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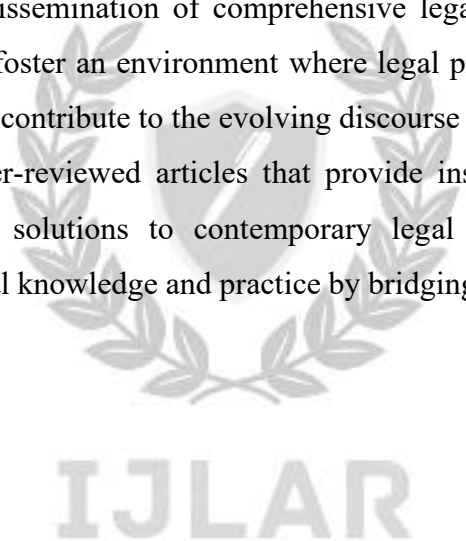
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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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A TELECOM TRIBUNAL FOR A FUNDAMENTAL RIGHT: TDSAT, SUBJECT-MATTER COMPETENCE, AND THE CONSTITUTIONAL ADEQUACY OF APPELLATE REVIEW UNDER THE DPDP ACT

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Abstract

Appeals against orders of the Data Protection Board of India go to the Telecom Disputes Settlement and Appellate Tribunal, a body Parliament built in 1997 to settle disputes between telecom licensors and licensees.¹ I argue in this paper that handing a fundamental-rights statute's appellate function to a tribunal designed for tariff and interconnection disputes was a choice that has never really been examined on its own constitutional terms — and that, tested against the standard the Supreme Court has set for tribunals doing judicial work, it does not hold up. Privacy has been a fundamental right since *Puttaswamy*, tested through a demanding four-part proportionality inquiry rather than the reasonableness review a regulatory tribunal is used to applying.² Separately, in a line of cases running from *L. Chandra Kumar* through *R. Gandhi* to *Roger Mathew* and the *Madras Bar Association* litigation, the Court has insisted that a tribunal absorbing judicial functions must be staffed to match what it has taken over — and, tellingly, *Roger Mathew* singled out TDSAT's own qualification clause as an example of exactly the kind of dilution the Court was troubled by.³ A handful of commentators have already noticed that something is off with this arrangement.⁴ What none of them has done is trace how India arrived here across four successive drafts of the law, work through the doctrine provision by provision, take the strongest objections seriously, or look at what the country's own securities tribunal does differently. That is the gap this paper tries to close, before TDSAT

¹Digital Personal Data Protection Act, No. 22 of 2023, § 29 (India) [hereinafter DPDP Act]; Telecom Regulatory Authority of India Act, No. 24 of 1997, §§ 14–14C (India) [hereinafter TRAI Act].

²Justice K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

³*L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India); *Union of India v. R. Gandhi, President, Madras Bar Ass'n*, (2010) 11 S.C.C. 1 (India); *Roger Mathew v. South Indian Bank Ltd.*, (2020) 6 S.C.C. 1 (India); *Madras Bar Ass'n v. Union of India*, (2015) 8 S.C.C. 583 (India); *Madras Bar Ass'n v. Union of India*, (2021) S.C.C. OnLine S.C. 463 (India).

⁴See Part II, *infra*.

starts deciding these appeals in numbers large enough that undoing the choice becomes politically and institutionally expensive.

Keywords: Data Protection Board, TDSAT, tribunalisation, *Puttaswamy*, proportionality, *Rojer Mathew*, *Madras Bar Association*, Securities Appellate Tribunal, DPDP Act

I. Introduction

Section 18 of the DPDP Act sets up the Data Protection Board of India to hear complaints, run breach inquiries, and impose penalties.⁵ Section 29 gives an aggrieved party sixty days to appeal a Board order to "the Appellate Tribunal," and cross-references to the Telecom Regulatory Authority of India Act make clear that this means TDSAT.⁶ Nowhere in the Act, its Statement of Objects and Reasons, or the record of parliamentary discussion is there an explanation of why a tribunal assembled for telecom tariff disputes was thought suitable to hear appeals about the constitutional right to informational privacy. That silence is not an oversight so much as the tail end of a longer story: as Part III sets out, TDSAT is in fact the fourth appellate model India considered for this law, not the first.

The question this paper asks is a fairly narrow one, even if the stakes are not: does TDSAT, as it is presently composed, meet the standard the Supreme Court has laid down for tribunals doing work that used to belong to courts, given that the subject matter here is a fundamental right rather than a tariff dispute? My answer is no. I spend the rest of the paper defending that answer against its strongest objections and working out what should follow from it.

II. Review of Literature

A few writers have already flagged that something is wrong here. Bhandari and Sane, writing not long after the Act was passed, pointed out that TDSAT's composition sits uneasily with the independence and expertise standards the Supreme Court set out in *R. Gandhi*, and noted — rightly, I think — that a three-year term is unlikely to draw a genuine specialist away from a career already going well.⁷ A *Bar and Bench* column made a related point in more compressed form, calling the move from the 2022 draft's High Court model to the 2023 Act's

⁵DPDP Act, § 18.

⁶DPDP Act, § 29(1)–(2), (8)–(9) (cross-referencing TRAI Act §§ 14A, 16, 18).

⁷Rishab Bailey & Faiza Rahman, *Trivialising Privacy through Tribunals in India: Analysing the Digital Personal Data Protection Act, 2023*, Verfassungsblog (Aug. 21, 2023), ¶120[ix].

TDSAT model an instance of institutional arbitrariness, and separately noted TDSAT's considerable backlog of pending matters as a capacity problem sitting alongside the expertise one.⁸ Another piece framed the switch itself, coming as it did without any recorded reasoning after two earlier drafts had gone a different way, as a rule-of-law concern in its own right.⁹

What all of this commentary shares is brevity. Each piece is a column or a blog post written to raise the alarm, not to work the argument through. None of them reconstructs the *L. Chandra Kumar–R. Gandhi–Rojer Mathew–Madras Bar Association* line and applies it, clause by clause, to Section 14C of the TRAI Act. None traces the legislative history back further than the 2022 draft. None asks what the Data Protection Board's own composition looks like, or whether the problem is confined to the appellate stage. None compares TDSAT with the Securities Appellate Tribunal, which sits right next door in the same tribunal ecosystem and does the qualification question rather differently. And none of them takes seriously the objections a defender of the current arrangement would actually raise — that TDSAT's Chairperson is a retired constitutional-court judge, for instance, or that High Court review under Article 226 might catch whatever the tribunal misses. This paper tries to do all of that.

III. Legislative History

Section 29's choice of TDSAT was not India's first idea, or even its third. Tracing the sequence matters, because a design that survived reasoned scrutiny across several drafts would deserve more deference than one that appears to have drifted.

The starting point is the Justice B.N. Srikrishna Committee's 2018 report, *A Free and Fair Digital Economy*, which recommended a dedicated Data Protection Authority with its own adjudicating officers and appellate tribunal — built for the purpose, not repurposed from somewhere else.¹⁰ The Personal Data Protection Bill, 2019 carried this forward largely intact.¹¹ The Joint Parliamentary Committee spent two years on the Bill and tabled its report in December 2021; its main energies went into widening the Bill's scope to cover non-personal data and tightening compliance duties, and it did not disturb the purpose-built appellate model

⁸*The Wrong Forum for Your Data: Why TDSAT Falls Short Under the DPDP Act*, Bar & Bench (Apr. 27, 2026).

⁹*India's Data Privacy Appeals Assigned to Unsuitable Tribunal*, Whalesbook (Apr. 25, 2026).

¹⁰Committee of Experts under the Chairmanship of Justice B.N. Srikrishna, *A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians* (2018) (Ministry of Electronics & Information Technology).

¹¹Personal Data Protection Bill, 2019, Bill No. 373 of 2019 (India).

it had inherited.¹² The break came with the November 2022 draft, MeitY's fourth and much-shortened version of the law, which for the first time proposed that appeals from the Board go straight to the jurisdictional High Court — a return, in effect, to a constitutionally conventional design.¹³ The DPDP Act, 2023, as finally passed, abandoned that in turn and substituted TDSAT, with no purpose-built privacy infrastructure of any kind behind it, and no explanation on record for either move.¹⁴

Put the four drafts side by side and a pattern appears: purpose-built (Srikrishna Committee, 2019 Bill), then constitutionally conventional (2022 draft), then borrowed from an unrelated sector (2023 Act) — three different models in five years, with the final switch made without any visible deliberation. That drift is not just a historical curiosity. It bears directly on how much deference the final choice deserves in a constitutional analysis, because a design Parliament actually considered and defended would carry more weight than one that seems to have been arrived at by elimination.

There is also a second, more recent thread worth pulling on here. The Tribunals Reforms Act, 2021 was itself an attempt to rationalise India's sprawling tribunal system — abolishing some tribunals outright and folding their functions back into the High Courts.¹⁵ That Act, and its predecessor ordinance, ran into repeated trouble in the Supreme Court over exactly the independence and appointment issues this paper is concerned with, and in November 2025 the Court struck down further provisions of the 2021 Act, directing the Union to set up a National Tribunal Commission within four months to bring some consistency to how tribunals are staffed and run.¹⁶ Two things follow from this. First, whatever pressure the government may have felt in 2023 to route DPDP appeals to an *existing* tribunal rather than build a new one — a pressure this paper takes seriously in Part VIII rather than dismissing it — that pressure has, if anything, only tightened since, given the broader consolidation drive. Second, and more

¹²Joint Parliamentary Committee, *Report on the Personal Data Protection Bill, 2019* (Dec. 16, 2021) (Parliament of India).

¹³PRS Legislative Research, *Draft the Digital Personal Data Protection Bill, 2022* (Nov. 2022) (noting the draft Bill provided that "[a]n appeal against any order of the Board shall lie to the High Court"); see also Cyril Amarchand Mangaldas, *The Digital Personal Data Protection Bill, 2022 — Part II* (Nov. 2022).

¹⁴Bailey & Rahman, *supra* note 7, ¶120[ix] (noting no reason was given on record for the departure from the 2022 draft's High Court model).

¹⁵Tribunals Reforms (Rationalisation and Conditions of Service) Act, 2021, No. 33 of 2021 (India); PRS Legislative Research, *The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021*.

¹⁶*Supreme Court Strikes Down Key Provisions of the Tribunal Reforms Act, 2021*, Insights on India (Nov. 20, 2025) (directing the Union to constitute a National Tribunal Commission within four months).

usefully for the argument in Part XI, the National Tribunal Commission the Court has now ordered into existence is a live, freshly mandated body whose job will be exactly to fix qualification standards across tribunals — which gives this paper's proposed remedy an actual institutional address to be sent to, rather than a purely hypothetical one.

IV. Research Gap

Four gaps can be stated precisely.

First, nobody has yet applied the full tribunal-composition line — *L. Chandra Kumar*, *R. Gandhi*, *Roger Mathew*, and the *Madras Bar Association* judgments of 2014–2021 — against TDSAT's actual qualification text in Section 14C of the TRAI Act, as opposed to gesturing at the general idea that TDSAT "lacks expertise."

Second, nobody has traced the legislative history through all four drafts, or noticed what the 2021 tribunal-rationalisation drive and the recent National Tribunal Commission order mean for how this argument should be framed.

Third, nobody has brought in an India-specific comparator. The Securities Appellate Tribunal, discussed in Part IX, offers a much closer and more difficult-to-dismiss point of comparison than a foreign jurisdiction would.

Fourth, nobody has engaged the composition question at both tiers — the Board as well as the tribunal — or seriously worked through the objections a defender of the status quo would raise.

The rest of this paper is organised around closing these four gaps.

V. Research Methodology

The method here is doctrinal, in the ordinary black-letter sense: close reading of the DPDP Act, 2023, the DPDP Rules, 2025, the TRAI Act, 1997, the SEBI Act, 1992, and the constitutional case law on privacy and on tribunal composition, read together to test whether Section 29's design meets the standard the Supreme Court has independently built up for transferring judicial work to tribunals. I follow the ordinary ratio-obiter approach to the case

law, focusing on the composition-related holding in *R. Gandhi* and *Roger Mathew* and its downstream application in the *Madras Bar Association* litigation, rather than the tax or company-law facts those cases happened to arise from — it is the transferable principle that matters here, not the sector it first appeared in.

Alongside the doctrinal work, I trace the legislative history described in Part III against the successive drafts and committee reports, and I draw a narrow comparison with the Securities Appellate Tribunal's design under the SEBI Act. I have deliberately kept the comparative element narrow rather than surveying multiple jurisdictions, on the view that one carefully worked comparison does more for an argument like this than several superficial ones.

A word on what this paper does not do. It is not an empirical study of who actually sits on TDSAT today, or of whether any sitting member happens, by background, to have relevant privacy expertise despite what the statute requires. It does not draw on interviews with TDSAT members, DPB officials, or litigants. The claim being tested is a structural one — whether the statute *guarantees* the relevant expertise — and that claim can be assessed from the text of the qualifying provisions without needing to know who currently occupies the seats. A reader interested in the empirical question of actual member backgrounds should treat that as a distinct, complementary inquiry this paper leaves open.

VI. The Right Being Adjudicated: Privacy as Proportionality

Puttaswamy did more than declare privacy a fundamental right under Article 21 and the freedoms in Part III — it set out how interferences with that right are to be tested: there must be a law authorising the interference, a legitimate aim, proportionality between the means used and that aim (including whether a less intrusive alternative existed), and procedural safeguards against misuse.¹⁷ It is the third limb — proportionality, or necessity — that does the most work here, because it asks something a regulatory tribunal is not ordinarily trained to ask: not merely "was this reasonable," but "could the same legitimate objective have been achieved by processing less data, or processing it differently."

It may help to make this concrete rather than leave it at the level of doctrine. Suppose the

¹⁷Puttaswamy, (2017) 10 S.C.C. 1.

Board finds that a large fintech app violated Section 8's data-minimisation obligations by continuing to retain biometric authentication data for two years after a user closed their account, and imposes a penalty. On appeal, the company argues the retention was necessary for fraud-prevention purposes across its user base. A tribunal well versed in tariff-setting will be entirely comfortable asking whether the retention period was "reasonable" in a broad commercial sense — the kind of question it asks about interconnection charges every week. What it is not institutionally built to ask is the *Puttaswamy* question: was there a less intrusive way to achieve the same fraud-prevention purpose — shorter retention, tokenisation instead of raw biometric storage, retention tied to specific flagged accounts rather than the whole user base — such that the company's chosen method fails the necessity limb regardless of whether it strikes anyone as "reasonable" in the ordinary sense. That is not a difference of degree; it is a different question altogether, and it is easy to see how a tribunal trained on tariff reasonableness could answer the first question competently while never actually reaching the second.

TDSAT's founding jurisdiction under Sections 14 to 14C of the TRAI Act is built entirely around the first kind of question — disputes between licensors, licensees, and service providers, and appeals from TRAI's tariff and regulatory orders.¹⁸ Nothing in that institutional history equips it, as a matter of design rather than individual competence, to run the second kind of inquiry. The danger is not that TDSAT will announce it is skipping the necessity analysis. It is that reasonableness review will quietly stand in for proportionality review, and nobody reading the resulting order will easily be able to tell the difference.

VII. Tribunal Composition Doctrine — and Its First-Instance Twin

A. The Supreme Court's composition standard

L. Chandra Kumar held, as far back as 1997, that judicial review under Articles 226 and 32 is part of the basic structure, and that a tribunal can supplement that oversight but never substitute for it.¹⁹ *R. Gandhi* pushed the point further: where a tribunal takes over work that used to belong to a court, its members need to bring a standard of legal knowledge, experience, and independence comparable to the judges they are replacing.²⁰

Roger Mathew is the case existing commentary on this question has missed, and it happens

¹⁸TRAI Act, §§ 14–14C.

¹⁹*L. Chandra Kumar*, (1997) 3 S.C.C. 261.

²⁰*R. Gandhi*, (2010) 11 S.C.C. 1.

to be the most directly useful one available. A five-judge bench struck down the 2017 Tribunal Member Qualification Rules in their entirety, and in doing so pointed specifically to Section 14D of the TRAI Act — TDSAT's own member-qualification clause — as an example of how far those Rules had diluted eligibility, observing that the effect was to make, in the Court's words, "every second advocate eligible."²¹ This is worth pausing on: TDSAT is not a tribunal this paper is analogising to the composition problem from a distance. It is a tribunal the Supreme Court has already named, in a related but separate proceeding, as an example of the very problem this paper is describing. *Roger Mathew* also pushed back against direct statutory appeals from tribunals straight to the Supreme Court, preferring that they first pass through Division Benches of the High Courts — a preference that sits awkwardly next to Section 29's design, under which TDSAT's DPDP orders bypass the High Courts entirely.²²

The subsequent *Madras Bar Association* litigation kept returning to the same theme: the 2014–2015 challenge to the National Tax Tribunal struck down provisions letting technical members without adequate legal training sit on matters that needed it,²³ and the 2020–2021 rounds on the Tribunals Reforms framework revisited qualification and tenure standards more broadly.²⁴ Applying all of this to TDSAT does not require much inference. Section 14C sets the Chairperson's qualification at retired Supreme Court judge or High Court Chief Justice, and the other members' at either former Secretary to the Government of India or someone with expertise in technology, telecommunications, industry, commerce, or administration.²⁵ None of that reaches privacy law, data protection law, or constitutional adjudication — which is exactly the expertise *Puttaswamy*-style proportionality review calls for.

B. The problem does not stop at the appellate stage

It would be an easier, but less honest, paper if I stopped there and left the Board itself alone. I have not, because the same composition question applies one tier down, and a reviewer would be right to ask about it. Section 19 of the DPDP Act requires the Board's Chairperson and Members to have "appropriate knowledge and practical experience" across a fairly broad list — data governance, administration, dispute resolution, information and communication

²¹Roger Mathew, (2020) 6 S.C.C. 1 (striking down the Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017, and citing TRAI Act § 14D as illustrative of diluted qualification standards).

²²*Id.* (directing reconsideration of direct statutory appeals from tribunals to the Supreme Court, in favour of routing through Division Benches of the High Courts).

²³*Madras Bar Ass'n v. Union of India*, (2015) 8 S.C.C. 583.

²⁴*Madras Bar Ass'n v. Union of India*, (2021) S.C.C. OnLine S.C. 463.

²⁵TRAIA Act, § 14C.

technology, digital economy, law, regulation or techno-regulation — with the single specific requirement that at least one member be an expert in law.²⁶ That is not a privacy-specific standard either, and the appointment process itself has drawn criticism on independence grounds: the search-cum-selection committee is chaired by the Secretary of MeitY, giving the executive a heavy hand in selecting the very body that will sit in judgment over the executive's own conduct as a data fiduciary in a significant share of cases.²⁷ If anything, this makes the case in this paper stronger rather than weaker. The composition defect this paper identifies at the appellate stage is not a one-off design accident corrected by a competent first-instance body; it runs through both tiers of the adjudicatory structure Parliament built for this right.

VIII. Counterarguments and Responses

A version of this argument that does not confront its own weak points is not worth publishing, so here are the five strongest objections I can think of, and my responses to them.

TDSAT's Chairperson is a retired Supreme Court Judge or High Court Chief Justice — doesn't that already supply the missing constitutional competence? Not reliably. TDSAT does not sit as a full bench on every matter, and Section 14C's Chairperson qualification does not extend to the other Members who may sit without her.²⁸ A safeguard that depends on which bench happens to be assigned to a given appeal is not the systemic guarantee *R. Gandhi* asks for. And having sat on a constitutional court is not the same thing as having built up expertise in data protection law specifically — the *Puttaswamy* proportionality test is a specialised tool, not something every senior judge necessarily carries with them into an unrelated sector.

Even if TDSAT gets it wrong, Article 226 review before the High Courts, and a further appeal to the Supreme Court, can catch the mistake. Article 226 review of a tribunal order is ordinarily a deferential exercise — jurisdictional error, natural justice, perversity — not a fresh proportionality assessment on the merits.²⁹ Treating downstream review as a cure gets the logic of *L. Chandra Kumar* backwards: that case held that supplementary tribunal review

²⁶DPDP Act, § 19; Digital Personal Data Protection Rules, 2025, r. 16–17.

²⁷SFLC.in, *Data Protection Board of India: A Watchdog Without Teeth* (Feb. 6, 2025) (describing the executive-dominated composition of the Search-cum-Selection Committee for Board appointments).

²⁸TRAI Act, § 14C (Chairperson qualification); § 16 (bench constitution).

²⁹See *L. Chandra Kumar*, (1997) 3 S.C.C. 261.

cannot substitute for constitutional court oversight, not that constitutional court oversight can retrospectively fix a badly composed tribunal at the first appellate stage. A litigant is entitled to a competently composed first appeal, not merely to the possibility of a later correction.

Technical members will not necessarily dominate every bench, so perhaps the risk is overstated. That is a fair empirical point, and I am not claiming every DPDP appeal will in fact be wrongly decided. But the constitutional objection under *R. Gandhi* and *Rojer Mathew* is structural — it asks whether the tribunal's constitutive framework guarantees the right expertise, not whether any particular panel happens to include someone who picked it up informally.

Article 21 does not generally require everybody that touches a fundamental right to be a specialist tribunal — ordinary courts decide privacy questions all the time without special composition rules. True, and I am not arguing otherwise. The objection is narrower: where a legislature deliberately takes a fundamental right's adjudication away from ordinary courts and hands it to a tribunal instead, that act of displacement itself carries a composition obligation. Ordinary courts do not need bespoke rules because generalist constitutional competence is already built into what a court is; a tribunal assembled for an unrelated regulatory sector is a different case precisely because it is not.

Economic regulators and sector tribunals decide constitutional questions all the time — competition and tax tribunals engage Article 14 arguments routinely — without anyone raising a composition challenge. This is correct as a description, but it does not transfer cleanly here. In those examples the constitutional question is usually incidental to a dispute whose core subject matter *does* sit within the tribunal's competence — a tax assessment, a competition order. Under Section 29, the constitutional proportionality question is not incidental; it is the entire point of the appeal, since the underlying Board order is itself an exercise in weighing a fundamental right against a processing interest. The objection loses its force exactly where the constitutional question stops being incidental.

I would add one further honest concession here, since it is the objection I find hardest to wave away entirely: the government may genuinely have had limited room to create a brand-new, purpose-built tribunal in 2023, given the consolidation pressure described in Part III. I take that seriously rather than dismiss it, but a constrained choice is not the same as an

unreviewable one — Parliament could still have amended TDSAT's own Section 14C qualification criteria specifically for DPDP matters, adding a privacy-law requirement to the existing bench, without needing to build an entirely new institution. That narrower fix remains available regardless of how much sympathy one has for the fiscal and consolidation pressures behind the original choice.

IX. Comparative and Intra-Institutional Design

A. The United Kingdom's Information Rights Chamber

Appeals against the UK Information Commissioner's Office, under the Data Protection Act 2018 and UK GDPR, go to the General Regulatory Chamber (Information Rights) within the First-tier Tribunal, with a further appeal to the Upper Tribunal.³⁰ This is a chamber built specifically to hear information-rights disputes, and its members build up subject-specific expertise the way any specialist bench does — through a steady diet of GDPR territorial-scope, transparency, and enforcement-notice cases rather than an occasional one.³¹ I offer this comparison narrowly. The UK's tribunal architecture sits inside a different constitutional tradition, and I am not suggesting it should simply be transplanted into Indian law. What it does show is that dedicated, subject-matched adjudicatory design for data rights is a real, tested option — not a theoretical ideal nobody has actually built.

B. A closer comparison: the Securities Appellate Tribunal

A more useful comparator, because it sits inside the same Indian tribunal system rather than a foreign one, is SAT — the Securities Appellate Tribunal, which hears appeals from SEBI, IRDAI, and PFRDA orders. Section 15M of the SEBI Act requires SAT's Technical Members to have at least fifteen years of experience specifically in the financial sector, including securities markets; Judicial Members must have High Court judicial experience or its equivalent.³² Whatever else one thinks of SAT's track record, its qualification clause was written to match the subject matter it actually adjudicates — securities and financial-market disputes — in a way Section 14C's more generic "technology, telecommunications, industry, commerce, or administration" formula for TDSAT was not written to match privacy law. India did not need to look abroad to find a model that takes the *R. Gandhi* matching principle

³⁰Data Protection Act 2018, c. 12, § 166 (UK); Tribunals, Courts and Enforcement Act 2007, c. 15 (UK).

³¹See, e.g., *Information Comm'r v. Clearview AI Inc.*, [2025] UKUT (AAC); *Information Comm'r v. Experian Ltd.*, [2024] UKUT 105 (AAC).

³²Securities and Exchange Board of India Act, 1992, § 15M (India).

seriously; it has one operating in its own tribunal ecosystem, a few statutes away from the DPDP Act itself. That makes the DPDP Act's choice of TDSAT harder to defend as simply "how Indian tribunals are usually built," since the closest domestic comparator shows Parliament knows how to do this differently when it wants to.

X. Timing and Institutional Stakes

The DPDP Act's rollout is phased. The Board and the Act's core administrative machinery came into force on November 13, 2025.³³ Phase 2, beginning November 13, 2026, brings the Consent Manager framework online.³⁴ Phase 3, from May 13, 2027, marks full enforcement, including penalties up to Rs 250 crore for security-safeguard breaches.³⁵ Layered on top of that timeline is TDSAT's own docket — over 3,900 pending matters as of April 2026 — which will only grow once DPDP appeals are added to it.³⁶ I do not think this cuts entirely one way, though: a slower High Court, wherever the caseload data on that turns out to run, is not obviously a better outcome than a faster TDSAT deciding proportionality questions it was never built to decide. The argument in this paper is about who decides, not merely how quickly.

What the timeline does establish is urgency. As Board orders begin issuing in real volume through 2026 and 2027, TDSAT will start building a body of DPDP precedent under Section 29. Every decision it hands down, right or wrong on its own terms, entrenches its practical claim to the jurisdiction and makes institutional correction — legislative or judicial — that much harder to bring about later. The case made here is strongest before that precedent accumulates, not after.

XI. Conclusion and Recommendations

The choice of TDSAT as appellate authority under Section 29 has not really been examined on constitutional terms, and once it is, it does not hold up. The right being adjudicated demands *Puttaswamy*-style necessity and proportionality review; the tribunal hearing the appeal is built for telecom tariff regulation, with no mandated expertise in privacy or data protection law, and is a tribunal the Supreme Court has already flagged, in *Rojer Mathew*, as an example of diluted qualification standards. The five objections addressed in Part VIII do not, in my view, survive

³³DPDP Act, Enforcement Notification (Nov. 13, 2025); Digital Personal Data Protection Rules, 2025, G.S.R. 844(E).

³⁴Digital Personal Data Protection Rules, 2025, r. 4.

³⁵DPDP Act, § 33 & Sched.

³⁶Bar & Bench, *supra* note 8 (reporting 3,917 pending TDSAT matters, February 2020–April 2026).

scrutiny — each rests on mistaking an occasional safeguard for a systemic one, or downstream review for first-instance competence — though I have tried to give the strongest version of each a fair hearing rather than a straw one, and have conceded the one (institutional-constraint) argument that genuinely has some force.

Stepping back, I think the *R. Gandhi–Rojer Mathew* line is best read as an institutional-fit requirement rather than a general competence test: the question is not whether a tribunal's members are qualified in some abstract sense, but whether their mandated expertise actually matches the function that has been moved out of the courts and into their hands. Measured against that standard, Section 29 fails — not because TDSAT does its original job badly, but because privacy adjudication was never its job to begin with.

Three remedial paths follow, and none forecloses the others. Parliament could amend Section 29 to send DPDP appeals to the jurisdictional High Court, or to a specially constituted bench with mandated privacy-law expertise — returning, in effect, to the purpose-built model the Srikrishna Committee and the 2019 Bill had already worked out before two later drafts moved away from it. Short of that, Parliament could leave TDSAT in place but amend Section 14C specifically for DPDP matters, adding a privacy-law qualification requirement the way SAT's Section 15M already does for securities expertise — a narrower fix that answers the institutional-constraint objection directly. And the newly mandated National Tribunal Commission, which the Supreme Court ordered into existence in November 2025 to fix exactly these qualification and appointment problems across the tribunal system, is a live body this argument can be taken to directly, rather than waiting on a constitutional challenge or a legislative amendment that may be years away. Whichever path is pursued, the window for pursuing it narrows with every DPDP appeal TDSAT decides. The case for fixing this is strongest today.