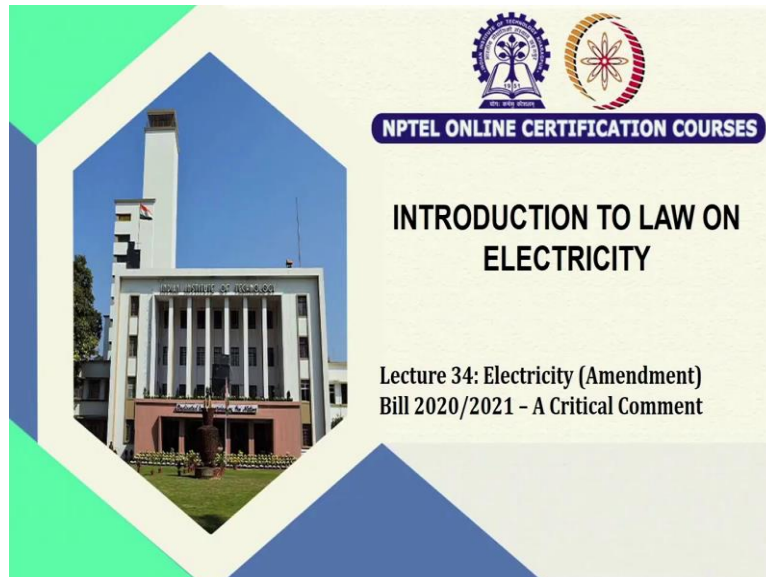


**Introduction to Law on Electricity**  
**Professor Uday Shankar**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology Kharagpur**  
**Lecture 34**  
**Electricity (Amendment) Bill 2020/2021 – A Critical Comment**

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Greetings to all the learners. We have discussed the salient features of the Electricity Act. We have looked into the statutory schemes on generation, transmission, and distribution.

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We have also discussed that how the regulatory commissions are being entrusted with the necessary power to discharge the function. And also, we have looked into the framework related to the Appellate Tribunal. Now, let us look at the proposed changes under the

Electricity Act 2003. Now, in this discussion, I have included the changes which have been introduced or proposed to be introduced in the year 2020 and also in the year 2021.

The reason why I have identified and decided to discuss these two changes; so that we can understand the thought process of the government. And because the latest proposed amendment is also not tabled on the floor of the house. Legally speaking, there is no harm in discussing the 2020 proposed amendment.

And that is the reason why I thought of discussing both in order to give the comprehensive overview on what has been going on in the mind of the government to bring in further reform in the electricity sector. And as all of us have been reading and learning through the news reports that the state governments are protesting against the decision of the government to bring in amendment on certain areas.

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- The Electricity Act, 2003 has transformed the sector – created conducive environment - huge direct investments, public-private partnership, rationalisation of tariff, uniformity and certainty in regulation, etc.
- Desired reform in distribution sector are yet to be achieved
- Regulatory Commissions are into multiple functions
- Contracts for supply and purchase of electricity – performance of the contract was not dealt specifically in 2003 Act

The slide also features a video inset of a man with a mustache, wearing a white shirt, speaking. At the bottom, there are logos for IIT Bombay and NIPTEL.

So, let us try to understand that what were the reasons for the change. And then, we will look at the salient features. And we will also try to analyze the possible impact of the same. The journey started in the year 2003, when the government decided to consolidate all the laws related to electricity and to give a new avatar dealing with the aspects of the power market.

2003 Act apparently appears to bring in necessary changes, apparently appears that it has successfully brought changes. It has contributed in the participation of private players in the generation segment. We see private players also showing interest in the transmission segment. We have learned that how professional, the issue of tariff determination has become

and how the regulatory commission has been discharging responsibility in a transparent manner.

So, overall, it appears that the aim identified under the 2003 Act has been achieved to a large extent. But the 2003 Act cautiously decided not to introduce overhaul reform in the distribution segment. Because of the very reason that distribution segment was and is still having a monopoly, state government governs the same, and then there are political factors which are resisting the necessary reform in the segment.

Perhaps in the 2003 Act, it has been indicated that let the reform start gradually coming in so that the benefit to the consumer be extended. So, in a way 2003 Act suggested for gradual reform in the distribution segment. That is how when you look at the provisions on parallel licensee, when you look at the provisions of open access, it presents testimony of the same.

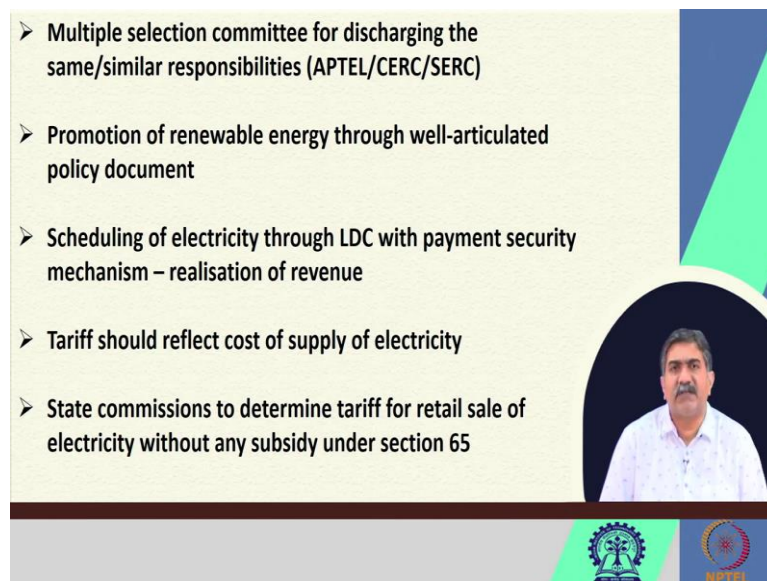
But then the reality at the ground is different. Distribution segment has not been transformed, has not been liberalized, and has not seen enough investment. And that is why these amendments were being proposed. These amendments were largely focusing on introducing the reform in the distribution segment.

Additionally, it also attempts to rationalize the workload of the regulatory commission because the regulatory commission under the 2003 Act has been entrusted with voluminous responsibility. It has to determine the tariff; it has to adjudicate the dispute, and it has to time to time come up with the regulation. So, huge task was entrusted.

And it was decided to rationalize that it was decided to make the regulatory commission more professional. And in order to ensure the same, some of the functions of the regulatory commission were decided to be transferred on another body. And what was that function which thought of to be transferred? It was with regard to the enforcement of the contract. Because if you look at the transaction, the nature of the transaction in the sector, it is all about contract for supply and purchase of electricity.

The 2003 Act fails to deal with the aspect of an obligation entered through a contract in a very effective manner. That what shall happen if contract is not being honoured, whether we can have quicker remedy for the same.

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- Multiple selection committee for discharging the same/similar responsibilities (APTEL/CERC/SERC)
- Promotion of renewable energy through well-articulated policy document
- Scheduling of electricity through LDC with payment security mechanism – realisation of revenue
- Tariff should reflect cost of supply of electricity
- State commissions to determine tariff for retail sale of electricity without any subsidy under section 65

So, that aspect was considered, and it was decided to introduce a new institution which shall be responsible for the contract enforcement. It has also been observed that regulatory commissions, the central one and the state one, they are discharging same function, but there are different selection committees for the same. And because of these, unnecessary bureaucratic hustles are coming.

Longer duration is being witnessed for filling the vacancies, and that is why it was decided that let there be a single committee which shall recommend the suitable candidate for the tribunal and the regulatory commissions. Because of the absence of sector specific law to promote renewable, the government also proposed, there is proposed that the central government shall be responsible to formulate renewable energy policy. 2003 Act mandates the formulation of electricity policy, tariff policy, and policy on rural electrification. But that does not categorically speak about renewable energy; there are scant references, which we will be discussing at later point of time.

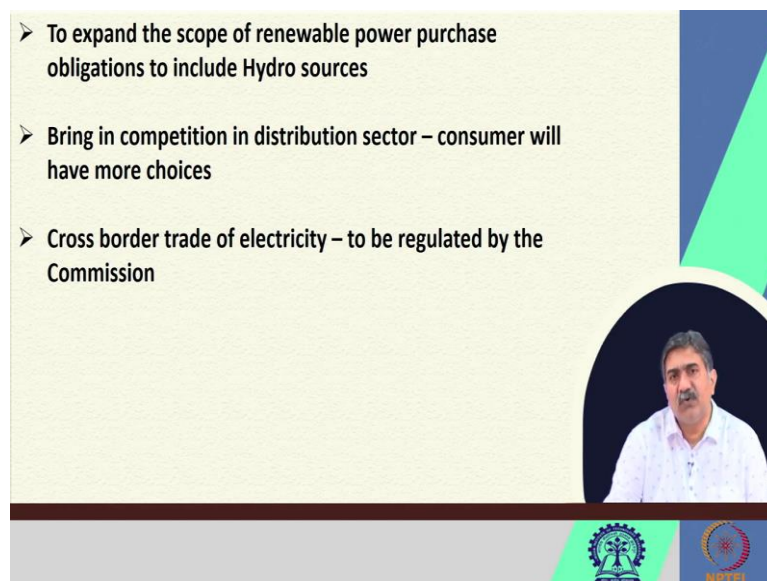
So, it was decided that let there be a dedicated policy, so that certainty will be a kind of driving point for the investors to come in and contribute in the growth of green energy. With the integration of grid, as we have discussed and learned, that we have achieved one nation, one grid goal. It has been observed that the activities at the grid level has gone up, and there is a need of better coordination at the national level.

There is a need of supervision, and that is why it was suggested to empower the National Load Dispatch Center. Cross-subsidy has been a pressing issue under the 2003 Act, as we

have discussed that due to pressure from the obvious circle, the word “eliminated” was deleted and “progressive reduction” was introduced.

So, instead of focusing directly on reduction of the cross-subsidy, the government thought that why not to look at the tariff determination based on actual cost of supply? And when actual cost of supply will be a parameter for determining the tariff, then the subsidy part can be directly given to the consumer.

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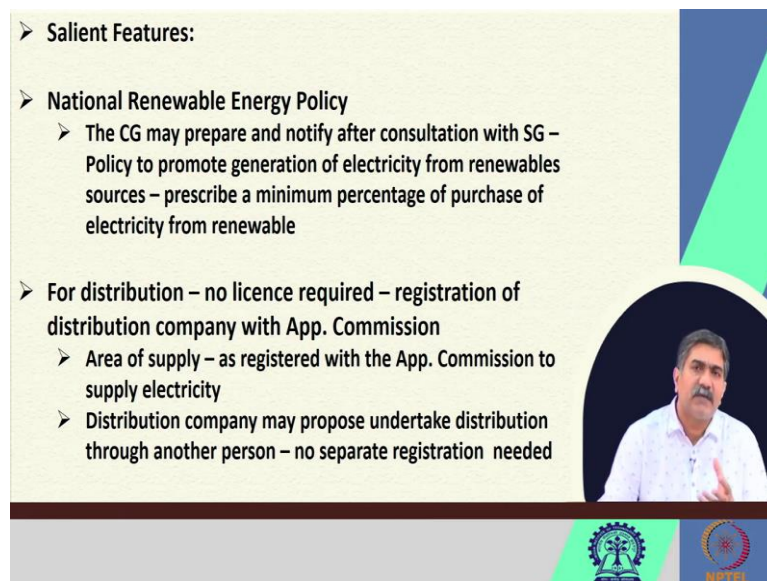
- To expand the scope of renewable power purchase obligations to include Hydro sources
- Bring in competition in distribution sector – consumer will have more choices
- Cross border trade of electricity – to be regulated by the Commission

And that is the reason why it was suggested that the subsidy aspect not to be considered for the tariff determination. Let the beneficiary get the necessary benefit from the government through a direct benefit transfer scheme. And distribution segment should be given the necessary authority to collect the electricity charges as per the actual cost.

And that is possible only when we have the tariff determination done without considering the subsidy. In order to promote green energy, it has been thought that Renewable Purchase Obligation needs to be expanded. And in addition to solar, it has also been decided that hydro projects should also be considered.

And long-awaited reform to introduce competition in the distribution segment, the government thought of opening up this segment and enabling the consumer to identify the supplier. With the increase in the installed capacity of generation now, we have a surplus electricity; we now have necessary infrastructural arrangement in place to export electricity to the neighbouring countries. Now, how it shall be done, the government said that let the Central Electricity Regulatory Commission also deal on these issues.

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➤ **Salient Features:**

- **National Renewable Energy Policy**
  - The CG may prepare and notify after consultation with SG – Policy to promote generation of electricity from renewables sources – prescribe a minimum percentage of purchase of electricity from renewable
- **For distribution – no licence required – registration of distribution company with App. Commission**
  - Area of supply – as registered with the App. Commission to supply electricity
  - Distribution company may propose undertake distribution through another person – no separate registration needed

So, let us look at how the amendment has been proposed, what are the proposed amendments, and what the government has suggested. So, it has been suggested that let there be a National Renewable Energy Policy which the central government shall prepare after consulting the state government.

And in that, the idea would be to prescribe a minimum percentage of purchase of electricity from renewables which obviously is the case even as on date, where we have a Renewable Purchase Obligation. But through that, it has been suggested that it is the central government which shall guide the RPO.

As of now, it is the state commission which has been dealing with the same, and there is a target which has been set. But under Section 86, which we will be studying, it has been suggested that let the responsibility be there on the central government to ensure the overall growth of renewable energy. On the lines of generation, it was decided to also delicensed distribution activity.

So, it was suggested that let there be no application to obtain license to engage into distribution activity under the Act. It is possible only with the registration, registration by complying with the necessary norms which the commission would be prescribing. So, licensing has been replaced with the registration, and it was suggested that distribution licensee can very well ask another person to supply electricity, and for the same, no separate registration is needed. So, the system of franchisee was already there under the Electricity Act 2003, and the distribution sublicensee was introduced under 2021.



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- National Load Despatch Centre is to be more empowered –
  - Responsible for optimum scheduling and despatch – across different regions of the country – apex body
  - Monitor grid operations
  - Exercise supervision and control over inter-regional and inter-state transmission network
  - Overall authority for carrying out real time operations of the national grid
  - Power to give directions to RLDC/SLDCs/Generating Company/Licensees
- Addition of Law Member in the Regulatory Commission
- Penalties for not meeting RPO

Now, in addition to that, as I said that, because of the increased capacity on the front of generation, because of the availability of generated electricity and supplemented by the necessary growth of transmission network, now it is possible for evacuating the power from one part of the country and supplying it to another part of the country. And this very much relates with moving towards the direction of energy security.

So, there is an important task to coordinate, under the 2003 Act, Regional Load Dispatch Center is being made all powerful. Now, it has been suggested that let National Load Dispatch Center (NLDC) be given the responsibility to do overall supervision and control. So, NLDC, in the proposed Act of 2020, suggested to be an apex body, which shall be responsible for monitoring the grid operation and also for supervising and controlling the inter-regional and inter-state transmission.

So, we have five region, and then inter region, NLDC will take care. Inter-state also, NLDC will supervise and control and then have overall authority for carrying out real-time operation. Because real-time operation is something which is being attempted to achieve, which means the injection of power and evacuation of power is to be determined in a very meticulous way, in a very scientific way. So that there shall not be any waste. Infrastructure is to be used in an optimal manner.

Proposed amendment empowered the NLDC to give necessary directions to RLDC and SLDC. And noncompliance of the same would attract penalty. Looking into the functioning of the regulatory commission and in compliance with the direction of the Supreme Court in

Users Association case, it has been suggested that there shall be a law member in the regulatory commission.

So, that whenever a bench is constituted, there will always be a law member to decide the issue, that is what it said. And in order to promote renewable, stricter penalty was suggested for not meeting the renewable purchase obligation.

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- To provide a legal mandate to payment security mechanism in wholesale market, to address the rise of accumulated discoms' dues to generators
- Reduction of surcharge and cross subsidy is to be aligned with the Tariff Policy
- CG may prescribe rules and issue guidelines for cross border trade of electricity – may require CERC to prepare guidelines
- Subsidy u/s 65 to be provided by the Government to consumers directly

Unrealized revenue has been a matter of concern for bulk supply. If you can recall, we have discussed that necessary regulation with regard to prepayment metering has been introduced. And that has been introduced in the retail sector. So, in prepayment metering, no security is to be deposited. Now, on the bulk supply, there is still a challenge to ensure the scaling of revenue and meeting the requirements which is needed for fulfilling the value chain system.

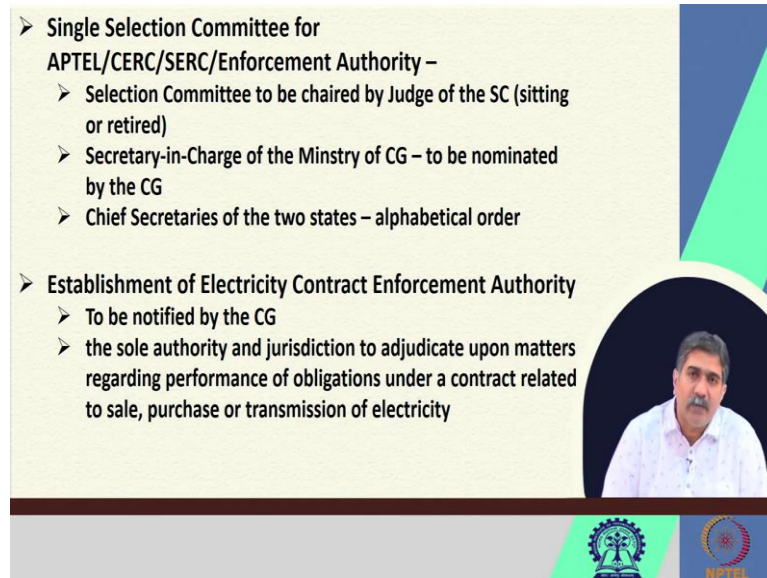
And that is why, it has been suggested that there shall be a legal mandate for payment security mechanism in the wholesale market. And Load Dispatch Center shall ensure that before scheduling and dispatching the electricity. Cross-subsidy, as I said, has been a matter of concern. And in order to tackle this issue apolitically on a larger interest of the electricity sector, it has been suggested that let it be aligned with the tariff policy. And we have learned the tariff policy, the formulation of tariff policy is the responsibility of the central government.

Cross-border trade of electricity has been entrusted, and the responsibility to formulate the guidelines has been entrusted to the Central Electricity Regulatory Commission. And on the lines of reform introduced in other important public services, for example, food subsidy, and



fertilizer subsidy, it has been suggested that similar effort is to be made also in the power sector where the government shall transfer the benefit directly to the beneficiaries.

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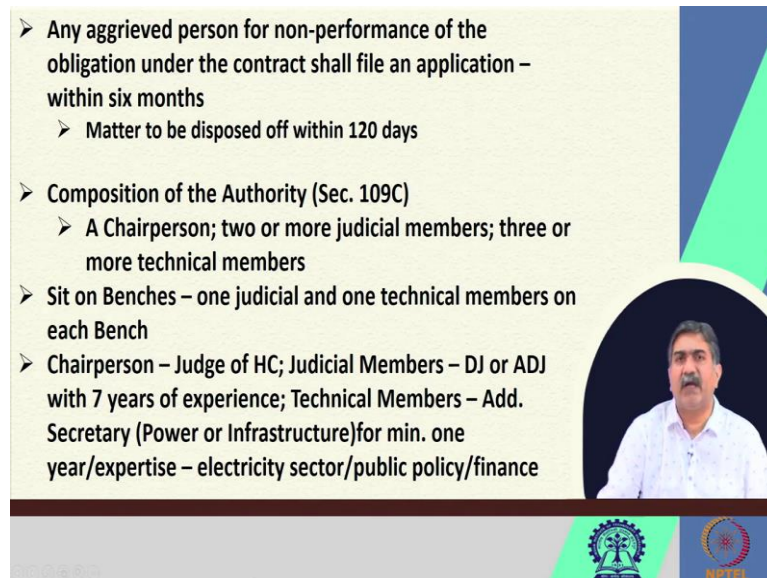
- **Single Selection Committee for APTEL/CERC/SERC/Enforcement Authority –**
  - Selection Committee to be chaired by Judge of the SC (sitting or retired)
  - Secretary-in-Charge of the Ministry of CG – to be nominated by the CG
  - Chief Secretaries of the two states – alphabetical order
  
- **Establishment of Electricity Contract Enforcement Authority**
  - To be notified by the CG
  - the sole authority and jurisdiction to adjudicate upon matters regarding performance of obligations under a contract related to sale, purchase or transmission of electricity

A new selection committee, a single selection committee, was suggested in the 2020 Amendment, which shall be chaired by a judge of the Supreme Court or a retired judge of the Supreme Court. And then, we will have a nominated member from the central government and chief secretaries of the two states, and the chief secretaries of the state will be participating in alphabetical order of the name of the state.

Another important change which was suggested in the 2020 amendment is of segregation of the responsibility of the regulatory commission. The tariff determination would continue to be the responsibility of the regulatory commission.

But as far as contract enforcement is concerned, it has been suggested that let there be a separate authority, the Electricity Contract Enforcement Authority, which shall be notified by the central government and which shall have sole jurisdiction to adjudicate upon the matter related to the performance of the contract. This is for quicker disposal. This is for ensuring the necessary penal measures in case of failure to comply with the obligation.

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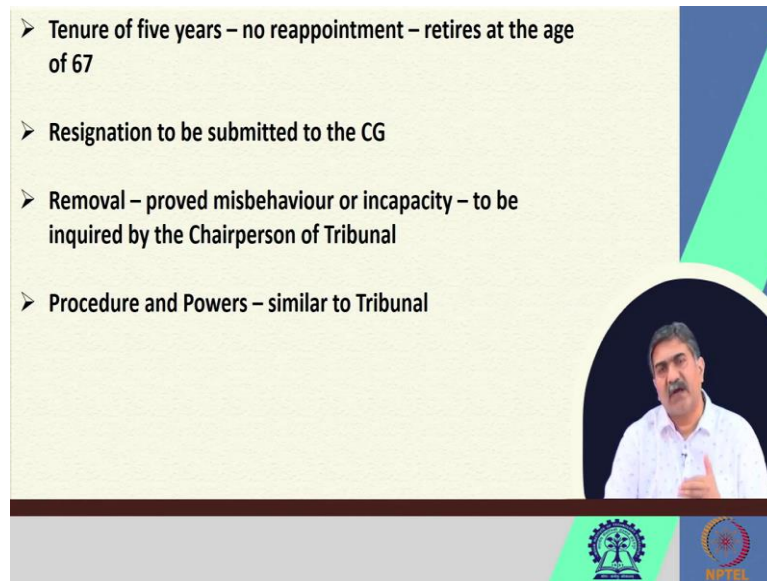
- Any aggrieved person for non-performance of the obligation under the contract shall file an application – within six months
  - Matter to be disposed off within 120 days
- Composition of the Authority (Sec. 109C)
  - A Chairperson; two or more judicial members; three or more technical members
- Sit on Benches – one judicial and one technical members on each Bench
- Chairperson – Judge of HC; Judicial Members – DJ or ADJ with 7 years of experience; Technical Members – Add. Secretary (Power or Infrastructure) for min. one year/expertise – electricity sector/public policy/finance

Therefore, it has been suggested that any aggrieved person who is not satisfied with the performance of the contract, that person can approach the authority within 6 months, and the authority should dispose it within 120 days.

What shall be the composition of the authority? In the 2020 amendment, it is suggested that there shall be a chairperson and then two or more judicial members or three or more technical members. And chairperson shall be either a sitting or a retired High Court judge, and judicial member shall be of the (D)J District Judge or Additional District Judge rank with 7 years of experience.

For technical member, it was suggested that the person must be a secretary in the Ministry of Power or the related infrastructural ministry, and having 1 year expertise or then you can have technical member also from the domain expertise. Public policy has been a new criteria added under the 2020 amendment.

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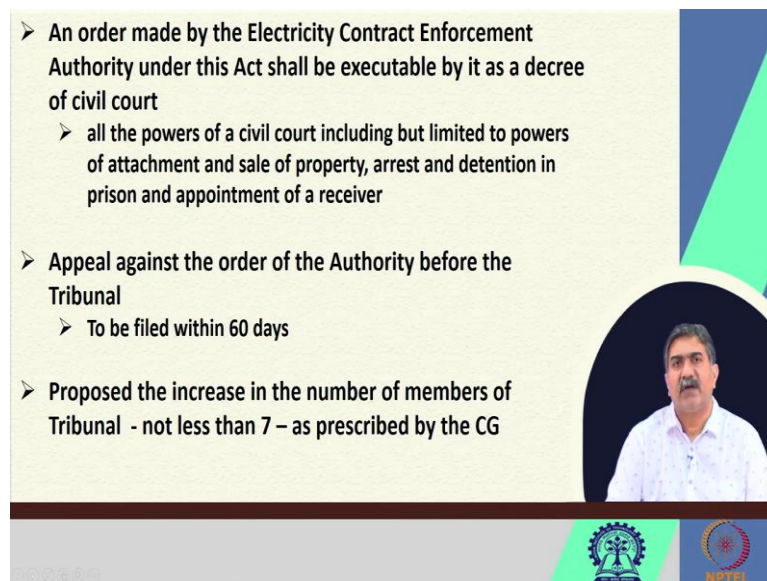


- Tenure of five years – no reappointment – retires at the age of 67
- Resignation to be submitted to the CG
- Removal – proved misbehaviour or incapacity – to be inquired by the Chairperson of Tribunal
- Procedure and Powers – similar to Tribunal

Tenure of the authority, the officials of the authority would be the chairperson or the member would be of 5 years, or the age of retirement would be 67 years with no reappointment on the lines of regulatory commissions. They would be asked to submit their resignation to the central government, and removal is also there, as it has been the case of appellate tribunal.

The only thing is that when it comes to removal, the inquiry has to be made by the chairperson of the tribunal. The authority has been entrusted with the same power as it has been the case with the appellate tribunal, and they need to follow the same procedure which is there with the tribunal. Meaning thereby that they are not court of laws, so they are having necessary flexibility to conduct or carry on their proceedings.

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➤ An order made by the Electricity Contract Enforcement Authority under this Act shall be executable by it as a decree of civil court

- all the powers of a civil court including but limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver

➤ Appeal against the order of the Authority before the Tribunal

- To be filed within 60 days

➤ Proposed the increase in the number of members of Tribunal - not less than 7 – as prescribed by the CG

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It has been said that the order of the authority shall be executable as a decree of court, and then it has all the power of the civil court including attachment of the property or detention in prison of the decree. That is what it says. Appeal against the decision authority can lie before the tribunal to be filed within 60 days. And then it has also been suggested that tribunal, the members of the tribunal can be increased and to be made not less than 7. This is suggested considering the workload of the tribunal.

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➤ Comments:

➤ De-licensing of distribution sector

- Micro-privatisation of electricity distribution - 'distribution sub-licensees', in addition to existing provisions for distribution franchisees
- No clarity on the selection criteria, nature of business, responsibilities, and accountability mechanisms

➤ Renewable Purchase Obligation – responsibility shifted to the Central Government

➤ SERC to determine tariff without considering subsidy – identification of beneficiaries for DBT will be a challenge

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Now, delicensing is an important step to bring in reform to ensure that the consumer gets the choice. But then there is a very important issue to flag, and what is that, whether it would lead to cherry picking, whether the distribution company will be more aggressive on

supplying electricity to the industrial consumer, the commercial consumer and would ignore the requirement of residential or agricultural consumer. So, that is a matter of concern, how that is going to get addressed.

As I said, renewable purchase obligation is going to get shifted because it is now suggested to be aligned with the tariff policy. So, central government will be determining the same. SERC to determine tariff without considering subsidy, that is what is an important change to be done in order to make DISCOMS, financially more sound.

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- Adjudication of disputes related to Load Despatch Centres entrusted to the Regulatory Commissions
- The order of the Regulatory Commissions will be executable as decree including attachment of property, arrest and detention in prison
- Federal Structure
  - Single selection committee
  - Temporarily entrust the function of SERC to another SERC – prolonged vacancy
  - Attempt of over-centralisation

The regulatory commission has been given an additional responsibility to adjudicate the disputes related to Load Dispatch Center because that is very obvious that with the robust network, there is a possibility of more number of disputes coming where the Load Dispatch Center will be involved. And therefore, Regulatory Commission has been given the necessary authority.

In order to make the regulatory commission more powerful, The amendment has been proposed suggesting that regulatory commission's order will be executable as a decree and that the same, they will have the power of attaching the property or selling the property and up to the arrest of the person.

It has been said that the proposed amendment is somewhere compromising with the federal structure. Because we have learned that electricity is a subject falling under concurrent list, and therefore, due consultation has to be there with the state government. Now, the point is that whether state government has been consulted or not and whether consultation is effective

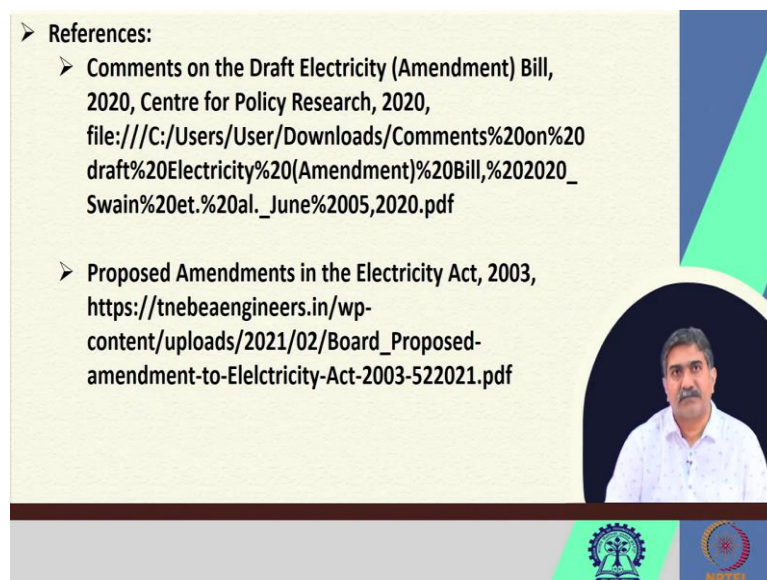


or not. As we are reading the news in our news report, learning from the different sources that, some of the states are protesting against the same.

So, how a subject matter which is there in the concurrent list has to be handled this case, electricity, reform in the electricity sector is going to suggest the future pathway in that matter. That how harmonization needs to be there between the central and the state government.

If some tough decisions are to be taken, how the central government shall be facilitated for taking those decisions. And how political economy will be considered for not leaving the poor people at the mercy of the market. So that is what is another important aspect to look at.

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➤ **References:**

- **Comments on the Draft Electricity (Amendment) Bill, 2020, Centre for Policy Research, 2020,**  
file:///C:/Users/User/Downloads/Comments%20on%20draft%20Electricity%20(Amendment)%20Bill,%202020\_Swain%20et.%20al.\_June%2005,2020.pdf
- **Proposed Amendments in the Electricity Act, 2003,**  
[https://tnebeaengineers.in/wp-content/uploads/2021/02/Board\\_Proposed-amendment-to-Elelctricity-Act-2003-522021.pdf](https://tnebeaengineers.in/wp-content/uploads/2021/02/Board_Proposed-amendment-to-Elelctricity-Act-2003-522021.pdf)

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These are the references for this session. Thank you very much.