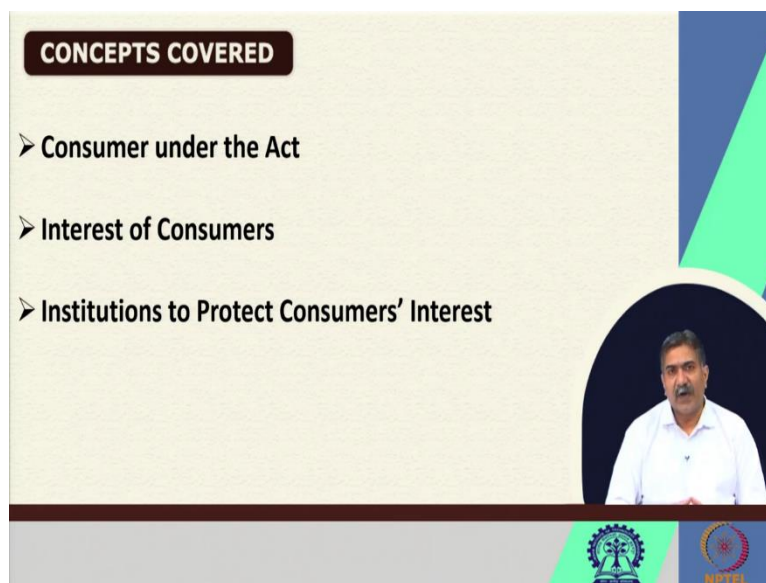


Introduction to Law on Electricity
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Lecture 24
Consumer Welfare

Greetings to all the learners. We have studied about the liberalization of the power market. We have also taken a kind of overview that how power market works through the power exchanges. Now, in today's session, let us try to understand that what are the main provisions of the welfare of consumer under the Electricity Act.

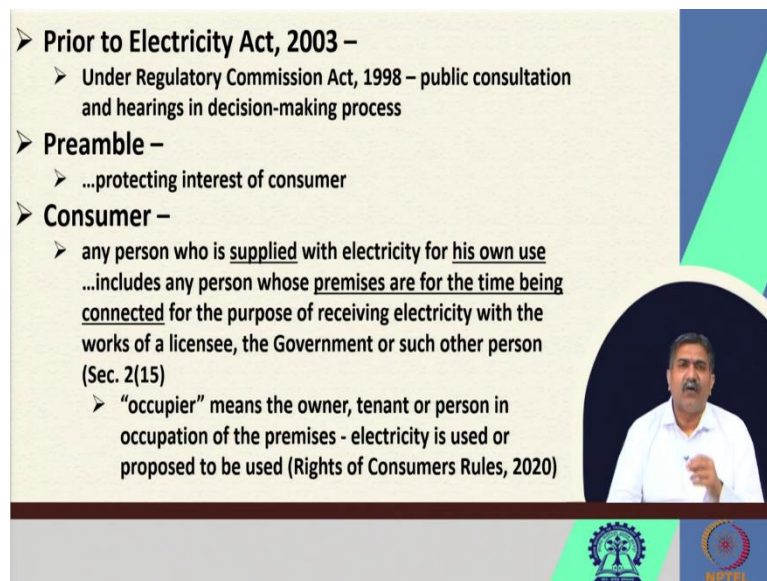
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Because if you look at the scheme of the law, the scheme of the law suggests that, apart from making the sector competitive, there is very prominent stress on serving the interest of the consumer also. In this session, we will be talking about how the consumer is featuring under the Electricity Act 2003.

We will look into the provisions which catered the interest of consumers, and then we will also try to identify that what are the institutions which are provided under the Act to protect the interest of the consumers.

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- **Prior to Electricity Act, 2003 –**
 - Under Regulatory Commission Act, 1998 – public consultation and hearings in decision-making process
- **Preamble –**
 - ...protecting interest of consumer
- **Consumer –**
 - any person who is supplied with electricity for his own use ...includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person (Sec. 2(15))
 - “occupier” means the owner, tenant or person in occupation of the premises - electricity is used or proposed to be used (Rights of Consumers Rules, 2020)

Now, when you look at the participation of consumer in the power market, it has its lineage prior to the 2003 Act. In the 1998 Act, which brought in regulatory commission into existence, it was stipulated there that the regulatory commission should consult the public and there shall be public hearings before deciding on the regulations.

Now, when you look at these kinds of provisions in the law, what purpose it serves? One has to understand that when public service transfers from state to market, then there is a task to involve the consumer, involve the public before deciding on the necessary mechanisms to operate the market. Now, electricity is certainly an important public service. The delivery of the service was earlier in the hands of the states under the 1948 Act, as we have discussed.

Gradually, because of the poor financial health and mismanagement, it was decided that electricity boards are to be unbundled, and efficiency of the sector would be possible only when we liberalize the market. So, obviously, there has been a shift in a sense that what was earlier entrusted to the state, now, it is being provided to the market players.

But then, we know very well that the market has its own way of dealing with things because, basically, it thrives and survives on profitability. And in order to regulate that, in order to ensure that the players in the market should not only look at profiteering but also look at the larger social cause of ensuring the availability of public service to all. Rightfully, it has been decided to incorporate the provisions under the law itself.

So, it is the law which shall govern the players of the market, and it is the law which shall determine whether the necessary steps are being taken in the direction to fulfil the objectives of the law or not.

So, the 1998 Act provided for public participation, provided for public consultation, and hearings in the decision-making process. One may look at this from the perspective of either a democratic approach, where the affected are to be consulted and taken on board, or it has to be also seen from the consumerist approach, where external factors are to be taken into account before generalizing, before deciding, before providing any guidelines.

Carrying on from that legacy, the 2003 Act highlighted the significance of addressing the interest of the consumer at the preamble itself. If you look at the language of the preamble, it serves to understand the mind of the lawmaker and what the language indicates; it says that, on the one hand, there is a responsibility to promote competition. On the other hand, it also suggests that the interest of consumers shall be protected.

That is what the language of the structuring of the preamble suggests. We know very well that the rationale of including a preamble in the statutory scheme is to understand the mind of the lawmakers. It is the preamble which facilitates the interpretation of the individual provisions, and it is the preamble which helps in clearing the ambiguity which is there in the law.

It is the preamble which helps in giving direction and direction to all the stakeholders. The term consumer is defined under the Act, section 2 subsection 15 defines consumer. It says any person supplied with electricity for his use and includes any person whose premises are for the time being, connected for the purpose of receiving electricity.

So, what is important to note here is that the consumer is one who is getting the electricity for one's own use, not for further resale. If the electricity is being received, if the electricity is being supplied for further resale, then the definition will not get attracted. Also, this definition covers a situation where there may not be any consumption of electricity taking place in a particular premise, but then if the premise is connected for the purpose of receiving electricity, then the owner of the premise, the occupant of the premise will certainly be called as a consumer.

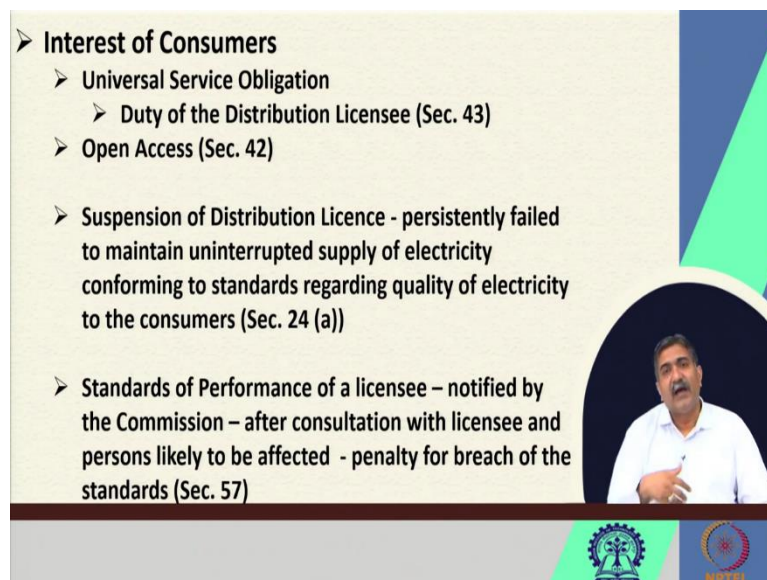
So, the consumer here has to be understood in terms of the one who is ultimately the beneficiary of this industry and the one who is deciding the consumption pattern. In the rules

of 2020, there has been an addition done or the clarification has been made, I would say, where the occupier has been defined as the owner or the tenant or any person who is in the occupation of the premises.

Now, what change has this clarification brought, many times it so happened that the electricity connection has been taken in the name of the owner, and if the owner gives the premise on rent, then the billing and everything is done in the name of the owner only and not in the name of the tenant.

Now, there may be a situation where the owner may have a different load, wherein the tenant may not have that kind of load, and thus the fixed charges which are to be paid may vary. Now, this definition will certainly address this issue and ensure the optimal use of electricity at the end of consumers.

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➤ **Interest of Consumers**

- **Universal Service Obligation**
 - **Duty of the Distribution Licensee (Sec. 43)**
 - **Open Access (Sec. 42)**
- **Suspension of Distribution Licence - persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers (Sec. 24 (a))**
- **Standards of Performance of a licensee – notified by the Commission – after consultation with licensee and persons likely to be affected - penalty for breach of the standards (Sec. 57)**

The slide features a video inset of a man in a white shirt speaking. At the bottom, there are logos for the Ministry of Power and NIPTEL.

Now, when you look at the provisions with regard to the interest of consumers under the law, you would find that there are several provisions which talk about that. The most prominent one to my mind is universal service obligation which we have discussed in detail while discussing on duties of the distribution licensee.

Universal service obligation why is the most prominent one to me because it, in a way, confers a statutory right in favour of the consumer to get quality and reliable supply. It ensures that the distribution licensee shall be bound by the terms and conditions, and not very difficult to visualize that the terms and conditions are ultimately being prepared to advance the interest of consumers.

So, universal service obligation is the most prominent provision to address the interest of consumers. Open access, we have again talked in detail about this; this is also to be linked with the interest of consumers. Why? Because open access gives the choice to the consumer, choice to the consumer from whom to buy electricity and in this process, as we have discussed, will create an ecosystem where the consumer will get electricity on affordable price. That is what open access promises to consumers.

You have a provision where it says that if the distribution licensee fails to maintain an uninterrupted supply of electricity as per the standards specified, then that should be a reason and factor to suspend the distribution license. Now, look at the way the law has given importance to the satisfactory service to be extended to the consumer.

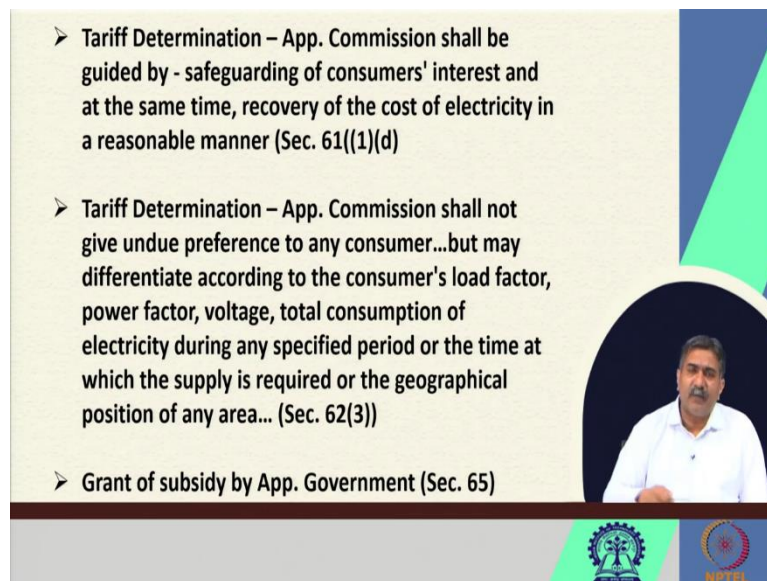
It says that if it has not been done, that is a good enough reason for suspending the license. As a law student, we need to understand the significance of the word persistent, which certainly would mean that if it is one instance of uninterrupted supply, it would not be a valid reason to suspend the license. There has to be a regular interruption, a sort of continuous interruption.

So, the law makers have certainly considered the consumer at the focal and at the core of the growth of the power sector. Section 57 talks about the standard of performance, which is to be followed by the licensee. What shall be the standards? Section 57 says it is to be laid down by the commission, and the commission shall consult the licensee as well as the person likely to be affected.

So, look at the way the law integrates a consultative process in decision making aspect. It is not about thrusting upon and imposition. It is more about hand holding; it is more about understanding the concern of all and accordingly framing the regulation, which creates a win-win situation for everyone.

So, the standard of performance is to be laid down, but if the standard is not being followed by the licensee, section 57 says there shall be a penalty. So, the penalty is being laid down there. So, the consumer can very well approach the commission and indicate that see, what you have agreed to, you are not conforming with the same and, therefore, you should be made liable.

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- Tariff Determination – App. Commission shall be guided by - safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner (Sec. 61(1)(d))
- Tariff Determination – App. Commission shall not give undue preference to any consumer...but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area... (Sec. 62(3))
- Grant of subsidy by App. Government (Sec. 65)

Even when you look at the issue of tariff determination, which is the responsibility given to the appropriate commission, in that you would find that one of the considerations to be kept in mind by the commission is safeguarding the interest of consumers. But then safeguarding the interest of the consumer must not be at the cost of distorting the market, and that is why it says safeguarding the consumer's interest and, at the same time, recovery of the cost of electricity in a reasonable manner.

So, when the consumer's interest has been taken into account, at the same time, it is also to be factored in whether the recovery is lesser than what is the cost of production. Otherwise, the market cannot sustain; otherwise, the industry cannot grow. By the same time, it is also important to take note of what section 62 subsection 3 says, that while deciding on the tariff, undue preference is not to be given for any set of consumers.

One should not be preferred over another, but then certain factors are to be considered for determining the tariff. E.g. Load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which supply is required or the geographical position of any area.

Now, when you look at these categories, you can very well make out and understand that these provisions give a realistic touch to the power which is entrusted to the commission with regard to tariff determination. What is realistic about it? That India being a country run on an agrarian economy, you have to take note of the farming season because the supply of electricity during the farming season should be better and more reliable.

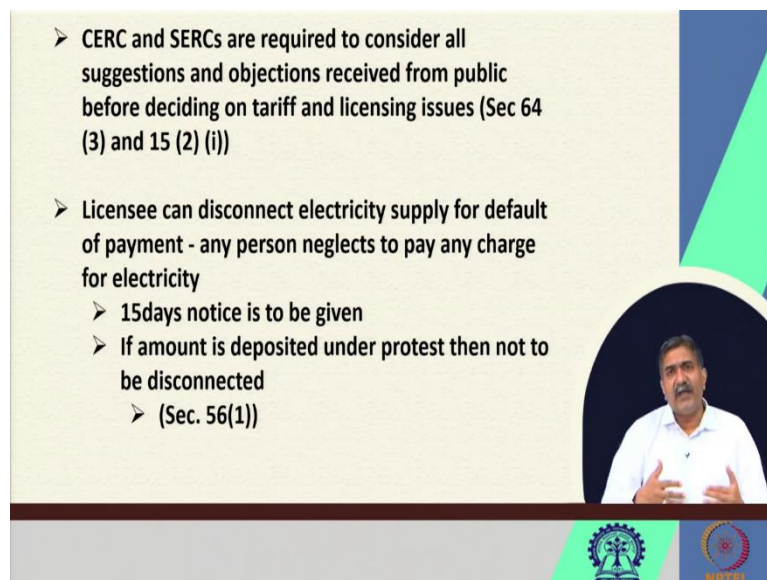
It has to be also considered that minimal quantity and quality should be ensured to every individual who is approaching the licensee for getting the electricity. That is what is the mandate of section 62 subsection 3. So, look at section 61 and 62 here together, you would find that appropriate commission has been entrusted with the responsibility, but then responsibility also says that yes, you consider recovery of the actual cost, but do not completely overlook the interest of the consumer.

And then, while working on the interest of consumer you can very well keep and come out with the factors of categorization based on consumption, load factor, and need of electricity during a particular period of time, geographical location and all. So, very, very significant provision.

Now section 65, which also we have discussed in detail, I am just connecting it with consumer's interest on this very count that at the end of the day, if the necessary leeway is not extended from the players of the market, if it is necessary, cushioning has not been extended by the distribution licensee or by the appropriate commission.

If such a situation arises or there are certain constraints in which necessary facilities cannot be extended, then appropriate government can very well take note of it. Section 65 certainly allows the government to come up with the plan of subsidy.

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- CERC and SERCs are required to consider all suggestions and objections received from public before deciding on tariff and licensing issues (Sec 64 (3) and 15 (2) (i))
- Licensee can disconnect electricity supply for default of payment - any person neglects to pay any charge for electricity
 - 15days notice is to be given
 - If amount is deposited under protest then not to be disconnected
 - (Sec. 56(1))

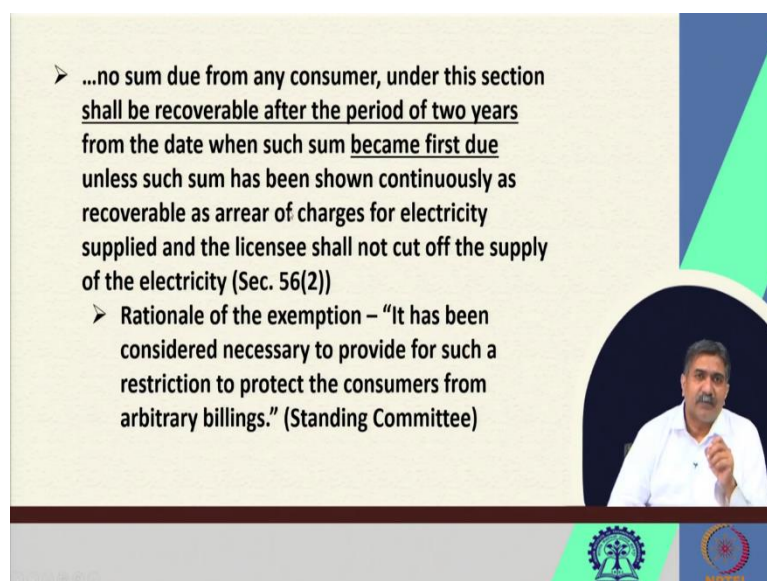
Now, look at the way section 64 and section 15(2) is being drafted; it says that regulatory commissions are required to consider all the suggestions and objections received from public before tariffs and licensing issues. So, tariff, section 61 says, do the consultation, consider the

suggestions which have come to you, and while granting the license under section 15 to the distribution licensee, to transmission licensee or to the trading licensee, you must look at what opinion has been advanced by the public at large.

And then you would find that it says that if there is a default on the part of the consumer, default in paying the bill, then licensee can disconnect the supply of electricity. But then here, what is to be taken note of is the expression any person neglects. There has to be an element of negligence here, and it must be established that it is being done knowingly. If something happens unknowingly by accident, perhaps section 56 may not be attracted, and it further says that let the licensee be bound to give a clear 15 days-notice to the consumer.

And if consumer agrees to pay the amount under protest, under protest in a way that consumer is disputing what licensee is claiming, then there shall not be any disconnection. So, look at it the way the law has presented an opportunity to the consumer that if you are willing to pay even with protest, disconnection shall not be there. So, in all possibilities, the connection must be maintained, connection must be ensured.

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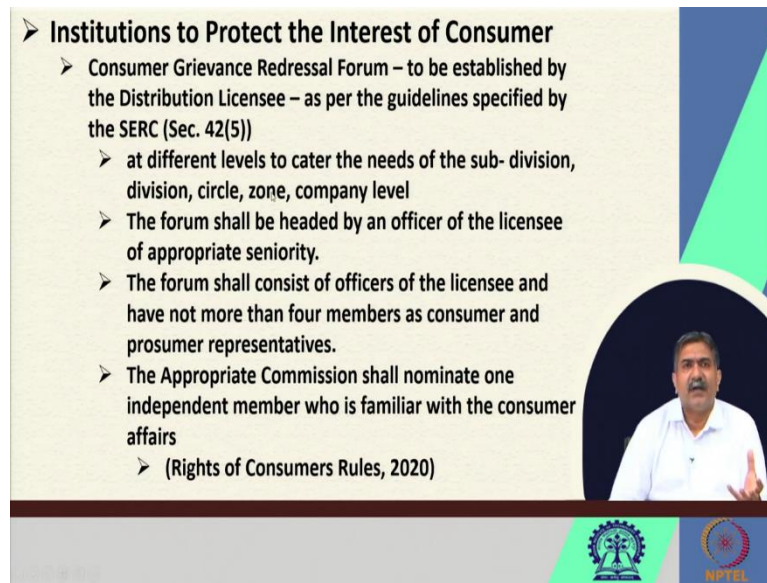


- ...no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity (Sec. 56(2))
- Rationale of the exemption – “It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings.” (Standing Committee)

And that is what also further says, section 56 subsection 2, says that if the amount when it is first due is not being recovered within the first 2 years, then it cannot be recovered later on. Very important provision and why important provision; when this discussion was going on, the parliamentary standing committee has suggested this that if you do not have this provision, then perhaps the consumer will get harassed by the licensee.

Then they will keep on revising the bill, and they will keep on claiming the bill. And that is why it says that if it has not been recovered after the period of two years from when the amount is first due, certainly there cannot be any disconnection, and there cannot be any cut off of the supply of electricity, a very important provision in the interest of consumer. That even if the amount is due, disconnection shall not happen.

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➤ **Institutions to Protect the Interest of Consumer**

- Consumer Grievance Redressal Forum – to be established by the Distribution Licensee – as per the guidelines specified by the SERC (Sec. 42(5))
 - at different levels to cater the needs of the sub- division, division, circle, zone, company level
 - The forum shall be headed by an officer of the licensee of appropriate seniority.
 - The forum shall consist of officers of the licensee and have not more than four members as consumer and prosumer representatives.
 - The Appropriate Commission shall nominate one independent member who is familiar with the consumer affairs
 - (Rights of Consumers Rules, 2020)

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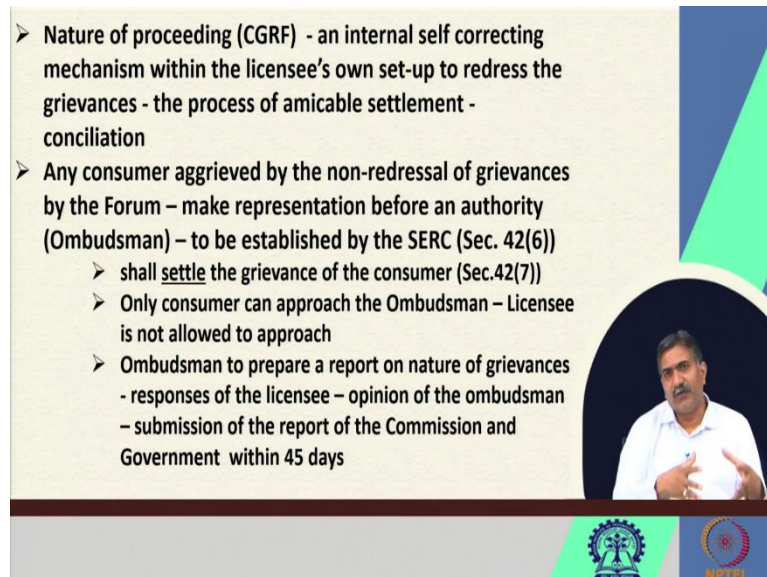
Now, look at the institutions which protect the interest of consumer. Section 42, which talks about the duties of distribution licensee under subsection 5, entrust the obligation on the distribution licensee to establish consumer grievance redressal forum. This is the responsibility of the distribution licensee to establish as per the guidelines issued by the state electricity regulatory commission.

Now, this grievance redressal forum could be at a different level, e.g. subdivision, circle, zone, or company level. It says that the forum is to be headed by an officer of the licensee. The forum shall consist of officers of the licensee and have not more than 4 members, and then there has to be a consumer and prosumer also there.

So, four of them should be from consumers and prosumers, and then appropriate commission shall also nominate one person who shall be an independent one and the one who is familiar with consumer affairs. There is a question here that, how do you see the officer of the licensee chairing the redressal forum? There is highly likely that the officer may have a soft approach towards the licensee and may try to engage into a kind of cover up; maybe I mean, it cannot be said with certainty.

But then some of the studies suggest that if you have a retired employee of the licensee as the chairman of the forum, perhaps it would serve the purpose better. But then again, this is all about the probity and integrity of the institution.

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The slide contains the following text:

- Nature of proceeding (CGRF) - an internal self correcting mechanism within the licensee's own set-up to redress the grievances - the process of amicable settlement - conciliation
- Any consumer aggrieved by the non-redressal of grievances by the Forum – make representation before an authority (Ombudsman) – to be established by the SERC (Sec. 42(6))
 - shall settle the grievance of the consumer (Sec.42(7))
 - Only consumer can approach the Ombudsman – Licensee is not allowed to approach
 - Ombudsman to prepare a report on nature of grievances - responses of the licensee – opinion of the ombudsman – submission of the report of the Commission and Government within 45 days

The slide also features a video inset of a man in a white shirt speaking, and logos for the Indian Institute of Technology (IIT) and NPTEL at the bottom.

The nature of proceeding before the forum is about self-correcting mechanism. Therefore, it is very informal; it is all about settling the dispute in a very amicable way, probably through a conciliation proceeding where grievances are being raised it is to be heard that who is at the fault and then try to look for a situation, try to look for a solution which will bring a win-win situation for both the parties.

So, it is a sort of in-house mechanism, and that is how we need to understand what shall be the nature of proceeding, legally speaking. Why am I highlighting on this? Because if there is a question that whether the lawyer should be allowed to be represented the client to represent the consumer at the forum or not. The answer should be no.

But then the question comes in if the licensee is being represented through a lawyer, then what shall happen? Then the consumer should be allowed for maintaining the parity. So ideally, neither licensee nor consumer should be allowed to be represented through a lawyer. Now, if someone is aggrieved by the decision of the forum, they can make representation before the Ombudsman to be appointed by the regulatory commission.

So, the grievance redressal forum is appointed by distribution licensee, and Ombudsman is appointed by the state commission under Section 42, subsection 6. Now if you look at the language, which helps you in understanding the role and responsibility of the Ombudsman, it

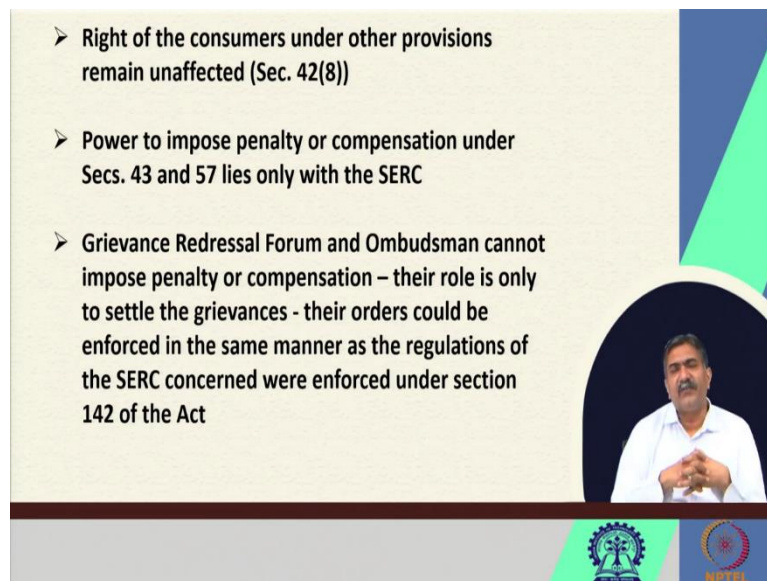
says, “shall settle the grievance of the consumer”, “settle” word here indicates that there is a responsibility entrusted on the Ombudsman to adjudicate the dispute and to give a final verdict, unlike what you find in the forum where conciliation has to be there.

So, adjudication is something where it seems is the kind of function which is entrusted on the Ombudsman. As per the language, it is only the licensee who shall be at the receiving end who shall not be allowed to approach because there is always a possibility that if forum decides in favour of licensee or if the forum decides against the consumer, licensee would not prefer to appeal against the decision.

So, only when the decision is against the consumer, consumer would come before the Ombudsman. So, licensee generally is not to be allowed because there is no grievance, and there is no cause of action for licensee to raise. Ombudsman is also being asked to prepare a report that what kind of grievances have come before the institution, the Ombudsman.

What are the responses of the licensees? What is the opinion of Ombudsman. And it has to be submitted to the commission and to the government within 45 days. Why this very process? You can very well make out this process is more about engaging with the consumer and that this report will serve the purpose of revealing the grievances which the consumer is presenting before the distribution licensee. And on that commission perhaps can take lessons, can learn lessons and then revisit the regulation and same with the government. Government can very well give the necessary advice to the appropriate commission as and when the situation is needed.

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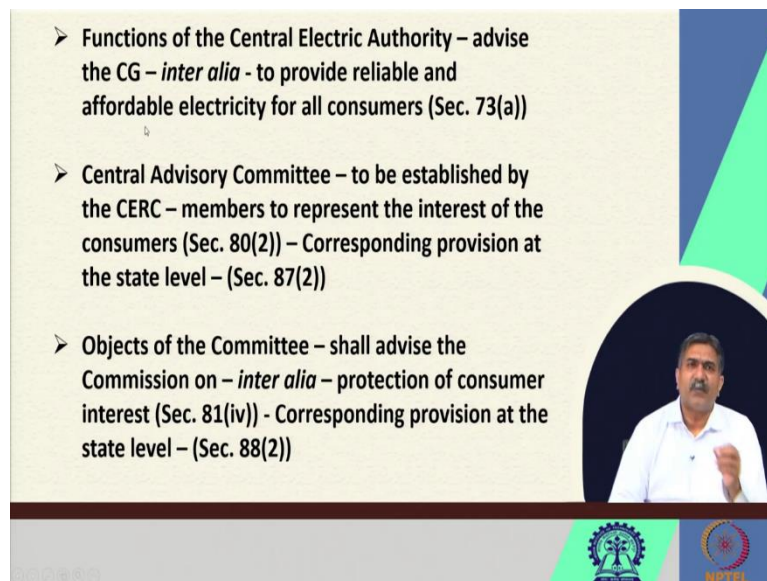


- Right of the consumers under other provisions remain unaffected (Sec. 42(8))
- Power to impose penalty or compensation under Secs. 43 and 57 lies only with the SERC
- Grievance Redressal Forum and Ombudsman cannot impose penalty or compensation – their role is only to settle the grievances - their orders could be enforced in the same manner as the regulations of the SERC concerned were enforced under section 142 of the Act

You have rights of consumer under the other provisions intact. Section 42 says that if consumer has right under different laws, let us say, for example, under Railways Act, under Consumer Protection Act, that remains intact, Electricity Act does not adversely affect the same. Then, if, as I said, the standard of performance is not being met, a penalty can be imposed. If the universal service obligation is not being met, a penalty can be imposed. So that is what is the power there with SERC.

And then point is that can grievance redressal forum and Ombudsman also impose penalty or compensation. The understanding is that their role is only to settle the grievances. Therefore, whatever the order they issue, it should be seen to be an order similar to the regulation passed by the regulatory commission under Section 142 of the Act. So, any issue of penalty or compensation is for the appropriate commission to deal with, not for the grievance redressal forum or the Ombudsman.

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- Functions of the Central Electric Authority – advise the CG – *inter alia* – to provide reliable and affordable electricity for all consumers (Sec. 73(a))
- Central Advisory Committee – to be established by the CERC – members to represent the interest of the consumers (Sec. 80(2)) – Corresponding provision at the state level – (Sec. 87(2))
- Objects of the Committee – shall advise the Commission on – *inter alia* – protection of consumer interest (Sec. 81(iv)) - Corresponding provision at the state level – (Sec. 88(2))

Now, further provision when you look at it, you will find that Central Electricity Authority, which is an advisory body, while considering the matters, it has to keep in mind reliable and affordable electricity for all consumers. So, that is one of the functions which has been entrusted under Section 73(a).

Also, with Central Advisory Committee, which is to be established by Central Electricity Regulatory Commission, there again, amongst the members, it is suggested that one set should always be the one representing the consumer, which represents the interest of the consumer. That is what it says, and the state advisory committee provision is also there under Section 87.

There again, it says that member must be drawn from the consumers representative. When you look at what is the responsibility of the committee, it says that the committee shall advise the commission to protect consumer's interest. So, you look at the way the institutions are being provided. Not only the one which has a responsibility to directly deal with the consumer or the grievances of the consumer but also, at the policymaking level, the consumer's viewpoint is to be looked at.

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- App. Commission shall in the proceeding before itself – authorise any person to represent the interest of the consumers (Sec. 94(3))
- District Committee – to be established by the App. Government - to review the quality of power supply and consumer satisfaction (Sec. 166(5)(b))
- A person who has applied for a new connection - called as consumer – thus – approach the grievance redressal forum or ombudsman –
Broader definition of consumer

And then appropriate commission has been given the necessary authority that if some issue comes up on adjudicatory side, then it can authorize any person to represent the interest of the consumer so that consumer's perspective should also be considered before taking a final call. In addition to that, when you look at the Central Advisory Committee and State Advisory Committee, you also have a district committee under section 166, where section 166 says that appropriate government can very well establish district committee. And that is one of the objectives is to review the quality of power supply and consumer satisfaction. So that is what it sees.

And then, when you look at how broader the definition is, a person who has supplied for a new connection, he is not already a consumer; he is applied for a new connection, and that person can also be called as consumer. If that person is not satisfied, if his application is not being considered in a stipulated time, he can very well also approach the forum and then Ombudsman.

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➤ **Superintending Engineer Dharmapuri Electricity Distribution Circle vs. Meenakshi Udyog India Pvt. Ltd. and Tamil Nadu Ombudsman (2007 – MadHC)**

- The ombudsman is not a mediator alone but an adjudicator as well – The Electricity ombudsman is an Appellate Authority under the Regulations for Consumer Grievance Redressal Forum and Electricity ombudsman 2004

The slide features a video inset of a man in a white shirt speaking. At the bottom, there are logos for the Indian Institute of Technology (IIT) and NPTEL.

Now, this is an important judgment where you find that what is being suggested about the role of the Ombudsman. Superintending Engineer Dharmapuri Electricity Distribution Circle versus Meenakshi Udyog India Limited, where you find that a Madras High Court clarifies that Ombudsman is not a mediator alone. He is also an adjudicator.

So, the electricity ombudsman is an appellate authority under the regulation, and therefore, it has all the power which it can exercise while looking into the appeal made by the aggrieved party against the decision of the forum.

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➤ **Assistant Engineer, Ajmer Vidyut Vitran Nigam Ltd. v. Rahamatullah Khan, 2020 – SC)**

- 'first due' u/s 56(2) was examined
- The appellant has realised the mistake in the billing – raised supplement billing after two years
- Held:
 - Sec. 56 (1) - a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues
 - Sec. 56 (2) - Right is subject to the period of limitation of two years
 - Licensee can raise supplementary demand – supply cannot be disconnected – after two years

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Then you have this case where the court has explained. The Supreme Court has explained that how you understand the meaning of first due. Assistant Engineer, Ajmer Vidyut Vitran

Nigam Ltd versus Rahamatullah Khan, where the court clarifies what do you mean by first due? It says that as per the scheme of the law, section 56(1) confers a right in favour of the licensee company that if payment is not being made on time, if it is not made during that stipulated time, the licensee has a right to disconnect, but then that is subject to that two years timeline which has been given in Section 56(2).

But then, can distribution licensee raise a supplement demand after two years? The Supreme Court in this Ajmer Vidyut Vitran Nigam Ltd said yes. Licensee can always raise a supplementary demand, but what licensees are refrained from doing under the law is licensee cannot disconnect the connection.

It can always raise the demand, but disconnection is not allowed. Why? Because there is a statutory timeline given that the disconnection shall be allowed only within two years from the date when the demand has been made. So, for disconnection, it is important that demand has been made by the licensee, and that is what is not being honoured by the consumer. So, when you look at it, this is how the consumer interest has been addressed under the Electricity Act. Thank you.