

Dispute Adjudication in Electricity Sector: Issues and Challenges

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Abstract

The Indian electricity sector is presently going through a major transformation. The accelerated pace of generation capacity addition, over the past few years has led to a situation wherein the electricity supply potential is greater than the economic demand, a scenario witnessed never before in the history of the Indian electricity sector. Thus with the changing scenario of electricity sector it gave rise to various disputes and hence an effective dispute resolution mechanism is necessary for promoting growth in electricity sector and protecting consumer's interests. If disputes are not resolved expeditiously, the result will be uncertainty in the sector, which in turn, may affect investment climate.

This paper will analyze the impact of the changing electricity environment on the nature of disputes that arise in this sector. It focuses on the need to resolve disputes in an efficacious, expeditious and transparent manner to ensure unhindered growth of the electricity sector and protecting consumer's interests. Some of the main types of disputes currently seen in the electricity sector, as well as the dispute resolution techniques applied to attempt to resolve them.

There is a need to make an in-depth study of The Electricity Act, 2003 for improving existing dispute resolution mechanism in the Indian electricity sector from dispute resolution to problem solving. Therefore, the present scholar seeks to make a brief study of the legal provisions relating electricity dispute settlement and then a critical study provides an insight into the Electricity Act, 2003. The paper will discuss why dispute resolution is important in electricity sector and describes the challenges and constraints in dispute settlement along with judicial approach. The researcher will also analyze the various kinds of disputes with the reference to electricity sector. Further, the researcher will examine the practice of regulator in adjudicating electricity disputes with the help of various regulations and case laws.

Keywords : Regulation, Electricity Sector, Consumer Protection, Regulatory bodies, Electricity Act 2003

I. Introduction

Government in India is tied down by complicated process and procedures. This makes the decision-making process slow and convoluted, and thus all kinds of government service deliveries become inefficient and corrupt. The lack of accountability among the individual decision-makers can prevent and change for the better, except for the rare enlightened individual government officer. Thus an effective dispute resolution mechanism is necessary for promoting growth in electricity sector and protecting consumer's interests. Recently developed or amended regulatory regimes (after Electricity Act, 2003) gave electricity regulators some role in dispute resolution.

In some circumstances, regulators are often accused of siding with either the incumbent or its competitors. Some regulators have extensive roles in proposing, issuing, and enforcing legislation

¹⁰⁴ "Transition in Indian Electricity Sector" 2017-2030, TERI-The Energy and Resource Institute.

¹⁰⁵ Rao S.L. (ed.), "Powering India-A Decade of Policy Regulation" Published by Academic Foundation in association with Independent Power Producers Association of India (IPRAI), New Delhi.

and regulations, even as they are tasked with promoting overall development of the sector. Conflicts of interest may result, and the result can be intense where there is little separation of governmental, shareholder, and regulatory interests. Often, governments have financial interests in operators through ownership of corporate shares or because the operators represent large sources of revenue through license fees or revenue-sharing arrangements. The regulation strategy of the Government, aimed at protecting consumer interests and making the sector commercially viable.

The Electricity Act, 2003 is a momentous development in the Indian Power sector, as it seeks to create liberal framework of development for the power sector by distancing Government from regulation. Most of the regulatory functions which were performed by the Government have been entrusted to the independent Regulatory Commission at the Central as well as the State level. The Regulators are assured functional independence under the Electricity Act. Electricity is a right which many expect to be cheap and easily available to all. However it must be accepted that the Regulators cannot be efficient managers to supply cheap electricity. They can only create the enabling environment within which efficient managers can function.

II. Dispute Resolution: A Pressing Priority for Policy-Makers and Regulators

The electricity sector in India has experienced considerable growth in the last two decades incorporating all consumer sectors from residential to industrial as well as agricultural. Growth in average per capita income levels, urbanization levels, improved electricity access, increased economic activity, and greater electrification impacting end use demands, such as agricultural practices, are some of the factors that have contributed significantly to the growth in electricity demand as well as changes in patterns of electricity consumption across the country. At the same time, the last decade has seen the introduction and implementation of several measures towards enhancing energy efficiency. The introduction of Star Labeled Appliances, standards, the PAT scheme, etc. are some of the additional measures that were initiated during the last decade. India's electricity demand across sectors is therefore a complex function of the growth, resulting from increasing aspirations, economic growth, and higher electrification of activities on the one hand, and the reduction in electricity requirements due to efficiency improvements across different sectors on the other.

The global electricity sector has been transformed over the past decade due to privatization, liberalization, technological change and growth in demand. These trends have contributed to economic growth and improved governance of the sector, but they also have produced an increasing number and variety of disputes that call for faster, more cost-effective and better resolution. Competitive markets inevitably produce disputes, and thus competitive electricity markets are no exception. As new companies enter market, with new and competing services, new relationships arises among the service providers and end users. In the rapid formation of these new relationships and deployment of new technologies, it is predictable that some relationships

¹⁰⁶Discussion is based on Rory MacMillan, Discussion Paper on "Dispute Resolution in the telecommunications Sector- Current practices and future direction" ITU news, October 2004 at page 15-45 available at <http://www.itu.int>

¹⁰⁷Yadav Manish (2015) "Energy Laws: Regulation in Electricity Sector & Protection of Consumer Rights" published by Kamal Publishers, New Delhi 88.

¹⁰⁸The Perform Achieve Trade (PAT) is an innovative, market-based trading scheme announced by the Indian Government in 2008 under its National Mission on Enhanced Energy Efficiency (NMEEE) in National Action Plan on Climate Change (NAPCC). It aims to improve energy efficiency in industries by trading in energy efficiency certificates in energy-intensive sectors.

¹⁰⁹"Transition in Indian Electricity Sector" 2017-2030, TERI-The Energy and Resource Institute.

and technologies will fail. These disputes may involve failures to fulfill contractual obligations, non-compliance with regulatory requirements, and a wide range of other issues .

Moreover, recent history in the sector has featured turbulent changes resulting not only from liberalization and competition, but also from a cycle of rapid market growth, followed by sudden, nearly catastrophic, financial collapse. This has also brought on disputes. Pressures inherent in a market undergoing liberalization produce incentives to use all available resources – including strategic use of dispute-resolving mechanisms – to gain business advantages. Extraordinary financial pressure on the sector – the high cost of financing and lack of cash reserves – raises the temperature further.

Some electricity disputes involve relatively insignificant differences among customers, service providers and infrastructure providers, while others raise fundamental regulatory issues. Disputes become particularly relevant for regulators where service providers have enough power in the market to resist liberalization and even abuse their market power, predominantly in areas that distort the functioning of competitive markets. Interconnection provides many examples of this type of dispute. An obvious example is when a service provider with exclusive control over essential infrastructure facilities fails to reach a reasonable agreement to interconnect with its competitors or provide access to its network or facilities . Due of the technical nature of some types of disputes, regulators may not have the necessary expertise to resolve them optimally. Strapped for resources and realizing limitations on their expertise, regulators often encourage the players to solve these disputes themselves, if possible, before involving the regulators. In some cases, regulators simply refuse to intervene, preferring to redirect disputants to alternative ways of resolving their disputes .

To recognize the importance of efficient dispute resolution in developing a fully competitive market, regulators have to increasingly focus on these issues. For example, the European Union's (EU's) new Framework Directive introduced new rules for dispute resolution in the regulation of electronic services and the use of radio frequency spectrum . This is an example of a wider phenomenon, in which regulators and international institutions such as the World Bank and the International Telecommunication Union (ITU), are devoting resources to improve dispute resolution in the telecommunications sector. There is increasing emphasis on techniques often known as "alternative dispute resolution" (ADR). These techniques include arbitration, mediation and other mechanisms that are less formal than traditional forms of regulatory adjudication .

¹¹⁰Yadav Manish (2015) "Energy Laws: Regulation in Electricity Sector & Protection of Consumer Rights" published by Kamal Publishers, New Delhi 81.

¹¹¹Yadav Manish (2015) "Energy Laws: Regulation in Electricity Sector & Protection of Consumer Rights" published by Kamal Publishers, New Delhi 98.

¹¹²Yadav Manish (2015) "Energy Laws: Regulation in Electricity Sector & Protection of Consumer Rights" published by Kamal Publishers, New Delhi 84.

¹¹³Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive). The extension of the directive to cover radio frequency use in addition to interconnection marks an important development. Article 20 requires national regulatory authorities to issue binding resolutions of disputes arising under the regulatory regime "in the shortest possible time frame and in any case within four months except in exceptional circumstances". Given the unsustainable pressure this may impose on regulatory authorities, the Framework Directive contains a release valve, allowing national regulatory authorities to "decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and would better contribute to a timely resolution of the dispute". Mediation is similarly encouraged for cross-border disputes in Article 21 of the Directive. http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/comgreen/index_en.htm visited on 29 April 2009

III. Nature of Disputes and Approaches to Resolve Them

Some of the disputes in the electricity sector relate to infrastructure, open access, Tariffs, Petitions, Commercial Disputes, Power purchase Agreements disputes, investment, trade liberalization or consumer-related matters which are covered by different laws. Specific attention will have to be given to dispute resolution mechanisms, which should be re-oriented to tackle new and emerging areas of conflict in the sector. Dispute settlement principles must, therefore, find a balance between the interests of various licensees (Like Generating licensee, Trading licensee, Transmission licensee, Distribution licensee) and customer considerations, which include their perception of quality of service, tariff determination, flexibility and distribution's service provider choice available to consumers. There are various common official and approaches for dispute resolution. These ranges from regulatory adjudication, court adjudication, alternative dispute resolution, negotiation and mediation to arbitration; and have their advantages and disadvantages.

Most countries use the combination of regulator and Court adjudication as a dispute resolution mechanism. The determining principle of regulatory adjudication is to ensure orderly development of the electricity sector by promoting fair competition between the dominant and new service providers through a series of measures like publishing standard of performance, consumer awareness booklets, distribution tariff, Generations and transmission tariffs and monitoring compliance with license terms and conditions.

Regulatory adjudication have advantages such as well-structured channels of decision-making, accountability of official decision-makers, established mechanisms for coordinating decisions among agencies with related responsibilities and availability of the State's enforcement mechanisms. Service providers or consumers also have an option to appeal against the decision of the regulator and have the issue settled through court adjudication. As an approach, court adjudication remains an important final recourse for many types of disputes, notably those that are less policy-related. It has the advantage of finality and official enforcement mechanisms, but also has a number of disadvantages: high costs arising from lengthy court procedures and a perceived lack of electricity regulatory-specific expertise to deal with the many complex industry disputes .

Today, alternative dispute resolution methods are gaining currency. Negotiation, mediation and arbitration are the most commonly practiced of these less official means of dispute resolution. The ADR methods that use confidential processes are well-structured, time sensitive and can help to maintain long-term commercial relationships. In the mediation and arbitration processes, there also can be regulatory oversight which sanctifies such processes. The ADR approach can help to smoothen the rough edges in a large number of cases but in certain areas involving substantive issues where the stakes are very high, there may be no escape from taking recourse to judicial intervention. In such situations, judicial and quasi-judicial bodies like specialized tribunals, which also have enforcement powers, become very relevant. In the emerging converged scenario, the dispute settlement mechanism will have to be more flexible and less bureaucratic with the requisite technical expertise to address new conflicts effectively .

¹¹⁴Discussion is based on Rory MacMillan, Discussion Paper on " Dispute Resolution in the telecommunications Sector- Current practices and future direction" ITU news, October 2004 at page 15-45 available at <http://www.itu.int>

¹¹⁵"Telecommunications disputes: Specificities, problems, and solutions" (White Paper), (17 June 1999) At: <http://www.ice-uk.com/rhill.html> visited on 12 Jan 2009.

IV. Current Disputes in Electricity and Resolution Approaches

The disputes in electricity sector involve section 126 and 127 (concerned with unauthorized use of electricity), 135 to 139 (theft of electricity and offences and penalties thereof), section 152 and 161 (notice of accident and inquiries in the distribution, supply or use of electricity). The description of current disputes in this chapter also provides some illustrations of how disputes have been resolved. Where there are no significant policy implications, regulators generally avoid involvement in disputes between service providers. The disputants often rely on the courts and alternative dispute resolution organizations. While the courts in many countries provide the most final and enforceable form of dispute resolution, it is often a costly alternative. Indeed, the cost of lawyers' fees and court costs can be more than the amount at stake in the dispute.

a. Electricity Regulatory Commissions

The first Central commission was created in 1998 and other state commissions have come later. The central commission regulates electricity tariffs and transmission up to the boundaries of any of the states. Public opinion has to recognize its value. It will do so when it sees results in terms of improved quality, availability and, in due course, reduced tariffs. Ultimately the independence of regulators can only be guaranteed by strong public opinion. While legislation will help, it is important that the financial and human resources for regulatory commissions are kept out of the scope of government approval.

Every regulatory commission has come out or is coming out with their approach papers on tariffs. Clearly, these approach papers will enunciate alternatives. These could be different from existing practice. The floating of these alternatives might cause some uncertainty. That kind of uncertainty is due to the transition to independent regulation, and is hence unavoidable. It will get resolved as soon as the commissions announce the principles and the terms and conditions on which they will regulate tariffs. This process takes time, given the need for transparency. This involves the submission of petitions, adequate opportunity for all interested parties to study and respond to those petitions, and adequate opportunity to the petitioners to file rejoinders to the responses. The process also demands that the information used in the final order was available to all parties during the hearing. If these are legalistic proceedings, they are unavoidable, given the nature of the process, which is subject to appeal. The regulatory commissions are trying to be as flexible as possible while ensuring that the required legal process is followed.

b. Central Electricity Regulatory Commission -

On 2 July 1998, recognizing the need of reforms in the electricity sector nationwide, the Central Government of India moved forward to enact the Electricity Regulatory Commission Act of 1998, which mandated the creation of the Central Electricity Regulation Commission (Herein after referred as 'CERC') with the charge of setting the tariff of centrally owned or controlled generation companies. Ministry of Power, India, has published the Electricity Regulatory Commissions Act, 1998. Apart from CERC, the act also introduced a provision for the states to create the State Electricity Regulation Commission (SERC) along with the power to set the tariffs without having to enact separate state laws. Central Electricity Regulatory Commission, a key regulator of power sector in India, is a statutory body functioning with quasi-judicial status under section 76 of the

¹¹⁶Yadav Manish (2015) "Energy Laws: Regulation in Electricity Sector & Protection of Consumer Rights" published by Kamal Publishers, New Delhi 78.

¹¹⁷Discussion is based on Rory MacMillan, Discussion Paper on "Dispute Resolution in the telecommunications Sector- Current practices and future direction" ITU news, October 2004 at page 15-45 available at <http://www.itu.int>

Electricity Act, 2003. CERC was initially constituted on 24 July 1998 under the Ministry of Power's Electricity Regulatory Commissions Act, 1998 for rationalization of electricity tariffs, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, and for matters connected Electricity Tariff regulation. CERC was instituted to regulate the tariff of Power Generating companies owned or controlled by the government of India, and any other generating company which has a composite scheme for power generation and interstate transmission of energy, including tariffs of generating companies. CERC has two types of jurisdiction; one is regulatory and the other is adjudicatory.

c. The State Electricity Regulatory Commissions

Regulatory Commissions have been set up in all States and they have taken over the functions of granting license to utilities, fixing consumer tariff, approving major utility investment and monitoring utility's quality of service. The new framework for the electricity sector has mandated many provisions towards transparency, accountability (to public) and participation (by people). It is important that these provisions are used by the community leaders working with the poor and not just by the large consumers (and their associations). The State Electricity Regulatory Commissions (SERCs), as the state level regulatory bodies, under the Electricity Act 2003, has been vested with several critical roles as an independent regulator. As mentioned earlier, some of the SERCs were created by the states, which initiated private participation in the sector. With the Electricity Act, 2003 the role of SERCs has been clarified in the comprehensive statute, replacing the state level acts and the earlier act enacted in 1998. It is mandated that, within six months from the appointed date (10 June, 2003) the State Governments may by notification, constitute State Electricity Regulatory Commission. However the State Electricity Regulatory Commission, established by a State Government under the -

- The Electricity Regulatory Commission Act, 1998 or
- The Orissa Electricity Reforms Act, 1995 or

¹¹⁸http://en.wikipedia.org/wiki/Central_Electricity_Regulatory_Commission last visited on 24 June 2013.

¹¹⁹76. Constitution of Central Commission.- (1) There shall be a Commission to be known as the Central Electricity Regulatory Commission to exercise the powers conferred on, and discharge the functions assigned to, it under this Act.

(2) The Central Electricity Regulatory Commission, established under section 3 of the Electricity Regulatory Commissions Act, 1998 and functioning as such immediately before the appointed date, shall be deemed to be the Central Commission for the purposes of this Act and the Chairperson, Members, Secretary, and other officers and employees thereof shall be deemed to have been appointed under this Act and they shall continue to hold office on the same terms and conditions on which they were appointed under the Electricity Regulatory Commissions Act, 1998:

Provided that the chairperson and other Members of the Central Commission appointed, before the commencement of this Act, under the Electricity Regulatory Commissions Act, 1998, may, on the recommendations of the Selection Committee constituted under sub-section (1) of section 78, be allowed to opt for the terms and conditions under this Act by the Central Government.

(3) The Central Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(4) The head office of the Central Commission shall be at such place as the Central Government may, by notification, specify.

(5) The Central Commission shall consist of the following Members, namely:--

(a) A Chairperson and three other Members;

(b) The Chairperson of the Authority who shall be the Member, ex officio.

(6) The Chairperson and Members of the Central Commission shall be appointed by the Central Government on the recommendation of the Selection Committee referred to in section 78.

- The Haryana Electricity Reforms Act, 1997 or
- The Andhra Pradesh Electricity Reforms Act, or
- The Uttar Pradesh Electricity Reforms Act, 1999 or
- The Karnataka Electricity Reforms Act, 1999 or
- The Rajasthan Electricity Reforms Act, 1999 or
- The Delhi Electricity Reforms Act, 2000 or
- The Madhya Pradesh Vidyut Sudhar Adhiniyam, 2000

and functioning as such immediately before the appointed date, shall be the SERC for the purposes of this Act and the Chairperson, Members, Secretary, and officers and other employees thereof shall continue to hold office, on the same terms and conditions on which they were appointed under those Acts. Constitution of SERC is critical for power sector reforms. Most of the States have already constituted and operationalized the State Electricity Regulatory Commissions. A Few States that missed the 9th December deadline for constituting SERC include - Bihar, Chhattisgarh, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Sikkim. The Union territories that have missed the deadline are Chandigarh, Andaman & Nicobar, Daman & Diu and Lakshadweep .

V. Proceeding of CERC and SERC

The Appropriate Commission shall have power to frame the regulations for conduct of their proceedings. All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate Commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974) .The members shall meet at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify. If the Chairperson is unable to attend a meeting of the Commission, any other Member nominated by the Chairperson in this behalf and, in the absence of such nomination or where there is no Chairperson, any Member chosen by the Members present from amongst themselves, shall preside at the meeting .

All questions shall be decided by a majority of votes of the Members present and voting, and in the event of equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote. Every Member shall have one vote . All orders and decisions of the Appropriate Commission shall be authenticated by its Secretary or any other officer of the Commission duly authorized by the Chairperson in this behalf .

VI. Review of Orders by CERC and SERC

The powers and scope of CERC and SERC to review its order flows from the order 47 Rule 1 of Code of Civil Procedure. The scope and application of review is much stricter than that of an appeal before electricity appellate authority. The Order 47 Rule 1 contemplates only limited jurisdiction with regard to review, which is circumscribed by the definitive limits of the language of the Order. The Appropriate Commission may allow a review on 3 specific grounds only, namely: -

¹²⁰Section 17 of The Electricity Regulatory Commission Act, 1998.

¹²¹Section 82(1) of The Electricity Act, 2003.

¹²²Niranjan R.N.(2004)"Guide to Electricity Laws in India" Universal Law Publishing Company, New Delhi at page 96.

- Discovery of new and important matter or evidence, which after the exercise of due diligence was not within the applicant's
- Knowledge or could not be produced by him at the time of passing of the order; Mistake or error apparent on the face of the record; or
- For any other sufficient reasons.

It is well settled law that a review of the order of the Court should be sparingly used after examining the facts placed before the Court. An erroneous view or erroneous judgment is not a ground for review, but judgment or order which completely ignores a positive rule of law.

Jurisdiction of Appellate Tribunal

All appeals to the ATE shall be filed under section 111 of the Electricity Act, 2003. Any Company or body corporate or association or body of individuals whether incorporated or not, or artificial juridical person aggrieved by an order made by an adjudicating officer or an order made by the CERC or State Electricity Regulatory Commission may prefer an appeal to the Appellate Tribunal for Electricity. However in case of appeal lying under section 127 to the appellate authority, or a final order of the appellate authority, the case shall not be preferred before the ATE. The Act is silent on the issue whether one member can exercise the jurisdiction of the ATE. However it clearly states that the jurisdiction of the Appellate Tribunal may be exercised by Benches constituted by the Chairperson.

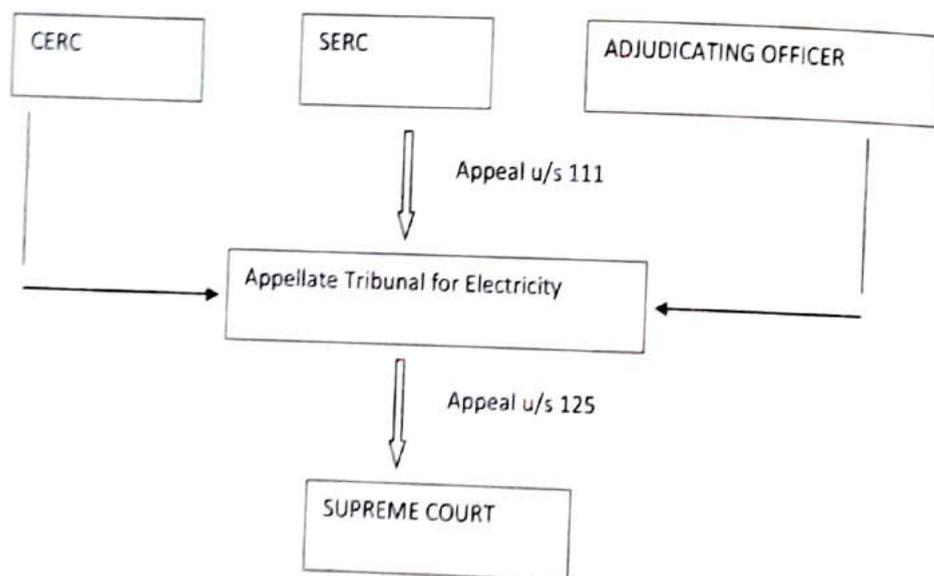


Fig: Appeal procedure under Section 111 & 125 The Electricity Act, 2003

Limitation Period

Limitation period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person has been provided in the Act. The Application shall be verified and should be accompanied by such fee as may

¹²³As defined Under Section 2 (4) of The Electricity Act, 2003.

¹²⁴Section 95 of The Electricity Act, 2003.

¹²⁵Section 92 (2) of The Electricity Act, 2003.

¹²⁶Section 92 (3) of The Electricity Act, 2003.

¹²⁷Section 92 (5) of The Electricity Act, 2003.

be prescribed. However the Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

Procedure and powers of Appellate Tribunal

Section 120 of the Act provides for the powers of the ATE. Sub-section (1) states that the ATE shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice. It is also provided that conforming to the provisions of the Electricity Act, 2003 the ATE shall have powers to regulate its own procedure. This gives wide discretion and powers to the ATE. Probably this will provide flexibility to the institution to act in the interest of justice and not go into procedural details of the Civil Procedure Code.

All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 .

Jurisdiction of Supreme Court

By virtue of section 125 the Supreme Court shall have the jurisdiction to try cases in appeal from the ATE. Section 125 provides that any person aggrieved by any decision or order of the ATE, may, file an appeal to the Supreme Court on anyone or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. Section 100 of the Code of Civil Procedure primarily provides that the appeal shall lie when substantial question of law is involved .

Power of Appropriate Commission to impose Penalty

The CERC and SERCs as the regulators of the electricity sector in India are entrusted with wide powers to regulate and develop the Electricity market in India. These powers are exercised by the Appropriate Commissions by issuing of directions to the appropriate entities. To maintain the sanctity of the regulatory authority and to provide a remedy in case of non-compliance of direction of the regulating authority it was felt necessary that certain powers to impose penalty must be entrusted to them.

If the Appropriate Commission, is Suo Moto or against the complaint of any person, is satisfied that any person has contravened the direction of the Commission, then the Commission after giving the person who has contravened the orders an opportunity to be heard direct in writing that such person pay the penalty. The penalty shall not exceed one lakh rupees. It is also provided that such penalty shall be in addition to any other penalty which the contravening party may be required to pay. Further it is also mandated that in case of continuing non-compliance of the direction an additional penalty may be imposed which may extend to six thousand rupees every day during which the failure continues after contravention of first such direction.

Section 146-Punishment for non-compliance of orders or directions

If anyone fails to comply with any order or direction given under this Act is punishable with fine which may extend to one lakh rupees, or with both. The local police can generally files case under the section to prosecute the offender. It can be added that most of the FIR against the delinquent SPD contractors in Delhi have been filed under this section.

¹²⁸Section 111(2) of The Electricity Act, 2003.

Non-compliance of directions or orders

Section 146 provides that whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence.

The provision is all incorporating and does not limit itself to only this part of the Act. Therefore any order given by any authority within the purview of the Act shall fall within this section. Wherever the Act is silent on the issue of effect of non-compliance of order, this section shall be applicable.

VII. Dispute Resolution and Enforcement

In addition to having transparent, open and participatory procedures, an effective regulator needs the power to resolve disputes and enforce its decisions and laws. As the electricity sector develops and matures, the ability of the regulator to maintain order in the sector is supreme to promote growth and attract investment in this sector. The first part of this section describes the different resolution techniques countries have engaged, in to solve electricity sector disputes. The second part describes the enforcement practices and procedures generally used to settle conflicts and enforce sector policy and regulation. As the electricity sector continues to develop and liberalize and new technologies are deployed, more regulators are encouraging parties to voluntarily resolve their disputes, and relying on alternative dispute resolution approaches. However, the regulator's involvement and intervention to resolve conflicts and enforce compliance with decisions, rules, and regulations are still critical and necessary for maintaining an effective regulatory regime .

Disputes between Regulators and Service Providers

Regulators do not participate in disputes solely as intermediaries. In some cases, the regulator itself is one of the disputants. A case brought by IsTim, Telecom Italia's Turkish mobile operator, against the Turkish regulator illustrates an action brought against the regulator itself for an alleged failure to exercise its regulatory duties .

Consumer Disputes

Disputes between electricity consumers and service providers occur in every jurisdiction. Issues frequently disputed between consumers and service providers include:

- **Service Charges:** Disputes may arise over the types and amounts of charges that are levied on consumers for services.
- **Billing:** Disputes may arise over the charges billed to a consumer for various services or for calls that have been made. Consumers may dispute the fact that they made the calls at all. In other cases, a consumer may be billed for services that he or she did not request. The practice of billing a consumer for services that the consumer has not requested is

¹²⁹For Details See Section 120 of The Electricity Act, 2003.

¹³⁰For Details See Section 125 of The Electricity Act, 2003.

sometimes called “cramming”, and several jurisdictions specifically prohibit service providers from engaging in it. Billing disputes also may involve failure to provide adequate information about charges billed to the consumer. Many jurisdictions recognize the consumer’s right to an accurate reporting of billed charges, including a written itemization of them, but disputes may still occur.

- **Payment of Charges:** The terms of payment for electricity services – and the timeframe for disconnection after the non-payment – frequently result in disputes. Many regulators have set standards to govern the terms of payment and disconnection, but these may not cover all potential areas of dispute.
- **Slamming:** Slamming is the practice of changing a consumer’s service provider without the consumer’s authorization. In other words, slamming is when one service provider “steals” a customer from another service provider, without asking the customer. This is a common source of disputes between consumers and service providers. Many jurisdictions have specifically banned slamming and have implemented measures to protect consumers from this practice, thereby reducing disputes.
- **Quality and Terms of Service:** Poor quality of service is a frequent cause of disputes, as are terms for connection and disconnection of service. Many jurisdictions have set quality of service standards and mandate certain terms of service in their regulatory frameworks, particularly for services provided by dominant operators.
- **Privacy:** Disputes over privacy frequently involve issues of use of personal consumer information, such as home addresses, credit information and calling patterns. Many countries have recognized consumers’ right to privacy, including, for example, the right to have one’s name removed from the telephone directory. However, disputes over application of these rights are common.
- **Advertising:** Disputes may arise over misleading advertising. Many jurisdictions protect consumers from misleading information through competition laws of consumer-protection legislation. Questions about the application of such legislation are a frequent cause of disputes .

Regulatory approaches to deal with the disputes between consumers and service providers may be proactive or reactive. Most countries have adopted a combination of the two. Proactive approaches include setting guidelines for consumer-service provider relations, establishing the obligations of each party. Such guidelines remove or reduce uncertainty in the relationship between consumers and service providers that would otherwise create conflict.

Regulators often have specific powers or procedures to investigate consumer complaints, particularly since many consumers – service provider disputes stems from the actions that are either mandated restricted, or prohibited by regulation. Regulators often can seek written submissions about the dispute or conduct a full hearing on the matter. Some regulators also have the power to issue binding decisions concerning the dispute and to levy sanctions, such as ordering compensation by the service provider.

¹³¹Discussion in based on Module 6. Legal and Institutional Framework of report from the InfoDev /ITU ICT Regulatory Toolkit available at www.ictregulationtoolkit.org

¹³²Rory MacMillan, Discussion Paper on “ Dispute Resolution in the telecommunications Sector-Current practices and future direction” ITU news, October 2004 at page 26

VIII. Challenges and Constraints

There are many challenges and constraints in dispute settlement. For example, different countries and different emerging markets are at different stages of the deregulation process. The rules of transition cannot be the same for each of these stages. Another important challenge is the pattern of relationship between the dispute settlement entities in the official sector and the other alternative dispute settlement mechanisms. Courts, regulators, statutory bodies and government come within the ambit of the official sector and have behind them the force of law. Negotiation, mediation and arbitration come under the category of alternative dispute settlement mechanism.

IX. Conclusion

In the new era of reforms, regulatory bodies are required to function in a transparent and accountable manner. The statutes envisage active consumer participation in the decision making process. To fulfil this requirement, regulators need to hold public hearings and open consultations to seek the views of consumers on the proposals under consideration. Hence, Consumer involvement depends not only on its scope as determined by the electricity act, but also on the willingness of the regulator to include the consumer in the process.

Consumer involvement in the regulatory process is necessary for various reasons; it helps the regulator in generating new ideas and to seek insights on the need of the weaker section of society. The Regulatory Commissions of many States have contributed greatly to the development of the power sector. Many of the issues raised or disputes in the power sector would involve technical knowledge for special matters, secondly speedy and early disposal of the matter would be in the interest of all stakeholders including the consumers. Consequently it would be desirable to have a specialist tribunal to adjudicate on the matters raised in the national electricity framework.

It is contemplated that the Appellate Tribunal for Electricity would avoid delay in dispute resolution in the courts and will help in quick disposal of cases relating to the specialized field of Electricity. The sanctity of the ATE is very high almost equivalent to the High Court. This will ensure greater certainty in the power sector for faster development.

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¹²⁹For Details See Section 120 of The Electricity Act, 2003.

¹³⁰For Details See Section 125 of The Electricity Act, 2003.