

The Right to Information (Amendment) Bill, 2018

A Critical Review of the Amendment Proposals and the Underlying Reasoning¹

1. Introduction

1.1 The Government of India (GoI) has given the Rajya Sabha, formal notice of its intention to amend *The Right to Information Act, 2005* (RTI Act) during the monsoon session of Parliament that commenced on 18 July, 2018. A copy of *The Right to Information (Amendment), Bill, 2018* (hereafter Amendment Bill) has already been circulated to the Hon'ble Members of the Rajya Sabha on 17 July, 2018 which soon found its way into cyberspace. The List of Business for the House's sitting on 19 July, 2018, mentions the introduction (and not "introduction and passing") in the Rajya Sabha under the Government's Legislative Business. However, GoI has not officially publicised the Amendment Bill for the information of the voter-citizens whom Parliament represents. Some sections of the media have reported that the Amendment Bill may be sent to a Select Committee of the House for detailed consideration.² Whether this will indeed happen, remains to be seen.

1.2 Parliament adopted the RTI Act to give effect to people's right to access information from governments which is a deemed fundamental right within the meaning and scope of Article 19(1)(a) of the Constitution.³ This is GoI's third attempt to amend this seminal law since its enforcement in October 2005. First, in August 2006, the Union Cabinet approved proposals to amend the law in order to keep "file notings" or opinion and advice recorded on file by officers involved in a decision-making chain on issues other than those relating to development and social issues. Thanks to the very vocal and widespread opposition from the citizenry, the government was compelled to shelve the proposal without ever introducing it in Parliament. Second, in 2013, GoI tabled a Bill to amend the RTI Act in order to insulate from public scrutiny, all political parties and information that regulatory authorities hold about them. The Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice approved the amendment proposals despite widespread criticism from the citizenry. However that Bill lapsed with the dissolution of the 14th Lok Sabha.

¹ This critical review has been prepared by Venkatesh Nayak, Access to Information Programme, Commonwealth Human Rights Initiative, New Delhi, in July, 2018 for public dissemination and discussion. The author is grateful to Mr. Wajahat Habibullah, Chairperson, CHRI and former Chief Information Commissioner, Central Information Commission of India for providing useful comments on the initial draft of this critique.

² "No trust debate today, Government holds back RTI changes Bill", *Indian Express* dated 20 July, 2018, accessible at: <https://indianexpress.com/article/india/no-trust-debate-today-government-holds-back-rti-changes-bill-narendra-modi-rahul-gandhi-5266801/>, accessed on 30 July, 2018.

³ Article 19(1)(a) of the Constitution guarantees every citizen the fundamental right to freedom of speech and expression. Since its ruling in the matter of *The State of U.P. vs Raj Narain & Ors.*, AIR 1975 SC 865, the Supreme Court has held in several cases that people's right to know what the government is doing in their name and spending taxpayer funds is a deemed fundamental right under Article 19(1)(a).

1.3 In both instances, in the past, Gol's proposals to amend the RTI Act were in reaction to the progressive and pro-transparency decisions issued by Information Commissions, particularly, the Central Information Commission (CIC) on crucial matters such as the disclosure of file notings (between 2005-2006) and declaring the six national political parties as public authorities under the RTI Act (in June 2013). The justification for the current round of amendments to the RTI Act which seek to give Gol near absolute power over all Information Commissions (Centre and State-level), mentioned in the Statement of Objects and Reasons attached to the Bill is not sufficiently convincing as will be argued below. In the absence of any disclosure of other pertinent reasons for amending the RTI Act, this critique is limited to examining the justification publicly declared by Gol apart from the amendment proposals themselves. This critique of the Amendment Bill is based on the following core themes:

- 1) the absence of any consultation with the citizenry on the amendment proposals despite Gol being required to so do under its own Pre-Legislative Consultation Policy of 2014;
- 2) the amendment proposals may violate the right to equality before the law guaranteed under Article 14 of the Constitution;
- 3) the amendment proposals contradict Gol's 2017 policy of upgrading and harmonising the remuneration packages offered to other Tribunals and Adjudicating Authorities established under various Central laws;
- 4) the amendment proposals are contrary to the rationale informing the October, 2017 recommendations of the Law Commission of India for harmonising the salaries and terms and conditions of service of other statutory tribunals established under Central laws (even though it did not cover Information Commissions); and
- 5) Parliament is being moved to confer excessive powers of delegated legislation on Gol - so the proposals are a blow to the federal scheme of the RTI Act.

2. Absence of any public consultation on the amendment proposals

2.1 In the past, when the text of the RTI Bill was drafted in 2004, and the RTI Rules were drafted in 2005 and replaced in 2012 and more recently when they were sought to be amended in April 2017 the draft proposals were placed in the public domain for consultation. Gol has worked on the latest amendment proposals without consulting any stakeholder. This despite the adoption of the Pre-Legislative Consultation Policy in 2014⁴ which requires every Department piloting new legislation or amendments to an existing one to place the draft Bill in the public domain through print or electronic media for enabling affected people to send their views and comments. This policy itself was the outcome of civil society advocacy for institutionalising a mechanism to involve people in the exercise of law-making in a timely and meaningful manner. The concerned Department is required to hold consultations with all stakeholders who are likely to be impacted by the proposed legislation and provide feedback from this exercise, first to

⁴ See the complete text on the website of the Legislative Department, Union Ministry of Law and Justice at: <http://www.legislative.gov.in/documents/pre-legislative-consultation-policy>, accessed on 30 July, 2018.

the Union Cabinet which approves the legislative proposals for tabling in Parliament and next to the Department-related Parliamentary Standing Committee which vets the Bill and makes recommendations for changes where appropriate.

2.2 None of these steps of pre-legislative consultation seem to have been complied with in the current exercise to amend the RTI Act. There is no report of the Department of Personnel and Training- the nodal department for the implementation of the RTI Act, having consulted the Information Commissions who stand directly affected by the proposed amendments, let alone discussions with civil society or the citizenry, lakhs of whom have used the RTI Act in strategic ways to make public authorities more transparent and accountable.

2.3 In fact it is this strategic use of the RTI Act that the Hon'ble Prime Minister urged citizens to make more and more, while delivering the inaugural address at the National Convention organised to celebrate the 10th anniversary of the RTI Act in 2015. He urged Ministries and Departments to analyse the information requests received from the citizenry so that it can serve as a feedback for improving governance instead of merely treating RTI as an exercise of giving information on request. Over the last 13 years, in thousands of cases, Information Commissions at the Central and the State level have directed the disclosure of information that revealed evidence of mismanagement of public funds, poor decision-making and other kinds of wrong doing that public authorities would have otherwise preferred to keep away from public scrutiny. In fact their accomplishment match with the NDA Government's twin agenda of minimum government and maximum governance with zero tolerance for corruption".

2.4 Further, the RTI Act is the Government's own tool for combatting corruption. This is made explicit in the Preamble of the Act itself where "containing corruption" and making the government and its instrumentalities accountable to the governed, namely, the citizenry are mentioned among the core public interests that the law seeks to promote by establishing a regime of transparency. The law seeks to empower citizens to bring to light instances of corruption by demanding transparency of governmental action and the spending of public funds. Information Commissions are the mediators who ensure that public authorities do not withhold access to information regarding allegations of corruption and wrongdoing of their functionaries simply because it may cause some embarrassment or inconvenience.

2.5 Commenting on the Amendment Bill, Mr. Wajahat Habibullah, CHRI's Chairperson and the first Chief Information Commissioner of the CIC says: "the direct effect (of the amendment proposals) will be to weaken the Information Commission".⁵ The objective is not giving it some status but retaining its independence and this is in the

⁵ "RTI amendment will promote patronage, says former Chief Information Commissioner Wajahat Habibullah", interview published in *The New Indian Express* dated, 22 July, 2018, accessible at: <http://www.newindianexpress.com/thesundaystandard/2018/jul/22/rti-amendment-will-promote--patronage-says-former-chief-information-commissioner-wajahat-habibullah-1846678.html>, accessed on 30 July, 2018.

government's own interests. "They should strengthen the instrument rather than weaken it", he says.

3. Overview of the amendment proposals

3.1 The Amendment Bill seeks to incorporate the following changes in the RTI Act as it stands today:

- 1) remove the stipulation regarding the remuneration payable to Chief Information Commissioner and the Information Commissioners of the CIC and place discretionary power in the hands of Gol to vary it at will through the exercise of rule-making powers;
- 2) remove the stipulation regarding the remuneration payable to the State Chief Information Commissioner and the Information Commissioners of the State Information Commissions (SICs) and place discretionary power in the hands of Gol to vary it at will through the exercise of rule-making powers;
- 3) remove the fixity of tenure for the Chief Information and Information Commissioners at both the Central and State levels (one term of five years maximum, and superannuation at the age of 65 years) provided in the law and place discretionary power in the hands of Gol to vary it at will through the exercise of rule-making powers;⁶ and
- 4) empower Gol to make rules on the aforementioned subject matters.

4. Justification for the amendment proposals

4.1 The justification that Gol has provided for these proposals in the Statement of Objects and Reasons attached to the Amendment Bill may be summarised as follows:

- i) the Election Commission of India (ECI) is a constitutional authority performing its appointed functions under the Constitution whereas the Information Commissions are statutory authorities established under the RTI Act;
- ii) the ECI is "responsible for the superintendence, direction and control of the preparation of the electoral rolls for and the conduct of all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice President";
- iii) the Chief Election Commissioner and the Election Commissioners are entitled to salaries and allowances equal to that of a Judge of the Supreme Court;
- iv) the salaries and allowances and other terms and conditions of service that the Information Commissioners are entitled to are equal to that of the members of the ECI (except in the case of State Information Commissioners whose salary and allowances are equal to that of the Chief Secretary of the State); and

⁶ The only saving grace is that such exercise of rule-making powers will not be done to the disadvantage of the incumbents of these positions.

- v) as the respective mandates of the ECI and the Information Commissions are different, the latter's status and service conditions need to be rationalised accordingly.

5. An overview of comparative remuneration packages payable to the ECI and Judges of the constitutional courts

5.1 In order to adequately appreciate the implications of the amendment proposals, it is necessary to visit the salary and allowance entitlements of the Chief Election Commissioner and the two Election Commissioners and the Judges of the Constitutional courts, first.

5.2 Salaries and allowances payable to the Chief Election Commissioner and Election Commissioners, ECI

The salaries, allowances and other entitlements payable to the Chief Election Commissioner (CEC) and the two Election Commissioners (ECs) have been determined by Parliament in *The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991*.⁷ Section 3 of this law states that the CEC and the ECs will be paid a salary equal to that of a Judge of the Supreme Court. According to the information disclosed proactively on the ECI's website under Section 4(1)(b)(x) of the RTI Act, the CEC and the two ECs draw a fixed salary of INR 90,000 per month.⁸

5.3 Consequently, the Chief Information Commissioner and Information Commissioners of the CIC and the State Chief Information Commissioners of all SICs (except that of Jammu and Kashmir to which the Central RTI Act does not apply) are entitled to similar salary packages.⁹ The State Information Commissioners are entitled to draw salaries equal to that of the Chief Secretary – the highest ranking civil servant in a State.

5.4 However, in 2017, Parliament hiked the salaries and allowances payable to the judges of the Supreme Court and the High Courts which would automatically apply to the salaries payable to the CEC and the ECs. This in turn would require an upgradation of the remuneration packages of the Chief Information Commissioners and other Information Commissioners.

5.5 Salaries and allowances payable to the Judges of the Supreme Court

On 27th January, 2018, the Legislative Department of the Ministry of Law and Justice published the *High Court and Supreme Court Judges (Salaries and Conditions of Service)*

⁷ The text of this law is accessible on Gol's website that displays all Central Laws, Rules and Regulations: India Code at: <https://indiacode.nic.in/bitstream/123456789/1965/1/199111.pdf>, accessed on 30, July, 2018.

⁸ See information uploaded on the ECI's website at: http://eci.nic.in/eci_main/right-to-information/RTI17062015.pdf, accessed on 30 July, 2018.

⁹ See f.n. #12 below for an explanation of the RTI situation in Jammu and Kashmir.

Amendment Act, 2018 in the Official Gazette.¹⁰ Thanks to the amendments approved by Parliament, the salaries of the Judges of the Supreme Court and the High Courts were hiked in the following manner:

- a) **Chief Justice of the Supreme Court of India:** from INR 1,00,000 per month to INR 2,80,000 per month;
- b) **Judges of the Supreme Court of India:** from INR 90,000 per month to INR 2,50,000 per month
- c) **Chief Justice of every High Court:** from INR 90,000 per month to INR 2,50,000 per month; and
- d) **Judges of every High Court:** INR 80,000 per month to INR 2,25,000 per month.

5.6 These changes to the basic salary levels were given retrospective effect, from 01 January, 2016. The said legislation also contains a slew of amendments to other allowances and entitlement packages for the Judges of these constitutional courts. We are not examining them in detail in order to avoid tedium for the reader. The critique of the RTI Amendment Bill given below will equally apply to such matters as well.

5.7 As a result of the revised salaries of the Judges of the Supreme Court, the CEC and the EC will also be entitled to a basic salary of INR 2,50,000 per month and with retrospective effect.¹¹

5.8 Implications of the aforementioned laws to the current remuneration package of Information Commissioners

By virtue of the 2018 upgradation of the salaries and allowances of the Judges of the Supreme Court which would result in the upgradation of the salaries and allowances payable to the CEC and the ECs, the following changes to the remuneration package payable to the Information Commissioners at the Central and the State level will have to be made:

- a) as Section 13(5)(a) states that the Chief Information Commissioner of the CIC will be entitled to the salary and allowances of the CEC, he or she would be entitled to receive INR 2,50,000 per month;
- b) as Section 13(5)(b) states that the Information Commissioners of the CIC will be entitled to the salary and allowances of the EC, he or she would be entitled to receive INR 2,50,000 per month;

¹⁰ The Gazette notification is accessible on Gol's E-Gazette website at: <http://egazette.nic.in/WriteReadData/2018/182326.pdf>, accessed on 30 July, 2018. While the Lok Sabha passed the amendment proposals on 04 January, 2018, they were deemed to have been passed by both Houses on 20 January, 2018. It appears that being a Money Bill, this legislation is assumed to have been passed by the Rajya Sabha 14 days after its introduction in that House under Article 109(5) of the Constitution of India. The President of India gave his assent to the legislation on 25th January, 2018.

¹¹ It appears that this change has not been effected yet. The official website of ECI continues to display the old salary figures for the CEC and the ECs in compliance with the requirements of Section 4(1(b)(x) of the RTI Act, as noted at f.n. #8 above.

- c) as Section 16(5)(a) states that the State Chief Information Commissioner in every State Information Commission¹² will be entitled to the salary and allowances of the EC, he or she would be entitled to receive INR 2,50,000 per month; and
- d) as Section 16(5)(b) states that the State Information Commissioner in every State will be entitled to the salary and allowances of the Chief Secretary, he or she will be entitled to receive INR 2,25,000 per month.¹³

5.9 It appears that the Amendment Bill seeks to remove this parity and instead empower GoI to vary the salaries and allowances payable to the Central and the State Information Commissioners at its discretion, to be decided at the time of their appointment.

6. A critique of the amendment proposals and GOI's rationale

6.1 As summarised at para #4.1 above, the Statement of Objects and Reasons attached to the RTI Amendment Bill explains that the Central and State Information Commissions being statutory authorities cannot be equated with a constitutional authority such as the ECI. **This justification contradicts the policy that informed GoI's move in 2017 to hike the salaries and allowances payable to the Chairpersons and Members of a host of tribunals and appellate tribunals- all of which are statutory authorities and perform statutory functions unlike the ECI.**

6.2 In 2017, GoI sought to harmonise the salaries and allowances paid to the Chairpersons/Presiding Officers and Members of 19 quasi-judicial and administrative tribunals by making changes to their parent statutes through *The Finance Act, 2017*.¹⁴ A chart listing these adjudicatory bodies along with the name of their parent statute and a brief description of their core functions is given below:

#	Name of the Tribunal	Parent statute and core functions
1.	Industrial Tribunal constituted by the Central Government	<u>The Industrial Disputes Act, 1947 (No. 14 of 1947)</u> To adjudicate industrial disputes specified in the Act.

¹² As the Central RTI Act does not apply to the State of Jammu and Kashmir, this reasoning will not apply automatically to that State. However, under the J&K RTI Act, 2009, the salary of the State Chief Information Commissioner (SCIC) is pegged at the same level as that of the EC. In other words, the SCIC is entitled to draw a salary of INR 2,50,000 per month.

¹³ After the implementation of the recommendations of 7th Pay Commission, the Chief Secretary's salary is said to have been revised to INR 2,25,000 per month. See: <https://www.jagranjosh.com/articles/salary-of-an-ias-officer-after-7th-pay-commission-1449148465-1>, accessed on 30 July, 2018. As the Central RTI Act does not apply to the State of Jammu and Kashmir, this reasoning will not apply automatically to that State. However, under the J&K RTI Act, 2009, the salary of the State Information Commissioners (SIC) is pegged at the same level as that of the Chief Secretary to the State Government. In other words, an SIC is entitled to receive a salary of INR 2,25,000 per month.

¹⁴ See the complete text of *The Finance Act, 2017*, on the website of the Lok Sabha at: <http://164.100.47.193/BillsPDFFiles/Notification/2017-12-gaz.pdf>, accessed on 30 July, 2018.

		(addition in 2017- workload of the erstwhile <i>Employees Provident Fund Appellate Tribunal</i>)
2.	Income-Tax Appellate Tribunal	<u><i>The Income Tax Act, 1961 (No. 43 of 1961)</i></u> To decide appeals relating to income tax matters.
3.	Customs, Excise and Service Tax Appellate Tribunal	<u><i>The Customs Act, 1962 (No. 52 of 1962)</i></u> To decide appeals against the orders passed by the Commissioners of Customs, Service and Excise Tax; orders passed by the Designated Authority under <i>The Customs Tariff Act, 1975</i> and appeals relating to Customs House Agent Licensing.
4.	Appellate Tribunal	<u><i>The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (No. 13 of 1976) - SAFEMA</i></u> To decide appeals against orders made regarding forfeiture of property in certain cases (individuals and trusts); fines imposed in lieu of such forfeiture; certain matters specified in the Narcotic Drugs and Psychotropic Substances Act, 1985 and any orders made by adjudicating authorities made under the <i>Prevention of Money-laundering Act, 2002</i> . (addition in 2017- workload of the erstwhile <i>Appellate Tribunal for Foreign Exchange</i>)
5.	Central Administrative Tribunal	<u><i>The Administrative Tribunals Act, 1985 (No. 13 of 1985)</i></u> To adjudicate disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other authorities under the control of the Government.
6.	Railway Claims Tribunal	<u><i>The Railway Claims Tribunal Act, 1987 (No. 54 of 1987)</i></u> To inquire into and determining claims against the Railways for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to the Railways; refund of fares or freight; compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents. (addition in 2017- workload of the erstwhile <i>Railway Rates Tribunal</i>)
7.	Securities Appellate Tribunal	<u><i>The Securities and Exchange Board of India Act, 1992 (No. 15 of 1992)</i></u> To decide appeals against the orders passed by the Securities and Exchange Board of India. (addition in 2017- workload of the erstwhile <i>Insurance</i>

		<i>Regulatory and Development Authority and Pension Fund Regulatory and Development Authority)</i>
8.	Debts Recovery Tribunal	<u><i>The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (No. 51 of 1993)</i></u> To facilitate the debt recovery involving banks and other financial institutions.
9.	Debts Recovery Appellate Tribunal	<u><i>The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (No. 51 of 1993)</i></u> To decide appeals against the orders of Debt Recovery Tribunals.
10.	Airport Appellate Tribunal	<u><i>The Airports Authority of India Act, 1994 (No. 55 of 1994)</i></u> To adjudicate disputes arising out of eviction of unauthorised occupants on airport premises. (addition in 2017- workload of <i>National Highways Tribunal</i>)
11.	Telecom Disputes Settlement and Appellate Tribunal	<u><i>The Telecom Regulatory Authority of India Act, 1997 (No. 24 of 1997)</i></u> To adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector. (addition in 2017- workload of <i>Airports Economic Regulatory Authority Appellate Tribunal</i> and <i>Cyber Appellate Tribunal</i>)
12.	Intellectual Property Appellate Board	<u><i>The Trade Marks Act, 1999 (No. 47 of 1999)</i></u> To decide disputes relating to trademarks, patents and geographical indications. (addition in 2017- workload of <i>Copyright Board</i>)
13.	National Company Law Appellate Tribunal	<u><i>The Companies Act, 2013 (No. 18 of 2013)</i></u> To decide appeals against the orders of the National Company Law Tribunal(s). (addition in 2017- workload of <i>Competition Appellate Tribunal</i>)
14.	Film Certification Appellate Tribunal	<u><i>Cinematograph Act, 1952 (No. 37 of 1952)</i></u> To decide appeals against the orders or certificates issued by the Central Board of Film Certification.
15.	Authority for Advance Ruling	<u><i>The Income Tax Act, 1961 (No. 43 of 1961)</i></u> To provide the facility for ascertaining the income tax liability of a non-resident, to plan their income tax affairs and avoid long drawn and expensive litigation under the <i>Income Tax Act, 1961</i> .

16.	National Consumer Disputes Redressal Commission	<u>The Consumer Protection Act, 1986 (No. 68 of 1986)</u> To decide consumer disputes cases involving a value of more than INR 1 crore and decide appeals or revision petitions against orders of State Commissions or District Consumer Fora, as the case may be.
17.	Appellate Tribunal for Electricity	<u>The Electricity Act, 2003 (No. 36 of 2003)</u> To decide appeals or original petitions against the orders of Adjudicating Officers or the Central Regulatory Commission or the State Regulatory Commissions or Joint Commissions under <i>The Electricity Act, 2003</i> .
18.	Armed Forces Tribunal	<u>The Armed Forces Act, 2007 (No. 55 of 2007)</u> To adjudicate or try disputes and complaints with respect to commission, appointments, enrolments and conditions of service in respect of persons subject to the <i>Army Act, 1950</i> , <i>The Navy Act, 1957</i> and the <i>Air Force Act, 1950</i> and decide appeals arising out of orders, findings or sentences of courts-martial under the said laws.
19.	National Green Tribunal	<u>The National Green Tribunal Act, 2010 (No. 19 of 2010)</u> To provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property.

6.3 Later, in exercise of its powers under Section 184 of *The Finance Act, 2017*, Gol notified the *Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017* (henceforth TATA Rules) which *inter alia* determined the salaries and allowances payable to the Heads and the Members of the 19 adjudicatory authorities.¹⁵ With the exception of the National Industrial Disputes Tribunal and the Debts Recovery Tribunal,¹⁶ **the salaries of the Chairpersons of 19 Tribunals and Appellate Tribunals established under various laws were hiked to INR 2,50,000. The salaries of the Judicial/Administrative/Expert/Technical/Accountant/ Members of these Tribunals were upgraded to INR 2,25,000.**¹⁷

¹⁵ The complete text of these Rules is accessible on Gol's E-Gazette website at: <http://egazette.nic.in/WriteReadData/2017/176368.pdf>, accessed on 30 July, 2018.

¹⁶ The salary scales of the Presiding Officers of these two Tribunals were upgraded to the scale of INR 1,44,200 - 2,18,200 which is a substantial increase over the salaries currently paid to Information Commissioners.

¹⁷ Four months after Gol enforced TATA Rules, the Law Commission of India made similar recommendations regarding the upgradation of salaries in addition to harmonising other matters such as manner of appointments, qualifications, tenure, reappointment, removal and other service conditions applicable to the Chairpersons and Members of Tribunals and Adjudicating Authorities. See the Commission's 272nd Report:

6.4 In other words the salaries of the chairpersons of these tribunals were equated with that of the Judges of the Supreme Court while that of their Members equated with that of the Judges of High Courts even though none of these adjudicating bodies perform any constitutional functions like the ECI. So the justification contained in the Statement of Objects and Reasons attached to the RTI Amendment Bill runs contrary to Gol's one year old policy of harmonising remuneration packages to other adjudicatory bodies established under various statutes. This alone is indicative that the classificatory criterion adopted by Gol to treat the Information Commissions and other adjudicating authorities listed above may not satisfy the test of Article 14 of the Constitution. This point is illustrated in greater detail below.

6.5 For obvious reasons, the Information Commissions do not seem to have been included in the aforementioned list. As the RTI Act had already fixed the salaries and allowances payable to the Information Commissioners at all levels, with the upgradation of the remuneration package of the CEC and ECs, they would be automatically entitled to the same. However, by seeking to do away with this parity, it can be safely presumed that the Amendment Bill is intended to empower Gol to downgrade the remuneration package payable to all Information Commissioners, to start with and vary it later on at will. Given the justification spelt out in the Statement of Objects and Reasons attached to the Amendment Bill, it is also fairly obvious that Gol is not seeking to empower itself to provide the Information Commissioners salaries that are any higher than that to which they are currently entitled.

6.6 Further, the laws and the rules to upgrade and harmonise the salaries of the Chairpersons/Presiding Officers and Members of the Tribunals and Adjudicating Authorities listed at para #6.2 above, were enacted and enforced even before the Bill to upgrade the salaries and allowances payable to Judges of the Supreme Court and the High Courts received Parliament's approval.¹⁸ **Gol effectively revised the remuneration package payable to Members of Statutory Tribunals and Adjudicating Authorities much before similar revision was made to the salaries and allowances of Judges of the Supreme Court and the High Courts who are constitutional functionaries. So the**

Assessment of Statutory Frameworks of Tribunals in India, Law Commission of India, October 2017, accessible on its website at: <http://lawcommissionofindia.nic.in/reports/Report272.pdf>, accessed on 30 July, 2018. However, the Law Commission did not include the Information Commissions established under the RTI Act within the scope of its discussions. It may not be inappropriate to conjecture that this exclusion might have been because the remuneration package, manner of appointment and removal and other service conditions already stood determined by law at a high level.

¹⁸ The 2017 TATA Rules came into effect on 01 June, 2017- on the date of their publication in the Official Gazette whereas *The High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2018* was notified more than six months later on 27 January, 2018 albeit with retrospective effect to different provisions. However, the relevant provisions of *The Finance Act, 2017* and the TATA Rules have been challenged on grounds of suffering from the vice of excessive delegation of powers in the matter of *Jairam Ramesh vs Union of India*, Writ Petition (Civil) No. 558 of 2017. Notices have been issued to the relevant authorities in Gol such as the Ministry of Finance and the Cabinet Secretariat. However the daily orders posted on the website of the Apex Court do not indicate that the operation of the TATA Rules has been stayed.

“rationalisation” argument presented in the Statement of Objects and Reasons attached to the Amendment Bill does not appear to be rational, let alone convincing enough.

7. Status of Information Commissions in comparison with other adjudicating authorities whose salaries were revised in 2017

7.1 Factsheets for all Tribunals and Adjudicating Authorities whose salaries were revised in 2017 are appended to this critique for a quick comparison with the Information Commissions established under the RTI Act (page 29 onwards below).¹⁹ The comparison has been attempted on the following criteria:

- a) size of the Tribunal/Appellate Tribunal or Adjudicating Authority;
- b) nature of proceedings;
- c) appointing authority;
- d) qualifications for appointment of the Chairperson, Chairman, or Presiding Officer, as the case may be and the judicial or technical or expert or administrative or accountant members, as the case may be;
- e) search-cum-selection process;
- f) tenure;
- g) erstwhile salary and as revised in 2017;
- h) the forum where the decisions of the adjudicating authority may be appealed against; and
- i) whether the adjudicating authority is subject to the directions of Govt.²⁰

Each of these criteria is dealt with separately below to show the common or contrasting features of the Information Commissions vis-à-vis the tribunals, appellate tribunals and adjudicating authorities. A summary of our findings are given below:

7.2 Tribunal Size

7.2.1 Information Commissions: Sections 13 and 15 of the RTI Act permit the constitution of the CIC and the SICs respectively with a Chief Information Commissioner and up to 10 Information Commissioners each. The determination of the actual number of Information Commissioners required is left to the appropriate Government.

¹⁹ The serial numbers assigned to each tribunal or adjudicating authority in the comparative chart illustrated at para #6.2 above are similar to the serial numbers assigned to those bodies in the Factsheets for Comparison appended to this critique (page 29 onwards below).

²⁰ As the RTI Amendment Bill does not seek to amend the process of the removal of Information Commissioners – another saving grace, that criterion has not been included in this comparative exercise.

7.2.2 Tribunals and other Adjudicating Authorities: The size of the Tribunals varies from body to body. For example, the Industrial Tribunals, Debt Recovery Tribunals and Debt Recovery Appellate Tribunal and the Airports Appellate Tribunal have only one Presiding Officer or Chairperson each with no other Members. The Securities Appellate Tribunal (SAT), the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) comprises of one Presiding Officer and two Members each. A few others such as the Appellate Tribunal for Electricity (ATE) and the National Consumer Disputes Redressal Commission (NCDRC) provide for between 3-4 members and a Chairperson or President as the case may be. The National Green Tribunal (NGT) is the largest body where at least 10 Judicial and Expert Members each must be appointed along with the Chairperson. However, this number can go up to 20 per category as and when required. In other words the maximum strength can be 41 Members including the Chairperson. The National Company Law Appellate Tribunal (NCLAT) may have up to 12 members including the Chairperson. In most other cases, it is left to the discretion of Gol to decide on the number of Members in each Tribunal or adjudicating authority as it deems appropriate. Please see the Factsheet for Comparison for details of each body (page 29 onwards below).

7.2.3 Discussion: It is obvious that the RTI Act provided for the constitution of 11-member Information Commissions at the Central and the State levels recognising the fact that the workload is likely to be high. Experience from larger jurisdictions such as the CIC and the States of Maharashtra and Uttar Pradesh has shown that despite the membership of the Information Commission reaching the maximum permissible limit, workload has been increasing year after year.²¹ In terms of workload several Information Commissions carry a heavy burden like other multi-member adjudicating authorities listed above and this is a good reason for ensuring that their salaries and allowances be retained at the same levels as stipulated in the RTI Act.

7.3 Nature of proceedings

7.3.1 Information Commissions: The RTI Act does not specify the nature of proceedings relating to the appeals and complaints brought before the Information Commissions. However, for the purpose of deciding complaints submitted under Section 18(3) of the Act, they are vested with the powers of a Civil Court under the *Code of Civil Procedure, 1908* in matters such as:

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;

²¹ The reasons for the phenomenon of increasing second appeals and pendency of Information Commissions have been analysed by the author in the Rapid Review Reports released from time to time regarding the use of the RTI Act and the state of the functioning of Information Commissions across the country. As this issue is not pertinent here, they are not being discussed in detail. See our publications on this subject at: <http://www.humanrightsinitiative.org/publication/rti-cases-pile-up-as-vacancies-in-information-commissions-rise-across-india>, accessed on 30 July, 2018.

- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

Under the RTI Rules notified by the Central and State Governments Information Commissions exercise similar powers for the purpose of deciding appeals received under Section 19(3) of the RTI Act.

7.3.2 In 2012, the Supreme Court of India determined that the Information Commissions were quasi-judicial tribunals with the trappings of a court of law. However upon a review petition filed by Gol and the Government of Rajasthan in which several civil society actors including this author intervened, the Supreme Court ruled that the Information Commissions performed administrative functions, not judicial functions like a court.²² Nevertheless recognising the fact that the Information Commissions are required to weigh the beneficial and the harmful effects of disclosure of sensitive information, multiple High Courts have ruled that they perform quasi-judicial functions or have quasi-judicial authority.²³

7.3.3 Tribunals and other Adjudicating Authorities: The parent statutes of 17 of the 19 Tribunals and Adjudicating Authorities listed at para #6.2 above clearly spell out that the proceedings before such bodies are deemed to be judicial proceedings. However, proceedings before the Film Certification Appellate Tribunal (FCAT) and the Appellate Tribunal established under SAFEMA, 1976 are not deemed to be judicial proceedings. Details of the nature of powers vested in these Tribunals and Adjudicating Authorities are provided in the Factsheets for Comparison (page 29 onwards below) appended to this critique.

7.3.4 Discussion: In several judgements, the Supreme Court of India has ruled that quasi-judicial tribunals established under specific statutes have the trappings of a court of law because the powers of Civil Courts, especially, High Courts have been transferred to them for the purpose of deciding disputes speedily.²⁴ They are vested with the powers

²² *Union of India vs Namit Sharma with State of Rajasthan & Anr. vs Namit Sharma*, AIR 2014 SC 122.

²³ For example see: *Hitender Kumar vs Union of India & Ors.*, WP (C) 2161/2018, judgement dated 09/03/2018; *Block Development Officer, Paonta Sahib vs State Chief Information Commissioner & Ors.*, CWP No. 6072 of 2012, judgement dated 26/06/2018. It is settled law that the meaning of the term “judicial” has at least two dimensions: a) it may refer to the discharge of duties exercisable by a judge or by justices in a court; or b) it may refer to administrative duties which need not be performed in a court but in respect of which it is necessary to bring to bear a judicial mind- that is a mind to determine what is fair and just in respect of the matters under consideration. See: *Royal Aquarium and Summer and Winter Garden Society vs Parkinson*, (1892) 1 QB 431 (452), cited in the 272nd Report of the Law Commission of India on *Assessment of Statutory Frameworks of Tribunals in India*, October 2017, accessible on its website at: <http://lawcommissionofindia.nic.in/reports/Report272.pdf>, accessed on 30 July, 2018.

²⁴ For example, see: *L. Chandra Kumar Vs Union of India*, (1997) 3 SCC 261 and *Union of India vs R Gandhi/Madras Bar Association* (2010), 11 SCC 1.

of a Civil Court for the purpose of summoning records, examining persons on oath, requiring the submission of evidence on affidavits passing *ex parte* orders or reviewing them or punishing a person for civil contempt. While the RTI Act does not vest with Information Commissions the powers to pass *ex parte* orders, in many cases they pass orders *ex parte* when the appellant or the PIO does not turn up. However, thanks to a judgement issued by the Delhi High Court, the question as to whether the CIC has the power to review its own orders is pending before the Supreme Court.²⁵

7.3.5 There is one important area in which the powers of the Tribunals and the Adjudicating Authorities listed at para #6.2 above are unable to match that of the Information Commissions. The power of several such bodies to call for official records is subject to public interest immunity provisions (formerly known as Crown or Government privilege) contained in Sections 123 and 124 of the *Indian Evidence Act, 1872*.²⁶ See Factsheets for Comparison for details of each Tribunal (page 29 onwards below). There is no such restriction on the powers of Information Commissions to call for official records. In fact a combined reading of Sections 18(4) and 22 of the RTI Act clearly indicate that it is not permissible for a public authority to withhold access to any official document that is the subject matter of an appeal or complaint proceeding before the Information Commissions by claiming privilege.

7.3.6 Further, if the members of FCAT which is empowered to review certificates issued by the Central Board of Film Certification to films and the Appellate Tribunal under SAFEMA can be equated with a quasi-judicial tribunal and therefore be put on the same pedestal as the Judges of the Supreme Court and the High Courts in terms of remuneration package, there is no reason why Information Commissions should be treated differently.

7.3.7 Further, most of these Tribunals or Adjudicating Authorities listed at para #6.2 above do not have jurisdiction on disputes that directly relate to any fundamental right. Perhaps the only exceptions are FCAT which relates to the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) and NGT which relates to the fundamental right to a clean and safe environment guaranteed under Article 21 of the Constitution. The CIC and the SICs have jurisdiction to hear and decide cases of contravention of the right to information which is a deemed fundamental right as

²⁵ While striking down the CIC's Management Regulations, 2007 a Division Bench of the Delhi High Court held that the RTI Act does not vest the power of review of one's own decisions in the CIC. See: *Delhi Development Authority vs Central Information Commission and Anr.*, WP (C) 12714/2009, judgement dated 21/05/2010, MANU/DE/1072/2010. An appeal against some of the findings of the High Court is pending before the Supreme Court.

²⁶ Under Section 123 of the IE Act, no one may be permitted to give any evidence derived from unpublished records relating to any affairs of State except with the permission of the head of the department who may or may not give permission, as he or she deems fit. Under Section 124 of the IE Act, no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer from disclosure.

explained already. So it is not clear why they should be treated differently from FCAT and NGT in terms of the remuneration package to which their Members are entitled.

7.3.8 In a catena of judgements the Supreme Court of India has said that in order for legislative action to meet the test of Article 14 of the Constitution, which permits classification of unequals it must satisfy two conditions:

- i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and
- ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question.²⁷

In our humble opinion, the Statement of Objects and Reasons attached to the Amendment Bill when read with the 2017 TATA Rules to upgrade the salaries of other Tribunals and Adjudicating Authorities, do not satisfy these tests. **Therefore, it is submitted that on this ground the Amendment Bill may violate Article 14 of the Constitution.**

7.4 Appointing authority:

7.4.1 Information Commissions: The Chief Information Commissioner and other Information Commissioners are appointed by the President of India. Their counterparts in the States are appointed by the Governors of the respective States. This provision was included along with the selection process which is discussed in the next segment, in order to ensure that the appropriate Governments do not monopolise the appointment process.

7.4.2 Tribunals and other Adjudicating Authorities: In the cases of 16 of the 19 Tribunals and Adjudicating Authorities listed at para #6.2 above, the Chairpersons or Presiding Officers and other Members, as the case may be, are appointed by the Central Government. It is only in four cases, namely, the Railway Claims Tribunal, the Intellectual Property Appellate Board and the Armed Forces Tribunal that the Chairperson and Members are appointed by the President of India.

7.4.3 Discussion: Even on the issue of appointment authority, it is difficult to make sense of an intelligible differentia that can be used to distinguish between the Tribunals and the Adjudicating Authorities listed at para # 6.2 above in order to justify the need for treating the Information Commissions differently.

²⁷ For example see, *Budhan Choudhry & Ors. vs The State of Bihar*, AIR 1955 SC1 91, (9-Judge Constitution Bench); *Harakchand Ratanchand Banthia & Ors., vs Union of India & Ors.*, AIR 1970 SC1 453 (5-Judge Constitution Bench) and more recently, *Lok Prahari vs The State of Uttar Pradesh & Ors.*, AIR 2018 SC2 209 and *Director General, CRPF & Ors., vs Janardan Singh & Ors.*, Civil Appeal No. 5850 of 2011, judgement dated 02/07/2018.

7.5 Qualifications for appointment of Chairperson and Members

7.5.1 Information Commissions: The RTI Act prescribes a common set of criteria of qualifications and disqualification for candidates who may be appointed as the Chief Information Commissioner or Information Commissioners at the Central and the State levels. They must be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media and administration and governance. Further, they must not be a Member of Parliament or the Legislature of any State or Union Territory or hold an office of profit or be a member of a political party or carrying on any business or any profession at the time of appointment. Further, in 2015 Gol unilaterally set a criteria of 3 decades of service in the specialised field as one of the minimum conditions that the Search Committee should take into account for shortlisting a candidate for appointment to the CIC.²⁸

7.5.2 Tribunals and other Adjudicating Authorities: The qualifications for appointment of the Chairperson or Presiding Officer of a Tribunal or Adjudicating Authority varies from statute to statute. For example, a candidate must be or should have been a Judge of the Supreme Court or the Chief Justice or a Judge of a High Court, as the case may be to be considered for appointment as the Chairperson of the NGT, AFT, the Appellate Tribunal under SAFEMA, Central Administrative Tribunal (CAT), NCDRC, TDSAT, National Company Law Appellate Tribunal (NCLAT), SAT, ATE, Railway Claims Tribunal, Debts Recovery Appellate Tribunal (DRAT), Airport Appellate Tribunal (AAT), IPAB and FCAT. A candidate must be a sitting or retired judge of a High Court for appointment as the Chairperson of the Income Tax Appellate Tribunal (ITAT), Customs, Excise and Service Tax Appellate Tribunal (CESTAT). A District Judge is eligible for consideration for appointment to the Debt Recovery Tribunal (DRT). In several statutes alternative criteria includes experience of working in the field of law, economics, business, commerce, industry, finance or governance for a minimum of 20-25 years have been provide for considering a candidate eligible for appointment as the Chairperson or a Presiding Officer. The requisite qualifications for a Presiding Officer of Debts Recovery Tribunal is that he or she is or was a District Judge with 20 years of experience (apart from the common criteria of ability, integrity and standing) in the fields mentioned above.

7.5.3 The qualifications for appointment of a Judicial/Law/Technical/Administrative/Expert Members of Tribunals and Adjudicating Authorities differ from statute to statute. Detailed criteria are compiled in the Factsheets for Comparison (page 29 onwards below) appended to this critique. In none of the parent statutes is a 30-year experience

²⁸ See Minutes of the meeting of the Search Committee chaired by Shri Ajit Seth, Cabinet Secretary and held on 27/04/2015 for shortlisting names for selection to the posts of Chief Information Commissioner and Information Commissioners in the Central Information Commission- information accessed under the RTI Act by Commodore (Retd.) Lokesh Batra 2015. I am grateful to him for sharing the relevant documents with me by email.

requirement included as a criterion for shortlisting candidates.²⁹ The number of years vary from 20 years as is the case with Railway Claims Tribunal, NCDRC and ATE to 25 years as is the case with TDSAT, NCLAT.

7.5.4 *Discussion:* The eligibility criteria for Chairpersons and Members of several Tribunals and Adjudicating Authorities listed in the Factsheets for Comparison (page 29 onwards below) appended to this critique were streamlined in the 2017 TATA Rules. Under these Rules even a Presiding Officer of a Debts Recovery Tribunal - who should be a serving or retired District Judge - is entitled to a substantially higher salary than that of an Information Commissioner, unless the salaries payable to the latter are hiked in accordance with the current provisions of the RTI Act. Nothing in the RTI Act bars the appointment of a retired Judge of the High Court or a Supreme Court as a Chief Information Commissioner. In fact the first Chief Information Commissioners appointed in Uttar Pradesh and Bihar were retired judges of High Courts. However, thanks to the practice adopted by the government-dominated selection committee at the Central and the State level, retired civil servants have been preferred for appointment more often than retired judges. So this is not a fault of the law but one of practice.

7.5.5 Further, None of the parent statutes or the 2017 TATA Rules specify a 30-year work experience requirement as a minimum requirement for a candidate to be considered for appointment as a Chairperson or Member of any of these Tribunals or Adjudicating Authorities. Under this category also it is submitted that the conditions of “intelligible differentia” are not satisfied and the Amendment Bill once again appears to fail the test of Article 14 of the Constitution.

7.6 Search-cum-selection process

7.6.1 *Information Commissions:* Section 12(3) of the RTI Act requires a three-member selection committee to be constituted for the purpose of identifying eligible candidates for recommendation for appointment to the CIC. This Committee is chaired by the Prime Minister of India. The Leader of the Opposition in the Lok Sabha and a Cabinet Minister nominated by the Prime Minister are its other members. The President of India appoints the Chief Information Commissioner and other Information Commissioners from the panel prepared by this Selection Committee. This committee is serviced by a Search Committee constituted under the Chairmanship of the Union Cabinet Secretary. Other members of the Committee may vary from time to time as there are no rules laid down for its composition. Section 15(3) of the RTI Act requires a similar selection committee to be formed in the States except that such Committees are chaired by the concerned Chief Minister. Different States follow different search processes details of which are not always readily available in the public domain.

²⁹ It must be clarified that this criterion is based on an executive decision and does not have the same force of law as the provisions relating to the qualifications and disqualifications for appointment, laid down in the RTI Act.

7.6.2 Tribunals and other Adjudicating Authorities: The parent statutes often provide for different selection-cum-search processes for recommending candidates for the post of Chairperson and members of the Tribunals and Adjudicating Authorities listed at para #6.2 above. In the case of 13 Tribunals or Adjudicating Authorities such as the ITAT, CESTAT, the Appellate Tribunal under SAFEMA, CAT, SAT, DRT, DRAT, TDSAT, IPAB, Authority for Advance Ruling, ATE, NGT, the Chief Justice of India or his nominee chairs the committee to select the Chairperson or Presiding Officer of these bodies. In the case of NCLAT, NCDRC and AFT, only a consultation with the Chief Justice of India prior to making the appointment is required. Other members of this selection committee are often government representatives or their nominee officers or their nominee subject experts. As regards the selection committee for Members of these Tribunals and Adjudicating Authorities, they are always dominated by government representatives though in certain cases they may be chaired by the Chief Justice of India or his nominee. Please see the Factsheets for Comparison for details regarding every such body (page 29 onwards below).

7.6.3 Discussion: The search-cum-selection process for Information Commissioners was much debated at the drafting stage and civil society demanded that the Chief Justice of India be put on it. However, Gol cited case law which gave primacy to the opinion of the Chief Justice of India in such processes and rejected the proposal and settled down for a government-dominated committee. Nevertheless, all the search-cum-selection committees relating to the Tribunals and Adjudicating Authorities reviewed for this critique are also Government-dominated. So there is no reason why on this criterion also the Information Commissions must be categorised differently from such bodies.

7.7 Tenure

7.7.1 Information Commissions: The RTI Act stipulates a maximum term of five years for the Chief Information Commissioners and Information Commissioners at all levels. If a serving Information Commissioner is elevated to the post of a Chief Information Commissioner, the combined term also cannot be more than five years. Further the age of superannuation is fixed at 65 years for all Commissioners.

7.7.2 Tribunals and other Adjudicating Authorities: A close examination of the age of superannuation stipulated in the 2017 TATA Rules indicates that there is not much uniformity despite the efforts at harmonisation. The only exception is that all Chairpersons and Members can serve for three years, as a rule, in the first term. All Chairpersons and Members are eligible for reappointment unless they have reached the stipulated age of superannuation. The age of superannuation for the Chairpersons of the AFT, NGT DRAT, TDSAT, the Authority for Advance Ruling and ATE is pegged at 70 years. In all other cases it is pegged at 65 years. While a justification may be made on the basis that a retired Judge of the Supreme Court serving on one of these bodies may have more than one term, Judicial and Expert/Technical members are also eligible for serving as the Chairperson of some of these Tribunals and will be entitled to serve for as long thereby staking their claims for multiple terms. See Factsheets for Comparison for Tribunals in which Expert/Technical Members are eligible for appointment as Chairpersons (page 29 onwards below).

7.7.3 As regards Members of the Tribunals and Adjudicating Authorities listed at para #6.2 above, those serving on the Authority on Advance Ruling have their age of superannuation fixed at 70 years- the maximum for any such body. In all other cases the age of superannuation varies between 62-65 years. Please see the Factsheets for Comparison (page 29 onwards below) for further details about every such body.

7.7.4 Discussion: The Amendment Bill seeks to empower Gol to prescribe the tenure for every Chief Information Commissioner and Information Commissioner at the Central and the State levels through rule-making. In theory, Gol can determine the tenure of every appointee to any Information Commission through the rule-making power. **This is in complete contradiction of the policy that guided the harmonisation exercise that was enunciated for Tribunals and Adjudicating Authorities under The Finance Act, 2017 and completed in the 2017 TATA Rules.** Once again, in our opinion, Article 14 of the Constitution will be hit if these proposals are approved by Parliament.

7.7.5 While discussing this matter in its 272nd Report, the Law Commission of India noted that permitting the Government control in matters of appointment, reappointment and tenure will itself undermine the independence of a Tribunal or Adjudicating Authority.³⁰ A Chairperson or Member “may be inclined to decide matters in a manner that would ensure reappointment”, the Commission noted. So the Commission has recommended that such matters be shielded from the intervention of the Executive.

7.8 Salary

7.8.1 Discussion: The issue of disparity in the fixation of salaries has already been discussed at paras #6.3 to 6.6 above. Through the Amendment Bill Gol is seeking rule-making powers from Parliament to determine the salaries of the Chief Information Commissioners and Information Commissioners not only at the Central level but also in the States. This is hugely problematic. **While the salaries of the CIC are paid out of the Consolidated Fund of India, the salaries of the SICs are paid out of the Consolidated Funds of the respective States. Under the constitutional scheme of division of powers, neither Parliament nor Gol has the power or control over the Consolidated Fund of any State unless such State has been placed under President’s Rule through a proclamation issued under Article 356 of the Constitution** and the powers of the State Legislature have been duly transferred to the President of India or subsequently delegated by him or her to Parliament. Therefore, it is difficult to understand how Parliament can be called upon delegate powers to Gol to determine salaries and allowances of State Information Commissioners through rule-making which can be varied from time to time at its whim and fancy.

7.8.2 Further, the very purpose of stipulating the salaries and allowances payable to the Information Commissioners at the Central and the State levels in the RTI Act itself, was

³⁰ Para 5.19 of Report No. 272 on *Assessment of Statutory Frameworks of Tribunals in India*, Law Commission of India, October 2017, page 50, accessible on the website of the Law Commission at: <http://lawcommissionofindia.nic.in/reports/Report272.pdf>, accessed on 30 July, 2018.

to ensure financial and functional autonomy from the government of the day- so that they may decide on information access disputes without fear or favour. **This forms an essential component of the legislative scheme of the RTI Act which is federal in character. By seeking to amend this component in our opinion, GoI will be mauling the very federal scheme beyond recognition.** Such discretionary powers can be used to emaciate any Information Commission in future that delivers decisions unpalatable to the government of the day. This goes against the very requirements of a fundamental rights adjudicatory mechanism which should be insulated from any kind of governmental influence.

7.9 Forum of appeal

7.9.1 Information Commissions: Under Section 19(7) of the RTI Act, the decisions of Information Commissions at all levels are binding and final on the parties to each case. Section 23 of the RTI Act ousts the jurisdictions of courts and prevents them from interfering in the functioning of the Information Commissions.³¹ The only way of challenging a decision of the Information Commission is external to the RTI Act, through judicial review, i.e., by invoking the writ jurisdiction of the relevant High Court or the Supreme Court of India under Articles 226 and 32 respectively.

7.9.2 Tribunals and other Adjudicating Authorities: The parent statutes of a large number of the Tribunals and Adjudicating Authorities listed at para #6.2 above explicitly specify the forum where an appeal against their decision or direction or award may be filed. For example, the decisions or directions of CAT, SAT, TDSAT, NCLAT, NCDRC, ATE, AFT and NGT may be appealed against before the Supreme Court of India within a period of 60-90 days as specified in the parent statute. In the cases of ITAT, CESTAT, Railway Claims Tribunal, IPAB, the Authority on Advance Ruling, the parent statutes specify that their decisions may be challenged before the relevant High Court. The parent statutes pertaining to the Industrial Tribunal, the Appellate Tribunal under SAFEMA, DRAT, FCAT and AAT are silent regarding the forum of appeal against the decisions of such bodies. Presumably, a judicial review of their decisions can be sought before the relevant High Court or the Supreme Court of India under the relevant provisions of the Constitution. In the case of DRT, its decisions can be challenged before DRAT.

7.9.3 Discussion: In its 272nd Report, the Law Commission of India noted that where a statute provides already for an Appellate Tribunal (i.e., two-tier Tribunals), its decisions should be open to challenge before the Supreme Court of India. Where a statute does

³¹ For example, in the matter of *The Grain merchants Cooperative Bank Ltd. Etc. vs Chief Information Commissioner, Karnataka Information Commission & Ors.*, Writ Petition No. 18532 of 2007 (GM-Res), order dated 28.02.2008, citing Section 22 of the RTI Act, the High Court of Karnataka refused to interfere in a complaint proceedings before the Karnataka Information Commission for determining whether the Petitioner was covered by the RTI Act and was required to make a decision on an information request received from a citizen. The Court advised the Petitioner to go through the proceedings before the Commission and then pursue remedies under Art. 226 of the Constitution for redressing any grievance with its orders or directions.

not provide for an Appellate Tribunal, then an aggrieved party should approach the relevant High Court.³² In the case of at least five Tribunals or Adjudicating Authorities listed above, appeals against their decisions lie not before a higher Tribunal but directly before the High Courts. Nevertheless, through the TATA Rules, 2017, GoI hiked their salaries to the same levels as that payable to the Chairperson and Members of Appellate Tribunals such as SAT, TDSAT and NCLAT whose decisions are open to challenge before the Supreme Court of India. These Rules do not distinguish between Tribunals and Appellate Tribunals. So on this account as well, the rationale for treating Information Commissions differently is not tenable from the Statement of Objects and Reasons attached to the Amendment Bill.

7.10 Functional autonomy

7.10.1 Information Commissions: Sections 12(4) and 15(4) clearly specify that subject to the provisions of the RTI Act and the Rules made under it the Information Commissions at all levels will manage their own affairs and exercise all powers and perform all appointed functions autonomously without being subject to the directions of any other authority under the Act. This provision was specifically included to ensure the operational autonomy of the Information Commissions and insulate them from interference from the appropriate governments with regard to their day to day functioning or performance of appeal functions.

7.10.2 Tribunals and other Adjudicating Authorities: The parent statutes of all but one of the Tribunals and Adjudicating Authorities listed at para #6.2 above also ensure their operational autonomy from GoI. In the case of FCAT, GoI may call for the record of any proceeding in completed cases. However there is an explicit bar on the use of such powers in cases that are pending before FCAT.

7.10.3 Discussion: Despite the fact that FCAT is subject to the supervision of GoI in relation to cases that it has already decided, it has been equated with other tribunals and Adjudicating Authorities. On the other hand GoI is seeking powers to regulate the salaries and tenures of Information Commissioners which in all likelihood will be for the purpose of a downward revision. This is another example of an apparent absence of intelligible differentia in GoI's policy towards Tribunals and Adjudicating Authorities. Therefore it is submitted that on this account also, the Amendment proposals may fail the test of Article 14 of the Constitution.

8 Increasing the workload of tribunals and adjudicating authorities

8.1 There is a strong possibility that GoI may argue that the Tribunals and Adjudicating Authorities listed at para #6.2 above have been assigned additional workload under the 2017 TATA Rules and are therefore entitled to higher salaries and allowances. Indeed

³² Paras 8.22 and 8.23 of Report No. 272 on *Assessment of Statutory Frameworks of Tribunals in India*, Law Commission of India, October 2017, page 50, accessible on the website of the Law Commission at: <http://lawcommissionofindia.nic.in/reports/Report272.pdf>, accessed on 30 July, 2018.

through *The Finance Act, 2017*, Parliament approved Gol’s proposal to merge 10 erstwhile tribunals and appellate tribunals with those listed at para #6.2 above. However the workload of only eight existing tribunals was increased through such merger, namely, the Industrial Tribunal, SAT, IPAB, Railway Clams Tribunal, Appellate Tribunal under SAFEMA, AAT, TDSAT and NCLAT. While SAT and TDSAT took on the workload of two other Tribunals each, the remaining have had only one erstwhile tribunal merged with them. The jurisdiction of the remaining nine Tribunals and Adjudicating Authorities was not expanded during this exercise. A comparative chart of these mergers is provided below:

8.2 Overview of Tribunals merged by *The Finance Act, 2017*:

#	Name of the Tribunal and merged/replaced with which Tribunal	Parent Statute of the merged/replaced tribunal	Erstwhile Jurisdiction
1.	<i>Employees Provident Fund Appellate Tribunal</i> merged with: <i>Industrial Tribunal constituted by the Central Government</i>	<u><i>The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (No. 19 of 1952)</i></u> ³³	To hear appeals against notifications of the Central Government or the Central Provident Fund Commissioner regarding application of the law to certain specified establishments, and moneys payable on orders of the Provident Fund Commissioners of various ranks after review process is exhausted.
2.	<i>Insurance Regulatory and Development Authority</i> and	<u><i>Insurance Regulatory and Development Authority Act, 1999 (No. 41 of 1999)</i></u>	To protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry
3.	<i>Pension Fund Regulatory and Development Authority</i> merged with: <i>Securities Appellate Tribunal</i>	<u><i>The Pension Fund Regulatory and Development Authority Act, 2013 (No. 23 of 2013)</i></u>	To promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds
4.	<i>Copyright Board</i> merged with:	<u><i>The Copyright Act, 1957 (No. 14 of 1957)</i></u>	To hear complaints regarding copyright related matters including disputes against any

³³ All in this comparative table links to parent statutes are sourced from official websites that displayed the text of the law as it stood before the 2017 amendments. All links were current as on 19 July, 2018.

	Intellectual Property Appellate Board (under <i>The Trade Marks Act</i>)		decision of the Registrar of Copyrights; to decide on applications for license to produce and publish a translation of a literary or dramatic work in any language and to decide complaints about statements published by performing rights societies regarding fees and royalties proposed to be collected for grant of licenses
5.	<i>Railways Rates Tribunal</i> merged with: Railway Claims Tribunal	<u><i>The Railways Act, 1989</i></u> <u>(No. 24 of 1989)</u>	To decide complaints against the Indian Railways regarding undue preference or advantage given or in favour of any particular person or any particular description of traffic in the carriage of goods or charging of unreasonable rates for the carriage of any commodity; or levy of any other unreasonable charges.
6.	<i>Appellate Tribunal for Foreign Exchange</i> merged with: Appellate Tribunal [under the <i>Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976</i>]	<u><i>The Foreign Exchange Management Act, 1999</i></u> <u>(No. 42 of 1999)</u>	To decide appeals against the order issued by the Adjudicating Authorities under FEMA regarding contravention of the Act.
7.	<i>National Highways Tribunal</i> merged with: Airports Appellate Tribunal	<u><i>The Control of National Highways (Land and Traffic) Act, 2002</i></u> <u>(No. 13 of 2002)</u> (Gazetted on 14 January 2003)	To decide appeals against the orders passed by any officer of the Highways Administration such as removal of unauthorised occupation of highways and recovery of costs or fines involved therein; orders relating to access to highways; recovery of costs for repair of damages to highways from person causing such damage; action taken against owners of vehicles or animals causing obstruction on highways; and action taken against unauthorised

			construction specified under or over a highway in the Act.
8.	<i>Airports Economic Regulatory Authority Appellate Tribunal</i> and	<u><i>The Airports Economic Regulatory Authority of India Act, 2008 (No. 27 of 2008)</i></u>	To adjudicate specified disputes between two or more service providers; or between a service provider and a consumer group; and decide appeals against the direction, decision or order of the Airports Authority of India.
9.	<i>Cyber Appellate Tribunal</i> merged with: <i>Telecom Disputes Settlement and Appellate Tribunal</i>	<u><i>The Information Technology Act, 2000 (No. 21 of 2000)</i></u>	To decide appeals against an order of an Adjudicating Officer regarding contravention of any provision of the Act
10.	<i>Competition Appellate Tribunal</i> merged with: <i>National Company Law Appellate Tribunal</i>	<u><i>The Competition Act, 2002 (No. 12 of 2002)</i></u> (Gazetted on 13 January 2003)	To decide appeals against any order of the Competition Commission of India

8.3 Gol has not placed data about the workload of some of these Tribunals in the public domain. The Law Commission of India published some data about pending cases in some of these Tribunals in 2017. For example, CESTAT had more than 90,000 cases pending (end of 2016), ITAT had more than 91,000 cases pending, DRT had 78,118 cases pending (as of July 2016), (end of 2016), Railways Claim Tribunal had more than 45,000 cases pending (as of September 2016) and CAT had more than 44,000 cases pending (as of July 2017).³⁴

8.4 Several Information Commissions in large jurisdictions have comparable pendency levels. Maharashtra and Uttar Pradesh SICs had more than 40,000 cases pending (beginning of January 2018), while Karnataka SIC had more than 29,000 pending cases (as of February 2018) and the CIC had a more than 23,950 cases pending (as of July, 2018).³⁵ As the remuneration package payable to the Tribunals and Adjudicating

³⁴ See para #3.35 of the 272nd Report of the Law Commission of India on *Assessment of Statutory Frameworks of Tribunals in India*, October 2017, accessible on its website at: <http://lawcommissionofindia.nic.in/reports/Report272.pdf>, accessed on 30 July, 2018

³⁵ For CIC's pendency data see: Pending Cases Report section of its website at: <https://dsscic.nic.in/cause-list-report-web/view-pending-cases>, and for pendency data for the SICs mentioned above, see CHRI's *State of Information Commissions and the Use of RTI laws in India: Rapid Review 4.0* accessible at: <http://www.humanrightsinitiative.org/publication/rti-cases-pile-up-as-vacancies-in-information-commissions-rise-across-india>, both accessed on 30 July, 2018.

Authorities whose workload was not expanded were also upgraded, the argument of expansion of jurisdiction and caseload will also not adequately justify the “rationalisation” that Gol seeks to achieve with the remuneration package of the Information Commissions by amending the RTI Act.

9. Obliteration of the federal character of the RTI Act

9.1 It has already been shown at para #7.8 above, that the amendment proposals adversely affect the legislative scheme of the RTI Act which is essentially federal in character. The salaries and allowances of the State Information Commissioners are paid up from the Consolidated Fund of the respective States over which Gol has no control under ordinary circumstances. Similarly, the information access disputes that State Information Commissions are called upon to hear and decide through appeals and complaints procedures under the RTI Act pertain to information or official records held by or under the control of State Governments or public authorities under their jurisdiction. This is clear from a combined reading of the definition of the phrase- “appropriate government” contained in Section 2(a) of the RTI Act read with the rule-making power given to them under Section 27 of the Act. How can an SIC which is constituted and whose salaries and tenure are determined by Gol effectively function in the State is a question that the Statement of Objects and Reasons attached to the Amendment Bill fails to answer.

9.2 Under Section 15(1) of the RTI Act it is the responsibility of the State Government to establish and constitute the State Information Commission. Under Section 15(3) of the Act it is the Governor of the State who is empowered to appoint the State Chief Information Commissioner and the State Information Commissioners upon the recommendation of the Selection Committee headed by the State’s Chief Minister, a Cabinet Minister from that very State chosen by such Chief Minister and the Leader of the Opposition of the Legislative Assembly of that State. The power to remove them on grounds of proved misbehaviour or incapacity are vested with the Governor of the concerned State who shall act on the findings of the Supreme Court of India which is empowered to conduct an inquiry on such matters. Additionally, the Governor may remove any Member of the State Information Commission on grounds of adjudged insolvency, conviction for an offence of moral turpitude, engaging in paid employment outside the duties of one’s office, has become infirm of body or mind so as to affect his or duties or has acquired any financial or other interests that are likely to prejudicially affect his or her performance of functions as a member of the Information Commission. The decisions of an SIC cannot be challenged before the CIC. In other words, the federal character of the legislative scheme of the RTI Act is unequivocal. The jurisdictional limits of the Central and State level are distinguished sharply and with adequate clarity. Gol has no role to play at all in the establishment and the functioning of the SICs. The Amendment Bill seeks to obliterate this federal character of the legislative scheme which is unwarranted.

9.3 Further, Section 27(2) empowers the State Governments to make rules for the manner in which appeals procedures will be conducted before the SICs. They are also

empowered to make rules for fixing the salaries and allowances payable to the officials and employees of the SICs in addition to determining their terms and conditions of service. If the Amendment Bill were to become law, then two sets of Rules would govern the SICs- one made by the Central Government for the tenure and remuneration package for the Information Commissioners and the other made by the State Government for the officials and employees of the SIC. This “diarchy” itself will create major problems in the functioning of the SICs.

9.4 Further, all annual reports of the State Information Commission are required to be tabled in the concerned State Legislature through the State Government. Although hardly any instance of the SIC reports being debated in the State Legislature has been reported in the media so far, in theory, the State Legislatures may examine the performance of the respective SICs using their annual report as a basis. However, if Gol is given the power to make rules for their salaries and tenure, they may no longer be accountable to the State Legislatures. Further, according to the Rules of Procedure and Conduct of Business adopted by the Lok Sabha and the Rajya Sabha, a matter falling within the exclusive jurisdiction of the State Government may not be raised in Parliament because there is no representative of such Government to submit a reply or defend governmental action on the floor of the House. So if the Amendment Bill becomes law, the SICs may not be held accountable in Parliament either. In short, in our humble opinion the amendment proposals will end up creating a mess as regards the accountability of SICs to people’s elected representatives is concerned. The Amendment proposals seek to obliterate the federal character of the legislative scheme of the RTI Act.

10. Conclusion and Recommendations

10.1 Gol’s justification for the amendment proposals is berthed on the issue of rationalising the status of the Information Commissions. In fact this is not an issue of stature at all. The current scheme of the RTI Act is designed to ensure the autonomy of the Information Commissions so that they may work under conditions free from government influence. Measures for ensuring operational and financial autonomy for the Information Commissions were incorporated in the Act because the government and other public authorities would be the principal respondents in a majority of information access disputes. Therefore Parliament and civil society advocates agreed on the current mechanism which permits the Information Commission to perform their appointed functions without fear or favour. The Amendment proposals seek to alter this very basic feature of the RTI Act.

10.2 In its 272nd Report assessing the statutory framework of tribunals, the Law Commission recalled the observation of a 7-Judge Constitution Bench of the Supreme Court in *L. Chandra Kumar* where the Court called for an independent supervisory body to be appointed to oversee the functioning of statutory tribunals.³⁶ Until such a mechanism is

³⁶ See f.n. #24 above and para 5.7 of the Law Commission’s report, accessible on its website at: <http://lawcommissionofindia.nic.in/reports/Report272.pdf>, accessed on 30 July, 2018.

established, the tribunals should be under a nodal Ministry, it opined. The Court recommended that the Union Ministry of Law and Justice play this role until the independent supervisory mechanism is established. The Law Commission has also recommended the establishment of such a nodal agency under the Union Ministry of Law and Justice. This recommendation needs widespread debate in order to insulate bodies such as the Information Commissions from interference by GoI as is being contemplated under the Amendment Bill.

10.3 In light of the very serious problems highlighted above with regard to the amendment proposals and the justification underlying them, it is advisable that the Amendment Bill be dropped without introduction in Parliament. Instead the requisite orders may be issued to upgrade the salaries of the Information Commissioners at all levels in accordance with the provisions of the RTI Act as they exist today and initiate measures to improve their functioning by providing them with an adequate number of staff of high calibre for quickly disposing appeals and complaints.

19 Appellate Tribunals/Boards/ Commissions established under Central Laws

(Composition, selection, appointment, salaries, tenure, nature of proceedings, and jurisdictional autonomy)

A Factsheet for Comparison

I. Name of the Tribunal and the parent statute:

Industrial Tribunal constituted by the Central Government under [The Industrial Disputes Act, 1947 \(No. 14 of 1947\)](#)

a) Tribunal size:

One person only

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. Tribunal is vested with the powers of a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of enforcing the attendance of any person and examining him on oath, compelling the production of documents and material objects, issuing commissions for the examination of witnesses and other matters prescribed by the Government.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or was a High Court Judge or has been a District Judge or an Additional District Judge for not less than 3 years or is a person of ability, integrity and standing and having special knowledge of and professional experience of not less than 20 years in economics, business, commerce, law, finance, management, industry, public affairs, administration, labour relations, industrial disputes or any other matter which in the opinion of the Central Government is useful to the Industrial Tribunal.

e) Qualifications for appointment as Judicial Member:

Not applicable

f) Qualifications for appointment as Lay/Technical/Expert/Administrative Member:

Not applicable

g) Search-cum-selection process:

Committee to choose the Presiding Officer to be chaired by a person nominated by the Central Government. Members are: Labour Secretary, another Secretary to GoI nominated by the Central Government and two experts nominated by the Central Government.

h) Tenure:

Three years or up to the age of 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Rules indicate that the Central Government may fix the fees payable on a case by case basis.

j) Revised salary in 2017:

Presiding Officer: INR 1,44,200 - 2,18,200.

k) **Where its decision may be appealed against:**

No reference in the law to a legal challenge to the award handed down by the Tribunal.

l) **Subject to the directions of the Government?**

No.

II. Name of the Tribunal and the parent statute:

Income-Tax Appellate Tribunal: [The Income Tax Act, 1961 \(No. 43 of 1961\)](#)

a) Tribunal size:

President and as many Judicial and Accountant Members as may be required.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. Tribunal has all powers vested in income tax authorities. Tribunal is deemed to be a civil court for the purpose of Section 196 of Indian Penal Code, 1860 and deemed to be a civil court for all purpose of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate must be a sitting or retired judge of a High Court for at least seven years or is one of the Vice Presidents of the Tribunal.

e) Qualifications for appointment as Judicial Member:

Candidate has held judicial office for at least 10 years or who has been a member of the Indian Legal Service and has held Grade II of that service or equivalent post for at least 3 years or has been an advocate for at least 10 years.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate has been a practising accountancy for at least 10 years as a Chartered Accountant or as a registered accountant under any law formerly in force or partly as such registered accountant and partly as a chartered accountant or has been a member of the Indian Income Tax Service Group A and has held the post of Addl. Commissioner-IT or equivalent or higher post for at least 3 years.

g) Search-cum-selection process:

(i) Committee for choosing the President is chaired by a sitting Judge of the Supreme Court nominated by the Chief Justice of India. Members are, President of the Tribunal, Secretary Law Ministry and Secretary, Dept. of Legal Affairs.

(ii) Committee for choosing the Accountant and Judicial Members of the Tribunal is chaired by a nominee of the Minister for Law and Justice. Members are, Secretary Law Ministry, President of the Tribunal and not more than 2 persons appointed by the Law Minister.

h) Tenure:

Three years for all. Age of superannuation- President: 65 years; Vice President and Members: 62 years. Eligible for reappointment within the age limit.

i) Previous salary:

President: Rs. 80,000 fixed. Members: Rs. 75,500 - 80,000.

j) Revised salary in 2017:

President: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

The decision may be challenged before the respective High Courts on a substantive question of law.

l) Subject to the directions of the Government?

No.

III. Name of the Tribunal and the parent statute:

Customs, Excise and Service Tax Appellate Tribunal: [The Customs Act, 1962 \(No. 52 of 1962\)](#)

a) Tribunal size:

President and such number of Judicial and Technical members as may be necessary.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860 and Tribunal shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVII of the Code of Criminal Procedure, 1973.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate must be a sitting or retired judge of a High Court or is a member of the Tribunal.

e) Qualifications for appointment as Judicial Member:

Candidate has held judicial office for at least 10 years or who has been a member of the Indian Legal Service and has held Grade I of that service or equivalent post for at least 3 years or has been an advocate for at least 10 years or has been an advocate for at least 10 years.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate has been a member of the Indian Customs and Central Excise Service Group A and has held post of Commissioner of Customs or Central Excise of any equivalent or higher post for at least 3 years.

g) Search-cum-selection process:

- (i) Committee for choosing the President is chaired by the Chief Justice of India or a Judge of the Court nominated by him. Members are, Revenue Secretary, Secretary Law Min and Secretary DoPT.
- (ii) Committee for choosing Judicial Member is chaired by a Supreme Court Judge nominated by the Chief Justice of India, Revenue Secretary, Secretary, Law Min, President of the Tribunal and not more than 2 other members nominated by the Central Government.
- (iii) Committee for choosing Technical Member is chaired by Cabinet Secretary. Members are, Revenue Secretary and Secretary Law Min, and Secretary DoPT.

h) Tenure:

Three years. Age of superannuation: President: 67 years; Member: 62 years. Eligible for reappointment within the age limit.

i) Previous salary:

President: Rs. 80,000 fixed. Members: Rs. 75,500 - 80,000.

j) Revised salary in 2017:

President: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

The decision may be challenged before the respective High Courts on a substantive question of law.

l) Subject to the directions of the Government?

No.

IV. Name of the Tribunal and the parent statute:

Appellate Tribunal: [The Smugglers and Foreign Exchange Manipulators \(Forfeiture of Property\) Act, 1976 \(No. 13 of 1976\)](#)

a) Tribunal size:

Chairperson and as many Members as the Central Government thinks fit.

b) Nature of proceedings:

The Tribunal exercises the powers of a Civil Court for summoning and enforcing attendance, examination on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning public record or copy from any court or office, issuing summons for examination of witnesses or documents and any other matter prescribed in the Rules.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate must be sitting or retired judge of the Supreme Court or a High Court.

e) Qualifications for appointment as a Member:

Officers of the Central Government not below the rank of Joint Secretary

f) Search-cum-selection process:

i) Committee for choosing Chairperson chaired by Chief Justice of India or a Judge of the Supreme Court he nominates. Members are, Revenue Secretary, Secretary Law Min, Secretary DoPT are Members.

ii) Committee for choosing Members is chaired by Cabinet Secretary, Secretary DoPT, Revenue Secretary and 2 Secretaries to Gol nominated by the Central Government.

g) Tenure:

Three years or up to the age of 65 years. Age of superannuation- Chairperson: 65 years; member: 62 years. Eligible for reappointment within the age limit.

h) Previous salary:

Chairman: to draw same salary as the Judge of the Court in which he was serving - Supreme Court or High Court. Member's salary- Rs. 80,000 fixed

i) Revised salary in 2017:

Chairman: INR 2,50,000. Members: INR 2,25,000.

j) Where its decision may be appealed against:

The Act is silent. Judicial review in High Courts is available by virtue of Art. 226 of the Constitution.

k) Subject to the directions of the Government?

No.

V. Name of the Tribunal and the parent statute:

Central Administrative Tribunal: [The Administrative Tribunals Act, 1985 \(No. 13 of 1985\)](#)

a) Tribunal size:

Chairman and as many Judicial and Administrative Members as the Government deems fit. Each Bench must have one judicial and one administrative Member.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the *Indian Penal Code, 1860*. Tribunal exercises all powers of courts except that of the Supreme Court on service matters. Tribunal has the power to punish contempt of itself in the manner of High Courts.

c) Appointing Authority:

President of India.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate should have been a Judge of the High Court or has for a period of at least 3 years held office as Administrative Member or Judicial Member in the Tribunal or is a person of ability, integrity and standing and having special knowledge of and professional experience of at least 20 years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs or administration or any other matter which in the opinion of the Central Government is useful to the Tribunal.

e) Qualifications for appointment as Judicial Member:

Candidate is qualified to be a Judge of the High Court or has held the post of Secretary to Gol for at least 2 years in the Dept. of Legal Affairs or the Legislative Dept. or Member-Secretary Law Commission of India or has held post of Addl. Secretary in the Dept. of Legal Affairs or Legislative Dept. for at least 5 years.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate has held the post of Secretary to the Government of India or any equivalent post in Gol or State Government for not less than 1 year or as Additional Secretary to Gol for 2 years.

g) Search-cum-selection process:

i) Committee to choose the Chairman and Judicial member is chaired by Chief Justice of India or his nominee. Members are, Chairman CAT, Principal Bench, Secretary, DoPT, Secretary Law Min and one expert to be nominated by the Central Government.

ii) Committee to choose Administrative Member is chaired by a person nominated by the Central Government. Members are Chairman, CAT, Secretary, DoPT, Secretary Law Min and one expert to be nominated by the Central Government.

h) Tenure:

Three years. Age of superannuation- Chairman: 68 years; Member: 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairman: salary equal to that of a Chief Justice of the High Court. Members: Pay scale of Rs. 7,300 - 100 - 7,600 (?)

j) Revised salary in 2017:

Chairman: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

Supreme Court may review the decision of CAT through Special Leave Petition (SLP).

l) Subject to the directions of the Government?

No.

VI. Name of the Tribunal and the parent statute:

Railway Claims Tribunal: [The Railway Claims Tribunal Act, 1987 \(No. 54 of 1987\)](#)

a) Tribunal size:

Chairman and four Vice-Chairmen and as may judicial and technical members as may be necessary. Every Bench shall have one judicial and one technical member.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860. Tribunal exercises the power of any Civil Court or Claims Commissioner appointed under the provisions of the Railways Act. Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of a Civil Court are vested in the Tribunal for summoning and enforcing attendance, examination on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any document subject to government privilege protected by Sections 123-124 of Indian Evidence Act, 1872, issuing summons for examining witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it ex parte, setting aside any order of dismissal of any application for default or any order passed by it ex parte and any other matter prescribed in the Rules.

c) Appointing Authority:

President of India

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been a High Court Judge or has held office of Vice-Chairman for at least 2 years or is a person of ability, integrity and standing and having a special knowledge or and professional experience of at least 25 years in claims and commercial matters relating to railways.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been a High Court Judge or is qualified to be such a Judge or has for at least 10 years held a judicial office in India.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate must be a person of ability, integrity and standing having special knowledge of rules and procedure of and experience in claims and commercial matters relating to railways for at least 20 years.

g) Search-cum-selection process:

i) Committee choosing the Chairman and Judicial Member is chaired by the Chief Justice of India or his nominee. Members are Chairman or Member (Traffic) of the Railway Board, Secretary to GoI nominated by the Central Government and two expert members who have knowledge and experience of Claims and Commercial matters pertaining to Railways nominated by the Central Government.

ii) Committee choosing the Technical Member chaired by a person nominated by the Central Government. Members are, Chairman or Member (Traffic) of the Railway Board, Secretary to GoI nominated by the Central Government and two expert members who have knowledge and experience of Claims and Commercial matters pertaining to Railways nominated by the Central Government.

h) Tenure:

Three years. Age of superannuation- Chairman: 67 years; Vice Chairman: 65 years; Member: 62 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairman: Rs. 90,000. Members: scale- 75,500-80,000.

j) Revised salary in 2017:

Chairman: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

Appeals lie in the relevant High Court.

l) Subject to the directions of the Government?

No.

VII. Name of the Tribunal and the parent statute:

Securities Appellate Tribunal: [The Securities and Exchange Board of India Act, 1992 \(No. 15 of 1992\)](#)

a) Tribunal size:

Presiding Officer and two other Members

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of Section 196 of the *Indian Penal Code, 1860*. The Tribunal is deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. The Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of a Civil Court are vested in the Tribunal for summoning and enforcing attendance, examination on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any document, issuing summons for examining witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it *ex parte*, setting aside any order of dismissal of any application for default or any order passed by it *ex parte* and any other matter prescribed in the Rules.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been a Judge of the Supreme.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been a Judge of the High Court.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate is or has been an Additional Secretary or Secretary in the Government or of equivalent post in the Central or State Government; is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than 15 years in financial sectors including securities market or pension funds or commodity derivatives or insurance; candidate shall not have any financial or other interest that are likely to prejudicially affect one's functions.

g) Search-cum-selection process:

- i) Presiding Officer and Judicial Member is chosen by the Central Government in consultation with the Chief Justice of India or his nominee.
- ii) Committee for choosing a Technical Member is chaired by the Presiding officer of the Tribunal. Members are Secretary, Dept. of Economic Affairs, Secretary, Dept. of Financial Services and Secretary, Legislative Dept. or Dept. of Legal Affairs.

h) Tenure:

Three years. Age of superannuation: Presiding Officer: 70 years; Member: 67 years. Eligible for reappointment within the age limit.

i) Previous salary:

Presiding Officer: same as that of a judge of the Supreme Court or Chief Justice of the High Court or Judge of the High Court depending upon the background of the candidate.
Members: equal to that of the Secretary of the Government of India.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Member: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies to the Supreme Court on any question of law.

l) Subject to the directions of the Government?

No.

VIII. Name of the Tribunal and the parent statute:

Debts Recovery Tribunal: [The Recovery of Debts due to Banks and Financial Institutions Act, 1993 \(No. 51 of 1993\)](#)

a) Tribunal size:

One person only.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purposes of Section 196, Penal Code, 1860 and shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of a Civil Court are vested in the Tribunal for summoning and enforcing attendance, examination on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any document, issuing summons for examining witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it *ex parte*, setting aside any order of dismissal of any application for default or any order passed by it *ex parte* and any other matter prescribed in the Rules.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been or is qualified to be a District Judge and is a person of ability, integrity and standing and having special knowledge of and professional experience of not less than 20 years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, banking, debt recovery or any other matter that in the opinion of the Central Government is useful to the Tribunal.

e) Qualifications for appointment as Judicial Member:

Not applicable

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Not applicable.

g) Search-cum-selection process:

Committee is chaired by the Chief Justice of India or his nominee. Members are, Secretary, Dept. of Economic Affairs, Secretary, Law Ministry, RBI Governor or Deputy Governor nominated by the Governor, Secretary or Additional Secretary, Dept. of Financial Services.

h) Tenure:

Three years or up to the age of 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Salary scale: Rs. 37,400 - 67,000.

j) Revised salary in 2017:

Presiding Officer: INR 1,44,200 - 2,18,200.

k) **Where its decision may be appealed against:**

Appeal lies to the Debts Recovery Appellate Tribunal.

l) **Subject to the directions of the Government?**

No.

IX. Name of the Tribunal and the parent statute:

Debts Recovery Appellate Tribunal: [*The Recovery of Debts due to Banks and Financial Institutions Act, 1993 \(No. 51 of 1993\)*](#)

a) Tribunal size:

One person only.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purposes of Section 196, Penal Code, 1860 and shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. The Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of a Civil Court are vested in the Tribunal for summoning and enforcing attendance, examination on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any document, issuing summons for examining witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it *ex parte*, setting aside any order of dismissal of any application for default or any order passed by it *ex parte* and any other matter prescribed in the Rules.

c) Appointing Authority:

Central Government

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been or is qualified to a Judge of the High Court or has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least 3 years or has been Presiding Officer of a DRT for at least 3 years.

e) Qualifications for appointment as Judicial Member:

Not applicable.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Not applicable.

g) Search-cum-selection process:

Candidate is chosen by a committee chaired by the Chief Justice of India or his nominee. Members are Secretary, Dept. of Economic Affairs, Secretary, Law Ministry, RBI Governor or Deputy Governor nominated by the Governor and Secretary or Additional Secretary, Dept. of Financial Services.

h) Tenure:

Three years or up to the age of 70 years. Eligible for reappointment within the age limit.

i) Previous salary:

Presiding Officer: equal to that of a High Court Judge.

j) Revised salary in 2017:

Presiding Officer: INR 2,50,000.

k) Where its decision may be appealed against:

The Act is silent. Judicial review in High Courts is available by virtue of Art. 226 of the Constitution.

l) Subject to the directions of the Government?
No.

- X. **Name of the Tribunal and the parent statute:**
Airport Appellate Tribunal: [The Airports Authority of India Act, 1994 \(No. 55 of 1994\)](#)
- a) **Tribunal size:**
One Chairperson only.
- b) **Nature of proceedings:**
Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code, and the Tribunal shall be deemed to be a civil Court for all the purposes of Section 195 of and Chapter XXVI of the *Code of Criminal Procedure, 1973*. Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of civil court are vested in the tribunal for the purpose of summoning and enforcing the attendance of any person or examining him on oath or requiring the discovery and production of documents and any other matter that may be prescribed.
- c) **Appointing Authority:**
Central Government.
- d) **Qualifications for appointment as Chairperson or Presiding Officer:**
Candidate is or has been or is qualified to be a High Court Judge or is a person of ability, integrity and standing and having special knowledge of and professional experience of not less than 25 years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government is useful to the Tribunal.
- e) **Qualifications for appointment as Judicial Member:**
Not applicable.
- f) **Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:**
Not applicable.
- g) **Search-cum-selection process:**
Candidate is chosen by a committee chaired by a person nominated by the Central Government. Members are Secretary, Dept. of Civil Aviation, another Secretary to Gol nominated by the Central Government and two experts nominated by the Central Government.
- h) **Tenure:**
Three years or up to the age of 62 years. Eligible for reappointment within the age limit.
- i) **Previous salary:**
Chairperson:
- j) **Revised salary in 2017:**
Chairperson: INR 2,50,000.
- k) **Where its decision may be appealed against:**
The Tribunal's order is final. However judicial review is possible in High Courts by virtue of Art. 226 of the Constitution.
- l) **Subject to the directions of the Government?**
No.

XI. Name of the Tribunal and the parent statute:

Telecom Disputes Settlement and Appellate Tribunal: [The Telecom Regulatory Authority of India Act, 1997 \(No. 24 of 1997\)](#)

a) Tribunal size:

Chairperson and two Members.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meanings of Section 193 and 228 and for the purpose of Section 196 of the *Indian Penal Code, 1860* and Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of a Civil Court are vested in the Tribunal for summoning and enforcing attendance, examination on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any document, issuing summons for examining witnesses or documents, reviewing its decisions, dismissing an application for default or deciding it *ex parte*, setting aside any order of dismissal of any application for default or any order passed by it *ex parte* and any other matter prescribed in the Rules.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been a Supreme Court Judge or Chief Justice of a High Court, is or has been a Justice of a High Court or has for a period of not less than 3 years held office of a Member or is a person of ability, integrity and standing and having special knowledge of and professional experience of at least 25 years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration. telecommunications or any other matter that in the opinion of the Central Government is useful to the Tribunal.

e) Qualifications for appointment as Judicial Member:

Not applicable.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate is a person of ability, integrity and standing and having special knowledge of and professional experience of at least 25 years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration. telecommunications or any other matter that in the opinion of the Central Government is useful to the Tribunal.

g) Search-cum-selection process:

i) Committee for choosing Chairperson is chaired by the Chief Justice of India or his nominee. Members are Secretary, Dept. of Telecom, another Secretary to Gol nominated by the Central Government and 2 experts nominated by the Central Government.

ii) Committee for choosing Members chaired by a person nominated by the Central Government, Secretary, Dept. of Telecom, another Secretary to Gol nominated by the Central Government and 2 experts nominated by the Central Government.

h) Tenure:

Three years. Age of superannuation- Chairperson: 70 years; Members: 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairperson: same as that drawn by a Supreme Court Judge or Chief Justice of a High Court depending upon the background of the candidate. Members: INR 26,000 fixed with dearness allowance.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies with the Supreme Court within 90 days of the order of the Tribunal.

l) Subject to the directions of the Government?

No.

XII. Name of the Tribunal and the parent statute:

Intellectual Property Appellate Board: [The Trade Marks Act, 1999 \(No. 47 of 1999\)](#)

a) Tribunal size:

Chairman, Vice Chairman and as many Judicial and Technical Members as the Central Government deems appropriate.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the *Indian Penal Code, 1860* and Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. Tribunal is not bound by procedures of a Civil Court but shall be guided by principles of natural justice. Powers of a Civil Court are vested in the Tribunal for receiving evidence, issuing summons for examination of witnesses, requisitioning any public record and any other matter prescribed in the Rules

c) Appointing Authority:

President of India.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been or is qualified to be appointed as a High Court Judge or has held the post of Vice-Chairman for at least 3 years.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been or is qualified to be appointed as a High Court Judge or has held a judicial office in India for at least 10 years.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

i) **Technical Member (Trademark):** Candidate should have exercised functions under Trade Marks Act for at least 10 years and has held a post not lower than that of a Joint Registrar for at least 5 years and has a law degree with at least 12 years' experience in a State Judicial Service.

ii) **Technical member (Patents):** Candidate should have held for at least 5 years the post of or exercised the functions of the Controller under *Patents Act* or has for at least 10 years functioned as a registered patent agent and possesses a degree in engineering or technology or a master's degree in science from any University established under the law.

iii) **Technical Member (Copyright):** Candidate must have been a member of the Indian Legal Service and is holding or has held a post in Grade I of that Service for at least 3 years or has held a judicial office in India for at least ten years or is or has been a member of a Civil Service not below the rank of Joint Secretary to GoI with 3 years' experience in the field of Copyright or has for at least 10 years been an advocate of a proven specialised experience in Copyright law.

Provided that at least one member of the Appellate Board for purposes of the Copyright Act shall have the requisite qualification mentioned immediately above.

g) Search-cum-selection process:

- i) Committee for choosing Chairman or Judicial Member is chaired by the Chief Justice of India or his nominee. Members are Secretary, Dept. of Industrial Policy and Promotion, another Secretary to Gol nominated by the Central Government and two experts nominated by the Central Government.

- ii) Technical Members are chosen by a committee chaired by a person nominated by the Central Government, Secretary, Dept. of Industrial Policy and Promotion, another Secretary to Gol nominated by the Central Government and two experts nominated by the Central Government.

h) Tenure:

Three years. Age of superannuation: Chairman: 67 years; Vice Chairman: 65 years; members: 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairman: Rs. 30,000. Member: salary scale - Rs. 22,00-400-600-26,000.

j) Revised salary in 2017:

Chairman: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies in the relevant High Court.

l) Subject to the directions of the Government?

No.

XIII. Name of the Tribunal and the parent statute:

National Company Law Appellate Tribunal: [The Companies Act, 2013 \(No. 18 of 2013\)](#)

a) Tribunal size:

Chairperson and up to 11 Members as the Central Government may deem fit.

b) Nature of proceedings:

Proceedings before the Tribunal are deemed to be judicial proceedings. Tribunal shall not be bound by procedure laid down in the *Code of Civil Procedure, 1908* but shall be guided by principles of natural justice. Tribunal to have powers vested in a civil court under *Code of Civil Procedure* for the purpose of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, subject to Sections 123 and 124 of the *Indian Evidence Act, 1872*, requisitioning any public record or document or a copy of such record from any office, issuing commissions for the examination of witnesses or document, dismissing a representation for default or deciding it *ex parte*, setting aside any order of dismissal or any representation for default or any order passed by it *ex parte* and any other matter that may be prescribed. Tribunal has the powers to punish for contempt of itself.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate should be or have been a Judge of the Supreme Court or a Chief Justice of the High Court.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been a Judge of a High Court or a Judicial member of the National Company Law Tribunal for at least 5 Years.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate should be a person of proven ability and integrity and standing having special knowledge and experience of not less than 25 years in law, industrial finance, industrial management and administration, industrial reconstruction, investment, accountancy, labour matters, or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies.

g) Search-cum-selection process:

i) Chairperson and Judicial Members to be selected in consultation with the Chief Justice of India.

ii) Technical Member to be selected by a committee comprising of the Chief Justice or his nominee as Chairperson, a senior judge of the Supreme Court or a Chief Justice of a High Court, Secretary, Ministry of Corporate Affairs, Secretary, Law Ministry and Secretary, Dept. of Financial Services.

h) Tenure:

Three years. Age of superannuation- Chairperson: 70 years; Member: 67 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairperson: same as that of a Supreme Court Judge or Chief Justice of a High Court depending upon the background of the candidate. Judicial Member: equal to that of a High Court Judge. Technical Member: INR 80,000 fixed.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Member: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies to the Supreme Court within 60 days of receipt of the order on any question of law.

l) Subject to the directions of the Government?

No.

XIV. Name of the Tribunal and the parent statute:

Film Certification Appellate Tribunal: [Cinematograph Act, 1952 \(No. 37 of 1952\)](#)

a) Tribunal size:

Chairman and four Members.

b) Nature of proceedings:

Nature of proceeding is not specified in the law. Tribunal is required to follow *audi alteram partem* principle. It appears to be an administrative tribunal.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate should be a retired judge of a High Court or qualified to be a judge of a High Court or has for a period of at least 3 years held office as a Member of the Tribunal or is a person of ability, integrity and standing and having special knowledge and professional experience of at least 25 years in law, management, industry, public affairs, administration, films or any other matter that in the opinion of the Central Government is useful to the Tribunal.

e) Qualifications for appointment as Judicial Member:

Not applicable.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidates who in the opinion of the Central Government are qualified to judge the effect of films on the public. 1983 Rules require consultation with the Chairman of the Tribunal.

g) Search-cum-selection process:

Committee to select the Chairman and Members is chaired by person nominated by the Central Government. Members are Secretary, Ministry of Information and Broadcasting, Secretary to GoI and two experts nominated by the Central Government.

h) Tenure:

Three years. Age of superannuation- Chairman: 67 years; Members: 65 years. Eligible for reappointment within age limit.

i) Previous salary:

Full time Chairman: salary equal to that of a Judge of a High Court. Honorary Chairman and Members received a consultancy fee of Rs. 100 per day for meeting or preview and Rs. 50 per day for the preceding and the following day if he stayed at the place of the meeting. Travel by air or train was admissible. Locally stationed member got Rs. 500 per day for attending meeting or preview.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Members: INR 2,25,000.

k) Where its decision may be appealed against:

The Act is silent. Judicial review in High Courts is available by virtue of Art. 226 of the Constitution.

l) Subject to the directions of the Government?

Central Government may call for the record of any proceeding in relation to any film decided by the Tribunal (pending cases not included).

XV. Name of the Tribunal and the parent statute:

Authority for Advance Ruling: [The Income Tax Act, 1961 \(No. 43 of 1961\)](#)

a) Tribunal size:

Chairman and such number of Vice Chairmen, Revenue Members and Law Members as the Central Government may deem fit.

b) Nature of proceedings:

Proceedings before the Authority are deemed to be judicial proceedings within the meaning of Sections 193 and 228 and 196 of the *Indian Penal Code, 1860*. The Authority shall have all powers of a Civil Court under *Code of Civil Procedure, 1908* as are referred to in Section 131 of the *Income Tax Act, 1961*. Authority is deemed to be a civil court for the purpose of Section 195 of the *Code of Criminal Procedure, 1973*.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been or is qualified to be a Judge of the Supreme Court or is or has been the Chief Justice of a High Court or has for at least 7 years been a High Court Judge or has been a Vice Chairman, Revenue Member or Law Member of the Authority for at least 3 years or is a person of ability, integrity and standing and has special knowledge of and professional experience of not less than 25 years in economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration, taxation or any other matter that in the opinion of the Government is useful to the authority.

e) Qualifications for appointment as Law Member:

Candidate must be from the Indian Legal Service who is serving as or is qualified to be an Addl. Secretary to Gol.

f) Qualifications for appointment as Revenue Member:

Candidate must be from the Indian Revenue Service who is qualified to be a Member of the Central Board of Direct Taxes and an officer of the Indian Customs and Central Excise Service who is qualified to be a Member of the Central Board of Excise and Customs.

g) Search-cum-selection process:

i) Committee to choose the Chairman is chaired by the Chief Justice of India or a Judge of the Court he nominates. Members are Revenue Secretary, Secretary, Dept. of Legal Affairs and Secretary, DoPT.

ii) Committee to choose Members is chaired by the Cabinet Secretary. Members are Revenue Secretary, Secretary DoPT and 2 Secretaries to Gol nominated by the Central Government.

h) Tenure:

Three years. Age of superannuation- Chairman: 70 years; Vice Chairman: 65 years; Member: 62 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairman: equal to that of a Supreme Court Judge. Member: scale is INR 75,500-80,000.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Member: INR 2,25,000.

k) **Where its decision may be appealed against:**

Appeal lies to the relevant High Court.

l) **Subject to the directions of the Government?**

No.

XVI. Name of the Tribunal and the parent statute:

National Consumer Disputes Redressal Commission: [The Consumer Protection Act, 1986 \(No. 68 of 1986\)](#)

a) Tribunal size:

President and at least 4 Members one of whom will be a woman. 50% of Members must be from judicial background.

b) Nature of proceedings:

Commission's proceedings deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the *Code of Civil procedure, 1908*. The Commission shall exercise powers as vested in the District Forum in the Act. It is vested with the power to pass *ex parte* orders and set aside such orders on the application of any aggrieved party.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been or is qualified to be a Supreme Court Judge or is or has been a Chief Justice of the High Court or has for a period of at least 3 years held the office of a Member or Judicial Member or is a person of ability, integrity and standing and having special knowledge or and professional experience of not less than 25 years in economics, commerce, business, law, finance, accountancy, management, industry, public affairs, administration or any other matter that in the opinion of the Central Government might be useful to the Commission.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been or is qualified to be a High Court Judge or has for at least 10 years held a judicial office in India.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidates must be persons of ability, integrity and standing and have adequate knowledge and experience of at least 20 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration or any other matter which in the opinion of the Central Government is useful to the Commission.

g) Search-cum-selection process:

i) President is appointed after consultation with the Chief Justice of India.

ii) Members are appointed on the recommendation of a Search-cum-selection committee comprising of a Judge nominated by the Chief Justice of India as chairperson, Secretary, Law Ministry, Secretary Consumer Affairs and two experts nominated by the Central Government members.

h) Tenure:

Three years. Age of superannuation- President: 70 years; Members: 70 years. Eligible for reappointment within the age limit.

i) **Previous salary:**

Chairperson: salary was equal to that of a Judge of the Supreme Court. Full time Member: INR 23,000. Woman Member who has not held office of profit is entitled to salary scale: Rs. 24,050-26,000.

j) **Revised salary in 2017:**

Chairperson: INR 2,50,000. Members: INR 2,25,000.

k) **Where its decision may be appealed against:**

Appeal lies in the Supreme Court. A time limit is not mentioned in the law.

l) **Subject to the directions of the Government?**

No.

XVII. Name of the Tribunal and the parent statute:

Appellate Tribunal for Electricity: [The Electricity Act, 2003 \(No. 36 of 2003\)](#)

a) Tribunal size:

Chairperson and 3 Members.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 345 and 346 of the Code of Criminal Procedure, 1973. Tribunal shall not be bound by the procedure laid down by the *Code of Civil Procedure, 1908*, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the *Code of Civil Procedure, 1908*, while trying a suit, in respect of the following matters: summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, subject to provisions of Sections 123 and 124 of the *Indian Evidence Act, 1872*, requisitioning any public record or document or copy of such record or document from any office, issuing commissions for examining witnesses or documents, reviewing its decisions, dismissing a representation of default or deciding it *ex parte*, setting aside any order of dismissal or any representation for default or any order passed by it *ex parte* and any other matter that may be prescribed by the Central Government. Tribunal's order executable as a decree of the civil court and for this purpose the Appellate Tribunal shall have the powers of a civil court.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been or is qualified to be a judge of the Supreme Court or is or has been a Chief Justice of a High Court or served as a Judicial or Technical Member for at least three years or is a person of integrity and having special knowledge of and professional experience of not at least 20 years in economics, business, commerce, law, finance, management, accountancy, management, industry, public affairs, administration or any other matter which in the opinion of the Central Government is useful to the Tribunal.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been a Judge of a High Court or held a judicial position in India for at least ten years.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate must be a person of ability, integrity and standing having special knowledge of and professional experience of not at least 20 years in matters dealing with electricity generation, transmission, distribution, regulation, economics, business, law, commerce, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government is useful to the Tribunal.

g) Search-cum-selection process:

- i) Chairperson and Judicial Member to be appointed on the recommendations of a Search-cum-Selection Committee comprising of the Chief Justice of India or his nominee (Chairperson), Secretary, Ministry of Power another Secretary to the Government of India nominated by the Secretary, Ministry of Power and two experts nominated by the Central Government Members.

- ii) Technical Member to be appointed on the recommendation of a Search-cum-Selection Committee comprising of a chairperson nominated by the Central Government, Secretary, Ministry of Power another Secretary to the Government of India nominated by the Secretary, Ministry of Power and two experts nominated by the Central Government Members.

h) Tenure:

Three years. Age of superannuation- Chairperson: 70 years; Member: 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairperson: salary was equal to that of a Judge of the Supreme Court. Member: salary was equal to that of a Judge of the High Court.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Member: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies to the Supreme Court within 60 days of communication of the Tribunal's decision to any party.

l) Subject to the directions of the Government?

No.

XVIII. Name of the Tribunal and the parent statute:

Armed Forces Tribunal: [The Armed Forces Act, 2007 \(No. 55 of 2007\)](#)

a) Tribunal size:

Chairperson and such number of Judicial and Administrative members as the Central Government may deem fit.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Section 193, 219 and 228 of the *Indian Penal Code, 1860*. Tribunal is deemed to be a criminal court for the purposes of Sections 175, 178, 179, 180, 193, 195, 196 or 228 of the *Indian Penal Code, 1860* and Chapter XXVI of the *Code of Criminal Procedure, 1973*. Tribunal has the power to order production of documents or exhibits connected with a proceeding before the court martial, order the attendance of witnesses, receive evidence, obtain reports from court martial, order reference of any question for enquiry, appoint a person with special expert knowledge to act as an assessor and determine any question which is necessary to be determined in order to do justice in the case. Tribunal has the power to punish any person for contempt on grounds of using insulting or threatening language. Tribunal is not bound by the procedure laid down in the *Code of Civil Procedure, 1908* but shall be guided by the principles of natural justice.

c) Appointing Authority:

President of India.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate must be a retired judge of the Supreme Court or a retired Chief Justice of a High Court.

e) Qualifications for appointment as Judicial Member:

Candidate is or was a High Court Judge.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate must have held or has been holding the rank of Major General or above for at least 3 years in the Army or equivalent rank in the Navy or Air Force and must have served as Judge Advocate General in the Army, Navy or Air Force and is not below the rank of Major General or Commodore or Air Commodore.

g) Search-cum-selection process:

i) Chairperson is appointed in consultation with the Chief Justice of India.

ii) Committee to choose Judicial or Administrative Member of the Tribunal is chaired by a Judge of the Supreme Court nominated by the Chief Justice of India or the Chairman, Law Commission of India. Members are Chairperson of the Tribunal, Defence Secretary and one other Secretary to GoI.

h) Tenure:

Three years. Age of superannuation- Chairperson: 70 years; Member: 65 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairperson: salary was equal to that of a Supreme Court Judge or Chief Justice of a High Court depending upon the background of the candidate. If serving or retired Judge is appointed as a Member, he or she would get the salary of a High Court Judge.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Member: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies in the Supreme Court within 90 days of the final order or decision of the Tribunal.

l) Subject to the directions of the Government?

No.

XIX. Name of the Tribunal and the parent statute:

National Green Tribunal: [The National Green Tribunal Act, 2010 \(No. 19 of 2010\)](#)

a) Tribunal size:

Full time Chairperson and not less than 10 but up to 20 full time judicial members and not less than 10 but up to 20 full time expert Members.

b) Nature of proceedings:

Tribunal proceedings are deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of section 196 of the *Indian Penal Code, 1860* and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. Tribunal shall not be bound by the procedure laid down by the Code of Civil procedure, 1908 but shall be guided by the principles of natural justice. It shall not be bound by the rules of evidence contained in the *Indian Evidence Act, 1872*. Tribunal shall have the powers of a civil court under Code of Civil Procedure for the purpose of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of documents, requiring evidence on affidavits, subject to Sections 123 and 124 of the *Indian Evidence Act, 1871*, requisitioning any public record or document or copy of such record or document from any office, issuing commissions for the examination of witnesses or documents, reviewing its decision, dismissing an application or default or deciding it *ex parte*, setting aside any order of dismissal of any application for default or any order passed by it *ex parte*, pass an interim order including granting an injunction or stay after providing the parties concerned an opportunity of being heard on any application made or appeal filed under the Act, pass an order requiring any person to cease and desist from committing any violation of any enactment specified in Schedule I.

c) Appointing Authority:

Central Government.

d) Qualifications for appointment as Chairperson or Presiding Officer:

Candidate is or has been a Supreme Court Judge or a Chief Justice of a High Court.

e) Qualifications for appointment as Judicial Member:

Candidate is or has been a Judge of the Supreme Court or a Chief Justice or a Judge of a High Court.

f) Qualifications for appointment as Lay/Technical/Expert/Administrative/Accountant Member:

Candidate should have a Masters degree in Physical or Life Sciences with a Doctorate degree or Master of Engineering or Master of Technology and has 15 years' experience in the relevant field including five years of practical experience in the field of environment and forests including pollution control, hazardous substance management, environment impact assessment, climate change assessment, biological diversity management and forest conservation in a reputed National level institution or has experience of 5 years in dealing with environment matters in the Central or the State Government or in a reputed National level institution.

g) Search-cum-selection process:

- i) Committee for selecting the Chairperson or Judicial Member is chaired by the Chief Justice of India or his nominee, Secretary, Ministry of Environment and Forests, another Secretary to Gol nominated by the Secretary Ministry of Environment and Forests and two experts nominated by the Government Members.
- ii) Committee for selecting Expert member is chaired by a person nominated by the Central Government, Secretary, Ministry of Environment and Forests, another Secretary to Gol nominated by the Secretary, Ministry of Environment and Forests and two experts nominated by the Government Members.

h) Tenure:

Three years. Age of superannuation- Chairperson: 70 years; Member: 67 years. Eligible for reappointment within the age limit.

i) Previous salary:

Chairperson: salary was equal to that of a Judge of the Supreme Court. Judicial Member: salary was equal to that of a High Court Judge. Expert Member: salary was equal to that of a Secretary to Gol.

j) Revised salary in 2017:

Chairperson: INR 2,50,000. Member: INR 2,25,000.

k) Where its decision may be appealed against:

Appeal lies to the Supreme Court within 90 days of communication of the award or decision or order of the Tribunal.

l) Subject to the directions of the Government?

No.