

ELECTRICITY ACT: DEPICTING THE PROGRESS OF INDIAN POWER SECTOR

Suraj Samdarshi , Advocate
Patna High Court

Abstract:

Energy sector being a natural monopoly has achieved a tremendous growth in addition to reaching the length of maximum utilization. Economic forces of the market drive any restructuring and reformation. Same has been witnessed with the power sector where presence of any economic inefficiency advocates the liberalization. Electricity plays a significant role to strengthen the pillar of technology for any nation. Thus, it is necessary to polish existing law, bye-laws and rules on electricity through amendment and regulation.

Keywords:

The Electricity Act, 2003, Central Electricity Regulatory Commission, State Electricity Regulatory Commission, National Development Council, National Electricity Policy.

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Introduction:-

Post-independence, regionally based electricity growth in India was viewed as a subject of growing urgency for Post-war development and rehabilitation. The

fundamental framework for the Electricity Supply Industry in India was established by The Electricity Act, 1910, which was being implemented on the basis of the licensee issued for supply of electricity in the specified area which dealt with not only the infrastructure, but also the relationship between the licensee and the consumer. It was confined to urban areas only and with a vision to extend the benefit of electricity to semi-urban and rural areas in efficient and economical manner, the Government vested in itself through necessary legislative powers by enacting the Electricity (supply) Act, 1948, to establish the grid system. The Electricity (Supply) Act, 1948 paved the way to virtually nationalize the power sector by creating the State Electricity Board (for short 'SEBs'), which was within the control of the Government.

1. Reforms in Power Sector in different phases:

The sector witnessed expansion of electric grid across the country, but with alarming losses in balance sheet of the SEBs arising out of unviable tariffs due to heavy gross subsidization, in appropriate billing and poor infrastructure for collection of revenues, necessitated the thought for immediate restructuring of the sector. Losses of the SEBs on the one hand and the realization with the power sector needs reforms in the light of nation's economic growth, on the other hand resulted into the reforms in energy sector, which are largely in three phases:-

Phase-I The first set of reforms initiatives in 1991 were effectuated by an amendment in The Electricity (Supply) Act, 1948. Increasing investment in power generation was the main goal of reform. These reforms initiatives were the natural outcome of chain of economic reforms when the nation was set for liberalization, privatization by adopting globalization model. The goal was to draw in foreign investors by supporting independent power producers with reform rates guaranteed. The Government of India succeeded in its effort to certain extent, as eight projects with fast track status and sovereign repayment guarantee were approved by the Central Government. But those reforms faced a difficulty on account of lack of infrastructure by the existing SEBs. As a natural consequence a Committee was constituted by the National Development Council in 1993, recommendation whereof was submitted in 1995. The primary recommendations were formation of Regional Tariff Board for fixing the tariff of SEBs, privatization of distribution utilities in urban areas, common and uniform agriculture tariff across the country and need for transparent subsidies to the SEBs to cope up the losses.

Phase-II. Phase-II of the reform seems to have emanated pursuant to the Chief Minister's conference, which in 1996 produced a Minimum National action Plan for

power. It focused on distribution reforms and envisaged Electricity Regulatory Commissions for determining retail tariff, apart from rationalization of tariff. The reform's main goal was to unbundle the SEBs and to establish independent Electricity Regulatory Commissions. The State of Orissa set the standard by implementing this reform, followed by Haryana and Andhra Pradesh. As a result, The Electricity Regulatory Commission Bill, 1997 was presented to the Lok Sabha in 1997 but was unable to pass since the 11th Lok Sabha was dissolved. However, during recess of parliament, the President promulgated Electricity Regulatory Commissions Ordinance, 1998.

Phase-III. The third phase of reforms became imperative, almost 15-16 States had notified their individual State Electricity Regulatory Commissions and complied with the Electricity Regulatory Commissions Act, 1998. Thus, the need for a comprehensive legislation to address the problem separately with regard to generation, transmission and distribution, apart from independent regulators to manage these three essentials of power sector, which are termed as 'Utility', became imperative for development of the country. In early 2000 the process of drafting new legislation was initiated and finally the Electricity Act, 2003 was passed with effect from 10th of June, 2003, except for Section 121, which deals with the powers of the Appellate Authority, with effect from 27.1.2004. Although many aspects of the repealed law were preserved, but the Electricity Act, 2003 (herein referred as 'Act') introduced new striking features. The main object which is manifest from the Legislation is the enhanced competition, transparency, accountability, commercial viability and centered around providing maximum benefit to the consumer. Thus, competitiveness was envisaged by unbundling the SEBs, de-licensing generating companies, providing open access to the utilities and consumers and introduce power trading. The second aspect of accountability and transparency has to be achieved by establishing State Electricity Regulatory Commission, an independent Appellate Tribunal and Special Courts. The commercial viability as envisaged under the Act has to be achieved by improving the operational efficiency, ensure competitive procurement of power purchase, reduce losses (by establishing service standards) and recover the cost. One more important facet of 2003 Legislation was to promote renewable energy by providing incentives to the generators. The Act, 2003 has been amended by Amendment Act 57 of 2003 and Amendment Act 26 of 2007.. Additionally, Sections 14, 135, 139, and 140 of the Act were somewhat modified, which decreased the discretionary ability to prevent abuse and protect the consumer from excessive harassment. Section 6 primarily said that the government must make every effort to give electricity to all places, including hamlets and villages.

Section 38, 39, 40, 42, 61 ,178 and 181 of the Act provided for reduction and elimination of cross subsidies. It was proposed that although cross subsidies could be reduced, but elimination might not be possible and therefore, the word ‘elimination’ was removed. However, reduction of cross subsidies remained part of the legislation. The third aspect which the 2007 amendment dealt with, was in relation to Section 151 of the Act i.e. the offence relating to theft of electricity, It was argued that the current wording of Section 151 posed a challenge to the police's ability to investigate the crime. It was proposed to amend Section 151 so as to clarify the position that the Police would be able to investigate cognizable offence under the Act.

2. Planning & Policy by the Government & Central Electricity Authority.

Part-II of The Electricity Act, 2003, deals with the plan and policy based upon which the regulators have to fix tariff for generation, transmission and distribution, apart from promoted renewable sources of energy as a long term plan. The said part mandates that the Central Government from time to time will prepare a National Electricity Policy and Tariff Policy in discussion with the State Governments and the Central Electricity Authority. The constitution of Central Electricity Authority and its function have elaborately been dealt from Section 70 to 75. It has to consist members not exceeding 14 including Chair Person and the members are appointed by the Central Government. It is mandatory for the members to declare that they do not have any interest or are not even indirectly related to the business of generation, transmission, distribution and trading of Electricity under Section 71 and the function and duty as per Section 73 of the Act is to advise the Central Government on the matters relating to National Electricity Policy and specifying technical standards for construction of electrical plants, promote research in the matters of generation, transmission, distribution and trading of electricity and any other matter upon which advice is sought for from the Central Government. Another important aspect is that authority has to specify the grid standards for operation and maintenance of transmission lines, which in turn ensures quality power supply in efficient and economical manner and also specifies the conditions for installation of meters for transmission and supply of electricity. Thus, the meters installed in every body's premise, be it domestic, commercial or industrial consumer, is regulated by the standards fixed by the Authority. The aforesaid exercise has been made by the Authority by virtue of Regulation, 2006 wherein standards has been set to ensure that a consumer is not harassed for malafide reasons, as the entire supply and consumption pattern is not only recorded in the meter, but such meter is capable of reflecting the data which can be retrieved from such meter. It comes to the rescue of a consumer whenever a licensee alleges with regard

to extra extraction of load, etc. as the same can be verified from the meter and the data stored therein.

The National Electricity Policy as approved by the Central Government after consultation with the State Governments and the Authority, is the broader guideline for the State Governments, as also the regulators and based upon the same the Authority prepares National Electricity Plan, before which suggestions and objections are invited from all stake holders including the consumers and such plan is revisable to incorporate any changes which the Central Government may make in the National Electricity Policy. Special thrust has to be given to rural electrification, which would include promotion of renewable sources of energy and other known conventional source of energy. Section 6 mandates that it would be the joint responsibility of the State and the Central Government and an effort is to be made that distribution of energy in rural areas should be made through Panchayat institutions, user institutions, cooperative societies, non-governmental organizations or franchise.

3. Regulatory Provisions.

As discussed earlier the very need to have a separate legislation by way of the Electricity Act, 2003 had arisen to make the entire system more effective and commercially viable, so that it by a natural consequence benefits the end consumers. The interference by the State Government and poor recovery mechanism for the energy sold, coupled with the subsidized availability of power had led to loss making SEBs which under the Act were required to be unbundled and broadly the licensee for three categories were to be issued, i.e. for generation, transmission and distribution. To take care of the revenue aspect and to protect the interest of the end consumer, coupled with the need to have a transparent procedure led to the establishment of regulators. Before enactment the nation had already tested the regulatory regime for a short span of time after the Electricity Regulatory Commissions Act, 1988, under which certain states adopted such reform and had constituted Regulatory Commissions. Independent Sector Regulation is relatively a new development in India which the present in furtherance of the Policy mandated and therefore, Independent Regulatory agencies, namely Central Electricity Regulatory Commission (for short 'CERC') and State Electricity Regulatory Commissions (SERCs) have been constituted at central and state level respectively. The regulatory provision has been dealt under Part-X of the Act. The CERC has jurisdiction over the utilities (the generating, transmitting and distributing companies or entities) in the cases of a composite scheme covering more than one state, whereas the SERCs have their jurisdiction only to the utilities within that particular State. The CERC is a 4-

member body including a Chair Person, who are appointed on the recommendation of the Selection Committee under Section 78 of the Act, which is constituted by the Central Government for the purpose of selecting the members not only for CERC, but also for the Appellate Tribunal and their function is to regulate the tariff of the generating companies owned by the Central Government or controlled by the Central Government for generation and sale of electricity in more than one State, regulate and determine tariff for transmission utility in inter-state transmission of electricity, issue licence to the persons to function as transmission agency and electricity trader with respect to inter-state operations. It also includes adjudication of dispute involving generating companies or transmission agency and can refer such dispute for arbitration independent of and any supersession of Section 11 of the Arbitration Act. It also takes care of fixation of trading margin and is obligated to be guided by the National Electricity Policy, the Tariff Policy and the National Electricity Plan as published under Section 3 of the Act. Similar is the provision with regard to State Commissions regarding its constitution. The CERC may establish an Advisory Committee and the Chair Person of the CERC is the ex. officio Chair Person of the Central Advisory Committee, which would advise the CERC on major question of Policy, matters relating to quality continuity and extent of service provided by the licensee, apart from protecting the interest of the consumers.

Similarly, the State Commission consists of three members including the Chair Person, who are to be appointed by the State Government on recommendation of the Selection Committee referred under Section 85. The functions under Section 86 include determination of tariff for generation, supply, transmission and wheeling of electricity within the State. The word 'wheeling' is defined under Section 2(76) of the Act which has charges determined by the respective Commissions for use of infrastructure of transmission or distribution by another person, for conveyance of electricity on payment of charges. Along with the authority granted to the central Commission, the state commission is also required to encourage cogeneration and the production of electricity from renewable sources by offering appropriate measures for grid connectivity and the sale of electricity to any individual, as well as by defining a percentage of the total amount of electricity consumed in a distribution licensee's area.. Like the Central Commission functions, the State Commission is also to adjudicate upon any dispute between the licensee and generating companies and can refer any dispute to arbitration and consider the advice of a State Advisory Committee to be constituted, the Chair Person whereof is the Chair Person of the SERCs' ex-officio. The Hon'ble Supreme Court in the case of *PTC India Vs. Central Electricity Regulatory Commission*, (2010) 4 SCC 603

categorized the adjudicatory powers of the Regulatory Commission as mandatory function under the 2003 Act, which have to be exercised even in absence of any applicable regulation. Further, the Hon'ble Supreme Court in the case of *Gujrat Urja Vikas Nigam Ltd. Vs. SR Power Limited*, (2008) 4 SCC 755 interpreted Section 86(1)(f) and clarified *that the State Commission can either decide or refer the matter to an Arbitrator appointed by them and no other, and will prevail over Section 11 of the Arbitration Act for the purposes of appointment of Arbitrator, however, rest of the provisions of the Arbitration Act has to be applied once the proceeding commences after appointment of such Arbitrator*. The same has been followed till the *Hindustan Zinc Ltd. since reported in (2019) SCC Online 1683*. Section 94 deals with the power of the appropriate Commissions and Section 95 deals with the manner in which proceeding has to be carried out before such commission. All proceeding before the appropriate Commission is deemed to be a judicial proceeding within the meaning of Section 193 and 228 of the Indian Penal Code and appropriate Commission shall be deemed to be a Civil Court for the purposes of Section 345 and 346 of the Code of Criminal Procedure. Section 98 and Section 103 deals with establishment of fund by the Central Government and the State Government and the State Government respectively for CERC and SERCs. It is manifest from the 2003 Act, that it is a step forward towards functional independence which can effectively be delivered only when financial autonomy is ensured.

The independence with regard to framing of Regulations, the Regulatory Bodies are allowed to frame Regulations replacing the practice of the Government framing Regulations for these institutions. The legislature provides ample power to adjudicate and decide the dispute inter-se utilities. In relation to any dispute regarding quantum of electricity or safety and integrated operation of the regional grid or state grid, it has to be decided by the CERC under Section 29(5) of the Act and SERCs under Section 33(4), as the case may be. Proviso to Section 9(2) and Section 5 of the Act allows the appropriate Commission to adjudicate upon the referred disputes and under Section 94 the power of the appropriate Commission with regard to enquiry, proceeding under the Act has been enumerated, which also includes the power to review its decisions, directions or orders. The power of the Commission while conducting such proceeding would be the same as has been vested in the civil court under the Code of Civil Procedure regarding summon, evidence, production of document, requisition of any public record, issuing commission for examination of the witnesses, apart from review of its own order and any other matter which may be prescribed.

Thus, regulatory independence in the power sector is essential to safeguard the efficiency and interest of all the stake holders in the field. The present enactment has reduced the interference by the Government in power sector to a certain extent. However, The Central Government still guides the overall development through the National Electricity Policy and plan by giving advisory role to regulator while formulating the National Electricity Policy and plan, as well as, the Tariff Policy itself. As such, not only appointments, but removal funding, suspension and removal of members of the CERC and SERCs are overwhelmingly influenced by the Government, which to some extent negates the idea of regulatory independence in a liberalized economy. The probability of the decisions taken by the appropriate Commissions, eventually come to be dominated, by the Government, is very high which is detrimental to the regulatory independence. The overlapping of the State Policy and regulatory function are potentially the source of controversy. It hampers the functional independence. As such, the regulators need independence from the Government to discharge its functions in a free and transparent manner. Although there is no generally agreed definition of what characteristic make a regulator independent, but the Government which has the sovereign power to express its Policy and convey the same to the respective Authority the balancing regulatory autonomy with scrutiny of function of regulator deserves a reasonable balance. ERCs are organizationally separate quasi judicial authorities, neither elected nor managed by the elected officials. Its source, objective, regulatory scheme, role, power, responsibility, funding autonomy of action and other functions to be carried are clearly enshrined in 2003 Act.

The Hon'ble Supreme Court interpreting Section 84 of the Act, which deals with qualification for appointment of Chair Person and members of the State Commission in the case of *State of Gujarat & others Vs. Utility Users Welfare Association & others*, (2018) 6 SCC 21, has held that although it mandated that both the Chair Person and the members of the State Commissions shall be the persons of ability, integrity and standing who have adequate knowledge of and have shown the capacity in dealing with the problems relating to engineering, finance, commerce, economics, law or management. A plain grammatical reading of this Section shows that no distinction has been made qua qualification of the Chair Person and members. Plain reading of Section 84 leaves no manner of doubt that a legislator only envisaged a possibility of appointment of a Chair Person from the tool of sitting or retired judges of the High Court, in which case the method of appointment would be different from the one as envisaged under Section 55 of the Act.

4. Generation, Transmission, Distribution and Licensing thereof.

The three important components of the power sector are generation of electricity, transmission of electricity and distribution of electricity. Although for the purposes of transmission, distribution and trading in electricity obtaining a licence has been made mandatory under Part-IV of the Electricity Act, 2003 by virtue of Section 12, but for the purpose of generation of electricity the Government has granted liberty to any individual to maintain and operate generating station without obtaining a licence, if he complies with the technical standards relating to connectivity with the grid as specified by the Central Electricity Authority under Section 73(b) of the Act. However, in case of a hydro-electric generation plant any person intending to set up the same has to submit its proposal to the Central Electricity Authority for its concurrence and only after taking into consideration the different environmental issues and other facets, approval has to be granted by the Authority after consultation of the concerned Government. One of the special features of the Act is the captive generation which has been defined in Section 2(8) of the Act, meaning thereby that any person intending to generate electricity primarily for his own use and includes a power plant set up by any cooperative society or association of persons for generating electricity primarily for use of the members of such society or association, for which no license is required.

5. Generation of Electricity:

The generating companies are obligated under the Act by virtue of Section 10, to establish, operate and maintain generating station in compliance with the Regulation which has to be framed the Central Commission, in case the generating company is owned or controlled by the Central Government or generation and sale from such station, is for more than one state. For the generating stations operating within a particular State, the Regulations have to be framed by the respective State Commission. By virtue of the Act, 2003 option has been given to supply electricity to any licensee in accordance with the rules and regulations which has to be framed by the appropriate Commission. The generating companies may be directed by the appropriate Government in extraordinary circumstances and the extraordinary circumstance has been clarified in explanation, which would mean the circumstances arising out of threat to security of the State, public order or natural calamity, or such other circumstances arising in public interest and for such appropriate Commission may offset the adverse financial impact of the directions

The main goal of the Act was to release the generating companies from the Licensing regime's constraints. In order to ensure customer satisfaction and fair

electricity distribution, the Act promotes free generation and increasing competition among generating companies and other licensee. The only limitation is with regard to fixation of tariff by the appropriation Commission even in case of generating stations.

The Hon'ble Supreme Court in the case of *Tata Power Vs. Reliance Energy Limited* since reported in 92009) 16 SCC 659 has held that de-licensing of the generating companies does not confer monopoly states on them and they are subject to rationalization of tariff. The Hon'ble Court clarified that the power to regulate under Section 23 would not include the generating stations, taking aid of the definition of supply under Section 2(70), as the generation of electricity has been separately dealt in Part-III, whereas Section 23 is part of the licensing provision which is meant only for transmission, distribution and trading. As such, taking aid of the interpretation of the Statute vis-à-vis contextual reading in paragraph 97, it has been held that *when the question arises as to the meaning of a certain provision in the Statute, it is not only legitimate but proper to read that provision in its context. That is why all definition in the Statutes jointly begins with the qualifying words 'Unless there is anything repugnant to the subject or context'*. The word 'supply' in Section 23 refers to supply to consumers only and not to licensees, by the generator.

Part-IV of the Act deals with the licensee of the utilities for transmission, distribution and trade in electricity. Under this provision the licenses granted earlier by virtue of repealed Act was deemed to have been granted under the Act, 2003 with certain exception like 4th Proviso to Section 16 which provided Damodar Valley Corporation, was deemed to be a licensee under the Act, but was not required to obtain a licence and the provisions of the Damodar Valley Corporation, 948 in so far as they are not inconsistent with the provisions of the Act, 2003, is to continue to apply to such Corporation. The aforesaid issue came for consideration before the Hon'ble Supreme Court, wherein the applicability of other provisions of the Act, 2003 vis-à-vis Damodar Valley Corporation Act required interpretation and the Hon'ble Supreme Court in the case of *Bhaskar Shrichi Alloys Limited*, (2018) 8 SCC 281 upheld the order of the Appellate Tribunal, holding that the tariff of Damodar Valley Corporation would be guided by Section 62 of the present enactment. The condition of licence is to specify general and specific conditions and amendment to such licence can be made invoking Section 18 if the same, in the opinion of the appropriate Commission, is in public interest. Revocation of licence is dealt in Section 19, whereupon for willful or prolonged default the appropriate Commission may revoke the licence and upon such revocation the appropriate Commission will invite application for acquiring the utility of the licensee

whose licence has been revoked and interim arrangement can be made by the appropriate Commission in this regard. When such utility is sold under Section 20, the utility shall vest in the purchaser and the right, power, authorities, duties and obligations of the licensee under its licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee. The appropriate Commission is required to protect the interest of the consumers or in public interest issue such directions or formulate such scheme, as it may deem necessary for operation of the utility in case the utility is not sold. Additionally, section 24 provides a maximum one year license suspension, during which the distribution licensee's utilities will be transferred to the administrator, who will be chosen by the appropriate commission. The appropriate commission must either revoke the license in the line with the section 19 of the Act or revoke the license suspension and return the utility to the distribution licensee whose license has been suspended within a year of the arbitrator's appointment.

6. Transmission of Electricity:

The Act, 2003 incorporates loss pertaining to transmission of electricity and encourages participation of private sector. Section 9, which addresses captive generation, makes it clear that the availability of sufficient transmission facilities, which must be supplied Central Transmission Utility (CTU) or State Transmission Utility (STU), as the case may be, and that any disagreement regarding the availability of transmission facilities must be decided by the relevant Commission. It also states that the supply of electricity from the captive generating plant through the grid shall be regulated, and that any person managing such a plant shall have the right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use. The transmission being the licensed activity, under Section 14 of the Act, the appropriate Commission may, on an application made to it under Section 15, grant a licence to any person to transmit electricity as transmission licensee, in any area as may be specified in the licence. However, the CTU, STUs and appropriate Government engaged in transmitting electricity, are deemed to be the transmission licensee under the law and every transmission licensee has to comply with the technical standards of operation and maintenance of transmission lines in accordance with the grid standards. Further, it shall be the duty of a transmission licensee to build, maintain and operate an efficient, coordinated and economical inter-state transmission system, or intra-state transmission system under Section 40 of the Act. The function of CTU and STUs has been dealt in Section 38 and 39 of the Act and the duties of the transmission licensee are dealt in Section 40. The State Government has to establish a center to be known as the State Load

Despatch Centre, for the purposes of exercising the powers and discharging functions under this part and also to facilitate transmission within a State,. The State Load Despatch Centre is the Apex Body to ensure the integrated operation of the power system in a State and shall be responsible for scheduling and dispatch of electricity within a state and is to exercise supervision and control over the intra-state transmission system. Similarly the National Load Despatch Centre has to be operated by a Government Company or any Corporation or Authority established or constituted by any Central Act and is responsible for scheduling and dispatch of electricity within the region and exercise supervision and control over inter-state transmission system.

Section 25 of the Act carves a duty upon the Central Government to facilitate voluntary inter-connections and coordination of facilities for the inter-state, regional and inter-regional transmission of electricity. For the said purpose the provision for National Load Despatch Centre, Regional Load Despatch Centre and State Load Despatch Centre has already been made.

Section 61 and 62 of the Act requires appropriate Commission to specify the terms and conditions and to determine the tariff for transmission of electricity. Under Section 79 the Central Commission has to regulate the inter-state transmission of electricity and adjudicate upon the disputes involving the transmission licensee and to refer any dispute for arbitration, while Section 81 obliges the State Commission to facilitate intra-state transmission and wheeling of electricity. The Central Electricity Authority under Section 53 has to specify suitable measures for protecting the public from the dangers arising from transmission of electricity and shall intimate in the specified form to the appropriate Commission and the Electrical Inspector, of accident and failures of transmission of electricity and ensure that maps and plans relating to supply or transmission of electricity are kept by the generating company or the licensee. Paucity of space for central transmission utility and state transmission utility cropped up and a series of disputes arose when the transmission utilities installed their towers for their extra high voltage lines, where farm land upon which such tower was being erected, the owner thereof claimed compensation. Finally the matter came before the Hon'ble Supreme Court with regard to applicability of two different enactments, the Indian Telegraph Act and the Electricity Act. The Hon'ble Supreme Court in the case of *Power Grid Corporation of India Ltd. versus century textile & industries Ltd.*(2017) 5 SCC 143 held that the dispute with regard to compensation will be governed by the provision of the Telegraph Act, and for the said reason the action of Central Transmission Utility (Power grid) will be governed by the Telegraph Act.

7. Distribution:

Part-IV of the Act deals with distribution of electricity and a crucial area that interacts with final consumer and generation of income for the entire value chain. The fortune of the entire sector is closely intertwined with the distribution business segment. The Act, 2003 has laid down a road map for the utilities to transform from integrated monopolies to unbundled autonomous entities for profit, and has supported private participation in electricity distribution through multiple distribution licensees and non-discriminatory use of electricity distribution system. For the distribution of electricity a separate licence is required under Section 12, read with Section 14, the terms and conditions whereof has to be specified therein. The licence may be issued to two or more persons within the same area to supply electricity to the customers through their own distribution system, but have to comply with additional requirement pertaining to capital adequacy, credit worthiness or the Code of Conduct, as may be prescribed by the Government. Upon failure to comply with the terms and conditions of the licence, the appropriate Commission may take similar action, such as, suspension, cancellation of the licence and sale of utility similar to in the case of transmission licensee, which has been discussed in detail above.

Section 42 and 63 are the striking features of the Electricity Act, 2003. In accordance with the legislative intent section 42 assigns the distribution licensee the responsibility of creating and maintaining an economical, well-coordinated, and efficient distribution system within his area of supply and guaranteeing the availability of electricity. If the State Commission allows a consumer or group of consumer to receive supply of Electricity from someone other than distribution Licensee in their service area, the consumer will be responsible for paying the additional fees on the wheeling charges, as determined by the State Commission, in order to convert the fixed costs of the distribution licensee. The Distribution Licensee's responsibilities with regards to this supply will be to provide non-discriminatory open access and act as a common carrier. Additionally, the distribution Licensee must set up a Forum for the resolution of the grievance of a consumer's commensuration guidelines specified by the State Commission. The Hon'ble Supreme Court in the case of *Sesa Sterlite Limited Vs. Orissa Electricity Regulatory Commission*, (2014) 8 SCC 444 has held that it is necessary that such distribution licensee must be a distribution licensee in respect of the area where the consumer is situated and it is not necessary that such consumer should be connected only to such distribution licensee. But it would suffice if it is a consumer within the definition of the Act. Further, it has been held that gross subsidy surcharge payable by the

consumer of the electricity to the distribution licensee of the area, where such consumer opts to avail power supply through open access from someone other than the licensee, cross subsidy surcharge is a compensation to the distribution licensee, irrespective of the fact as to whether its infrastructure for supplying energy is used or not. In another case, i.e. *BEST Vs. Maharashtra Electricity Regulatory Commission*, (2015) 2 SCC 438 the Hon'ble Apex Court has held that *the local authority is exempted from the obligation under Section 42(3), to provide its network for wheeling the electricity to consumer.* Hence the local authority having network in a particular area may refuse to provide or make its network available for wheeling of electricity to the consumer, of that area who wishes to have supply of electricity from other distribution licensee. It is mandatory for a distribution licensee to supply electrical energy irrespective of the fact as to whether such consumer falls within his area or not.

Under Section 43 of the Act, every distribution licensee is duty bound to supply electricity to the owner or occupier of any premise on his request by way of the application in an appropriate form, complete in all respect, along with the documents showing payment of necessary charges and other compliances. The distribution licensee may demand reasonable security under Section 47, but security cannot be asked for if the person requiring supply is prepared to take supply through a pre-paid meter. In case the distribution licensee fails to supply electricity to the consumer within one month of the receipt of his application, the licensee shall be liable to the penalty which may extend to Rs.1,000/- for each day of default. The recovery of charges has to be made in accordance with Section 45 of the Act and in accordance with the tariff fixed by the appropriate Commission under Section 62 of the Act. Such charges may include a fixed charge, in addition to the charge for actual electricity supply. The State Commission under Section 50 of the Act has to specify the Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to the electrical plant or electrical line or meter, removal of meter, entry for replacing, altering or maintaining electric lines or electrical plants or meters and such other matters. The Wording of Section 51 of the Act empowers that the distribution licensee may enter into any other business for optimum utilization of his assets, provided the revenue derived from such business, as may be specified by the concerned State Commission be utilized for reducing its charges for wheeling. Section 52 deals with trading of electricity activities, wherein the appropriate Commission has to specify technical requirement, capital adequacy and credit worthiness for being an

electricity trader. Section 13 of the Act authorizes the appropriate Commission to exempt any local authority, Panchayat institution, user's association, cooperative societies, non-governmental organizations or franchises from the provisions of Section 12 for the stipulated period and subject to any specific condition and restriction.

Section 56 of the Act deals with disconnection of supply for default in payment and most of the cases arise out of disconnection on account of default in payment or dispute with regard to energy bills. A consumer can dispute the correctness of an energy bill before the Forum provided under Section 42(5) of the Act, which is an inbuilt mechanism provided for redressal of the grievance of the consumer. This Section provides some protection to the consumer who has disputed the correctness of the energy bill by virtue of Proviso to Sub-section (1) that in case the consumer has made payment on the basis of average charge for the preceding six months pending dispute between the consumer and the licensee, the electric supply is not to be disconnected. Sub-section (2) has made a provision that the licensee cannot recover any demand which had become payable, rather has become first due, after a period of two years from the date when the same became first due, unless such sum has been shown continuously, recoverable as arrear of charges. Meaning thereby that a limitation has been provided for the licensee to recover any charge after a period of two years, from the date when it first became due. Different High Courts interpreted it in different manner and the term which fell for consideration was 'became first due'. Earlier the Hon'ble Supreme Court in the case of *Kusumam Hotels, (2018) 13 SCC 213* had held that *if the dues pertain to the period when the Electricity Act, 2003 had already come into force, such dues are barred for recovery after two years, but if such dues pertain to the earlier enactment, there cannot be any limitation, on recovery of such dues even after the 2003 enactment*. Recently the Hon'ble Supreme Court in the case of *Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited Vs. Rahamatullah Khan, (2020) SCC Online 206*, decided on 18.2.2020 held that *although the dues can be recovered which had become due before two years, but for such dues the licensee cannot disconnect the electric supply, rather can take any other remedy available in law for recovery of such additional demand which was discovered belatedly or could not be incorporated in the earlier energy bill by the State*.

8. Distribution Franchise (DE):

The distribution franchise model has become a way for the private sector player and the distribution licensee to work together to improve consumer management, invest in infrastructure, and splits profit. The DF acts as an intermediary between the distribution licensee and its consumers. The licensee grants the designated franchise the sole right to

sell, and the franchise is in charge of overseeing power distribution in a designated geographical area. The licensee almost hands over all its functions to the DF, who virtually acts as a distribution licensee. The DF can incur expenditure for augmenting and upgrading the distribution, but it cannot develop parallel or substantial distribution system. In the essence, the model is a subcontract for fulfilling the DISCOM's operational and maintenance responsibilities. While actual control over the distribution business is transferred to the Franchise, the DISCOM retains all legal obligation. The DF is accountable to the utility only and no separate licence or approval from the regulator is required for the DF and regulatory mechanism is enforced through the licensee. The State Regulatory Commission does not have any direct control over the DF, which can be done only through the licensee, as framed by the Regulatory Commission. In the entire enactment there are three reference of the term 'franchise'. Section 2(7) defines franchise to mean a person authorized by a distribution licensee to distribute electricity on its behalf on a particular area within his area of supply. Section 5 states that the Central Government can formulate a national Policy in consultation with the State Government and the State Government for rural electrification for local distribution, can manage the local distribution through Panchayat institutions, user's institutions, cooperative societies, NGOs or franchises. The third reference is under Section 13, wherein appropriate Commission may, on recommendation of the appropriate Government in accordance with the National Policy, formulate under Section 5 and in public interest direct by notification that subject to such conditions and restrictions, if any, for such period or periods, as may be specified in the notification, the provisions of Section 12 shall not apply unless he is authorized to do so by a licence issued under Section 14. All the consumer complaints have to be redressed by the franchise within the timeframe prescribed by the utilities, the norms or under the Standards of Performance issued by the SERC. In case of failure to do so, all the penalties, fines imposed on utility and the Standards of Performance or any other directive issued by the SERC, has to be borne by the franchise. The DF jointly adopts three tier strategy for its operation; (1) reduction in technical losses; (2) reduction in commercial losses; and (3) improvement in customer satisfaction. The DF model of power distribution has made a significant contribution towards reduction in transmission and distribution losses, improved metering, revenue collection, reduction in operating expenses and customer satisfaction. However, the process is still evolving and it is important to take up this activity in an organized and integrated manner.

9. Investigation/Offences/Penalty:

Another important facet of the Electricity Act, 2003 is the investigation and enforcement which directly concerns the relationship between the distribution Licensee and consumer. Section 126 of the Act provides that in case of an inspection of any premise if it is found that many equipment, gazette or machine connected or used and in the opinion of the Assessing Officer such person has any indulgence in unauthorized use of electricity, he can provisionally assess to the best of his judgment, but the manner of imposing charges were not provided, which by way of first removal of difficulty, Order 2005 was incorporated on 8th of June, 2005, wherein the Electricity Supply Code specified by the State Commission under Section 50 of the Act was to include the method of Assessment and charges payable in the case of theft of electricity, pending adjudication by the appropriate Court and other methods, with regard to the manner of seizure and removal of appliances. Section 126 explains unauthorized use of electricity, wherein the Assessing Officer has to be an officer of the State Government or Board or the Licensee, as the case may be, designated as such by the State Government and unauthorized use of electricity means the usages of electricity by any artificial means, or tampering of meter, or for any other purpose for which the usages of electricity was unauthorized, or by any means not authorized by the concerned person, or for the premises and areas other than those for which supply of electricity was authorized. Any person aggrieved by the assessment made under section 126, may prefer an appeal before the Appellant Authority under section 127 after deposit of 50 % of the amount so assessed and the balance amount becomes payable within thirty days from the date of final order passed by the Appellate Authority, failing which interest at the rate of 16% is leviable on the balance payable amount. Similarly, on being satisfied that a licensee has failed to comply with any of the provision, then the appropriate commission can also investigate and that investigation can be carried out under section 128 of the Act and order for securing compliance is to be passed by the appropriate Commission. The manner for issuing direction has been prescribed is to be passed by the Appropriate Commission. The manner for issuing direction has been prescribed under Section 130 of the Act. The next important facet as contained in Part-XIV is the offence and penalty, which deals with not only theft of electricity, but other materials used for transmission or distribution of electricity, or damage to any electrical equipment made deliberately. Section 135 deals with theft of electricity and the only distinction between Section 126 and 135 is that 126 does not stipulate dishonest intention and therefore it becomes the unauthorized use and with the same definition, coupled with dishonest intention, the action has been termed as theft of electricity. The distinction between Section 126 and 135 has elaborately been

dealt in the case of *Southern Electricity Supply Company of Orissa Vs. Sri Seetaram Rice Mill*, (2012) 2 SCC 108, Wherein it has been held that Section 135 deals with the offence and penalty for the theft of electricity. It falls within criminal jurisprudence where *mens rea* becomes an important part, whereas Section 126 falls within civil law and does not involve *mens rea* and for the first time even the exceeding load and violation of the Regulations framed by the Commission was treated to be a case falling under Section 135, without there being any criminal intent to do so. The Hon'ble Apex Court in the case of *Maharashtra State Electricity Distribution Company Limited Vs. Appellate Authority* since reported in (2018) 3 SCC 608, held that “*once proceedings has been initiated under Section 126 or 135 of the Act, they must be brought to the logical conclusion in accordance with law after hearing the consumer or the concerned person as per the statutory scheme and the Writ Court should not interfere*”.

Section 136 to 141 deals with petty offences relating to intentional breaking or damaging the works for interference with the meter or the works of the licensee. Punishment for non-compliance of the direction by the appropriate Commission is stipulated under Section 142 of the Act. It state that if a Complaint is filed before the appropriate Commission alleging violation of any of the Act, Rules and the Regulations made thereunder, or any direction issued by the Commission, appropriate Commission may, after giving the complainant a chance, impose a penalty of up to Rs. 1.00 Lac for each infraction and, in the event of a persistent violation, an additional penalty of up to Rs. 6,000/-per day. For the purposes of adjudication under Section 143, the Commission shall appoint any of its members to be the Adjudicating Officer for holding an enquiry in the manner as may be prescribed. By the virtue of Section 145 the jurisdiction of the Civil Court has been ousted and punishment for which imprisonment for a term, which may be extended up to 3 months has been provided under Section 146. Section 149 deals with the offence by a company, which is similar to the provision in many enactments. As it stood prior to amendment of 2007, Section 151 stipulates that “*no court can take cognizance of offence except upon a complaint in writing made by the appropriate Government, or the Commission, or any of their officer authorized by them, or the Chief Electrical Inspector, or an Electrical Inspector, or the licensee, or the generating company, as the case may be for this purpose,*” and many of the FIRs instituted were quashed on the ground that FIR was not maintainable as per the mandates of Section which referred to the complaint only, read with the definition of the complaint under Cr.P.C. Subsequently vide 2007 amendment with effect from 15.6.2007, a proviso was added that, upon report of the Police Officer under section 173 of the Cr.P.C, the Court may take Cognizance of the

offence punishable under this Act. Also by virtue of Section 151(b) offences under section 135 to 140 and 150 were made cognizable and non-bailable and compounding of offence has been provided for the offence of theft of electricity but allowed only once for any person or consumer. The Hon'ble Supreme Court in the case "*Union of India Vs. Mustaq, (2016) 13 SCC 398*" held that the amendment under section 151 has to be clarificatory and retrospective in operation. As such all pending cases wherein challenge was with regard to non-maintainability of FIR, were affected by this judgment. Part-XV of the Act deals with constitution of Special Courts for speedy trial of the offences under Section 135 to 140 and Section 150 of the Act. The presiding Officer of the Special Court has to be an Additional Sessions Judge and the procedure and power of the Special Court has been dealt in Section 154, which is special in character. All assessments made under Section 135 of the Act, to which an appeal lies under Section 127, is subject to the final quantum decided by the Special Court under Section 154(5), which provides that the "*Special Court shall determine the civil liability against a consumer, or a person in terms of money for theft of energy, which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months, preceding the date of detection of theft of energy or the exact period of theft, if determined, whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of the Civil Court.*" The Special Courts have the power of the Court of Sessions in terms of Section 155, as provided under the Cr.P.C., so far as they are not inconsistent with the provisions of this Act. The High Court exercises the appellate and revisional jurisdiction by virtue of Section 156 and the authority of review has been vested in the Special Court by virtue of Section 157. Section 158 deals with resolution of dispute through arbitration and read with Section 79(f) and 86(f) if a dispute arises with regard to licence of a licensee, the appropriate Commission may nominate a person upon application of either of the parties, but in all other aspects the Arbitration Act would apply. In other words it means that, Section 11 of the Arbitration Act for the purposes of appointment of Arbitrator will not apply in the case of the disputes under the Act.

10. Independent Tribunal for Electricity:

Part-XI of the Act deals with the establishment of the Appellate Tribunal, wherein any aggrieved person by any order made by the Adjudicating officer under this Act, Except Section 127 or by any Order of the Appropriate Commission under this Act, may prefer an appeal to the Appellate Tribunal for Electricity. Such appeal has to be filed within forth five days and against the order of such Appellate Authority, the appeal lies before the Hon'ble Supreme Court under Section 125 of the Act, wherein appeal has to be filed

within sixty days and if the Court is satisfied that the appellant was prevented from filing such appeal on reasonable ground, a further extension of sixty days can be granted. The Hon'ble Supreme Court in the case *Chhatisgarh SEB Vs CERC*, (2010) 5 SCC 23 held that the delay beyond the period of Sixty days or an appeal filed after 120 days cannot be condoned, and same order has been prevailed in other number of cases.

CONCLUSION:

Electricity Act 2003, proved to be a parent legislation and torch bearer for Indian Power sector since last 21 years,(excluding Nuclear and Atomic Energy).However, for a long time, the efforts has been centered around the reforms addressing the infrastructural, financial and market based needs of the power sector but for the First time, the Union Government through ministry of power has laid down the Rights to Electricity Consumers through “Electricity (Rights of Consumer) Rules, 2020” to ensure that consumer have the right to reliable services, quality electricity, timely new electricity connection, refunds and other services. This marks a remarkable development in power market reforms in India to fill the gap and to give a fair share of pie to the Consumer.

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1. *PTC India Vs. Central Electricity Regulatory Commission*, (2010) 4 SCC 603.
 2. *Gujrat Urja Vikas Nigam Ltd. Vs. SR Power Limited*, (2008) 4 SCC 755.
 3. *Hindustan Zinc Ltd.*, (2019) SCC Online 1683.
 4. *State of Gujrat & others Vs. Utility Users Welfare Association & others*, (2018) 6 SCC 21.
 5. *Tata Power Vs. Reliance Energy Limited* since reported in 92009) 16 SCC 659.
 6. *Bhaskar Shrachi Alloys Limited*, (2018) 8 SCC 281.
 7. *Sesa Sterlite Limited Vs. Orissa Electricity Regulatory Commission*, (2014) 8 SCC 444.
 8. *BEST Vs. Maharashtra Electricity Regulatory Commission*, (2015) 2 SCC 438.
 9. *Kusumam Hotels*, (2018) 13 SCC 213.
 10. *Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited Vs. Rahamatullah Khan*, (2020) SCC Online 206.
 11. *Southern Electricity Supply Company of Orissa Vs. Sri Seetaram Rice Mill*, (2012) 2 SCC 108.
 12. *Union of India Vs. Mustaq*, (2016) 13 SCC 398.
 13. *Chhatisgarh SEB Vs CERC*, (2010) 5 SCC 23
 14. *Maharashtra State Electricity Distribution Company Limited Vs. Appellate Authority*, (1018) 3 SCC 608.