

Introduction to Law on Electricity
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Lecture 1
Introduction of the Electricity Law: Constitutional Design

Welcome to the course on introduction to law on electricity. This is a course which is being floated under the aegis of NPTEL online certification course. I am Uday Shankar, Associate Professor at Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology Kharagpur. In this course, we will take you through the fundamentals of The Electricity Act 2003, and we will explain to you how the law related to electricity has evolved over a period of time and also what the challenges are for successful implementation, including the shortcomings under the laws.

Before we start the discussion on the statutory framework related to electricity laws, I want you to give an overview of the constitutional scheme related to energy generally and electricity in particular, and then, I want you to also understand the significance of access to electricity in the larger understanding of rights-based jurisprudence.

The reason is that electricity in today's context should not be only seen as a commodity to be tradable in the market. But then, it should be seen as basic amenities needed to lead a decent life. And therefore, as the course progresses and we start discussing the statutory provisions, we want the learners to develop an understanding on the premise of the very significance of access to electricity and how the statutory interpretation should take place to achieve the larger goal of fulfilment of the rights for everyone, especially the marginalized section of the society. And that is why, at the very beginning, I want to give this description to all of you on the constitutional scheme.

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CONCEPTS COVERED

- Constitutional Framework
- Evolution of the Laws on Electricity
- Salient Features of the Electricity Act, 2003

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Now, these are the concepts which we will be covering, the constitutional framework on the electricity and energy aspect, then what are the different phases of the evolution of the laws on electricity. And then in the first module, we will also take you through the salient features of the electricity act of 2003. So that we, right at the beginning, get the idea that how the legal provisions have transformed in this sector.

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Constitutional Structure – Division of Power

- Supreme Document.
- Federal Structure – Divide law-making power between the Centre and the States.
- Central List – List I Seventh Schedule (Only Union Government can enact law).
- State List – List II Seventh Schedule (Only State Government can enact law).
- Concurrent List – List III Seventh Schedule (Both the Centre and State Governments can enact law – in case of conflict – Central law shall prevail).

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Now, to begin with, the Constitution is generally considered a supreme document on the constitutional structure. This is said to be the *Suprema Lex*. Every law needs to comply with the Constitution; any law enacted by the legislature that runs contrary to the constitutional scheme is void and has no legal effect. And that is why we need to understand the very

significance of the constitutional scheme to understand the responsibilities of the center and the states in relation to electricity.

The Indian Constitution is primarily said to be a federal in nature, which divides the power between the center and the states. States enjoy autonomy in the spheres which are being specifically demarcated, and center has generally been not allowed to encroach unless and until it complies with the necessary constitutional conditionalities lead therein.

Now, for building upon that division of power, the Constitution provides three different lists. List one of the seventh schedule details out the subject matters on which the Center can make a law. List two has a subject matter on which the State can make law. And then we also have a list three in the seventh schedule, which provides for the concurrent list where both the Center and the State can make law, but then central law shall prevail over the state law as and when conflict arises between these two. This is what is the constitutional solution suggested in cases of conflict between the central law and the state law.

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➤ Significance of Concurrent List

- Desirable that provincial legislation should make provision
 - It is equally necessary that central legislature should also have a legislative jurisdiction –
 - if uniformity in the main principles of law
 - to guide and encourage provincial effort
 - to provide remedies for mischief arising in the provincial sphere
- In case of electricity – problems extending beyond the boundary state.

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Now, what is the significance of a concurrent list? The significance of the concurrent list is that many times it is desirable to confer the necessary legislative power on the states. It may be for the very purpose that subject matter is such where necessary leeway is to be given to the provinces. At the same time, the center has also been assigned with the necessary legislative competence to interfere. And the same is possible or permissible when uniformity is needed in the main principles of law.

When the center needs to guide and encourage the effort of the state governments or when there is a need to remedy the mischief arising in the provincial sphere, or where the action of one province is adversely affecting the other provinces or the nation or the interest of the nation in general, then in that situation, the center can very well intervene and make a law on that subject and electricity is one example which falls under the concurrent list, wherein, it is advisable that center should step in where the problem extends beyond the boundaries of the states.

And in order to give the necessary confidence to the investor, it is also desirable to have a uniform legal framework across the country; therefore, entry 38 of list three of the seventh schedule describes electricity as a subject.

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Constitutional Framework - Energy

Traced under two paths:

- One dealing with law relating to coal, petrol and gas, which are derived from minerals.
- Second dealing with law relating to electricity.

List I Entry 54 - Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

List II Entry 23 - 23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

List III Entry 38 - Electricity

Now, in general, before I come to electricity, when we look at the framework on energy, it can be located under two different parts; one, which deals with coal, petrol and gas, which are derived from minerals, and the second one is related to electricity. Now, looking at the subject matters' significance, both the center and the states are assigned exclusive power to deal with the subject.

Now, list one of entry 54 empowers the parliament to make a law to regulate mines, and mineral development, to the extent that such regulation and development under the control of the union is declared as a matter of public interest. Then in such a situation, the parliament shall be making the law, and the parliament has enacted the law to regulate the mining sector.

Then we have list two, entry 23, where we find that the mines and mineral development has also been conferred upon the state. Obviously, that is subject to List One, that is, entry 54 of list one that whatever has already been declared as a matter of public interest to be dealt by the parliament that is excluded from the domain of the state list.

And then for our purpose, which I stated a while ago, list three entry 38 describes electricity and as I said, on this subject, both the center and the states do have jurisdiction. We would find in our course of study how the center and the states collectively regulate the area related to electricity.

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➤ The Indian power sector is highly diversified –

Sources for power generation in India range from conventional sources like coal, lignite, natural gas, oil, hydro and nuclear power to other viable nonconventional sources like wind, solar and agriculture and domestic waste.

➤ Electricity sector in India is under the concurrent list of the constitution and is administered both by the central and the state governments. the responsibility for distribution and supply of power to rural and urban consumers rests with the states.

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And in general, when you look at the energy segment and how the energy sector has been performing in this country, you would find that we have very diversified sources. We do have sources for power generation in India from conventional sources like coal, lignite natural gas, oil, hydro and nuclear power. Nowadays, there is a promotion done for bringing in renewables for making our dependency on the import of conventional sources minimal.

So, we do have both conventional sources of energy and renewable sources of energy, which meet the need of the country. As I said, the electricity sector in India is under the concurrent list. Both governments do have power, particularly when you look at the arrangements when you look at responsibilities, you would find that the distribution segment is largely under the control of the state governments. It is the state which closely regulates that distribution segment, and the approach of the state government decides the efficiency of the sector.

Having said so, there has been an effort made by the central government from time to time that how to popularize the reform and how to effectively bring in the reform in that sector, which we will be discussing in our course at a later point in time. But then, at this stage, when we are discussing the constitutional framework, I want to make this very clear to all of you that when it comes to distribution, it is largely under the control of the state, along with this even intrastate transmission is under the control of the state. But then we have a broad regulation in place, which is drawn from the electricity act of 2003, which certainly we will be discussing as we move on with the course.

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Right to access electricity as a part of the Right to Life

- Art. 21- Guarantees right to life and personal liberty
- Constitutional Courts in India (SC & HCs) – expanded the meaning of 'life' to include basic necessities of life which are needed for leading dignity life.
- Unenumerated rights – not included in text – but equally significant and essential for the enjoyment of the rights given under the Constitution.
- Recognition of the right to access electricity u/r Art.21 – as unenumerated rights

Now, before I start discussing the evolution of electricity laws in this country, I want to highlight the significance of rights-based understanding. The reason is that electricity is essential for leading a meaningful life. Thus, any attempt to interpret the law or any proposal to reform the sector must have the alignment with this understanding of rights-based jurisprudence. That is why I want all of you to also get an overview of the rights aspect related to the right to access electricity.

Now, the argument has been built on the premise that access to electricity is to be considered as a part of the right to life, which is a celebrated provision given under the Constitution under Article 21. Article 21 says that no person shall be deprived of the right to life and personal liberty without procedure established by law.

Now, over a period of time, the Supreme Court of India and the High Courts have given very expanded meaning to the term life. The court highlighted that the significance of life must not

be limited to bear minimal existence. It is not about existence, similar to the existence of other living creatures; it is more than that. Therefore, whatever is needed to lead a dignified life, where autonomy is regarded, where self-fulfillment is regarded, it must be considered to be an integral part of right to life.

Now, in this regard, we also need to understand that rights are generally to be seen from two perspectives. One is the rights specifically included in the constitutional text, and the other, which has been acknowledged through the judicial process and has become part of the larger gamut of the right given in the Constitution, which we also call unenumerated rights.

Now, it is not that the right to access electricity is being advocated as a part of the right to life as only an essential, integral aspect of life. On earlier occasions, the courts in this country, particularly the Supreme Court, very justifiably recognized several aspects of a dignified and decent life. As a part of the right to life, such as the right to help, right to shelter, right to food, right to Social Security, right to education, which is now being recognized as part of constitutional right. Now, it is one of the fundamental rights under 21 capital A.

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DECIDED CASES

- *Molay Kumar Acharya v. Chairman Cum Managing Director, West Bengal State Electricity Distribution Co. Ltd.* AIR 2008 Cal 47
- **Facts:** Petitioner prayed for an order commanding the respondents to give a new electricity connection in his name – as there was a property dispute – he was staying in the first floor.
- **Held:** As 'occupier' under sec. 43, the petitioner's right to have electricity so long as he remains in the possession of the property – no one can survive without electricity in modern days – right to electricity is also a right to life and liberty in terms of Art. 21.

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So, there has been such recognition done of expanding the list of rights given under the Constitution, and in that series, right to access electricity also to be placed. In order to build the argument on this, I am taking the help of some of the decided case laws; as I said, much of the recognition has taken place only through the judicial process. Therefore, it is better to look at some of the judicial pronouncements which will strengthen the argument to consider

the right to life, a consider right to access electricity as an integral component of the right to life.

Now, in this case of Calcutta High Court, where Molay Kumar Acharya approached the electricity distribution company for getting a connection in his house. The connection was denied to the petitioner on the very ground that there is some property dispute going on. Therefore, unless that gets resolved, there shall be no electricity connection provided to him.

Now, the court here very rightly looked into the statutory obligation of the licensee under Section 43 and directed the board to provide electricity to the petitioner as long as it remains in possession of the property. But for our purpose, the observation based on Article 21 is very pertinent.

The court categorically said that no one could survive without electricity in modern days, and in the language of the court, the court says the right to electricity is also the right to life and liberty in terms of Article 21. So, look at the way the court is uplifting the status of electricity and drawing it parallel with the amenities needed to lead a meaningful life.

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➤ *T.M. Prakash v. The District Collector & The Superintending Engineer - Tamil Nadu State Electricity Board, MANU/TN/2091/2013*

➤ **Facts:** Petitioners engaged in the task of laundry works staying in the Govt. lands for over 2 centuries - did not have supply of electricity.

➤ The Board asked to obtain 'NOC' – refused to give connection.

➤ **Held:** Sec. 43 – duty of licensee to give supply of electricity to owner or occupier.

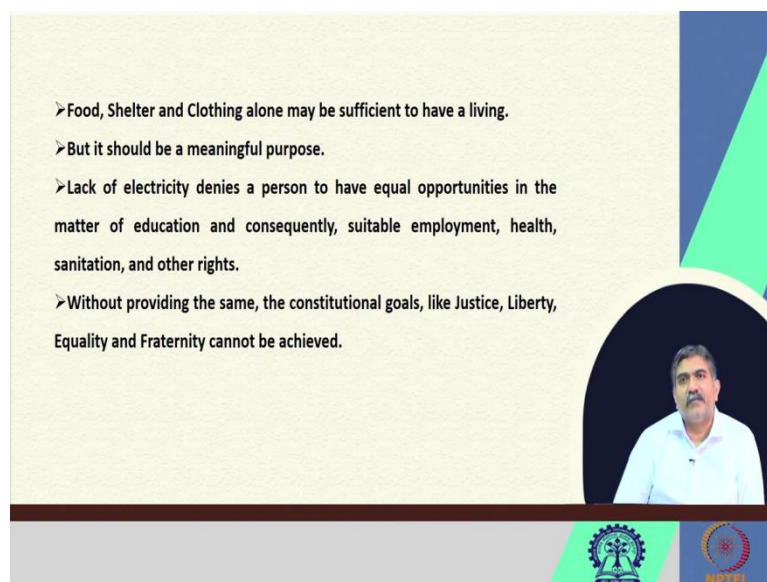
➤ Additionally, it was said that – the respondents ought to have realised the misery of life of people living in huts without electricity.

➤ Electricity supply is essential and important factor for achieving socio-economic rights.

So, in this case of T.M. Prakash, versus the district collector and the superintending engineer, Tamil Nadu, state electricity board, the laundry workers, more than 115 numbers, they were staying in the government lands and for over two centuries, they were staying in the hut. Their children were going to schools and colleges. Therefore, they demanded for the supply of electricity to their huts.

Now, the board asked them to obtain NOC from the district collector's office, and obviously, they could not manage NOC, and thus the board refused to supply electricity to them. They approached the Madras High Court. Madras High Court, in this case, again reminded the board of the statutory obligation under Section 43, where there is a duty of the licensee to give a supply of electricity to the owner or occupier. And apart from that, the court stressed upon this very fact that before denying the supply of electricity to the petitioners, the board ought to have realized the condition of life, they are living in that hut without electricity. Therefore, the court said that electricity supply is so essential, so fundamental, an important factor for achieving socio-economic rights.

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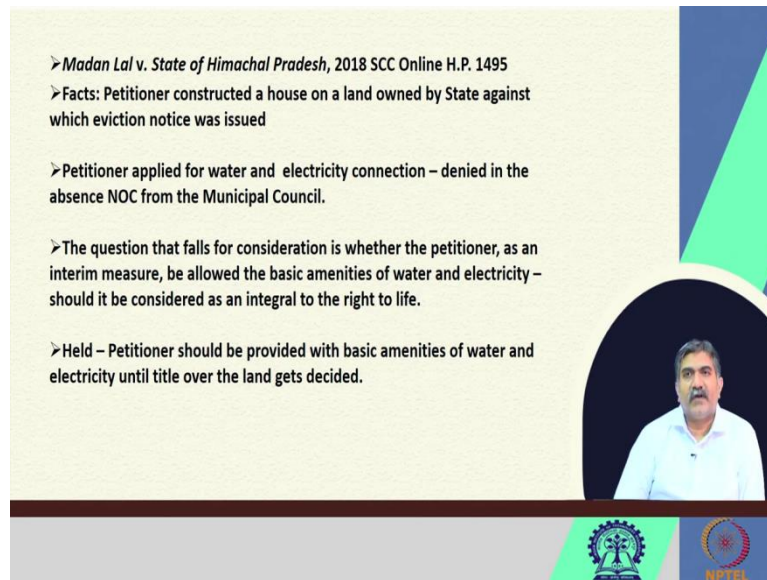
- Food, Shelter and Clothing alone may be sufficient to have a living.
- But it should be a meaningful purpose.
- Lack of electricity denies a person to have equal opportunities in the matter of education and consequently, suitable employment, health, sanitation, and other rights.
- Without providing the same, the constitutional goals, like Justice, Liberty, Equality and Fraternity cannot be achieved.

The court built upon this; the court said that food, shelter, and clothing alone may be sufficient for leading a life, but electricity is needed to make it valuable, meaningful, and decent. If you deny an individual the supply of electricity, then it has very fatal consequences connected with many rights which are given in the Constitution, be it the right to equality, be it the right to education, to compete for suitable employment, the judiciary evolved right to help, judiciary evolved right to sanitation and other rights and therefore the court has said that without providing the electricity, the board is denying them the goals which are enshrined in the constitution such as Justice, Liberty, Equality and Fraternity, is that how they can achieve this?

How do we expect the person who is living his life in darkness to really come forward and compete with the whole world? So that is what is the significance of the right to electricity;

the court highlighted and instructed the board not to look into this very aspect of whether they have got NOC or not. The court said that immediately provide them the supply of electricity.

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➤ *Madan Lal v. State of Himachal Pradesh, 2018 SCC Online H.P. 1495*

➤ Facts: Petitioner constructed a house on a land owned by State against which eviction notice was issued

➤ Petitioner applied for water and electricity connection – denied in the absence NOC from the Municipal Council.

➤ The question that falls for consideration is whether the petitioner, as an interim measure, be allowed the basic amenities of water and electricity – should it be considered as an integral to the right to life.

➤ Held – Petitioner should be provided with basic amenities of water and electricity until title over the land gets decided.

Now, the same is the case from other High Courts also. Now let us look at what the Himachal Pradesh High Court has said. Now, here again, in Madan Lal case, the petitioner constructed a house on land which is alleged to be owned by the state, and there was an eviction notice which was given.

The petitioner contested the eviction notice; there was a dispute going on with regard to the proprietorship. Meanwhile, the petitioner approached for the supply of water and electricity. Because the municipal council refused to give the NOC to the petitioner, the board decided not to supply electricity.

Interestingly, in this case, the High Court framed this question that whether the petitioner should be allowed to have basic amenities of water and electricity, which is considered as an integral part of right to life or not. So, in Madan Lal case, the court itself is framing the question and answering this that water and electricity, they are basic amenities. And the court said that these amenities ought to be provided to the petitioner until the title over the land gets decided because the court said that if the petitioner fails to establish the ownership over the land, anyway, the residential house will also be taken away. So, there will be no question of continuing with the water or electricity supply.



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➤ *K.N. Raveendranadhan v. Kerala State Electricity Board* WP(C).No.34061 OF 2014(G) (decided on 15/03/2021- Kerala High Court)

➤ Applicant applied for electricity connection to his new house, denied by Electricity board officials.

➤ Application denied on mere technical grounds(Petitioners came before High Court to appeal against orders of State Electricity Regulatory Commission)

➤ Held: Electricity is a basic amenity in life within the meaning of Art. 21 – statutory duty under sec. 43.





Another case from Kerala High Court of very recent time; in this case, the applicant applied for an electricity connection to his new house, which was merely of 300 square feet or so. The connection was denied to him on the very ground that his house was not falling within the distance from where the low transmission connection was to be given, and on this technical ground, the board refused to give him the connection. Now, the court said that this could not be a reason to deny him the basic amenity, and the court also reminded the board of its statutory duty laid down under Section 43.

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➤ *G Sundarajan v. Union of India* (2013) 6 SCC 620

➤ Petitioner argued that the commissioning of Nuclear Power Plant at Kundakulam, TN will cause catastrophic effect on the environment and life of people living in the surrounding areas. Thus, it violates the right to life.

➤ Held – Court stressed upon the need to balance the right to life and property and the protection of environment - Larger public interest of the community should give way to individual apprehension of violation of human rights and right to life guaranteed under Article 21.

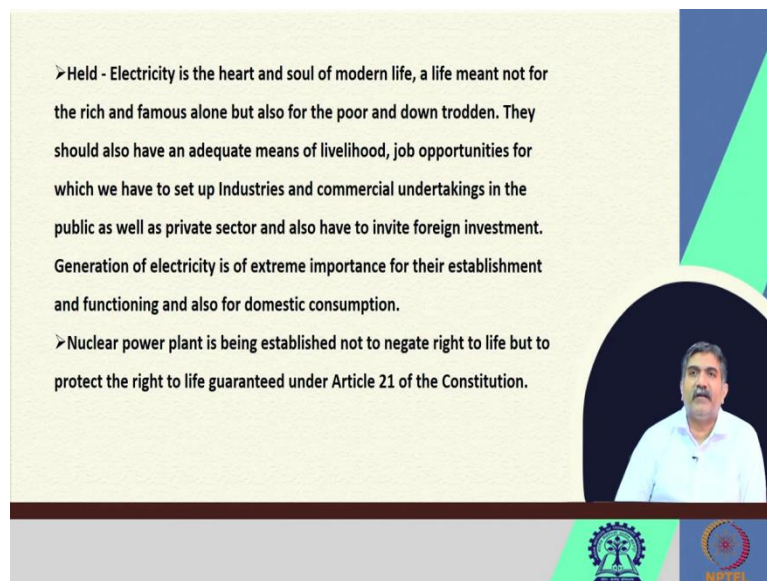


This case is very important because, in this case, the court sets a very remarkable narrative in favor of access to electricity. It is a case which was filed to oppose the commissioning of nuclear power plant situated at Kundakulam in Tamil Nadu, wherein through public interest

litigation. The petitioner argued that the commissioning of the power plant would have a very damaging effect on the environment and the life of the people living in surrounding areas. Thus, it would violate the right to life.

Now, the court stressed upon the need to balance the right to life and property with the protection of the environment. And the court made this remark that the larger public interest of the community must be given precedence over the apprehension of an individual on the violation of his human rights; it is merely apprehension.

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➤ Held - Electricity is the heart and soul of modern life, a life meant not for the rich and famous alone but also for the poor and down trodden. They should also have an adequate means of livelihood, job opportunities for which we have to set up Industries and commercial undertakings in the public as well as private sector and also have to invite foreign investment. Generation of electricity is of extreme importance for their establishment and functioning and also for domestic consumption.

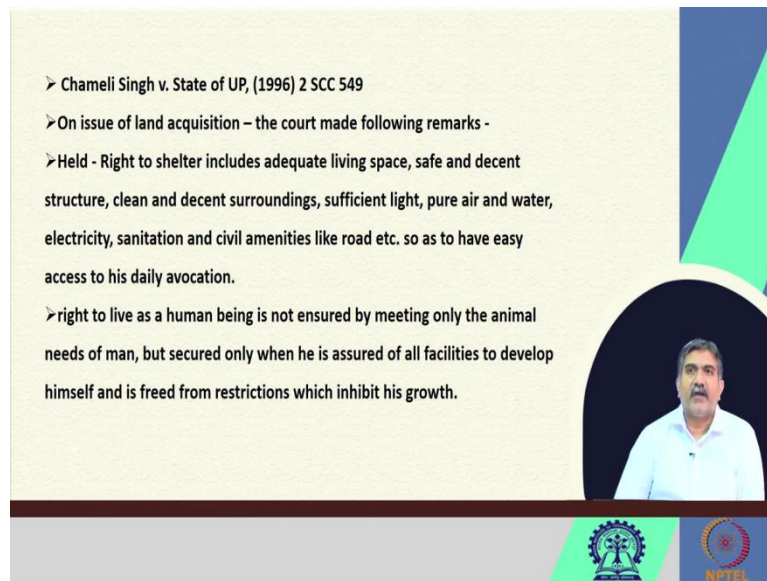
➤ Nuclear power plant is being established not to negate right to life but to protect the right to life guaranteed under Article 21 of the Constitution.

And therefore, it would be wrong to overlook the public interest to serve by the generation of electricity from that nuclear plant and providing light to many houses and to provide electricity to multiple industries in that region and far away. Therefore, on that premise, the court said that, in order to economically prosper, we need electricity.

In modern life, that is what is heart and soul. Life is not only meant for the one who is resourceful but also for the poor and downtrodden. And that is possible only when the country sees economic growth. And economic growth is possible only when there is a sustainable, efficient and quality supply of electricity, and nuclear power is certainly a viable alternative in that direction.

And therefore, the court, in this case, said that the nuclear power plant is being established not to negate the right to life but to protect the right to life guaranteed under Article 21. So, very fundamental observation by the court in this case.

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➤ Chameli Singh v. State of UP, (1996) 2 SCC 549

➤ On issue of land acquisition – the court made following remarks -

➤ Held - Right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities like road etc. so as to have easy access to his daily avocation.

➤ right to live as a human being is not ensured by meeting only the animal needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth.

And then last in the series of the case to establish the right to access electricity as a part of the right to live. I quote this judgment of Chameli Singh, which again is from the Supreme Court, where the matter was of land acquisition. But then, for our purpose, what is important that the court truly accepts that how electricity is an integral part of the right to shelter which is acknowledged as part of the right to life.

So, the court, in this case, says that the right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and civil amenities. And the court says that it is not only about the animal needs of man. It is more than that, and what is more than that is the availability of basic amenities, which fulfil the meaning of life for individuals. And it matters more for the one who is standing at the end of the queue in the social strata. And there, access to electricity is certainly going to play a role. Therefore, we need to understand this when we are analyzing and interpreting various provisions of the Electricity Act 2003 in today's context. Thank you for listening