

Consumer Protection in Electricity Services in India

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Abstract: The consumer protection is essential in a welfare state. The question emerges whether supply of electricity energy is service or purchase of goods under the Consumer Protection Act-1986 (CP Act for short)? Whether deficiency in electric supply gives actionable cause to a consumer in a Consumer Fora or in a civil court? Also whether beneficial consumer jurisdiction under the CP Act extends to determination of tortuous acts and liability? But lack of mandatory accountability leads to corruption particularly in State Electricity Boards. The policy seeks to address issues of rural Electrification, power generation, transmission, distribution, recovery of Cost, the technology Development and Research and Development (R&D), competition aimed at Consumer Benefits, Financing Power Sector, Private Sector Participation, Energy Conservation, Environmental Issues, Training and Human Resource Development, use of Non-Conventional Energy Sources and Protection of Consumer interests with Quality Standards. Economic viability of generation and tariff will be important considerations. The non-conventional energy resources, small hydro, wind and bio-mass need be exploited to increase overall share of non-conventional energy sources in electricity requires encouraged private participation. Deficiency in service or defect in quality of good leads the consumers to seek redressal, the failure of which results into agitations and adoption of illegal means as remedies. The lengthy process of litigation, its cost implications and official apathy leads to frustration. These are some issues taken up in this article.

Key words: consumer, consumer fora, deficiency in service, goods, services.

Consumer Protection in Electricity Services in India

For protecting consumers' rights and interests in the area of electricity services, it needs be ascertained supply of electricity energy is hiring of service or purchase of goods under the Consumer Protection Act-1986 (CP Act for short)? Whether the deficiency in electric supply gives an actionable cause to the consumer in the Consumer Fora or in the civil court? "service" is inclusively defined in clause (o) of section 2(1) of the Act as "service of any description made available to users, the provision in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, house construction, entertainment, the purveying of news or other information and excludes services free of charge or under a contract of personal service."

The Act provides remedy in addition to the other remedies available in any other law. The supply of electricity is service and not purchase of good under the CP Act. The concessional supply of electricity to the agriculture sector does not violate article 14 of the Constitution of India when read with sections 49 and 59 of the Electricity (Supply) Act – 1948.

An agreement that a licensee is assured of minimum consumption and payment of usual consumption charges, whether consumed or not, is not void under section 23 of the Electricity Act 1910. If electricity energy is 'service' under section 2(1)(o) of the CP Act, it is not sale of goods as the State Electricity Boards render service under section 2(1)(o) of the CP Act. When a consumer takes the ground of illegal disconnection of electricity supply and not under unfair trade practices, it falls under the Act.

The protection under the CP Act is available not only to the person who had hired the services or who availed the services with the approval of person who had hired the services, who is availing the electric services connected with the approval of the landlord, is a consumer. Applying for additional power supply, depositing earnest money, makes one not the consumer and protection under the CP Act is not available. Protection under the Act is available on hiring of service on payment of full amount or when the connection has been given. A complaint for compensation on allegation of buffalo dying in electrocution for non-providing of safety measures is not maintainable as the complainant is not a customer u/s 2(1)(d)(ii). The remedy lies only in civil court.

The question arises what is deficiency in electricity services' under the CP Act? Where an industrial investment corporation assured capital subsidy for setting industry in backward areas, the complainant established one and approached the corporation for taking up electricity issue which could not be settled. The corporation was only financing institution not responsible for electricity supply and there was no deficiency in service.

To prove deficiency in service under the C P Act due to disconnection of electricity supply, a complainant has to prove defect or imperfection in service that can be established. If the electricity bill for a specified amount was wrongly sent by the opposite party and the default in payment of said bill has resulted in disconnection of such electricity supply. U/s 2(1)(g) of the CP Act deficiency means any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance is required to be maintained or expected by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract. It is unfair for the Electricity Board to issue demand notice to a consumer when it is not releasing electricity connection within a reasonable time. 'Reasonable time' is a matter of facts. Installation of defective electricity meter and still claiming rent in the bill is deficiency in service.

The Delhi High Court pointed out that maximum period for which a bill can be raised in respect of a defective meter u/s 26(6) of the Electricity Act 1910 is six months and no more. If a meter remained defective for five years, the revised bill can't be for more than six months. The failure to prepare and serve bills at the appointed time as per billing circle, raising heavy arrears bill without actual reading in the bill, claim of arrears without details, serving a bill on Sunday and to expect him to pay over Rs a lakh within four days under threat of disconnection and, thereafter, disconnecting power supply even before the last date specified for payment of bill etc. clearly constitute deficiency in service amendable under the CP Act.

Whether the deficiency in supply of electricity gives an actionable cause the answer is u/s 2(1)(O) of the Act which embarrasses "service of any description includes the provisions of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical and other energy, board or" includes special law overriding the general law and enlarges the term 'service' as inclusive with wider interpretation. The complaint filed for reconnection of electricity supply and compensation for inconvenience and harassment due to illegal disconnection succeeds with penalty. The method of fixation of charges for electricity supply, inadequacy of interest allowed on security deposits, defective meter installed resulting in incorrect functioning of meter warrants rectification or replacement and equal treatment of levies. It is deficiency in service and covered under the CP Act. The deficiency in electric supply gives a cause of action to the consumer to file complaint for compensation u/s 14(1)(d) of the CP Act and has to establish

negligence on the part of opposite party and consequential loss or injury suffered by him. The claim for compensation for illegal disconnection in 1981 brought in 1989 failed for not seeking remedy at earliest opportunity, the claim was time-barred and claimant did not attempt to mitigate damages allegedly sustained. The complainant, the legal heir of deceased in electrocution, filed claim for compensation on the ground that electric pole outside the house had sparking and meter got burnt even after correction and electric current entered in the earth wire resulting in the death of predecessor of the complainant. Complaint for deficiency in service must succeed. The Consumer Fora are not technically qualified and can't entertain complaints requiring cross-examination of a fact or matters of technical nature. The appropriate forum to impugn fast/slow moving meter, tempering or pilferage is the Electric Inspector u/s 26(6) of the Electricity Act 1910. The question may also be whether beneficial consumer jurisdiction under the CP Act extends to determination of tortuous acts and liability? Assessment of duty for unauthorized use of electricity, tempering of meters, and distribution of meters and calibration of electric current are of technical nature and can't be decided by Consumer Fora.

Availability of Power in Time and of Appropriate Quality

The Consumer Council circulated an information leaflet as a tool to compare the price and services. The power bill, if excessive, need be compared with the previous bills to ascertain erratic variations, to help the customers overcome temporary or long-term financial difficulties - installing a keypad meter or setting up a repayment scheme to pay back the outstanding balance.

If the energy supplier has treated the customers unfairly or has not given the standard of service one is entitled to, there should be legal provision to get the legal relief at local level and the defaulting official should be held responsible for deficiency in service. In compliance with section 3 of the Electricity Act 2003 the Central Government notified the National Electricity Policy recognizing it as a basic human need on which socio-economic development depends. The supply of electricity at a reasonable rate in rural areas is essential. Lack of mandatory accountability has led to corruption particularly in State Electricity Boards. Equally important is availability of reliable and quality power at competitive rates to industry which is necessary for employment generation. The Electricity Act, 2003 provides appropriate regulatory provisions.

The National Electricity Policy aims at achieving the following objectives:

- a. Access to Electricity - Available for all households.
- b. Availability of Power - Demand to be fully met by 2018. Energy and peaking shortages to be overcome and adequate spinning reserve be made available.
- c. Supply of Power of specified standards in an efficient manner and at reasonable rates.
- d. Per capita availability of electricity to be increased.
- e. Minimum lifeline consumption.
- f. Financial Turnaround and Commercial Viability of Electricity Sector.
- g. Protection of consumers' interests.

The policy seeks to address issues of rural Electrification, power generation, transmission, distribution, recovery of Cost of services, the technology Development and Research and Development (R&D), competition aimed at Consumer Benefits, Financing Power Sector Programmes Including Private Sector Participation, Energy

Conservation, Environmental Issues, Training and Human Resource Development and Non-Conventional Energy Sources and Protection of Consumer interests and Quality Standards. Reliable rural electrification system should aim at creating the following:

Rural Electrification Distribution Backbone (REDB) with 33/11 kv (or 66/11 kv) sub-stations.

- (b) Installing the supply feeders and distribution transformers.
- (c) Connecting every household to distribution transformer.
- (d) Decentralized generation facilities with local distribution network through conventional or non-conventional methods to be utilized economically.
- (e) Development of infrastructure for agriculture & other economic activities including irrigation pump sets, small and medium industries, Khadi and village industries, cold chain and social services like health and education.

The economics of generation and resultant tariff will be, among others, important considerations. The potentials of non-conventional energy resources, small hydro, wind and bio-mass need be exploited. With a view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures.

Power Distribution

Power distribution has intrinsic relationship with the working of the CP Act. Unequal distribution of electric power hinders the consumer satisfaction and interests. The distribution aspect of electricity, particularly in rural areas, can be better dealt with on following issues:

- i. Distribution is the most critical segment of the electricity business chain. The real challenge lies in efficient management of the distribution sector.
- ii. The electricity Act provides for a robust regulatory framework to safeguard consumer interests, creates a competitive framework for distribution business, offering options to consumers, open access and multiple licensees in same area.
- iii. For achieving efficiency the restructuring of distribution is essential, to be linked to appropriate governance structure for insulating the service providers from extraneous interference, ensuring transparency and accountability. The Central Government assist the States, developing a clear roadmap for turnaround in arranging transition financing from sources linked to predetermined improvements and efficiency aimed at attaining financial viability and putting in place appropriate governance structures.
- iv. Conducive environment, adequate returns, with pre-determined improvements in efficiency parameters in distribution it would be necessary to facilitate funding and attracting investments. It would improve efficiency, service quality, predictability in tariffs and tariff adjustments to known indicators.
- v. The Electricity Act 2003 enables competing generating companies and trading licensees, besides distribution licensees, to sell electricity in open access in distribution introduced by the State Electricity Regulatory Commissions. Section 49 of this Act provides that such consumers who have been allowed open access under section 42 may enter into agreement with any person for supply of electricity on such terms and conditions, including tariff, as may be agreed upon by them.
- vi. A time-bound programme should be drawn up by the State Electricity Regulatory Commissions (SERC) for segregation of technical and commercial losses through energy audits, energy accounting and declaration as determined by SERCs.

- vii. The Act provides for multiple licensees having flexibility distribution zones while restructuring the Government utilities. For grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of Constitution of India (74th Amendment) may be considered as the minimum area. The system does not exonerate the liability of service provider towards the consumers. To provide benefits of competition to all section of consumers, the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of section 43 of the Electricity Act 2003. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers.
- viii. The Electricity Act of 2003 mandates supply of electricity through a correct meter within a stipulated period. The Authority should develop regulations as required under Section 55 of this Act within three months.
- ix. The Act requires consumers to be metered within two years. The SERCs may obtain from Distribution Licensees their metering plans, approve these and monitor.
- x. The IT systems may be implemented by the utilities to facilitate creation of network information and customer data base which will help in management of load, improvement in quality, detection of theft and tampering, customer information and prompt and correct billing and collection .
- xi. High Voltage Distribution System is effective method for reduction of technical losses, prevention of theft, improved voltage profile and better consumer service.
- xii. Efforts should be made to install substation automation equipment in a phased manner to augment quantity and quality of electricity energy.
- xiii. This Act has provided for stringent measures against theft of electricity. The States and distribution utilities should ensure effective implementation of these provisions. The State Governments may set up Special Courts as envisaged in Section 153 of the Act.

Cost of Services & Subsidies in the Targeted Areas

There is an urgent need for ensuring recovery of cost of service from consumers to make the power sector economically sustainable. The subsidies are the vote bank politics and indirectly harm the customers in the long run and so also the economic structure of the country. A minimum level of support may be required to make the electricity affordable for consumers of very poor category. Tariffs for such designated group of consumers will be at least 50 % of the average cost of supply.

Technology Development & R & D

Effective utilization of all available resources for generation, transmission and distribution of electricity using efficient and cost effective technologies helps in providing service to the consumers free from any deficiency and ultimately protects and promotes consumer interest. Application of IT has great potential in reducing technical and commercial losses in distribution and providing consumer friendly services. Special efforts must be made for research, development and commercialization of non-conventional energy systems. Efficient technologies would be gradually introduced for generation of electricity as their cost effectiveness is established. Specific information technology tools need to be developed for meeting the requirements of the electricity industry including control systems for complex generation and transmission operations, efficient distribution business and user friendly consumer interface.

Competition for Consumer Benefits

To promote market development, it would be feasible to finance projects with competitive generation costs in the long-term power purchase agreements. It increases the power markets and provides alternatives to generators and licensees/consumers and would reduce tariff and helps in making available electricity supply at competitive rates. For achieving this, the policy underscores the following:-

- a. The Central Electricity Regulatory Commission to issue license for inter-state trading and would include authorization for trading throughout the country.
- b. The IT regime at the national level has a positive impact and enables a credible settlement mechanism for intra-day power transfers from licenses with surpluses to licenses experiencing deficits.
- c. The captive generating plants be permitted to sell electricity to licensees and consumers allowed open access by SERCs under section 42 of the Act.
- d. Development of power market would need to be undertaken by the Appropriate Commission in consultation with all concerned.
- e. The Central Commission and the State Commissions are empowered to make regulations under section 178 and section 181 of this Act respectively to ensure implementation of various provisions of the Act regarding encouragement to competition and also consumer protection.
- f. Enabling regulations for inter and intra State-trading and regulations on power exchange shall be notified by the appropriate Commissions within six months.

Transmission & Distribution Losses of Electricity

The Power Sector will remain unviable until transmission and distribution (T&D) losses are controlled. The ultimate loss is that of consumers as the cost is pushed up by such losses. These are unsustainable and imply a steady decline of power sector operations. Continuation of these losses is a threat to the power sector operations and the economy as a whole. Reforms can't succeed in such large pilferages.

CP and Quality Standards

The consumer councils and consumer fora regulate utilities based on pre-determined indices on quality of power supply including, amongst others, frequency and duration of interruption, voltage parameters, harmonics, transformer failure rates, waiting time for restoration of supply, percentage defective meters and waiting list of new connections. This is a troublesome area where a consumer has to run from pillar to post to seek redressal for the deficiency in service. The accountability standards and citizen charters should be not only transparent but also be implemented in the true spirits.

CP and Service Quality Improvement Mechanisms

One of the biggest issues for the industry and the state governments is lack of supply of adequate power. The power cuts and black-outs are the routine which affects the industrial and agricultural growth and has taken its political tolls. The consumers are ultimate sufferers for such obstructions in supply of electricity. In some cases of medical emergencies the power failure causes serious consequences to the society. A statutory safeguard for uninterrupted electric power supply is need of the hour for protecting and promoting the interest of consumers.

Consumer Expectations & Agitations

Deficiency in service or defect in quality of good leads the consumers to seek redressal, the failure of which results into agitations and adoption of illegal means as remedies. The lengthy process of litigation, its cost implications and official apathy leads to frustration. The adequate and timely availability of power, reasonable tariff and good service quality following measures will help in avoiding ugly situations and adoption of illegal means for seeking redressal to the grievances:

Deficient Service Related Concerns

The service and supply of electricity related concerns requiring immediate attention and a legal framework to set social and consumer regime in place and will enhance their interests. In addition to the corporate social responsibility there is immediate need of legal safeguards to check the defect/default in the service; like poor service quality; billing errors, metering related issues, un-timely fault resolution, etc.; un-planned load shedding, poor quality of supply, etc.; Lack of information/clarity about procedures such as getting new connection, change in name or connection type and so on; the lack of access (half the households do not get electricity of proper quality, cost effective, poor and small consumers are most effected and legal provisions related to supply and service quality legal provisions related to supply and service quality.

Three tier grievance redressal mechanism structure will go long to establish IGRC & CGRF (consists of independent chairperson, utility's representative, and consumer representative; should decide the matter within 2 months and appointing an ombudsman.

Regulatory Mandate

The regulatory mandate upgrades the quality of service, its regulation and enforcement. It includes: (i) Defining norms and standards for service quality that utility must comply with; (ii) Establishing grievance redressal mechanism that is simple, easy to access, quick in response and economical for consumers and (iii) Establish monitoring mechanisms to ensure compliance of standards and regulations and effective grievance redressal.

Role of Civil Society

The role of civil society in protecting and promoting the interests of consumers includes:

1. Increasing awareness and participation
2. Consumer education through booklets and pamphlets
3. Establishing consumer advocacy cells, consumer groups/organizations that work on electricity issues
4. Can make use of provisions under the Right to Information Act if the utility is not cooperating or unwilling to share information

CP and Legal Due Diligence

For timely protection of rights of consumers, "legal due diligence" need be conducted for proper delivery of electricity services. The legal due diligence is to review the current legal and regulatory environment prevailing at the relevant time and its compliances. The following matters need attention:

- a. Does the existing law permits restructuring to deliver electricity services?

- b. Does the law explicitly permit a private sector contract?
- c. Any restrictions in the existing legal framework?
- d. Any proposed change in law which may affect either institutional restructuring!

The Concept of “Applicable Law”

A legal analysis of the applicable law should be liberally interpreted and applied. To have a comprehensive description of the legal and regulatory environment, it is necessary to consider traditional legal instruments as well as "quasi-legal" instruments. In the 'applicable laws' one needs to examine: the constitutional laws; the statutes, legislations, parliamentary orders or similar instruments; the regulations or similar instruments; the corporate charters that may be applicable (for example, with respect to the electricity utilities that currently serves the relevant area); the courts' decrees and declarations; the municipal and local by-laws; policy decisions of government / local authorities having the force of law; the case law and court findings where applicable; and any other documents of any kind having the force of law.

Role of Local Laws

(i) **General Legal Framework Description** - that will be applicable to the private sector contract. Usually, this type of general legal description should be carried out under the following categories: Municipal Law; Environmental Law - This would include a description of any law relating to emission levels, energy conservation, use of clean energy and restrictions on land use; Public Health and Safety Legislation - matters of maintenance and repair of the facility, generation, transmission, and distribution standards and for public health and safety; Consumer Protection Legislation; Employment and Labour Law; Occupational Health and Safety Legislation; Company/ Utilities Law; Privatisation Laws; Public Procurement Laws and the Tax Law.

(ii) **Analysis of Key Legal Issues** - that routinely arise in the development and implementation of a private sector contract.

Jurisdictional Issues & Competenc to Make a Private /Corporate Contract

In this regard, the following issues should be examined

- 1) Any general prohibition against the implementation of a private contract?
- 2) Any positive legislative authority to implement private sector contract?
- 3) Any legal restrictions prohibiting a municipal entity, a utility or an asset holding company from being party to a private sector contract?
- 4) Any legal restrictions on delegation of electricity services to private operator?
- 5) Anything in law requiring the utility, a company to get permission from the central government to enter into a private sector contract?
- 6) Any requirement in law to obtain permission of government?
- 7) Government's legal review requirement before a municipality.
- 8) Any constitutional problems in delegating authority for operations and maintenance of the electricity system to a private sector operator?

Ownership & Control of the Electricity Infrastructure

In order to comprehensively describe who has authority over the electricity infrastructure, the matter of ownership and control should be looked into:

- a) Who currently owns the electricity infrastructure?
- b) Are there any easements or rights of way held by the utility allowing access to property not owned by the utility?
- c) Who has the right to allow access to the infrastructure?
- d) Is the entire infrastructure currently owned and controlled by the same entity?
- e) If the utility owns the infrastructure, has it delegated its rights of control to anyone?

Financial Matters

Different countries have particular rules applying to the financing of electricity infrastructure. These financial rules impose restrictions on financing and, therefore, should be understood in planning. Therefore, the following matters should be examined:

- a. Who currently has legal rights to charge a fee for electricity services?
- b. What entity legally owns the revenues that are collected?
- c. Are the revenues currently deposited in accounts controlled by the utility?
- d. Are the revenues used to subsidize any other non-electricity services? Are there any specific rules with respect to the disposition of the
- e. The revenues, the service generates?
- f. If costs currently exceed revenues, who is responsible for covering the shortfall?
- g. As a practical matter how is the shortfall handled?
- h. Who currently has the legal right to issue bills to customers?
- i. Is there a legal right, to whom, to disconnect customers power supply.
- j. Who has the legal right to set tariffs for electricity services?

Control & Regulation of MNCs and their Activities

A number of countries impose restrictions to foreign companies. Therefore, the following types of issues should be reviewed:

- a. Are there any restrictions on the operation of foreign companies in the host country?
- b. Are there any special requirements with respect to registration, for a local agent?
- c. Any restrictions on foreign staff causing significant difficulties to the operator?
- d. Any restrictions on local staff who may be employed by a foreign company?
- e. Does the foreign company have to incorporate a local company?

Operation and application Legal Powers

Some jurisdictions give particular legal powers to identified officials of a utility i.e. legally empowered to collect revenues, disconnections etc. This is a very important technical legal issue because these legal powers may not be capable of being legally passed on to a private sector company.

Tax Implications

Tax exemptions, other tax implications that may pose some difficulty in institutional restructuring and in the implementation of a private sector contract?

Electricity Sector Specific Law

The summary of these laws should be analysed to see:

- a. The process of licensing electricity facilities, transmission & distribution systems;
- b. The system of fines or prosecutions for contravening the legislation?
- c. Do the laws pose any special liability problems for a private sector operator?

Employment and Labour Law

Employment and labour law issues are important issues arising in the course of developing and implementing private sector contracts; often sole cause for an inability to implement the contract. Therefore, some specific issues should be examined. These issues are:

1. Do the labour and employment laws permit private sector operator in the field?
2. Would a secondment and unionization permitted?
3. Collective agreements and its prohibition of operators as supervisors?
4. The salary and compensation management and law regulating it.
5. Legal prohibitions of hiring, firing, carrying out staff reductions or re-organizing the work force?
6. Legal obligations for employee benefits (any health, pensions, and vacation leave or disability rules)?
7. The applicable law regulating the severances of entity and severance of compensation?

Institutional Restructuring

An important point to assess the legal and regulatory environment is to assess the options available to the government for institutional restructuring of electricity services. The following issued need be reviewed:

- a. Applicable Law for creating and regulating a new entity?
- b. Restrictions as per the local law regarding the ownership of a body corporate?
- c. Any specific legislation for the electricity sector for creating new entity?
- d. Legislation regarding creation of a separate for electricity.
- e. Legal Regulations regarding issue of share capital?
- f. The new entity and how would it be different than a standard corporation?

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