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## "This will be an impediment to India's image": concerns over costs and backlogs voiced after IPAB is abolished

- **Ordinance abolishes India's IP Appellate Board and transfers functions**
- **Appeals against registrar decisions must now be filed at the high court**
- **Local practitioner warns over implications of move for rights holders**

Last week the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance 2021 was promulgated, effectively abolishing India's IP Appellate Board (IPAB) and transferring its functions to the country's commercial and high courts. One local IP expert calls the move "a regressive step" and warns over the possible cost and timeliness implications.

The IPAB was formed in 2003 to hear appeals against decisions of the registrar under, among other things, the Trademarks Act 1999. Under the new [ordinance](#), the powers that have since resided with the IPAB in regard to trademarks, patents and geographical indications will be transferred to the respective high courts. Importantly, the ordinance is a temporary measure designed to buy time for the passage of [the Tribunals Reforms \(Rationalisation And Conditions Of Service\) Bill 2021](#), which was introduced to the Lok Sabha [on 13 February 2021](#).

The bill aims to abolish certain tribunals and provide a mechanism for filing appeals directly to the commercial or high court in an effort to speed up justice and reduce costs. In explaining why the change is needed, the document states: "

Analysis of data of the last three years has shown that tribunals in several sectors have not necessarily led to faster justice delivery and they are also at a considerable expense to the exchequer." While this legislation theoretically adds to the courts' workload, the bill states that, as most cases do not reach finality at the tribunal level but are litigated further in the courts, "these tribunals only add to another additional layer of litigation".

Thus, reducing the administrative burden of separate tribunals is deemed beneficial for speed and process reasons, as well as to address "the issue of shortage of supporting staff of tribunals and infrastructure".

Reflecting on the reasoning proffered for the legislation, [Ranjan Narula](#) of RNA Technology and IP Attorneys notes that "there were long periods of time when not even one member of the IPAB was in place and the IPAB had to remain non-functional". However, he pushes back on some of the above contentions. On cost, for example, he notes that between 2018 and 2019 the IP system generated a revenue of Rs862.93 crores, against expenditure of Rs188.31 crores (a crore equating to 10 million). "These numbers will not be significantly different in outcomes for the subsequent years," Narula says. "None of this shows, even remotely, that the IPAB is a drain on the national exchequer. But even more importantly, there is no cost benefit analysis that has been presented, at least in the case of the IPAB, to back up the rationale of 'considerable expense'. The external benefits of a tribunal like the IPAB to the IP ecosystem, right holders and those who wish to obtain IP rights are so enormous that they cannot even be calculated."

Additionally, he notes that less than 5% of cases decided by the IPAB are litigated up to the Supreme Court. "Thus, it is not correct to say that the decisions of the IPAB do not achieve finality."

Finally, Narula notes that there was no consultation process with respect the move. "When the bill was not taken up for debate due to lack of time during Parliament's session, this ordinance route was taken to hurriedly abolish nine tribunals, including the IPAB." The move has caused consternation in other sectors too. For instance, [the film industry](#) has seen the abolition of the appellate body that grants certifications through the same ordinance.

Reflecting on the changes, [Shwetasree Majumder](#), managing partner at Fidus Law Chambers, reflects: "As someone who has practised trademark law both before and after the constitution of the IPAB, I am hoping that this will mean expeditious decisions and has a trickle-down effect in regard to the high courts taking cognisance, and a greater accountability on the part of the IP office... We [do] need quicker decisions and the judges in each of the high courts who are appointed to this roster will feel the pressure initially as there is a pretty significant pendency."

Narula concurs with the latter, observing: "More than 4,500 cases are pending before the IPAB. When these are transferred, it will only add to the delays as the high courts have a considerable backlog."

So what does this mean in terms of trademark processes? Appeals against decisions of the registrar that were historically heard at the IPAB must now be filed at the high court. For Narula, this "is clearly a regressive step that will only delay the resolution of opposition and cancellations actions. As an example, if an application is opposed, and the applicant wants to appeal against the registrar's order, such an appeal will go to the high court. The pendency of cases at the high court would mean a final resolution of the case will take several years. There is a considerable backlog of opposition cases at the trademark registry, and it takes up to five years (sometimes longer) for a decision in a contested opposition matter. An appeal to the high court will take similar time."

It may also affect decision making on the part of rights holders – not only with respect to weighing up the costs associated with a high court appeal, but also in terms of interactions, as Narula argues that the IPAB was a more approachable forum. Additionally, he states: "A technical member of the IPAB was in a better position to appreciate procedural and substantive law issues when considering an appeal from the registrar. On the other hand, a high court judge with a heavy board will have little patience and time to consider the cases."

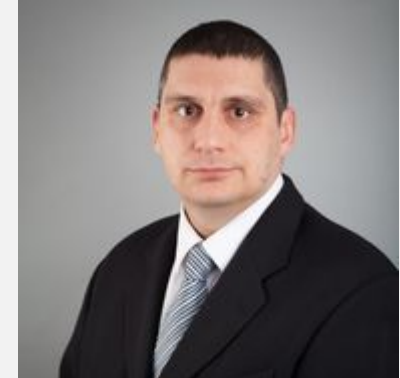
Majumder warns that there could be other quirks to watch out for. For instance, she notes: "Regarding cancellations, especially if they are linked to a lawsuit, there may be situations where the court deciding the suit for an injunction takes a different view as to the validity of the plaintiff's or the defendant's trademark than the court hearing the cancellation. We may then end up with the odd situation of two concurrent courts arriving at decisions with opposite effects over the subject matter, where one prevails over the other (currently the IPAB's decision as to the validity of a trademark is meant to prevail in an infringement suit)."

Majumder regards the passage of the bill as a "foregone conclusion" and hopes that the change will result in expeditious and cognisant decisions on the part of the courts. However, Narula is less positive, concluding: "Overall, the abolition of the IPAB will add to the delays and, intellectual property being an important asset for business, this step will be an impediment to India's image and its resolve to improve its ranking in 'ease of doing business' indexes."

## Trevor Little

Author | Editor

[trevor.little@lbresearch.com](mailto:trevor.little@lbresearch.com)



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