

Introduction to Law on Electricity
Professor Uday Shankar
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology Kharagpur
Lecture 4
Salient Features of the Electricity Act 2003

Welcome to all of you again in the session on introduction to the law on electricity. We will be today discussing the salient features of the Electricity Act 2003.

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➤ Institutional, Regulatory and Policy Reforms in the Sector could not deliver the desired result

➤ IPPs could not add to their capacity

➤ Reform of distribution segment was almost a non-starter

➤ SEBs were on the verge of financial collapse

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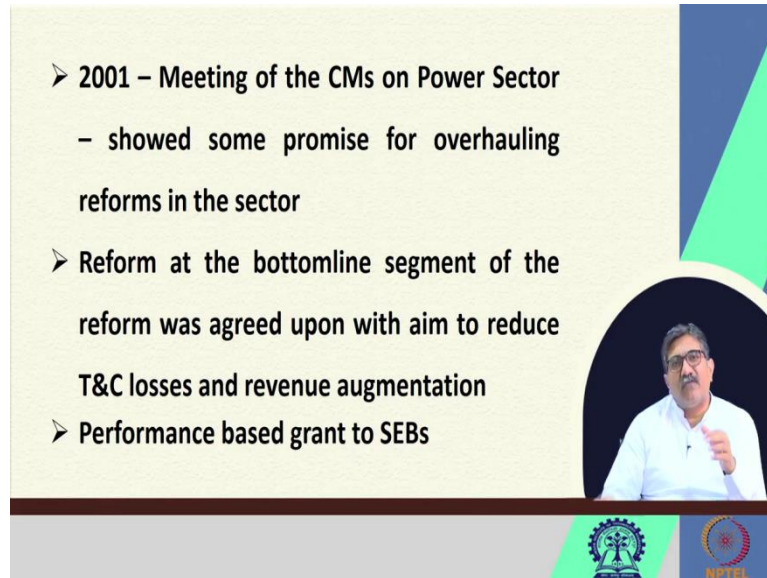
Now, as I was telling in the last class that all the reforms which have taken place, these reforms could not result into the desired outcome. The independent power producers who were invited with a lot of fanfare after liberalization of the economy in the year 1991, they could not add to their capacity to a generating segment.

The reform in the distribution sector was almost a sort of a non-starter. Because there was a lack of political will to bring in the necessary professionalism needed to assure the other players in the market that distribution sector would be working in a very autonomous way in the interest of the consumers and other stakeholders.

So, that caused a lot of distrust in the market. And because of this very fact, the electricity boards were on the verge of financial collapse. They were not collecting enough revenue from the end consumers. As I said, either because of the absence of necessary infrastructure or efficient manpower or because of an inefficient tariff system. So, SEBs failed to extend the

necessary support needed to strengthen the upper layer of the segment, which is the generation and the transmission.

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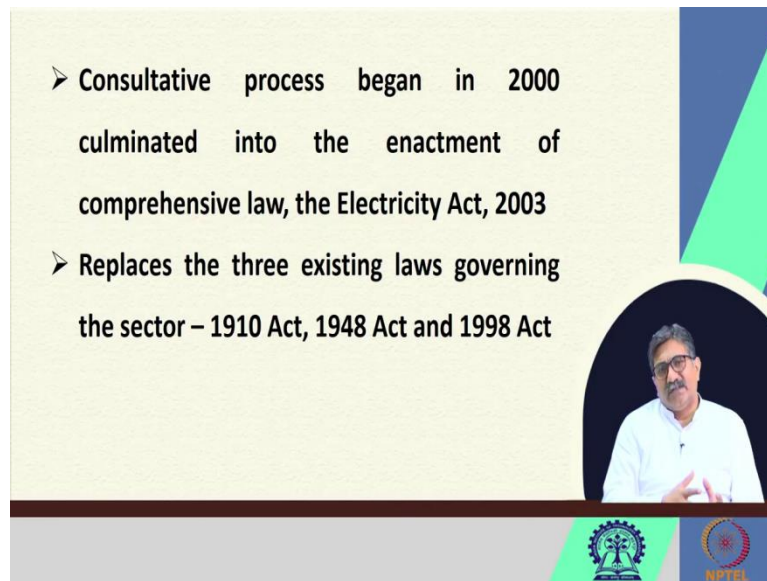
- **2001 – Meeting of the CMs on Power Sector**
 - showed some promise for overhauling reforms in the sector
- **Reform at the bottomline segment of the reform was agreed upon with aim to reduce T&C losses and revenue augmentation**
- **Performance based grant to SEBs**

So, in the year 2001, when the Chief Ministers, they met on the agenda of reforming the power sector, they agreed that this sector needs a sort of overhauling. Piecemeal reform is not going to do any good, and in that, it was agreed that any change, any reform, any proposal to strengthen the sector, to make the sector competitive is possible only when the lower segment, the bottom line, the distribution sector, is adequately addressed.

If this sector is not seeing the change, if this sector is not internalizing the change, if they are not participating in the change, then the effort put in for inviting private players in the generation segment, bringing professionalism in the transmission segment is not going to give a very welcoming result.

And therefore, it was decided that the distribution segment, the utilities, they must aim to reduce transmission and commercial losses and must make all attempts for augmenting revenue generation. And in order to bring in discipline, in order to compel the utilities to commit to the change, it was also suggested, decided that any financial support to the electricity board needs to be tied up with the performance displayed by them.

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➤ Consultative process began in 2000 culminated into the enactment of comprehensive law, the Electricity Act, 2003

➤ Replaces the three existing laws governing the sector – 1910 Act, 1948 Act and 1998 Act

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So, performance-based tie-up was, performance-based financial support was agreed upon. Along with this resolution parallelly, an effort was being made to introduce a comprehensive change in the legal framework. So, what was being dealt with under the 1910 Act, for instance, the licensing aspect, the role of the government under the 1948 Act or the power and functions of the Regulatory Commission? All these need to be reformed; all these need to be brought under one umbrella.

And furthering this objective, consultation started taking place with the stakeholders of enacting a new law. And it was suggested that the new law must repeal the earlier existing legal framework governing the sector, and those were pre-independence law, that is 1910 Act and two post-independent laws, that is 1948 Act that, is electricity supply act and then this Electricity Regulatory Commission Act.

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➤ **Salient Features**

- De-licensing in thermal generation
- Captive Generation
- Non- Discriminatory open access of transmission system
- License-free generation and distribution in rural areas
- Management of rural distribution by local bodies, cooperative societies, franchises

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All these three laws were repealed, and in the year 2003, the country welcomed a new legal regime which promised 360-degree change in the legal landscape pertaining to this sector. Now, at this stage, let me briefly tell you what are the salient features of the law. Because I will be discussing some of these in detail in different modules of this course.

Drawing lessons from the drive of privatization, the 2003 Act introduced delicensing in the generation segment particularly the one which is based on thermal power. One for hydro based power plants, it was suggested that techno-economic clearance is to be obtained. And because of the very obvious reason that hydro-based power plant makes an impact on the environment.

And that is why it was suggested that let there be a sort of assessment done. 2003 Act also introduced a very clear guideline on captive generation. And captive generation was being proposed as a significant contributor to making the industry self-sustainable. And we have seen phenomenal growth of captive power plants in this country post 2003 Act.

So, clear guidelines were being laid down that when an entity would be called a captive power plant under the law. It was also suggested that the transmission segment would have nondiscriminatory open access to all. So, there shall be no discrimination on the basis of which entity is engaged in generation and which entity is into the distribution of the electricity, into the supply and use of electricity.

The reason being that a private generating company is there, then private generating company should not face undue harassment from the transmission licensee in the name of capacity, in

the name of lack of infrastructure and that generating company find it very difficult to get the prospective buyer of the electricity. And that is why it was suggested that let there be a nondiscriminatory open access of the transmission system.

And in order to make the transmission licensee work in an unbiased way, they are not allowed to engage into trading of electricity so, so they should not have any vested interest. Conflict of interest was completely minimized. So, this was an important change. The important change in order to ensure that the generating company will find the buyer and the transmission licensee will facilitate the buying and selling of electricity without any biasness.

You can understand that, in the absence of legal backing, it was not very easy to achieve. Because if the transmission licensee has an interest in the generating unit, then the transmission licensee will always give preference to that unit in order to facilitate, in order to look for the buyer.

So, this independence to the transmission licensee introduced a level playing field for the players in the market and particularly the private players. And I would say that in the longer term, it is also for the utilities which are owned by the government.

Because if the government-owned utilities are getting cheaper electricity from the private generating units, they can also buy it. 2003 Act advanced the cause of public interest connected with the electricity sector. And that is why it suggested that in rural areas, there shall be generation and distribution license free.

They need not go for license. Anyway, generation was made license free for all, but distribution was also made. So, that necessary investment can take place and electricity for all can be a reality. With this intention, this provision was included in the Act. And it was also suggested that as far as engaging into distribution business is concerned in rural areas, panchayats can play a role, there can be a cooperative-societies, they can play a role, or there can be a franchisee which can play a significant role. So, there is a possibility of small players coming forward and participating in this market. That is what was envisaged.

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➤ **Salient Features**

- **Multiple licensing in distribution**
- **Mandatory metering of all supplies**
- **Multi-Year Tariff – to give certainty to all stakeholders – negate the fluctuation of beyond reasonable limit**
- **Cross subsidy surcharge on direct sale to consumers**

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Now 2003 Act also introduced multiple licensing in the distribution sector, which obviously has not been utilized to its fullest extent till date. But this is a very progressive provision. It allows the end user to get electricity from the utilities of one's own choice. And a larger reform in the sector is now being proposed, which I will discuss in the latter part of the course while taking up the amendment suggested by the government in 2020.

So, this is like providing a choice to the consumer. Let the consumer have this choice that from whom they want to buy electricity. As on date, this is prevalent in some pockets of the country, but not in every region. And if you can draw an analogy, you can very well visualize how this can work in the consumer's interest.

When you look at the liberalization of the telecommunications sector, now, as an end user, you do have a choice to subscribe to one or the other service provider. And because of that very model, you get a very competitive price. Something similar is also envisioned in the power sector: as a consumer, you shall have a choice from whom you want to buy electricity.

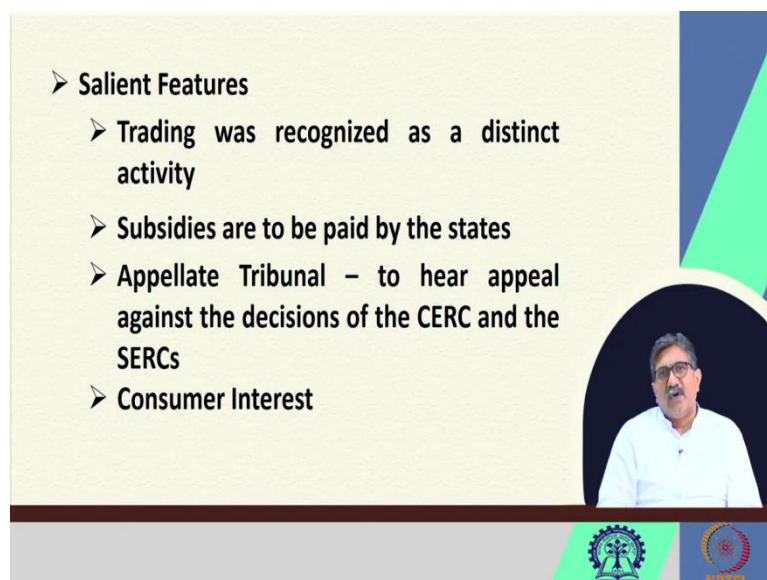
And it is being imagined, visualize that this will bring necessary competition and that competition will cater the interest of the consumer. It was also suggested that there shall be a mandatory metering of all the supplies because, as I said that that was one of the loopholes under the law.

Now it was said that let net metering be sort of compulsory. There can be variations in the tariff, but then it is essential to know what kind of consumption is taking place with which set of consumers. And another important milestone is a multiyear tariff wherein the investor, the

one who is investing in this segment, is aware of the fact that what shall be the return over a period of time. And it will also allow the distribution utility to plan accordingly.

So, a multiyear tariff, in a way brings in a win-win situation for all. It gives certainty and confidence to the generating units that this will be the return. It also provides the necessary space to the distribution utility to build a strategy. And prominently, it diminishes the possibility of unrealistic fluctuation of the tariff. Unless and until there is a situation of force majeure, some natural calamity taking place where that whatever has been agreed as a tariff cannot be adhered. So, a multiyear tariff is a phenomenal change which has been brought. And then the other one is the cross-subsidy surcharge on direct sale to consumers.

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➤ **Salient Features**

- **Trading was recognized as a distinct activity**
- **Subsidies are to be paid by the states**
- **Appellate Tribunal – to hear appeal against the decisions of the CERC and the SERCs**
- **Consumer Interest**

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So that the state need not be overburdened to bear the cost. Trading under this 2003 Act was recognized as one of the distinct activities, we have the power exchanges in India now, where the trading takes place. And, with the recognition of trading as a distinct activity, conflict of interest in this sector was also minimized.

Now, it is being known which entity has been given the authorization to trade in this electricity market. So that biasness can be removed. Obviously, this also will be dealing in modules to come. It is also suggested that subsidies are to be paid by the states. This is, in a way, putting an onus on the state that better you behave in a disciplined manner and make these state-owned utilities perform on a professional basis.

Otherwise, it will bring in undue financial problems for the states. So, in a way, an attempt was being made to bring in a sort of characteristic method for disciplining the errant

behaviors of the players. Earlier, it was suggested that the appeal from the decisions of the Electricity Regulatory Commission shall lie before the High Court.

Now, we know very well that our traditional judiciary is already overburdened, the docket is already full with pending cases. And infrastructural projects cannot bear the cost of prolonged litigation. 2003 Act suggested for introducing a new forum to take up the disputes related to this sector.

So, Appellate Tribunal was established under the 2003 law, which has been given the necessary jurisdiction to hear the appeal against the decisions of CERCs and the SERCs. The idea was to have a combination of both judicial as well as technical expertise to resolve the issue. And it was also suggested that such issues ought to be resolved in a speedier manner so that litigants need not wait for ages to get relief.

The new Act also promoted consumer interest. Because at the end of the day, this sector is addressing the needs of the consumer regardless of the categories of the consumers. So, the interest of the consumer was also considered to be a paramount interest under this law. Therefore, it is rightly indicated right in the preamble of the Act.

Very aptly, it has been said that one of the objectives of this law is to further the interests of the consumer. And in order to achieve these utilities, distribution utilities are being suggested to create a body of ombudsman, and then there was a grievance redressal mechanism to be brought in by Regulatory Commission. So, enough provisions were being made to advance the consumer interest under the law.

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➤ **Changes brought -**

- **Multi-Buyer Model**
- **SEBs was dismantled**
- **Regulatory Commission - tariff setting, standards setting, monitoring the performance of utilities**
- **Rural Electrification**
- **Grievance Redresaal Mechanism for consumers**

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So, from the single buyer model, the 2003 Act has institutionalized the multi-buyer model. Now, the buyer has a choice, the seller also has a choice to whom to sell and from whom to buy. Now, there are different players in the market. So, it is not needed, that the generating utility is owned by the state and it is to be also sold to the distribution utility, which is owned by the state.

Now multi-buyer model has generated genuine hope in the sector. Electricity boards were dismantled, and regulatory commissions were being asked to continue to do the job of tariff setting. They were also being asked to lay down the standards which are to be followed by the players of the market.

Because as I said, if the generation has become delicensed activity, that does not mean that they will not follow any specification. So, they will have to follow certain standards. And that is why it is the responsibility of the regulatory commission to come up with the standards for the grid and transmission segments. And then regulatory commission has also been given the responsibility of monitoring the performance that how the different players are following the rules.

If not, intervene and make the necessary course corrections. 2003 Act very aptly cater the balance of the industry and also the citizen of the country. I would say citizen because the very focus on rural electrification is not primarily driven by the fact of the consumer. It is attempted that everyone should get electricity, and that is why a special emphasis has been made on rural electrification.

So, the industry is being taken care of, the consumer is being taken care of, as well as I would say citizens also is being taken care. The citizen here, what I mean to convey is with the idea of detaching it from paying ability. And as I said that, the law also introduced the necessary redressal mechanism for the consumer.

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So, this is what, in a way, the 2003 Act attempted to address. There was a clear obligation to develop the industry; it was suggested that let there be more competition in the market. So that will advance the interest of the consumer. And then, Power for All was also the agenda, aim, and objective so that no one shall be deprived, no region shall be deprived of electricity.

As I said in one of my sessions, that right to access electricity can very well be linked with the fundamental rights guaranteed under the Constitution. And then it was also suggested that the necessary promotion should be given to renewables. That is also, is the mandate of the law. And it was suggested that let there be a transparent subsidy policy so that one set of consumers should not unnecessarily get burdened at the cost of others. And that's why it was suggested that let there be a rationalization of tariff so that every category is a burden as per the capacity.

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➤The Industry grew substantially

➤Generation and Transmission sectors showing substantial growth

➤Distribution Sector currently lagging behind- but policies are on the anvil to promote it.

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2003 Act certainly brought in necessary facelift, necessary improvement in the sector, particularly the two segments that witnessed substantial improvement in generation and the transmission sector. A good amount of investment has happened in the generation segment. There is a lot of improvement on functional aspect, on the technical aspect of the transmission licensee. But then, as I said, the distribution segment is still lagging behind and now, the government has proposed a change, so that segment also matches up with the other two segments.

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➤Due consideration given to Renewable Energy
Incorporation into main stream power sector

➤Mooted the Idea of Captive Power Plant,
Parallel Licensing, Renewable Purchase
Obligation

➤Provided pathway for Power Trading

➤Promoted Open Access

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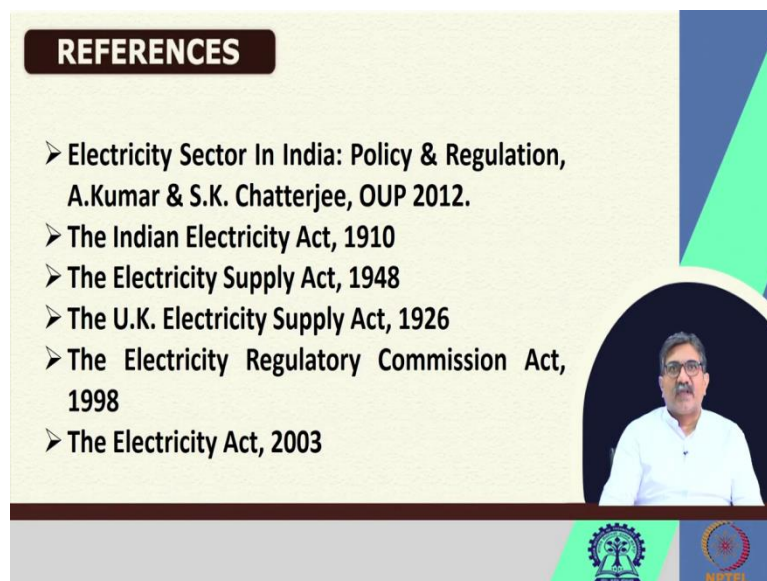
Now, though the electricity act largely deals with thermal or hydro-based electricity, but then there is also a reference of renewable energy that the regulatory commission has been given

the necessary responsibility to promote generation through renewables. And in recent time, it has been seen that this very objective of the law is aggressively followed by the regulatory commission.

Here, let me also inform you that there is a draft Renewable Energy Act also, perhaps with this idea, that the renewable segment requires a focused approach. And for that, a separate law is needed, but that is still a draft; it has not been brought into force. I will also be dealing with the salient feature of that law in due course of time.

So, this 2003 Act brought the captive power plant in a prominent role. It has given the structuring to renewable purchase obligation, it has provided for parallel licensing, and it has also made open access a reality which will be a subject matter of discussion in the coming sessions.

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REFERENCES

- Electricity Sector In India: Policy & Regulation, A.Kumar & S.K. Chatterjee, OUP 2012.
- The Indian Electricity Act, 1910
- The Electricity Supply Act, 1948
- The U.K. Electricity Supply Act, 1926
- The Electricity Regulatory Commission Act, 1998
- The Electricity Act, 2003

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These are the references for module one, and with this, I conclude the session on module one. Thank you very much.