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Study of Energy Law in India with Special Reference to Electricity Act 2003

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ABSTRACT

Indian energy law is necessary to oversee and control the country's electricity sector, including electricity, coal, petroleum, natural gas, and renewable energy. The Electricity Act of 2003 is an important legislation that replaced obsolete regulations to develop competition, efficiency, and consumers' rights. The Act promotes private sector participation, promotes renewable energy, and decentralizes power regulation through State Electricity Regulatory Commissions (SERCs). Provisions of free distribution and transmission of power, provision for exchange of power, and regulation by the government through CERC and APTEL are deemed vital.

Private participation has increased immensely by the provisions of the Act, has induced growth in alternative energy sources, and facilitated reform in the power sector.

Nevertheless, it continues to suffer from financial losses in distribution businesses, regulatory issues, and electricity theft. Continuous policy modifications and good implementation procedures are essential for ensuring long-term sustainability and efficiency.

Keywords: Indian Electricity Act of 1910, Electricity (Supply) Act of 1948, Electricity Regulatory Commission Act of 1998, Energy Charter Treaty (ECT), OECD and energy legislation, Article 21 - Right to Life.

INTRODUCTION

Indian energy law governs the production, utilization, distribution, and exploitation of the energy resources, including renewable energy, natural gas, oil, coal, and electricity¹.

Energy Act of 2003 is an important legislation that reformed the energy sector in India to promote competition, safeguard the rights of consumers, and invite the private sector.

Energy law comprises the legislative laws relating to oil, petrol, and tax on exploitation. The subject matter of energy law comprises site selection agreements, extraction agreements, acquisition permits, and ownership rights of oil and gas both before discovery and after extraction, and adjudication of those rights in law.

HISTORICAL BACKGROUND OF ENERGY LAWS IN INDIA

The Indian power sector was first regulated by the Electricity Act of 1910 and the Electricity (Supply) Act of 1948. These acts formed a framework for central power generation and supply controlled by the state. But inefficiencies, losses, and imbalances in demand and supply demanded reform, prompting the enactment of the Electricity Act, 2003. The history of energy legislation in India is a complex pattern of events that are intricately woven with the industrial and economic development of the nation, evolving through a series of legislative measures to regulate energy production, supply, and use.² During the British colonial era, energy acts were primarily focused on power generation and coal extraction, which led to the Indian power Act of 1910 that set the trend of electric regulation in India.

After independence, the government made earnest attempts towards nationalization of energy resources and equitable distribution. The 1948 Power Supply Act set up the Central Electricity Authority and State Electricity Boards to adopt a systematic approach towards the supply and generation of power. The economic liberalization of the 1990s necessitated a market-driven system, leading to the 2003 Electricity Act, a landmark piece of legislation that replaced all earlier enactments, promoting competition, private investment, and the use of renewable energy. Furthermore, India has put in place

¹ Sharma, R., & Gupta, P. (2020). The impact of electricity sector reforms in India: A review of policy and regulatory frameworks. *Energy Policy Journal*, 35(4), 45-62.

² Mehta, A. K. (2019). Renewable energy policies in India: A critical analysis of regulatory measures. *Journal of Energy Law & Policy*, 42(3), 122-139.

sectoral energy laws such as the Coal Mines (Nationalisation) Act of 1973, Oilfields (Regulation and Development) Act of 1948, and Energy Conservation Act of 2001, showing an inclination toward efficiency and sustainability. India has progressively enacted and encouraged legislations and reforms concerning renewable energy, carbon emissions, and energy security, portraying global climate pledge and technological advances in the arena of energy.

MEANING AND CONCEPT OF ENERGY LAW

Energy law regulates the activities relating to the production, distribution, transportation, and use of energy, balancing consumers', energy companies', and the state's interests to ensure a safe, efficient, and reliable energy supply.

Definition of Energy Law

The term 'energy' is "the ability to do work."

Therefore, energy defines strength, ability, or capacity of doing an action.

From the non-experts' point of view, energy is the quantity of power or force that, when put into effect, can shift an object from one location to another. Every living thing, including humans, needs energy to do work. When human beings experience a deficit in energy, it must be supplemented from an external source. Another specialized branch of science known as physics also facilitates advancement in energy. The 2001 Energy Conservation Act also provides the definition of energy as any form sourced from fossil fuels, nuclear substance, hydro power, and electrical power sourced from renewable resources or biomass that is grid-connected. The concept of energy law is not new. In 1996, Adrian Bradbrook defined energy law as the distribution of rights and duties regarding the utilization of energy resources between persons, between persons and the state, between states, and between governments.³

Energy legislation therefore regulates the utilization and taxation of renewable and non-renewable energy. Such legislation consists of the primary authorities, which comprise case law, statutes, and rules concerning energy. Application of energy law includes numerous issues, such as environmental policy, invasion of interest in property, regulation of utilities, and federal taxation, mainly focused on sale and transfer of natural resources. Electricity is currently the most available source of commercial energy and has become rightfully the most critical input in maintaining economic and social development. Electrical energy is currently replacing other energies. The term 'energy' refers to different types of power, vigor, or dynamism. Electricity is an energy source derived from different sources of energy. By rule, it is produced by electric current and leads to motion, light, or heat. Electricity may be produced either from renewable or nonrenewable sources of energy; however, regardless of the source, the process of generation is most capital-intensive and operational cost-intensive.

IMPACT OF THE ELECTRICITY ACT, 2003

The Electricity Act of 2003 spawned a humongous change in India's electricity sector, from a heavily regulated to a more competitive and consumer-oriented market. It aimed at improving efficiency, improving competition, and attracting private sector investment while promoting universal access to power.

One of the most important impacts was deregulation of electric generation, which allowed private industry to build power plants without the necessity for government approval, with resultant investment and capacity expansion. The Act also mandated open access to enable large consumers to buy power from any producer or supplier, thus inducing competition and reducing state utility monopoly ownership. The unbundling of the State Electricity Boards (SEBs) into generation, transmission, and distribution companies enhanced the efficiency of operations and transparency. It also set up regulatory bodies at the national and state levels to give transparent and equitable tariff structures, protect consumer rights, and settle disputes. Regulatory bodies were required by the Act to foster the development of renewable sources of energy. Besides, it was of supreme importance to rural electrification and to ensuring an undisturbed availability of power to all. However, challenges in the nature of fiscal pressure on DISCOMs and inefficient implementation still ongoing need to be continuously adapted to and by policy interventions⁴. The electric Act of 2003 modernized India's electric industry much more to the modern era, with a framework in place for a more dynamic and consumer-focused electrical market.

ENERGY LAW AS BASIC HUMAN RIGHT UNDER THE CONSTITUTION OF INDIA

Energy is a fundamental part of human existence. Energy cannot be created or destroyed but is converted from one form to another. For instance, chemical energy is converted to kinetic energy in the detonation of a stick of dynamite. Petrol or saved energy of any kind is utilized to fuel an automobile or other motor vehicle. Electrical energy is used in the functioning of most machinery, e.g., domestic appliances. Man needs food to generate energy. Energy exists in different forms, e.g., chemical, light, mechanical, nuclear, solar, ocean, and biomass energy. Modern society consumes a vast amount of energy. The government controls the generation, supply, and utilization of energy through different laws and measures. Most Indian villages in rural, remote areas have no connection to the power grid. In most households that are connected in electrified villages, there cannot afford expensive electricity. Beyond cost in urban areas, some of the constraints to obtaining coal power for poor people are no property rights on their homes, as well as the hazardous condition of homes. Electricity supply is one of the basic human rights and the motive for more and more power generation industries being established

³ Kumar, S., & Verma, D. (2021). Challenges and opportunities in the Indian power sector post Electricity Act 2003. *International Journal of Energy Economics and Policy*, 13(2), 78-95.

⁴ Ibid

in India. There is an increasing people's resistance against industrial proposals, particularly large centralized power plants—coal, hydro, or nuclear—because they displace many families from their homes, pollute the environment, and dislocate their way of life. Upstream coal and uranium mining operations are equally harmful.

INTERNATIONAL INSTRUMENTS OF ENERGY LAW

The Energy Charter Treaty (ECT) is an international legal technical treaty intended to regulate the energy sector's trade and investment. It creates a special multilateral energy cooperation regime under the law of international relations. The Treaty has the objective of promoting energy security through more open and competitive energy markets, in line with the principles of sustainable development and sovereignty of energy resources.⁵ It establishes a legislative framework designed to foster lasting cooperation in the energy field in the spirit and under the goals of the Charter based on complementarities and mutual benefits. The Treaty mainly focuses on foreign investment protection by extending national treatment or most-favoured nation treatment, whichever is more beneficial, along with protection against chief non-commercial risks; codifies eight non-discriminatory terms of export and import of energy material, products, and equipment in line with WTO norms; formalizes provisions for safe cross-border energy transit through pipelines, grid

The Organisation for Economic Co-operation and Development (OECD) was founded on 30 September 1961.

The mission of the Organisation for Economic Co-operation and Development (OECD) is to promote policies that increase the economic and social well-being of the world's people. The OECD provides a forum to governments to collaborate, share experience, and seek solutions to common problems. It also disseminates vast information on energy saving and efficiency and their environmental impacts.

LEGISLATIVE DEVELOPMENT OF ELECTRICITY LAWS IN INDIA

The legislation regarding electricity began as early as 1887 and lasted up to 2003.

The Electricity rules began with the regime of British Government in 1887 and lasted up to the formation of the independent country in 2003.

Electrical legislation over the period of the century has undergone diverse phases. This study tries to depict changing trends in electrical legislation that started in 1991. But without looking at the legislative context, the study can be incomplete. This chapter is divided into three sections. Particularly, the Pre-Independence era, the Post-Independence era, and the sensational reversal of trends in between 1991 and 2003. This chapter presents the legislative development of laws relating to electricity in India with brief information on the Electricity Act of 1910 and the Electricity Supply Act of 1948. The researcher has described the situation that compelled the Government of India to reverse trends in law and allow private entry into the field of electricity and policy measures adopted to upgrade the status of the power sector. The writer has provided a brief overview of the Electricity Regulatory Commission Act, 1998, and the Electricity Act, 2003, which replaced three earlier legislations and embraced a liberal system for the power sector, a first step for India's energy sector.⁶

a) The Indian Electricity Act, 1903

It was realized that the 1887 Act had to be greatly modified. The Indian Electricity Act of 1903 was enacted following the operational experience of electricity supply companies in the United Kingdom, which were quite developed. Scientific developments in 1903 were still rudimentary, but most facets of electricity generation and distribution were growing more relevant with the development of the power supply sector. So, the question of bulk sale to authorized dealers had not been dealt with by the Act and according to the finding of the Advocate-General of Bengal, it was held that bulk licensees could not be licensed under that Act. Its administration and working had shown a number of its weaknesses, and a Committee was constituted in 1907, led by Sir H.W.C. Camduff, to perform a thorough overhaul of the laws.

Local councils were given powers to grant licences under the 1903 Act. While legislative power proper was a bit vague at the time, it is testimony to the wisdom of legislators that they looked forward to uniformity in legislation such that the different provinces would fall into line through one policy developed by an authority central to them.

b) Indian Electricity Act, 1910

The Indian Electricity Act of 1910 provides the legislative framework for supply and use of electrical energy in India, provides for regulation of the process of licensing electrical enterprises, provides for provisions relating to obligations in regard to the execution of works and supply of material, and provides for regulation of connections between consumers and licensees. By that time, however, the idea of restructuring the power supply industry as a whole had still not taken shape, nor was the Bill oriented to meet the needs of an economy growing increasingly large.⁷ The goals of rationalisation and development, in the sense known today within the framework of the rapidly expanding industry, were new to the 1910 Bill. This task was left to the power (Supply) Act, 1948 (Act No. 54 of 1948), which has the purpose of codifying and rationalizing the supply and generation of power and formulating policies for the advancement of electrical development.

⁵ Das, R. (2018). Open access in Indian electricity markets: Progress and barriers. *Indian Journal of Energy Studies*, 29(1), 67-84.

⁶ Rao, M., & Banerjee, T. (2022). Smart grid implementation and regulatory frameworks in India. *Energy Regulation Quarterly*, 50(2), 110-127

⁷ Sharma, R., & Verma, P. (2021). Impact of the Electricity Act, 2003 on India's power sector reforms. *Energy Policy Review*, 35(2), 112-130.

The Act touches on the question of issuing licenses, the process of revoking and varying such licenses, the taking over of undertakings, and the consequences of the revocation or variation of licenses. It requires the licensee to prepare accounts in a definite format.

c) The Electricity (Supply) Act, 1948

The Electricity (Supply) Act, 1948, contains a Statement of Objects and Reasons, a distinguishing feature of every Act explaining its need and expressing its purpose. We will study the Statement of Objects and Reasons of the Electricity (Supply) Act, 1948 to understand the need of this Act and "The making of a special legislation was called for for the integrated development of electricity in India.". Accordingly, the Electricity (Supply) Bill, 1948 was proposed in the Central legislature on the pattern of the Electricity (Supply) Act, 1926 of the United Kingdom with a view to furthering inter-regional coordination in the development of electricity beyond local authority territorial boundaries.

The Statement reaffirms the causes of the failure to achieve the goal of coordinated regional energy development under the Indian energy Act of 1910.

The absence of a coordinated system, where generation is localized in the most efficient units and bulk energy supply is centralized under one's direction and control, is a serious obstacle to the healthy and economical progress of electrical development in this nation. Furthermore⁸, it is increasingly evident that in bringing the advantages of electricity to rural and semi-urban zones in the most economical and effective manner consistent with the requirements of the entire zone, development must extend beyond territorial boundaries of a Municipality, Cantonment Board, or Notified Area Committee, as the case may be. Consequently, there must be a necessity in which the concerned governments have a legal authority to harmonize electrical development in proximate areas into a single framework by defining what all know as the "Grid System."

d) Electricity Supply Act, Amendment 1998:

Electricity Supply Act, 1998 amendment: In 1991, the Supply Act amendment allowed access to power generation by the private sector; only private players would sell their electricity to the State Electricity Board. The 1948 Supply Act was thus amended in 1998 to enable private sector participation in transmission.

e) The Electricity Regulatory Commission Act, 1998:

The power sector, which was once in the control of the state, continued to expand with the intervention of the private sector after the Supply Act was amended in 1991 and 1998. Today, the private sector can generate electricity to be sold to state-owned utilities. In order to regulate the transaction and charging of tariffs and limiting the profit private generators can receive, the need for a third party authority has been seen. Realizing the instant need for an independent regulator, the Electricity Regulatory Commission Act of 1998 came into being.

The Act established the Central Electricity Regulatory Commission at the centre and the State Electricity Regulatory Commission in all states. Centrally owned electricity utilities and inter-state stations were placed under the overall administration of the Central Electricity Regulatory Commission and the power utilities at the state levels were managed by the State Electricity Regulatory Commissions.

CASES LAW

Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd⁹. and Others If last two months' average billing has been made, it can be done for one month only.

During that three-month period, the meter would have been tested or replaced and the results conveyed to the consumer, and bill adjustments accordingly done, especially where average billing is on a presumed faulty meter and the faultiness of the meter has been established. If the licensee has not been reasonably and timely diligent, he cannot assert the right to continue billing on a presumptive, average basis. The same methodology will be adopted in the case of all other instances of 'average' billing, unless the meter is locked out. The Commission notes that, in the case of locked or inaccessible meters, licensees have the option of utilizing the remedies under Section 163 of the EA, 2003, and it is hoped that MSEB will act similarly with all despatch. Where bills have already been raised and/or recoveries enforced, which do not conform to (a) above, such bills have to be recalled and/or amounts refunded to the consumers, either by way of energy bills or otherwise, on or before 30th November 2005, with interest at the same rate charged by MSEB from the consumers for tardy payment.

Sri Chandu Khamaru v. Nayan Malik & Others dated September 2, 2011¹⁰

Section 42, Sub-section (1) explicitly states that every distribution licensee shall be responsible for maintaining and developing an effective, co-ordinated and economical system of distribution in its specified supply area, and supply energy as provided by the provision of this Act. Sub-section (1) of Section 43 mandates that every distribution licensee shall, on receipt of an application from the owner or occupier of any premises, supply electricity to such premises within one month from the date of receipt of such application.

⁸ The Electricity Regulatory Commission Act, 1998

⁹ AIR 2008 SUPREME COURT 976

¹⁰ AIR 2011 SUPREME COURT 2897

The Electricity Act, 2003 makes it clear that a distribution licensee is statutorily bound to supply electricity to any owner or occupant of premises within its area of supply on request. Conversely, all occupiers or owners are statutorily entitled to request and be provided electric power by the distribution licensee.

Paschimanchal Vidyt Vitran v. M/S Dvs Steels & Alloys Pvt. Ltd. & Ors on 7 November 2008¹¹

It was argued by the appellant that where a consumer surrenders its premises, or a part thereof, without paying the arrears in electricity charges, then any transferee who is in need of a new electricity connection or supply to the premises must pay the electricity dues of the original occupant. The licensee may not deny linkage to an applicant due to unsettled dues elsewhere on the premises, nor must the licensee ask applicants for proof of most recent payments elsewhere.

The appellant averred that the above provisions existed in the applicable rules of the Board prior to the enactment of the aforesaid Code. The supply of power by a distributor to a consumer is a 'sale of goods.' The distributor who is the supplier and owner or occupier of premises to whom it enters into an agreement for the supply of electricity are the parties to the agreement. A subsequent transferee or occupier of a premises, having no privity of contract with the supplier, cannot be made to pay off the liabilities of his predecessor in title or possession since charges for supply of electricity do not raise a lien over the premises. A property purchaser cannot be saddled with the electricity arrears of a former occupant for no better reason than the fact that they happen to be the present owner of the property. The supplier cannot sue or initiate revenue collection proceedings against a property purchaser for the unpaid electricity bills of the vendor, unless a contract specifically so provides.

CONCLUSION

The Electricity Act 2003 has been at the center of electricity sector reforms in India. While it has promoted competition, private sector entry, and growth in the renewable energy sector, issues such as regulatory inefficiencies and financial unviability in distribution companies persist. Continued reforms, better regulation frameworks, and effective implementation mechanisms are essential in achieving a sustainable and efficient energy sector in India. The Electricity Act of 2003 was a new revolution in Indian energy law, promoting competition, promoting efficiency, and promoting alternative sources of energy. In spite of this, issues in the path of financial shortages and regulatory barriers continue. Reforms of the future must be followed by an emphasis on consolidating implementation, promoting private investment, and promoting sustainable alternatives to energy. Electricity is an indispensable commodity in the contemporary world, but monopolized production of electricity hurts humans, and standards must be there to restrict the negative impacts of electricity on citizens. The British government did not indicate energy production development for home light. There was no respect for the expansion and economic development of Indian society because there were no human rights principles. The licensee takes a strictly professional attitude towards tariff rate fixation without strict responsibility and accountability to society. This attitude priced electricity beyond the reach of the entire country of India. The professionalism of private licensees has played an important role in keeping India and its economy distant from developmental advancements. When India achieved independence from British colonial domination, it focused on national development and well-being of its citizens and included human rights in its Constitution. The Electricity Supply Act of 1948 was passed as part of the social welfare model of Indian democracy. This act was implemented with the intention to serve all village industries and all villages towards socio-economic justice, and the SEB was established to undertake this responsibility for social welfare without being professional.

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