

**‘Power Game’  
Critical Analysis on Electricity Amendment Bill, 2020**

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**ABSTRACT:**

Electricity is one of the most critical components of infrastructure which is essential for sustainable growth of the Indian economy. The Electricity Amendment Bill 2020, recently drafted by the Union power ministry will amend the Electricity Act 2003. The Indian government aims for sustainable, affordable and reliable energy by 2020. To achieve this mission, the government has recently announced to make certain amendments to the Electricity Act 2003.

India is the world’s third-largest consumer and producer of electricity. The power sector in India is governed by the Ministry of Power. It has requested the stakeholders to provide their comments and suggestions on the Amendment Bill within (21) twenty-one days i.e., by or before 8 May 2020. Electricity is a concurrent subject in List III at Entry 38 of the seventh Schedule<sup>1</sup>. The pillars of the power sector are Generation, Transmission, and Distribution. As far as the generation of power is concerned it is divided into three sectors: Central Sector, State Sector, and Private Sector.

In this article, an attempt has been made to discuss in detail various amendments proposed by the Union Government in the Electricity Amendment Bill, 2020. And understanding the effects by comprehending its opportunities (benefits) and obstacles (hindrances).

**KEYWORDS:**

Ministry of Power, Amendments, ECEA, APTEL, RPO, HPO, Sustainable growth, Payment security, Cross border trade, Tariff, National Renewable energy policy, Cross Subsidy, Federalism.

**KEY AMENDMENTS PROPOSED:**

**[1] Setting up of Electricity Contracts Enforcement Authority<sup>2</sup>:**

Electricity Act 2003 dealt only with the supply and purchase of electricity but failed to address the issues regarding the enforcement of a contract, hence there arose a need for Electricity Contracts Enforcement Authority (ECEA). Realizing its limitations and

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<sup>1</sup> Constitution of India.

<sup>2</sup> Section 109A, Electricity Act, 2003.

understanding that the strength of contracts enables investment in the electricity sector. Ministry of Power (MoP) proposed this amendment. ECEA have to dispose of a matter within 120 days from the date of its receipt. The orders of the Electricity Authority will be executable as a decree of a civil court.

ECEA has sole jurisdiction or authority to adjudicate matters related to specific performance of contracts related to purchasing or sale of power, between generating companies and distributing companies, and matters regarding sale, purchase and transmission of electricity. Section 109C<sup>3</sup> deals with the Composition of Electricity Contract Enforcement Authority. The decision of the ECEA can be challenged in the Appellate Tribunal for Electricity (APTEL) and subsequently, in the Supreme Court.

APTEL is proposed to have the powers of a High Court to deal with wilful disobedience of persons and entities under the Contempt of Courts Act, 1971<sup>4</sup>

### **[2] Payment Security Mechanism for Scheduling of Electricity:**

A strapping system to enforce compliance with payment security mechanism has been a major pressure point for the power industry and has led to a huge pool of unpaid dues to generators, this has caused a lot of stress in the sector.

The Amendment Bill provides that *"no electricity shall be scheduled or despatched under such contract unless adequate security of payment as agreed upon by the parties to the contract, has been provided"*<sup>5</sup>.

The dispatch of electricity is being undertaken by the load dispatch centre through the process of scheduling. The Amendment Bill proposes to empower the load dispatch centres to administer the establishment of adequate payment security mechanism before scheduling dispatch of electricity as per the relevant contracts. Creation of such a payment security mechanism is proposed to be made mandatory keeping in view the sanctity of contracts unless it is waived by the parties to the contract themselves.

### **[3] Cost Reflective Tariff:**

The Draft Bill Amended Section 62<sup>6</sup> which says *"Provided that the Appropriate Commission shall fix tariff for the retail sale of electricity without accounting for a subsidy, which, if any, under section 65 of the Act, shall be provided by the government directly to the consumer;"*

It proposed a system where State Electricity Regulatory Commissions will hereafter declaring tariffs considering subsidies, reflecting the true cost of production of every unit of power produced and supplied to the consumer.

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<sup>3</sup> Electricity amendment bill, 2020.

<sup>4</sup> Amendment of Section 121 of the Principle act.

<sup>5</sup> Section 28 clause (a) of sub-section (3), Electricity Act, 2003.

<sup>6</sup> Section 63 sub-section (1) after clause (d), Electricity Act, 2003.

The State governments can pay the subsidy<sup>7</sup> per unit to consumers similar to LPG cylinder, as the consumer pays the bill first and the subsidy amount is deposited in their accounts on a later date.

The time limit for the adoption of tariff is proposed to prevent the cost escalation because of the lazy attempts to adopt the tariffs by the commission. *“The Appropriate Commission shall, after receipt of application complete in all respects, adopt the tariff so determined under subsection (1), in a timely manner but not later than sixty days from the date of application”<sup>8</sup>*

#### **[4] Cross Border Trade of Electricity:**

The draft bill introduced section 49A<sup>9</sup> which says *“(1) The Central Government may prescribe rules and issue guidelines for allowing and facilitating cross border trade of electricity in accordance with the provisions of this Act. (2) The Central Government may require the Central Commission to make regulations for cross border trade of electricity.”*

#### **[5] National Renewable Energy Policy:**

National Renewable Energy Policy<sup>10</sup> (NREP) is to promote the generation of electricity from renewable sources. The policy may also prescribe a minimum percentage of purchase of electricity from renewable sources of production to the states. Amendment to Section 86<sup>11</sup> makes it mandatory for State Commissions to follow directions given in Policy to purchase a minimum percentage of electricity from renewable and hydro sources of energy. The Amendment proposes special attention to hydropower<sup>12</sup>.

#### **[6] Penalty for failure to comply with the Renewable Purchase Obligation (RPO) and Hydro Electricity Power Obligation:**

Penalties were proposed to ensure strict compliance of the provisions of the Electricity Act and orders of the commission. This could be a major boost to the renewable sector, for non-compliance with the renewable and hydropower purchase obligations. *“for the word “lakh”, the word “crore” shall be substituted;”<sup>13</sup> and “for the words “to six thousand rupees”, the words “upto one lakh rupees” shall be substituted.”<sup>14</sup> and “for the words “lakh”, the word “crore” and for the words “five thousand rupees”, the words “one lakh rupees” shall be substituted<sup>15</sup>”.*

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<sup>7</sup> Section 65, Electricity Amendment bill, 2020.

<sup>8</sup> Amendment of Section 63 by inserting subsection (2)

<sup>9</sup> Section 49A (1) and (2), Electricity Act, 2003.

<sup>10</sup> Section 3A is inserted following the amendment bill to the principle act.

<sup>11</sup> Section 86 (1) (e), Electricity Act, 2003

<sup>12</sup> Section 86(1)(e) “After the words “from renewable”, the words “and hydro” shall be inserted”.

<sup>13</sup> Amendment to Section 142(1).

<sup>14</sup> Ibid.

<sup>15</sup> Amendment to section 146.

<p>Increase in a penalty under Section 142</p>	<p>Penalty for non-compliance with the directions of the Appropriate Commission</p> <ul style="list-style-type: none"> <li>• Under the Electricity Act: up to INR 1,00,000.</li> <li>• Proposed increase under the Amendment Bill: up to INR 1,00,00,000.</li> </ul>	<p>Additional per day penalty in case of continuing non-compliance</p> <ul style="list-style-type: none"> <li>• Under the Electricity Act: up to INR 6,000</li> <li>• Proposed increase under the Amendment Bill: up to INR 1,00,000</li> </ul>
<p>Increase in a penalty under Section 146</p>	<p>Penalty for non-compliance of orders or directions under the Electricity Act</p> <ul style="list-style-type: none"> <li>• Under the Electricity Act: up to INR 1,00,000.</li> <li>• Proposed increase under the Amendment Bill: up to INR 1,00,00,000.</li> </ul>	<p>Additional per day penalty in case of continuing non-compliance</p> <ul style="list-style-type: none"> <li>• Under the Electricity Act: upto INR 5,000</li> <li>• Proposed increase under the Amendment Bill: upto INR 1,00,000</li> </ul>

**[8] Open access:**

Open access is essential to bring competition in the electricity sector, whereby large consumers have access to the transmission and distribution (T&D) network to obtain/access electricity from suppliers other than the local distribution company (Discom).

Under the Electricity Act, 2003 open access can be granted to a consumer on the payment of surcharge and wheeling charges as determined by the relevant State Commission.

However, such charges do not include charges for intrastate transmission and inter-state transmission of power. Given this, the Amendment Bill proposes to add such transmission charges, wherever applicable, to the existing charges (i.e. surcharge and wheeling charges)

Open access surcharge and cross-subsidies will be “*progressively reduced*”<sup>16</sup> by the state commission according to the tariff policy according to the proposed amendment.

Section 42 of the Electricity Act envisaged reduction in cross-subsidy as per the discretion of the relevant State Commission, however, the Amendment Bill proposes “*charges for inter-state transmission, as determined by the Central Commission under section 38*”<sup>17</sup> It seeks to take away the discretion of the State Commission for determination of cross-subsidy and post amendment the State Commission will be bound to follow the mandate of the Central Government.

<sup>16</sup> Amendment of Section 42 for the third proviso to sub-section (2).

<sup>17</sup> Amendment of Section 42, Subsection (2) of the Principle Act.

**[9] The Distribution sub-licensee and Franchisee:**

Amendment of section 14 of the principal Act for the seventh proviso, provisions were added that a franchisee shall not be required to obtain any separate license from the appropriate State Commission and such distribution licensee shall continue to remain responsible for the distribution of electricity in its area of supply, and sub-licensee shall not be required to obtain any separate license from the appropriate State Commission.

**[10] National Load Despatch Centre<sup>18</sup>:**

NLDC shall be responsible for optimum scheduling and dispatch of electricity in the country across different regions by the contracts entered into with the licensees or the generating companies; exercise supervision and control over the inter-regional and interstate transmission network, and have overall authority for carrying out real-time operations of the national grid.

Authority of National Load despatch centre is amplified for every Regional Load Despatch Centre, State Load Despatch Centre, licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the National Load Despatch Centre.

**CRITICAL ANALYSIS:**

Employees of power utilities of the State have been vehemently opposing the bill and various state governments<sup>19</sup> opposed the bill and Telangana Chief Minister K.Chandrashekar Rao labelled this as a '**Draconian Bill**'<sup>20</sup> and said it is against the spirit of Federalism.

On the Other hand, Union Government braces this Bill and vocalize that the electricity sector is seized with few critical issues which have weakened the commercial and investment activities in the electricity sector that needs to be addressed immediately to ensure sustainable growth of India. It has been felt that the few provisions of the principle act are not able to cope with the rapid development of the electricity sector.

**Reasons to Support:**

(1) End of Cross Subsidy benefits:

The Direct Benefit Transfer System in the power sector reduces the power subsidy burden on the state governments and also aids in making electricity tariffs more economical.

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<sup>18</sup> Amendment of Section 26 of the principal act. Subsections were inserted.

<sup>19</sup> Telangana, Tamil Nadu and Maharashtra.

<sup>20</sup> 'Telangana to oppose draconian power amendment Bill' by Telangana today, Last Updated: 8th May 2020. 12:52 am <https://telanganatoday.com/telangana-to-oppose-draconian-power-amendment-bill>

At present, the state governments subsidise electricity tariffs of all households by laying more tariffs for commercial and industrial consumers. This in return affects the business activities and economic growth. Electricity charges would be lowered by transferring subsidy for the needy/ chosen category directly into the accounts of beneficiary consumers through the DBT platform.

In many states farmers are misusing the subsidy of electricity, In the State of Punjab, There is a scheme called ‘Pani Bachao Paisa Kamao’ where farmers have to install meters voluntarily in order to show that they are not wasting groundwater by using pumps excessively. Upon submission of such proof, they need not pay any power bill.

Hence this DBT can increase accountability in state governments and also from the farmers.

#### (2) Renewable energy and Sustainable Development:

The Amendment bill introduced New Renewable energy policy and focuses mostly on hydroelectricity and other forms of energy. This is a good move and prevents extension of fossil fuels and reduces dependents on thermal energy.

#### (3) Sanctity of Contracts and Timely payments:

Electricity Contracts Enforcement Authority (ECEA) is the need of the hour in the Electric sector and ensuring proper payment security mechanism helps in overall development of this sector and these two pressing issues are well addressed in this amendment.

#### (4) Cost reflective tariffs and metered system:

Cost reflective tariffs and the metered system helps in transparency in this sector and helps in reducing losses, tariff determined is not cost reflective and resulted in weakening the financial health of the distribution companies due to under-recovery of the prudent cost. It also hampers the transparency in cost-reflective tariff as mandated under the 2003 Act. These amendments were essential since the electricity sector has been growing with increasing non-government investments and structural changes.

#### (5) Competitive Bidding:

Timely adoption of tariff discovered under competitive bids as per section 63 of the Act is important to avoid cost escalations and impacts the sustainability of the project. Its propose is to address the time taken for adoption of tariff and identify a timeline for the same.

### **Reasons to Oppose:**

#### (1) End of Cross Subsidy:

Removal of Subsidy and Cross Subsidy is a very big concern. Centre’s move to allow for a transfer of subsidies through Direct Benefit Transfer has its defects as Subsidies for various

scale industries and Farmers have to pay the electricity bill first and receive the benefits later. Unlike LPG, Electricity Bills are much higher and various small and medium scale industries especially farmers are not in a position to pay the bills post-pandemic. Apart from ensuring food security, free power provides livelihood opportunities to a landless worker in rural areas.

State commission role in this is taken away and the mandate of the central commission has to be followed as per the new amendment to section 42.

Impact of removing these subsidies can affect farmers as states like Telangana, Andhra Pradesh, Punjab and Karnataka who currently get free electricity. Removing cross-subsidies adds burden on already-empty state coffers, with states not getting their dues from the Centre even during the pandemic.

#### (2) Penalties on RPO and HPO:

In Quasi-Federal Structure, state utilities would have to pay heavy penalties for contract failures. States which previously had various sources of supply to electricity now have to stick to RPO and HPO. Ultimately some states cant fulfill their election promises of providing electricity, if rates of these purchase obligations are higher, Further states have to pay penalties for not fulfilling the obligations. This is an overwhelming disappointment to the states.

#### (3) Privatization of Distribution:

The power minister announced that the eight union territories, which are under the administrative control of the federal government, will be privatised. High-income economies have privatised their electricity distribution businesses to promote competition and efficiency in the power sector. But this is a failure of the government to see that privatisation would in no way eliminate or reduce costs and the process of franchisee selection is in a manner of cherry-picking and private distributors are not going to be attentive in supplying to the rural sector due to subsidies and low revenue.

#### (4) Ambiguity:

The operational part of the Bill is to privatise DISCOMS through franchisees and then to introducing multiple licences. The Bill does not provide detailed functions, responsibilities and the modalities to appoint sub-licensees. ECEA, giving franchise or sub-licensing of existing distribution licenses to private players makes it difficult for the States to participate in dispute resolution, resulting in accountability issues.

#### (5) Complacency in Federal Spirit:

Even though electricity is a Concurrent subject, where both centre and state can make laws. The concurrent list is a device to avoid excessive rigidity to two list distribution. Thus, in the

words of Pyle, it is “*a twilight zone, as it were, for both the union and the states are competent to legislate in this field, without coming into conflict*”.

Even though our constitution reflects the leaning of constitution-makers towards a strong centre, taking away the power to have authority on one such important subject is debilitating the spirit of federalism.

Power Purchase Agreements (PPA) are in between the State and the power generating company and any interference by the centre will be inimical to the State’s interest. For Instance, the State of Andhra Pradesh scrapped Solar Power Purchase Agreements entered by the earlier government citing high rates, such decisions cannot be taken now. The decision making authority is taken away from the hands of the State.

National Load Dispatch Centre (NLDC) will have control over state transmission networks which overrides the state’s authority

The Act topples the powers of States in the management of generation, transmission and distribution of electricity by placing them in the hands of the Centre.

(6) Electricity Contract Enforcement Authority:

In *All India Power Engineers Federation v. Sasan Power Ltd & others* the Supreme Court headed by bench Kurian Joseph, Rohinton Fali Narima has held that “it is clear that the moment electricity tariff gets affected, the consumer interest comes in and public interest gets affected..... if there is any element of public interest involved, the court steps in to thwart any waiver which may be contrary to such public interest” But enforcing contracts which are against public interest in order to save DISCOMS, this will definitely fall under judicial review and creating a semi judicial body in the form of ECEA will delay this process.

## CONCLUSION

The timing of proposal of Electricity amendment bill, 2020 amidst the Covid-19 crisis is undeniably a lousy move. Even though state governments are asked to submit their suggestion within a dead-line, many state governments vehemently opposed this policy decision of union government. The question that falls on the states is how far the union government takes these suggestions and initiate changes. There are certainly some aspects which need to be clarified and addressed. The consequences of the privatization of Electricity in 7 Union territories and observations derived from it can be used as a tool for further policymaking. Principles of Cooperative Federalism have to be showcased in dealing in this matter.