



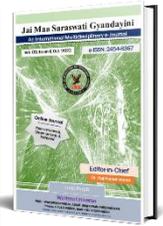
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CONSUMER PROTECTION IN THE ELECTRICITY SECTOR

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KEYWORDS

Consumer protection, electricity regulations, power generation, legislation and policies, promoting consumer awareness, energy sector in India.

ABSTRACT

With the constant evolution of the country's electricity regulations, consumer protection in the Indian electricity sector has grown dexterously. Every Electricity Act that has been passed throughout the years has increased the extent of consumer protection. During the last two decades, the Country has witnessed notable improvements, particularly in the infrastructure, power generation, and most importantly consumer welfare. The Electricity Act of 2003, in its numerous clauses and other government legislation and policy documents, clearly state that efficiency and consumer protection and welfare are the primary goals for achieving real reforms in the electricity sector. Government, through this Act has provided several ways for promoting consumer awareness. The Act has also established a comprehensive two-tier grievance redressal mechanism consisting of CGRF at primary level and Ombudsman at State level for protecting consumers from tiring traditional resolution process. To ensure that the consumers are benefitted of the regulations, the Act also provides for minimum standards in form of Standards of Performance which are required to be met by the licensees.

Introduction

Indian electricity sector is one of the largest and the widely spread energy sector in the world. Over a past few decades the energy sector in India has witnessed a remarkable evolution. Historically, the Indian electricity sector, just like every other large sector was a state-owned monopoly which was subject to strict regulations. However, with the need to increase the efficiency and consumer welfare the need for competition was felt and the sectors which were once thought to be best suited for State monopoly for protecting consumers from private players witnessed an archetype revolution.

The Indian Electricity Act, 1910, covered only the supply and usage of electricity having no focus on consumer welfare or their representation.¹ The subsequent legislation, namely, The Electricity (Supply) Act, 1948 provided for the representation of key stakeholders but didn't include domestic consumers.² However, it is considered to be the much-needed step in the direction of consumer participation and welfare.

With the introduction of the Consumer Protection Act, 1986, India took a momentous stride toward consumer protection. Recognizing the growth of business and customers' susceptibility, the

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umbrella legislation was enacted to further safeguard consumers' interests. With increased market coverage and complexity, particularly as a result of liberalization and reformation of important economic sectors, and increased consumer awareness, this umbrella dispute redress system eventually became overburdened with cases, resulting in an increase in pendency.

With the advancement of technology in the electricity sector the grievance redressal system required technical knowledge and skill, necessitating the creation of specialized organizations. Finally, through the Electricity Act, 2003 the legislature explicitly made provisions for consumer welfare and participation in the electricity sector. As a result of structural reforms, specialized grievance resolution processes have been established for consumer protection and welfare.

This Act places a strong prominence upon consumer protection, consumer participation, grievance redressal and consumer education through different measures. Consumer protection has been envisaged as an integral element of the Electricity Act which is clear from the object of the Act given in the preamble which states that the Act is brought to increase competition and for protecting the interest of the consumers.

The provisions under the Act have been enacted for the resolution of consumer grievance through a system of Consumer Grievance Redressal Forum (CGRF) and Ombudsman. This dedicated system for the consumer to attend to their grievances allows them to resolve their problems without

going through the long and time-consuming mechanism provided under the general umbrella law of consumer protection. In accordance with the Act's provisions, all State Electricity Regulation Commissions (SRCs) have enacted regulations establishing a CGRF and an Ombudsman to resolve consumer complaints in their respective states.

To advance the objective of consumer protection, the Act also offers a set of Standards of Performance (SoP), which the SERCs may prescribe after engaging licensees and consumers who may be harmed. This is another way to ensure consumer protection as it provides standards that are beneficial to consumers and uniformity in the sector. If the standards are not met, the licensees must pay compensation to the affected persons within 90 days, as assessed by the SERC after the licensees were given a reasonable opportunity to be heard.

Consumer protection, grievance redressal and public participation under the Electricity Act, 2003

The consumers' interests and protection have been in consideration of the electricity laws right from the beginning. This objective has been consolidated with each subsequent legislation, culminating in provisions for a somewhat elaborate mechanism in the current Electricity Act, 2003. The protection of consumer interests is clearly stated as a goal in the Act's preamble. The Act makes provision for all three aspects, that is, consumer protection, grievance redressal & dispute resolution, and public participation.

Section 2(15) of the Act defines consumer as,

“any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and 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, as the case may be”

In terms of grievance redressal and dispute resolution, the Act provides two stages: firstly, at the level of the Distribution Company and secondly, at the level of the state through Ombudsman. Section 42 of the Act discusses the duties of the Distribution Licensees. Every distribution licensee is required by Section 42(5) to set up a forum for customers to air their complaints within a certain amount of time. After that, if the consumer feels that their complaints are not being adequately resolved at the forum level, they may file a complaint with the State Commission-appointed Ombudsman.³ The rights of the consumers to approach the forum or the Ombudsman are in addition to and not in conflict with the other remedies or grievance redressal options that the consumers have.

Additionally, under the Electricity Rules, 2005, it has been clearly laid down that the forum to be

established under Section 42(5) is to consist of the officers of the licensee and an independent member appointed by the Commission. Such independent member must be someone who is well acquainted and familiar with consumer affairs.⁴ The normal time period for redressing grievances is 30 days which may extend up to 45 days.⁵

With respect to the Ombudsman, the rules stipulate that the Ombudsman will be appointed by the State Commission. The Ombudsman can hear representations of consumers that may arise out of the provisions of the Act, Rules and Regulations made thereunder, and the general directions/orders of the Government or the Commission.⁶

Apart from addressing consumer complaints, the Ombudsman also has to draft a report every six months that summarizes the type of complaints, licensee responses, and the Ombudsman's assessment of the licensee's adherence to performance requirements. Section 57 of the Act lays out the requirements for performance. Within forty-five days of the conclusion of the applicable six-month term, this report must be delivered to the State Commission and the State Government.⁷

Consumer participation can assist in combating electricity theft as well. Some distribution companies have taken the initiative of including consumers in the drive against electricity theft by offering rewards (monetary or otherwise) to consumers who report electricity theft. The idea behind this initiative is that consumers themselves are suffering due to problems in electricity supply because of certain miscreants who are involved in electricity theft. Therefore, combating electricity

theft ultimately benefits the consumers itself and hence, they must be included in the identification and detection of electricity theft.⁸

NITI Ayog conducted a study in August, 2021. According to its report,⁹

“many SERCs are yet to implement adequate transparency measures or create frameworks for meaningful public input to the regulatory process. Beyond these deficiencies, there are also no clear accountability mechanisms to govern the SERCs. Unless these gaps are addressed, the SERCs’ ability to create an independent, transparent, and unbiased governance framework to balance the interests of consumers and discoms will remain muted”

Globally, researches have revealed that distribution companies rooted in community participation have better success rates.¹⁰

However, despite having made provisions to allow for consumer participation, in reality, the implementation of these provisions has proved to be problematic. On one hand, there are no mechanisms to ensure effective participation of consumers in the regulatory process and on the other hand, consumers lack the awareness and aid required for their participation.¹¹

Some steps that need to be taken in order to improve consumer participation are to provide for institutions that cater to consumer participation and to provide financial support towards such

institutionalized mechanisms.¹²

Standard of Performance for Electricity Distribution Companies

Outlining standards of performance for licensees is another way of ensuring consumer protection because it prescribes the standards that are in favor of and for the benefit of the consumers. The standards are also a means of maintaining uniformity in the sector for similarly placed licensees.

According to Section 57 of the Act, the Commission is in charge of defining the performance requirements for a licensee or group of licensees. These guidelines must be developed following discussions with license holders and other individuals who might be impacted by their performance.

If a licensee doesn't meet the performance standards, they will be responsible for compensating the individual who was impacted by their failure. The compensation is determined by the Commission and it is irrespective of any other penalty or prosecution that may be initiated against the licensee.

Every licensee has the following obligations in addition to complying with the standards of performance,¹³

- a. The level of performance that the licensee has achieved;
- b. The number of cases in which the licensee has paid compensation to various affected persons for failure to comply with standards of performance.

On receiving such information from the licensees,

the Commission shall publish this information at least once a year.

In 2009, the Forum of Regulators released the Model Standard of Performance Regulations for Distribution Licensees. These model regulations categorise the standards into two categories namely, Guaranteed Standards of Performance and Overall Standards of Performance.

Guaranteed standards of performance pertain to operation and maintenance of call centers for consumers, restoration of power in cases of failures or breakdowns, quality of supply, handling meter complaints, handling new connections, transferring ownership, temporary supply of power, handling consumer complaints arising out of bills, disconnection of supply, and reconnection of supply where disconnection had taken place due to non-payment of bills.¹⁴

The Overall Standards of Performance are the minimum/maximum (as the case may be) performance rate of the standards specified in the Schedule I.¹⁵ For example,

“New connection/additional load: Licensee shall achieve the standards of performance as specified in section 14.21, 14.22 and 14.24 of Schedule-I in at least 95% of the cases.”

“Billing mistakes: Licensee shall maintain the percentage of bills requiring modifications following complaints to the total number of bills issued, at a value not greater than 0.1%.”

Additionally, the Model Regulations also prescribe the mode and manner of computing compensation for failure of different standards of performance.¹⁶

The standards of performance, if complied with

and if properly monitored, will help a lot in the identification and detection of electricity theft because these standards of performance dictate the norms for meter checking and monitoring as well. For example, in the Model Regulations, it has been stipulated that the meter must be read at least once every two months. When a licensee receives a complaint regarding malfunctioning meters, it is required to make sure that the issue is checked within four business days in Class I cities, seven days in urban areas, and twelve days in rural areas. In addition, if a metre is discovered to be broken, it must be replaced in Class-I Cities within three working days, in Urban Areas within five working days, and in Rural Areas within fifteen working days. The licensee is responsible for covering the cost of this replacement.¹⁷ These Model Regulations have been adopted with slight modifications in various states like Rajasthan,¹⁸ Uttar Pradesh,¹⁹ Maharashtra,²⁰ etc.

Electricity (Rights of Consumers) Rules, 2020

In December, 2020, the Central Government passed the Electricity (Rights of Consumers) Rules, 2020 in furtherance of the powers conferred under Section 176(2)(z) of the Act. According to these Rules, following are the duties of the distribution licensees,

- a. Supply electricity upon request made by the owner/occupier of any premises²¹ and the supply shall be 24x7²²
- b. Display on the website and notice board relevant procedures regarding the services, details of offices, provision for online submission of forms, document

requisitions, and applicable charges and tariff.²³

- c. Create website & mobile application, for submission of online application forms.²⁴
- d. Acknowledging and generating registration number immediately upon submission of forms.²⁵
- e. Providing application tracking mechanism through unique registration number.²⁶
- f. Ensuring availability of tested and sealed meters from approved meter manufacturers. The consumers must be informed of the places where these meters are available.²⁷
- g. Reading meters at least once in every billing cycle by authorized representatives of the distribution licensee.²⁸
- h. Setting up a mechanism for monitoring grievance redressal.²⁹

If a consumer feels aggrieved by the readings of the meters or its testing, the meter must be tested at a third-party testing facility that is decided by the consumer. However, the Commission is to provide a list of approved third-party testing agencies. If the results of this test coincide with the test results conducted by the distribution licensee, the cost of such third-party testing must be borne by the consumer. If, the results of the two tests contradict, the cost is to be borne by the distribution licensee.³⁰

Electricity (Rights of Consumers) Amendment Rules, 2021

In June, 2021, the Government of India through MoP (Ministry of Power notified Electricity

(Rights of Consumers) Amendment Rules. The object of the amendments are focused on improving reliability and reducing the reliance of polluting diesel generators for backup power. The 2020 Rules limited net metering to a maximum load of 10 kW and required gross metering for loads greater than that. This action was met with much criticism because it prevented customers with greater loads (particularly commercial, industrial, and residential customers) from benefiting from net metering, which results in a significant reduction in their rates.

In an effort to promptly resolve the gaps in the 2020 Rules and ensure clarity for prosumers who have installed rooftop solar systems, the MoP has now released the Amended Rules in response to feedback from a variety of stakeholders. Prosumers utilize the same energy source from which they draw power from the grid to produce electricity for Discoms, making them both producers and consumers. The modification that stands out the most is the raising of the maximum load for prosumers using net metering from 10 kW to 500 kW.

The amendment mandates that the State Commission to determine generic rate for consumers who choose to sell their full generation from rooftop solar systems to Discoms. The terms gross metering, net billing, net feed in, and net-metering have all been defined by this amendment. The arrangements for net-metering, gross-metering, net-billing, or net feed-in must be made in line with the State Commission's regulations, which are updated on a regular basis.

The consumers also have certain rights in terms of electricity theft. For example, any consumer against whom electricity theft proceedings are initiated, must be given a chance to defend himself/herself before the addressing officers. The consumers can also own up the offence and pay a compromise fine.³¹

On the other hand, the distribution licensees also have certain rights. For example, the licensee through its authorized representative can enter into the premises of the consumer provided a reasonable notice has been issued to the consumer prior to such entry. Such entry can be for reading and inspecting meters, disconnecting supply, carrying out repairs, replacements, or any other maintenance activities. However, such inspections cannot be carried out beyond the point of supply. This means that the right to entry is limited until the point of supply. Furthermore, the representative of the licensee is also required to carry a valid identity card and the inspection must be carried out at reasonable hours, that is not between sunset and sunrise.³²

In order to check for illicit energy use, unauthorized equipment additions and modifications, energy theft and misappropriation, power diversion, meter bypassing or tampering, or for general inspection and testing, the licensee is also permitted to enter the property with prior notice. If the aforementioned activities are detected, the licensee is entitled to recover the expenses and to disconnect electricity supply.³³ In some cases, if the licensee has sufficient reasons or evidence to believe that a consumer has indulged

in electricity theft, unauthorized use, or other such offences, the licensee may not be required to issue the prior intimation or notice.³⁴

The third aspect of consumers is that of public participation in the regulatory process. The Electricity Act intended to establish an independent regulatory system. Public participation and participatory governance is what sets independent regulatory system part from the government regulation. The Electricity Act provides for the appointment of a person by the State Commission to represent the interests of the consumer.³⁵ Additionally, certain aspects of the regulatory process like applications for grant of license,³⁶ amendment of license,³⁷ and determination of tariff³⁸ must be published so as to make these accessible for public comments. Thereafter, the Central Commission and State Commissions are mandated to consider and deliberate upon any suggestions or objections that are received in this regard, before deciding upon these aspects.³⁹

The Act also envisages the establishment of Central Advisory Committee⁴⁰ & State Advisory Committee.⁴¹

“The Committees shall consist of not more than 31 members to represent interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector. These Committees will advise the

respective commissions on major policy questions; matters relating to quality, continuity and extent of service provided by the licensees; compliance by the licensees with the conditions and requirements of their licence; protection of consumer interest; and electricity supply and overall standards of performance by utilities.”

This provision has been made to allow for representative participation of consumers since, despite having the requisite provisions, it would not always be possible or feasible to include all consumers in the governance.

Consumer Protection in National Electricity Policy and Tarriff Policy

With regard to the protection of consumers, the National Electricity Policy states the following,⁴²

- a. The distribution licensees are required to indicate a Reliability Index (RI) of supply of power to consumers.
- b. The State Commissions are to formulate guidelines with respect to grievance redressal forum by the licensees and regarding the Ombudsman.
- c. In order to improve the effectiveness of the regulatory process, the Central Government, State Governments, and Electricity Regulatory Commissions are in charge of helping consumer organizations develop their capacity and effectively

represent themselves before the Regulatory Commissions.

In the Tariff Policy, following has been stipulated,⁴³

- a. The State Commission is to determine and notify the standards of performance, in relation to quality, continuity and reliability of service for all consumers, to the distribution licensees.
- b. The Forum of Regulators is responsible for determining the basic framework on service standards.
- c. The licensees can also be provided with suitable transition framework so as to help them reach the desired levels of service.

Apart from these, each State Commission has a statement of rights or charter of rights of electricity consumers available on its official website. The general rights of the consumers are as under,⁴⁴

- a. Right to know and have access to information pertaining to conditions and procedure of the various services and their termination, standards of performance, grievance redressal, tariff schedule, status of their applications, etc.
- b. Right to access forms free of cost for new connection.
- c. Right to receive a copy of agreement, prior intimation of visit/entry of the authorized representatives, supply within stipulated time, receipt of fees and charges paid, and interest upon the security deposit.

- d. Right to get the meter tested for accuracy. Such request can be made to the distribution company and upon such request charges for testing are to borne by the consumer. Consumers have the right to receive copy of the meter test report.
- e. Right to receive detailed bills and right to demand explanation of the basis of computation of the bill.
- f. The Act provides for the following rights: the right to a minimum of fifteen clear days' written notice before disconnection for nonpayment under Section 56; the right to a minimum of thirty days' written notice before disconnection for failing to deposit the requisite security amount under Section 47; to obtain supply following the removal of the disconnection's cause or causes.
- g. Right to visit consumer service centers to obtain information and register complaints.
- h. Right to demand copies of consumer statement of rights, electricity supply code, standards of performance regulations, terms and conditions of supply, schedule of charges, tariff schedule, rules and procedures for redressal of grievances, etc.
- i. Right to receive all information in relation to grievance redressal procedure.

Role of State Regulatory Commission in Consumer Protection

In accordance with the Act's provisions, all SERCs have enacted regulations establishing a CGRF and an Ombudsman to resolve consumer complaints in their respective states. The establishment of

successful consumer protection mechanisms is inextricably related to consumer awareness and engagement. Discoms and SERC engage in a variety of campaigns to raise consumer awareness of their rights and the mechanisms available for reporting grievances.

In addition, many SERCs have drafted the Standards of Performance Regulations, which establish consumer rights with respect to service standards to be maintained by the licensee, in accordance with Section 57 of the Electricity Act 2003.⁴⁵ SERCs' major tool for safeguarding consumer rights and enforcing them on power Discoms is SOP regulations. These rights are outlined in terms of maximum time periods for responding to consumer service requests and issues, as well as compensation mechanisms in the event of non-compliance with the set standards. The elements covered by SOP of Different SERCs' regulations can be classified into four broad groups, each with its own standard term and compensation: (i). Power quality (ii). Outages in power supply (iii). New connections (iv). Metering and billing.

SERCs are required by Section 64 of the Electricity Act 2003 to consider public comments and ideas when formulating regulations or issuing orders.⁴⁶ This process is called Stakeholder Consultations. SERCs may allow or invite organizations, forums, or entities, as well as individuals, to participate in their proceedings and file responses, objections, or comments.

Shortcomings

Electricity customers have grievances spanning

from the application for new connections to changes to current connections such as a change in consumer name, contract demand, or tariff category. Consumers have also highlighted concerns about timely testing and replacement of defective meters, as well as problems in meter reading and bill correction in the event of erroneous or inflated bills.

The Electricity Act of 2003 mandates that regulatory commissions to solicit public feedback on tariff-setting and other significant issues and examine all public input before making a decision. It is true that almost every state has attempted to comply with these standards, however it is also true that it has been done in letters and not in spirit. Although the SoP's are in place since a long time now, however, due to the lack of awareness among the consumers and lack of information, very few have claimed the compensation provided therein.

A recent study conducted by 30 Cuts International on five states including Delhi, Karnataka, Haryana, Rajasthan and Maharashtra⁴⁷ discovered that the CGR mechanism has various flaws that prevent it from being as successful as it should be. Some of the shortcomings highlighted by the report are:

1. Lack of awareness
2. The potential of SoP has not been tapped by SERCs.
3. SERCs focus more on monetary issues and ignore grievances related to service and quality.
4. Learnings of CGR which can benefit the consumers are not inculcated in the decision-making process.

Conclusion

The evolution of the Indian energy sector dates back to 1880, with the establishment of a small power producing station and a local distribution system established in Darjeeling. It was followed by two legislations one in 1887 and the other in 1903, that provided for minimal regulation and private participation, these two regulations laid the groundwork for the first extensive Indian Electricity Act of 1910. The subsequent Act of 1948 along with 1910 Act marked the historical development of the electricity sector in India.

The electricity sector was very competitive during the colonial era, but with the passage of the 1910 Act, a licensing system was established, bringing standardization and regulations. Later, the energy sector was nationalized under the 1948 Act, which supported state monopoly by establishing State Electricity Boards (SEBs). When liberalization and competition in the sector became inescapable the Electricity Act of 2003 was enacted with the goal of protecting and assisting consumers.

The Electrical Act of 2003 repealed all previous legislation and brought in significant improvements in the electricity sector. To improve the quality of power supply and service, the Act incorporated essential consumer-oriented provisions. The State Electricity Regulatory Commissions have been given more responsibility to safeguard the interests of consumers. The Act envisages various consumer rights such as, right to a new connection, right to receive notice before disconnection, right related to meter, right to minimum standard of performance and right to

consumer grievance redressal.

Furthermore, several legislations and regulations, including as the Consumer Protection Act, National Electricity Policy, Tariff Policy, and others, strengthen the rights of electricity consumers granted under the Electricity Act of 2003. Additionally, the Act establishes Central and State advisory committees to reflect the interests of stakeholders such as consumers, NGOs, research agencies, and industries, among others, in order to ensure stakeholder engagement.

Consumer awareness, grievance redress, and protection are thought to be some of the most important markers of any sectors efficacy, advancement, and development in any country. This has been effectively incorporated in the Act of 2003. The Act establishes a two-tiered system for resolving grievances. To begin, a consumer can approach a forum at the discom level, which is required by Section 42(5) of the Electricity Act, and if they are dissatisfied with the ruling, they can approach an Ombudsman at the state level, who is appointed by the State Commission and is responsible for hearing consumers who are dissatisfied with the commission's rulings.

In order to accomplish the goal of consumer welfare, the Act also establishes a set of Standards

of Performance that the State Regulation Commissions may establish after consulting licensees and others who are affected. If the Standards are not met, the Act requires licensees to compensate the aggrieved consumer within 90 days after the licensees have been given an opportunity to be heard. Furthermore, licensees are required to submit a performance and compliance report to concerned State Regulation Commissions at least once a year.

With around two decades since the Act's enactment, all states have established rules and operationalized the Consumer Grievance Redressal Forum and Ombudsman to safeguard consumer interests. Moreover, the consumers are empowered by the recent Energy (Rights of Consumers) Rules, 2020, which ensures electricity supply reliability, a grievance redressal mechanism, accountability, and openness in terms of processes and provides for proper timelines.

The evolved legislation provides electricity consumers with access to justice, representation and participation. But there is a need to explore additional ways to ascertain that the laws and regulations which are on paper are also followed and implemented in the best possible ways to benefit the costumers.

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