

Press Brief

India prepares for a change in Electricity sector through Proposed Electricity (Amendment) Bill 2020

Electricity is one of the most critical components of infrastructure which is essential for sustained growth of the economy of the country. While we have made significant improvements in the electricity generation and transmission segments, the distribution segment, having achieved 100% village electrification and near-universal access to electricity, is beset with problems of operational inefficiencies, liquidity, and financial solvency. In this regard Ministry of Power had prepared a draft proposal for Amendments in Electricity Act 2003 in the form of draft Electricity (Amendment) Bill 2020 with the following broad objectives –

- Ensure consumer centricity
- Promote Ease of Doing Business
- Enhance sustainability of the power sector
- Promote green power

However, some canards and misconceptions are being spread regarding some of the proposed amendments to the Electricity Act. It is important to place the correct position pertaining to them.

Misconception 1: Transfer the power of appointment to SERCs from State to Central Government

There is no proposal to take away the power of appointment of Members/Chairpersons of State Electricity Regulatory Commissions from the State Governments. As per the draft circulated the appointments of Members/Chairpersons of the State Electricity Regulatory Commissions will continue to be made by the State Governments. The Selection Committee currently has equal number of members from the Central and State Government – one member from Central Government and one from State Government. The proposed Selection Committee in the draft Bill also has equal number of members from the Central and State Governments as earlier. The only difference is that instead of the of the Selection Committee being presided over by a retired Judge of the High Court, it is proposed that the committee be headed by a sitting Judge of the Supreme Court. Instead of multiplicity of Selection Committees, there be one

Selection Committee for drawing up of panels for the vacancies in the Central Electricity Regulatory Commission and State Electricity Regulatory Commissions. The appointments will continue to be made by Central Government for the Central Electricity Regulatory Commission and by the State Governments for the State Electricity Regulatory Commissions as before. The reason for this proposed amendment was that currently every State had to constitute a separate Selection Committee for each fresh vacancy and this took time. In some cases the time taken for appointment was up to 2 years leading to disruption of work of the Regulatory Commission. Regulatory Commissions are the fulcrum around which the Power sector revolves. Delay were deleterious for the various stake holders such as consumers, Discoms, and generators etc. However, based on the suggestions received, the Central Government is now considering to continue with the existing separate Selection Committees for each state – but make them Standing Selection Committees so that there is no need for constituting them afresh every time a vacancy occurs. The Selection Committee will continue to have equal number of members from the State and Central Governments, as earlier with the only difference that it will now proposed to be presided by the Chief Justice of the High Court of the state.

Misconception 2: DBT is against the interests of consumers

Another misconception is that the proposed provisions for introducing the system of Direct Benefit Transfer (DBT) of subsidies is inimical to the interest of the consumers especially the farmers. It has been argued that if the State Government is not able to pay the subsidies on time, the electricity supply to the consumers may get disconnected. This is baseless. As per Section 65, of the Electricity Act, 2003, the State Government is required to pay the amount of subsidy in advance to the distribution companies. The subsidy is now being proposed to be given into the account of the consumers maintained by the Distribution Companies through DBT. It is being provided in the new Tariff Policy that the electricity supply shall not be discontinued even if the State Government is unable to pay the subsidy in time or even if the State Government fails to pay the subsidy for 3 to 4 months. Therefore, the consumer's interest will be duly protected. It is, of course, expected that the State Government pay the subsidy in advance to the DISCOM/consumers as provided for in the law. It may be noted that the Direct Benefit Transfer will be beneficial for both the State Governments and as well as Distribution Companies. It will be beneficial for the State Government because it will ensure that the

subsidy reaches the people who are actually entitled and the State Government gets clear accounts of the amount given as subsidy. It will benefit the distribution company by making sure that the subsidies due are received as per the number of beneficiaries. It may be noted that Government of India have implemented Direct Benefit Transfer for 419 Schemes pertaining to 56 Ministries with cumulative savings of Rs. 1.70 lac crore.

Misconception 3: Power to set retail power tariff is being transferred from State to Central Government

Another misconception is that currently the State Governments fix tariff for retail supply of electricity to consumers and this is proposed to be taken over by the Central Government. This is again absolutely baseless. Presently, the tariff is determined by the State Electricity Regulatory Commission and no change has been proposed in the present arrangement.

The other major amendments proposed in the Electricity Act are as follows.

Sustainability

- (i) **Cost reflective Tariff:** To eliminate the tendency of some Commissions to provide for regulatory assets, it is being provided that the Commissions shall determine tariffs that are reflective of cost so as to enable Discoms to recover their costs. It is estimated that the total regulatory asset, ie revenue due to a Discom but not collected because appropriate tariff increase was not given, in the country is about Rs. 1.4 lakh crore.
- (ii) **Establishment of adequate Payment Security Mechanism for scheduling of electricity** - It is proposed to empower Load Dispatch Centres to oversee the establishment of adequate payment security mechanism before dispatch of electricity, as per contracts.

Late payment of dues of generating and transmission companies have reached unsustainable levels. As of 31.03.2019, the payables to the Gencos and Transcos were Rs. 2.26 lakh crore. This not only impairs the finances of the Gencos and Transcos making it difficult for them to pay for fuel and other

expenses but also has a debilitating impact on the Banks. If liquidity is not maintained, the power sector can collapse. Thus, it is in our collective interest to put in place systems for ensuring timely payments. That is why it is being provided that electricity shall not be scheduled or despatched unless security of payment has been established.

Ease of Doing Business

- (iii) **Cross Subsidy:** At present, the Act provides for the State Commissions to progressively reduce cross subsidies. Despite the requirement of the Tariff Policy to reduce cross-subsidies to within 20% of average cost of supply, they are in excess of 50% in some States making industries uncompetitive. The Bill provides for the SERCs to reduce cross subsidies as per the provisions of the Tariff Policy. The Tariff Policy is prepared after consultation with the all stakeholders and the views of the State Governments are taken into consideration before finalising its provisions. It is noteworthy that there is no proposal to eliminate cross subsidy.
- (iv) **Establishment of Electricity Contract Enforcement Authority:** CERC and SERCs do not have powers to execute their orders as decree of a civil court. An Authority headed by a retired Judge of the High Court is proposed to be set with such powers including but not limited to powers of attachment and sale of property, arrest and detention in prison and appointment of a receiver to enforce performance of contracts related to purchase or sale or transmission of power between a generating company, distribution licensee or transmission licensee. This will enhance sanctity of contracts and spur much needed investment in the power sector.

Renewable and Hydro Energy

- (v) **National Renewable Energy Policy:** For environmental reasons, it is in our long term interest to promote green power. India is a signatory to the Paris Climate Agreement. It is therefore proposed to have a separate policy for the development and promotion of generation of electricity from renewable sources of energy.
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- (vi) It is also proposed that a minimum percentage of purchase of electricity from hydro sources of energy is to be specified by the Commissions.
- (vii) **Penalties:** It is being further proposed to levy penalties for non-fulfilment of obligation to buy electricity from renewable and/or hydro sources of energy.

Miscellaneous

- (viii) **Strengthening of the Appellate Tribunal (APTEL):** It is proposed to increase the strength of APTEL its strength of Members, apart from the Chairperson, to at least seven to facilitate quick disposal of cases. It may be noted that there are a large number of cases pending in APTEL at present. To be able to effectively enforce its orders, it is also proposed to give it the powers of High Court under the provisions of the Contempt of Courts Act.
- (ix) **Penalties:** In order to ensure compliance of the provisions of the Electricity Act and orders of the Commission, section 142 and section 146 of the Electricity Act are proposed to be amended to provide for higher penalties.
- (x) **Cross border trade in Electricity:** Provisions have been added to facilitate and develop trade in electricity with other countries.
- (xi) **Distribution sub-licensees:** To improve quality of supply, an option is proposed to be provided to Discoms to authorise another person as a sub-license to supply electricity in any particular part of its area, with the permission of the State Electricity Regulatory Commission.

It may be noted that provisions relating to Distribution Franchisee already exist in the Act and are being successfully used by Distribution Companies to improve performance and enhance efficiencies. These are enabling provisions for use by DISCOMs / States which want to give out some areas to Franchisees / Sub-licensees. It has been ensured that Distribution Sub Licensee remains under regulatory control and jurisdiction to protect interest of consumers.

