Licensing under Electricity Act, 2003

Sections 12–24

1. Why licensing is needed

The Electricity Act, 2003 de-licensed **generation**, but kept some activities under licence because they directly affect public supply, infrastructure, safety, consumers and market control.

Under **Section 12**, licence is required for:

1. **Transmission** – carrying electricity through high-voltage lines.
2. **Distribution** – supplying electricity to consumers in an area.
3. **Trading** – buying and selling electricity as business.

So, **generation does not require licence**, but transmission, distribution and trading generally require licence.

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2. Exemption from licence — Section 13

Section 13 allows exemption from Section 12.

In rural electrification, the following may supply electricity without licence:

1. Local authority
2. Panchayat institution
3. Users' association
4. Cooperative society
5. NGO
6. Franchisee

But exemption is not automatic. It must be based on:

1. recommendation of the Appropriate Government;
2. national policy or public interest;
3. conditions imposed by the Appropriate Commission.

Purpose: quicker rural electrification and wider access to electricity.

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3. Grant of licence — Section 14

Licence is granted by the **Appropriate Commission**, which may be:

1. CERC,
2. SERC, or
3. Joint Commission.

The Commission may grant licence for:

1. transmission,
2. distribution,
3. trading.

Deemed licensee

A deemed licensee means the law treats an entity as having licence even though it has not taken a fresh licence under the 2003 Act.

Important deemed/special categories:

1. Existing licensees under old electricity laws.
2. CTU and STU as deemed transmission licensees.
3. Appropriate Government if engaged in transmission, distribution or trading.
4. Damodar Valley Corporation.
5. Government companies formed after unbundling of State Electricity Boards.
6. Franchisee of a distribution licensee.
7. Rural distributed generation and distribution entities.
8. Distribution licensee undertaking trading need not take separate trading licence.

Parallel distribution licensing

More than one distribution licensee may operate in the same area. This promotes consumer choice, competition and better tariff discipline.

4. Procedure for grant of licence — Section 15

The applicant must apply in the prescribed form, manner and fee.

Main steps:

1. Applicant files application before Appropriate Commission.
2. Applicant publishes notice within **7 days**.
3. Objections must be considered if received within **30 days**.
4. If defence-sensitive areas are involved, Central Government no-objection is needed.
5. For transmission licence, copy must be sent to CTU/STU.
6. CTU/STU may give recommendations within **30 days**, but these are not binding.
7. Commission must publish notice before granting licence.
8. Commission should decide within **90 days** as far as practicable.
9. Rejection must be with written reasons and after hearing the applicant.
10. Licence is normally valid for **25 years**, unless revoked earlier.

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5. Conditions of licence — Section 16

The Appropriate Commission may impose:

1. **General conditions** – applicable to all licensees or a class of licensees.
   Example: safety standards, reporting duties, grid compliance.
2. **Specific conditions** – applicable to a particular licensee.
   Example: complete a transmission line by a fixed date.

The Commission is not only a licence-granting authority; it also continuously monitors licensees to protect public interest, prevent monopoly and ensure compliance.

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6. Licensee not to do certain things — Section 17

A licence is not an ordinary private asset. A licensee cannot freely transfer or restructure it.

Without prior approval of the Appropriate Commission, a licensee cannot:

1. acquire another licensee's utility;
2. merge its utility with another licensee's utility;
3. assign its licence;
4. sell, lease, exchange or transfer its utility or any part of it.

If such agreement is made without approval, it is **void**.

Reason: such transactions may affect supply, competition, public interest and consumer welfare.

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7. Amendment of licence — Section 18

The Commission may amend the licence in public interest.

Amendment may happen:

1. on application of the licensee; or
2. by the Commission on its own.

Normally, licensee's consent is required. But if the licensee unreasonably refuses consent, the Commission may still amend the licence in public interest.

Procedure:

1. notice must be published;
2. objections/suggestions must be considered within 30 days;
3. Central Government consent is needed for defence-sensitive areas.

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8. Revocation of licence — Section 19

Revocation means cancellation of licence after the licensee seriously fails in its duties.

Before revocation, two things are necessary:

1. enquiry;
2. public interest.

Grounds for revocation:

1. wilful and prolonged default under Act/rules/regulations;
2. breach of licence condition where licence says breach may lead to revocation;
3. failure to show capacity to discharge duties;
4. failure to deposit security, pay fees or charges;
5. weak financial condition making performance impossible.

Safeguards:

1. minimum **3 months' written notice**;
2. grounds must be stated;
3. licensee must be allowed to reply;
4. Commission may impose further conditions instead of revoking.

Cancellation vs Revocation

Cancellation usually means defect existed from the beginning.

Revocation means licence was valid initially, but later the licensee failed to perform or became unfit.

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9. Sale of utility after revocation — Section 20

After revocation, the electricity system should not collapse. So Section 20 provides for sale of utility.

Main points:

1. Commission invites applications to acquire the utility.
2. Highest and best offer may be accepted.
3. Commission may direct old licensee to sell the utility.
4. Past liabilities remain with old licensee; future obligations cease.
5. Commission may appoint an Administrator for interim operation.
6. Purchaser may operate utility even before formal sale is completed, if allowed by Commission.

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10. Vesting of utility in purchaser — Section 21

When utility is sold:

1. utility vests in purchaser free from old debts and mortgages;
2. old debts attach to the purchase money;
3. purchaser gets rights, duties and obligations of old licensee;
4. purchaser becomes deemed licensee.

So the purchaser gets both the physical assets and legal position of the old licensee.

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11. If no sale takes place — Section 22

If utility is not sold, the Commission may:

1. issue directions; or
2. prepare a scheme for operation of utility.

Purpose:

1. protect consumers;
2. ensure continuity of supply;
3. serve public interest.

If Commission does nothing, the old licensee may dispose of the utility. But if it fails to do so within **6 months**, the Commission may remove works from streets/public land and recover cost from the licensee.

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12. Directions to licensees — Section 23

Section 23 gives the Commission power to issue directions to licensees for:

1. efficient supply;
2. equitable distribution;
3. promoting competition.

Example: during shortage, Commission may direct priority supply to hospitals, water supply, essential services, etc.

Equitable distribution means electricity should not go only to profitable consumers; need and fairness must also be considered.

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13. Suspension of distribution licence — Section 24

Section 24 applies only to **distribution licensees**.

Licence may be suspended if the distribution licensee:

1. persistently fails to maintain uninterrupted supply as per quality standards;
2. is unable to discharge its duties;
3. persistently defaults in following Commission directions;
4. breaches licence terms and conditions.

Important safeguards:

1. reasons must be recorded in writing;
2. reasonable opportunity of hearing must be given;
3. suspension cannot exceed **one year**;
4. Administrator may be appointed.

Within one year, the Commission must either:

1. revoke the licence; or
2. end suspension and return utility to licensee.

Suspension vs Revocation

Suspension is temporary and corrective.

Revocation is final and leads to sale/transfer of utility.

Important Case Law Points

1. Odisha Distribution Case, 2006

Licences of Odisha discoms were suspended under Section 24. Tribunal held that procedure was defective because the Commission appeared to have made up its mind before issuing notice. Proper notice and real opportunity of hearing are necessary.

Principle: Natural justice must be followed before suspension.

2. Odisha Follow-up Case, 2017

After proper procedure, inquiry and performance review, revocation of discom licences was upheld.

Principle: If procedure is properly followed and public interest is affected, revocation is valid.

3. Transmission Licence Delay Case

Transmission licensee delayed project. Force majeure was pleaded due to Telegraph Act permission issues, but even after extension the licensee failed to act seriously.

Principle: Delay in important transmission project may justify revocation.

4. NTPC Vidyut Vyapar Nigam Case

NTPC subsidiary claimed deemed licensee status. Court rejected it because the company was not formed through SEB unbundling.

Principle: Deemed licence provisions are interpreted strictly.

5. SI Electrical Power Case

Challenge was made against non-notification of certain areas as rural areas. Court held this is a policy decision.

Principle: Courts usually do not interfere with policy decisions on rural area notification.

6. Section 23 and Generating Companies Case

Court held Section 23 directions apply only to licensees, not generating companies, because generation is de-licensed and belongs to a separate part of the Act.

Principle: Section 23 cannot be used against generating companies.

7. Railways Case, 2012
Supreme Court held Railways need not obtain licence under Electricity Act for transmission/distribution within railway context because Railways Act is a special law.
Principle: Special law prevails over general law.

Transmission under Electricity Act, 2003

1. Meaning of Transmission
Transmission means carrying electricity from the generating station to another generating station, sub-station or load centre through high-voltage lines.
Simple chain:
Generation → Transmission → Distribution → Consumer
Electricity is usually generated at lower voltage, then stepped up for long-distance transmission to reduce losses, and later stepped down for distribution to consumers.
Transmission includes:

1. high-voltage lines,
2. overhead cables,
3. step-up and step-down transformers,
4. switchgear,
5. substations and related works.

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2. Why Transmission is Licensed
Generation is generally de-licensed under **Section 7**, but transmission requires licence under **Section 12**.
Under Section 12, no person can:

1. transmit electricity,
2. distribute electricity, or
3. trade in electricity,

unless authorised by licence under **Section 14** or exempted under **Section 13**.
Transmission is licensed because it affects:

1. grid stability,
2. safety,
3. supply continuity,
4. transmission losses,
5. open access,
6. market competition,
7. risk of blackout.

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3. Importance of Transmission
Generation alone is useless unless electricity can be transported to the place where demand exists.
Example:
If power is generated in Odisha but the transmission line to West Bengal or Delhi is congested, electricity cannot reach consumers properly.
Therefore, transmission is called the **backbone of the electricity system**.
It helps in:

1. evacuation of power from generating stations,
2. movement of power from surplus States to deficit States,
3. development of electricity market,
4. private investment in generation,
5. reliable supply to consumers.

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4. Transmission Congestion

Transmission congestion means the network does not have enough capacity to carry required electricity.

Simple example:

It is like a narrow road where too many vehicles are trying to pass.

Effects of congestion:

1. cheaper power may not reach buyers,
2. power plants may reduce generation,
3. cost of electricity may increase,
4. grid stability may be affected,
5. private generators may suffer.

So, transmission network must be expanded and decongested.

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5. Inter-State and Intra-State Transmission

Transmission is divided into two levels.

Inter-State Transmission

It means movement of electricity from one State to another. It is mainly connected with the **Central Transmission Utility**.

Intra-State Transmission

It means transmission within one State. It is mainly connected with the **State Transmission Utility**.

Simple distinction:

Type	Meaning	Main Institution
Inter-State transmission	Between States	CTU
Intra-State transmission	Within one State	STU

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6. Central Transmission Utility — Section 38

The **Central Transmission Utility** is notified by the Central Government.

Main functions of CTU:

1. undertake inter-State transmission,
2. plan and coordinate inter-State transmission,
3. develop efficient, coordinated and economical inter-State transmission system,
4. provide non-discriminatory open access,
5. not engage in generation or trading.

Simple meaning:

CTU plans and coordinates national/inter-State transmission.

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7. State Transmission Utility — Section 39

The **State Transmission Utility** is notified by the State Government.

Main functions of STU:

1. undertake intra-State transmission,
2. coordinate with CTU, generating companies, licensees, State Government and others,
3. develop efficient, coordinated and economical intra-State transmission system,
4. provide non-discriminatory open access,
5. not engage in trading.

Simple meaning:

STU plans and coordinates transmission within the State.

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8. Role of Central Electricity Authority — Section 34

Transmission is a technical activity. Therefore, transmission licensees must follow technical standards.

Under **Section 34**, every transmission licensee must comply with technical standards of operation and maintenance of transmission lines according to Grid Standards specified by the Authority.

The CEA ensures:

1. safety,
2. technical quality,
3. grid standards,
4. proper operation and maintenance,
5. prevention of accidents and failures.

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9. Duties of Transmission Licensee — Section 40

A transmission licensee has three main duties:

1. build, maintain and operate an efficient, coordinated and economical transmission system;
2. comply with directions of RLDC or SLDC;
3. provide non-discriminatory open access.

Simple meaning:

A transmission licensee must build the network, maintain it, obey grid directions and allow fair use of the system.

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10. Open Access

Open access means allowing eligible persons to use transmission lines or distribution system on payment of charges.

Under **Section 2(47)**, open access means non-discriminatory use of transmission lines or distribution system by licensees, consumers or generating companies.

Under **Section 40**, transmission licensee must provide open access to:

1. licensees,
2. generating companies,
3. consumers when allowed under Section 42.

Simple meaning:

The owner of the wire cannot unfairly block others from using the network.

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11. Why Transmission Licensee Should Not Trade

Transmission must remain neutral.

If the same entity controls transmission and also trades electricity, it may favour its own trading business.

Statutory position:

1. CTU cannot engage in generation or trading.
2. STU cannot engage in trading.
3. Transmission licensee cannot engage in trading under Section 41.

Reason:

To prevent conflict of interest and protect non-discriminatory open access.

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12. Transmission Tariff

Transmission charges are regulated by the Appropriate Commission.

Relevant provisions:

1. **Section 61** – tariff principles,
2. **Section 62** – determination of tariff.

Purpose:

1. transmission licensee should recover reasonable cost,
2. consumers/users should not be overcharged,

3. tariff must remain fair and regulated.

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13. Safety in Transmission

Transmission involves high-voltage lines, so safety is very important.

Important provision: **Section 53**

It deals with safety measures for protecting:

1. public,
2. electricity workers,
3. property,
4. electrical lines and plants.

Transmission lines may cause danger to people, animals, buildings, trees and crops. Therefore, technical and safety standards must be followed.

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14. Right of Way

Right of Way means the right to use land for laying transmission lines and erecting towers.

It does not always mean full acquisition of land. The landowner may continue to own the land, but use of land is restricted.

Problems:

1. farmers may object,
2. tower area may become unusable,
3. trees/buildings may be restricted,
4. environmental clearance may be needed,
5. compensation disputes may arise.

Under **Section 67**, the licensee must cause minimum damage and pay compensation for damage, detriment or inconvenience.

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15. Load Despatch Centres

Load Despatch Centres manage real-time grid operation.

They are like traffic controllers of the electricity system.

Three levels:

1. **NLDC** – National Load Despatch Centre
2. **RLDC** – Regional Load Despatch Centre
3. **SLDC** – State Load Despatch Centre

Their role is to maintain balance between generation and consumption.

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16. National Load Despatch Centre — Section 26

NLDC works at national level.

Main function:

1. optimum scheduling and despatch of electricity among RLDCs,
2. national-level grid coordination,
3. no trading in electricity.

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17. Regional Load Despatch Centre — Sections 27–29

RLDC is the apex body for integrated operation of the power system in a region.

Functions under **Section 28**:

1. scheduling and despatch within region,
2. monitoring grid operation,
3. keeping accounts of electricity transmitted,
4. supervising inter-State transmission,
5. real-time grid control.

Under **Section 29**, RLDC directions must be followed.

Important rule:
First comply, then dispute.
Penalty for non-compliance may go up to **₹15 lakh**.

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18. State Load Despatch Centre — Sections 31–33
SLDC is the apex body for integrated operation of the power system in a State.
Functions under **Section 32**:

1. scheduling and despatch within State,
2. monitoring State grid operations,
3. keeping accounts,
4. supervising intra-State transmission,
5. real-time grid control.

Under **Section 33**, SLDC directions must be followed.
Penalty for non-compliance may go up to **₹5 lakh**.

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19. Scheduling and Despatch
Scheduling means deciding in advance how much electricity will be generated, transmitted and drawn.
Despatch means actual operational control of electricity flow according to schedule.
Example:
If a discom is scheduled to draw 500 MW but draws 600 MW, it is overdrawal.
Overdrawal affects grid frequency and may cause instability.

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20. Overdrawal and Injection
Overdrawal
Overdrawal means drawing more electricity than scheduled.
Effect:

1. grid frequency falls,
2. grid becomes unstable,
3. blackout risk increases.

Injection
Injection means putting electricity into the grid.
Unscheduled injection is also problematic because it disturbs scheduling, accounting and grid discipline.

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21. One Nation, One Grid, One Frequency
India gradually connected regional grids into one national grid.
The idea is that electricity should flow from surplus regions to deficit regions across the country.
Importance:

1. national reliability,
2. better use of surplus power,
3. support for power market,
4. reduction of regional shortage,
5. stronger grid stability.

Important Case Laws
1. Maharashtra State Electricity Power Trading Corporation v CERC
Concern was conflict of interest between trading activity and transmission/load despatch neutrality.
Principle:
Grid operators and transmission utilities must remain neutral. Trading interest may create bias.

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2. Vijay Ramchandra Agrawal v Power Grid Corporation
Landowner objected to transmission tower and high-voltage lines over his land.
Principle:
For transmission infrastructure, landowner's consent is not always necessary if statutory powers are validly exercised. Remedy is usually compensation.

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3. Delhi Transco Ltd. v CERC / DERC Context
Issue involved overdrawal and failure of SLDC to take effective action despite RLDC warnings.
Principle:
SLDC cannot remain passive. It must follow RLDC directions and protect grid stability.

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4. Simhapuri Energy Case
Two generating companies wanted to use common dedicated transmission line.
Principle:
Act does not prohibit common dedicated transmission line. Technical inconvenience cannot defeat statutory entitlement.

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5. Indo Rama Synthetics Ltd. v MERC
Involved inadvertent/unscheduled injection of electricity into the grid.
Principle:
Prior scheduling and communication are necessary. A generator cannot inject electricity without proper schedule and claim compensation as of right.

Distribution under Electricity Act, 2003

1. Meaning of Distribution
Distribution is the last stage in the electricity chain:
Generation → Transmission → Distribution → Consumer
Transmission brings electricity at high voltage to substations. Distribution begins after electricity is stepped down and supplied to final consumers such as houses, shops, industries, offices and agricultural users.
Distribution is therefore called the **last-mile supply system**.

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2. Distribution System
Under **Section 2(19)**, distribution system means the system of wires and associated facilities between the delivery point from transmission/generation and the consumer's premises.
It includes:

1. local wires,
2. feeders,
3. transformers,
4. meters,
5. service lines,
6. other supply facilities.

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3. Distribution Licensee
Under **Section 2(17)**, a distribution licensee is a licensee authorised to operate and maintain a distribution system for supplying electricity to consumers in its area of supply.
Main elements:

1. must have licence;
2. must operate and maintain distribution system;
3. must supply electricity to consumers;

4. must work within defined area of supply.

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4. Why Distribution is Important

Distribution is the most important revenue link in the electricity sector.
Generation produces electricity.
Transmission carries electricity.
Distribution collects money from consumers.
If DISCOMs are financially weak, they cannot pay generating companies and transmission licensees.
This affects the whole electricity sector.

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5. Distribution as the Weakest Link

Distribution is often called the weakest link because it suffers from:

1. high AT&C losses;
2. electricity theft;
3. poor billing and collection;
4. defective or no metering;
5. poor infrastructure;
6. political pressure on tariff;
7. cross-subsidy burden;
8. weak financial condition of DISCOMs.

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6. AT&C Losses

AT&C means **Aggregate Technical and Commercial Losses**.
It includes:

1. **Technical loss** – loss due to old wires, transformers, overloading, poor equipment.
2. **Commercial loss** – loss due to theft, wrong billing, defective meters, non-payment.

Example:
If DISCOM buys 100 units and receives payment for only 75 units, then 25 units are lost as AT&C loss.
High AT&C loss weakens DISCOM finances.

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7. Distribution is Licensed Activity

Under **Section 12**, no person can distribute electricity unless authorised by licence under **Section 14** or exempted.
Distribution requires licence because it directly affects:

1. consumers,
2. billing,
3. metering,
4. tariff,
5. public supply,
6. safety,
7. consumer protection.

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8. Area of Supply

A distribution licensee operates only in a specified geographical area called **area of supply**.
It may be:

1. municipal area,
2. revenue district,
3. industrial area,
4. urban area,
5. other notified area.

The licensee's duties are limited to its licensed area.

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9. Cross-Subsidy

Cross-subsidy means one class of consumers pays more so that another class pays less.

Example:

If actual cost is ₹5 per unit:

1. agricultural/domestic consumer may pay ₹3 or ₹4;
2. industrial/commercial consumer may pay ₹6 or ₹7.

The higher-paying consumer subsidises the lower-paying consumer.

Purpose

Cross-subsidy helps poor, rural and agricultural consumers get affordable electricity.

Problem

If industrial consumers leave the DISCOM through open access, the DISCOM loses high-paying consumers and becomes financially weaker.

So cross-subsidy should be reduced gradually, not suddenly removed.

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10. Parallel Licensing

Parallel licensing means two or more distribution licensees may operate in the same area.

Under the **sixth proviso to Section 14**, the Appropriate Commission may grant licence to more than one person for distribution of electricity in the same area through their own distribution system.

Purpose

1. consumer choice;
2. competition;
3. better service;
4. competitive tariff;
5. efficiency;
6. pressure on existing DISCOM to improve.

Example:

Like telecom consumers can choose Jio, Airtel or BSNL, electricity consumers may also get supplier choice.

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11. Parallel Licence is Not Automatic

Parallel licence is not a matter of right.

The Commission must consider:

1. capital adequacy;
2. creditworthiness;
3. code of conduct;
4. infrastructure capacity;
5. consumer interest;
6. ability to meet universal service obligation.

Important point:

Existing licensee in the area is not by itself a ground to refuse a second licence. But the applicant must satisfy legal and regulatory conditions.

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12. Cherry-Picking

Cherry-picking means selecting only profitable consumers and avoiding loss-making consumers.

Example:

A new licensee supplies only malls, factories and industries, but avoids villages, poor households and agricultural consumers.

This is dangerous because the old DISCOM may be left only with subsidised consumers and may become financially weak.

So regulators must prevent selective profit-taking.

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13. Universal Service Obligation — Section 43

Under **Section 43**, every distribution licensee must supply electricity to the owner or occupier of premises within one month of receiving a complete application.

This is called **universal service obligation**.

It means the licensee cannot supply only profitable consumers. It must supply all eligible applicants in its area.

Important points:

1. owner or occupier can apply;
2. tenant can also apply;
3. application must be complete;
4. supply must normally be given within one month;
5. penalty may be up to ₹1,000 per day for default.

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14. Exceptions to Duty to Supply — Section 44

A distribution licensee is not bound to supply if prevented by events beyond its control, such as:

1. cyclone,
2. flood,
3. storm,
4. natural disaster,
5. other uncontrollable events.

But ordinary delay or negligence is not protected.

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15. Duties of Distribution Licensee — Section 42

Under **Section 42(1)**, every distribution licensee must:

1. develop distribution system;
2. maintain efficient system;
3. maintain coordinated and economical system;
4. supply electricity according to the Act.

Simple meaning:

A DISCOM must maintain wires, transformers, substations, meters and supply infrastructure.

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16. Open Access — Section 42

Open access means a consumer can use the distribution network to get electricity from another source.

Example:

A factory in DISCOM A's area buys electricity from Generator B, but uses DISCOM A's wires. This is open access.

Purpose:

1. consumer choice;
2. competition;
3. reduce monopoly;
4. allow large consumers to buy cheaper electricity.

Open access is introduced gradually by the State Commission.

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17. Wheeling Charges

Wheeling means carrying electricity through another licensee's network.

If a consumer uses the DISCOM's wires to receive electricity from another supplier, the consumer must pay **wheeling charges**.

Simple meaning:

Payment for using another person's wires.

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18. Cross-Subsidy Surcharge

When a high-paying consumer leaves local DISCOM and uses open access, the DISCOM loses cross-subsidy revenue.

So the consumer may have to pay **cross-subsidy surcharge**.

Purpose:

To compensate DISCOM for loss of cross-subsidy.

But this surcharge should be progressively reduced.

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19. Additional Surcharge

Additional surcharge is different from cross-subsidy surcharge.

It is paid to meet fixed costs of the DISCOM arising from its obligation to supply.

Example:

DISCOM may have already entered into long-term power purchase agreements expecting demand from consumers. If large consumers leave, DISCOM may still have fixed cost burden.

So:

1. **Wheeling charge** = charge for using wires.
2. **Cross-subsidy surcharge** = compensates loss of subsidy support.
3. **Additional surcharge** = compensates fixed cost burden.

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20. Captive Generation Exception

If a person has a captive generating plant and uses electricity for its own consumption, cross-subsidy surcharge is not leviable.

Example:

A factory generates electricity in its own captive plant and carries it to its own unit. It may pay network charges, but not cross-subsidy surcharge.

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21. Power to Recover Charges — Section 45

A distribution licensee may recover charges for electricity supplied.

Charges may include:

1. fixed charge;
2. energy consumption charge;
3. meter rent;
4. charges for electrical plant.

But charges must follow tariff principles and cannot be discriminatory.

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22. Recovery of Expenditure — Section 46

The State Commission may allow the distribution licensee to recover reasonable expenses for providing electric line or electrical plant.

Example:

If a new connection requires extension of line or installation of transformer, the DISCOM may recover reasonable cost.

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23. Security Deposit — Section 47

A distribution licensee may require reasonable security from consumers.

Purpose:

To protect against non-payment of electricity bills.

Security may be required for:

1. electricity charges;
2. electric line;
3. electric plant;
4. meter.

If consumer uses **pre-payment meter**, security for electricity consumption is generally not required.

24. Electricity Supply Code — Section 50

The State Commission must frame an Electricity Supply Code.

It deals with practical matters like:

1. billing,
2. recovery of charges,
3. disconnection,
4. restoration of supply,
5. meter tampering,
6. replacement of meters,
7. maintenance of lines,
8. consumer-licensee relationship.

Important Case Laws

1. Punjab State Electricity Board v Zora Singh

Electricity supply is a public utility service. A licensee must provide adequate and efficient service without unjust discrimination.

Principle:

Distribution licensee cannot act arbitrarily.

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2. Noida Power Company Ltd. v Paschimanchal Vidyut Vitran Nigam Ltd.

This case dealt with parallel licensing in the same area.

Principles:

1. parallel licence is legally possible;
2. existing licensee is not enough reason to refuse second licence;
3. applicant must satisfy capital adequacy, creditworthiness and statutory duties;
4. licence cannot be granted only on future promises.

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3. BEST v MERC / Tata Power Case

Consumers wanted to shift to Tata Power where BEST was already supplying.

Principle:

Consumer choice is recognised, but second licensee must develop its own network where required and cannot avoid universal service obligation.

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4. Sanjay Balvantrai Desai v Dakshin Gujarat Vij Company Ltd.

Issue: Whether new purchaser must pay old owner's electricity dues before getting connection.

Principle:

Earlier view: new purchaser should not automatically be denied supply for old dues unless law permits.

Safer current view after **K.C. Ninan**: if valid supply code requires payment of premises-related arrears, licensee may insist on compliance.

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5. Sarvottam Ispat Case

Issue related to prepaid meter and security deposit.

Principle:

If prepaid meter facility is available and consumer agrees to it, security for consumption should not be demanded. But if prepaid meter facility is not practically available, security deposit may be required.

Open Access under Electricity Act, 2003

1. Meaning of Open Access

Open access means **non-discriminatory use of transmission lines or distribution system by eligible users**.

Under **Section 2(47)**, open access means use of transmission lines, distribution system or associated facilities by:

1. licensees,
2. consumers, or
3. generating companies,

as per regulations made by the Appropriate Commission.

Simple meaning:

The owner of the wire cannot unfairly stop others from using the network if they are legally entitled and pay required charges.

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2. Why Open Access is Important

Open access introduces **competition** in the electricity sector.

Without open access, a consumer must buy electricity only from the local DISCOM. With open access, eligible consumers can buy electricity from another generator, trader or supplier by using the existing network.

It helps in:

1. consumer choice,
2. competition,
3. cheaper power procurement,
4. better electricity market,
5. use of surplus generation,
6. reducing monopoly of DISCOMs.

---

3. Simple Example

A factory is located in the area of **DISCOM A**, but wants to buy cheaper electricity from **Generator B**. Electricity still has to pass through transmission/distribution wires. Open access allows the factory to use those wires after paying charges.

So open access separates:

ownership of wire from **sale of electricity**.

---

4. Types of Open Access

A. Based on Geography

1. **Inter-State Open Access**
   Electricity moves from one State to another.
   Regulated mainly by **CERC**.
2. **Intra-State Open Access**
   Electricity moves within one State.
   Regulated by **SERC**.

B. Based on Duration

1. **Long-term access** – long duration.
2. **Medium-term open access** – intermediate duration.
3. **Short-term open access** – short duration.

In lecture terms:

1. Long-term: more than 12 years.
2. Medium-term: 3 months to 12 years.
3. Short-term: intra-day to 3 months.

---

5. Open Access in Transmission

Open access is recognised in transmission through:

1. **Section 38** – CTU must provide non-discriminatory open access to inter-State transmission system.
2. **Section 39** – STU must provide non-discriminatory open access to intra-State transmission system.
3. **Section 40** – transmission licensee must provide non-discriminatory open access on payment of transmission charges.

Simple point:

Transmission network must be available fairly to eligible users.

---

6. Open Access in Distribution — Section 42

Section 42 is the key provision for distribution open access.

The State Commission introduces open access in phases, subject to:

1. cross-subsidy,
2. operational constraints,
3. technical feasibility,
4. network capacity,
5. regulatory conditions.

Open access is not absolute from day one. It is introduced gradually because DISCOMs also have universal service obligations.

---

7. Open Access for Large Consumers

The Act initially focused on large consumers, especially those requiring supply above **1 MW**.

Reason:

1. they consume electricity in bulk,
2. they can participate in competitive power purchase,
3. they can manage metering, scheduling and settlement requirements.

Updated point: For **green energy open access**, the threshold has been reduced to **100 kW**, but for lecture/exam based on this note, remember **1 MW**.

---

8. Charges Payable in Open Access

Open access is not free. Different charges may apply.

A. Transmission Charges

Paid for using transmission network.

Example:

Generator in State A supplies power to consumer in State B through inter-State lines.

B. Wheeling Charges

Paid for using distribution network.

Example:

Consumer buys power from outside supplier but uses local DISCOM's wires.

Simple difference:

Charge	Meaning
Transmission charge	Use of transmission network
Wheeling charge	Use of distribution network

C. Cross-Subsidy Surcharge

This is paid by open access consumers to compensate the DISCOM for loss of cross-subsidy.

Example:

Industrial consumers pay higher tariff and support subsidised domestic/agricultural consumers. If industrial consumers leave DISCOM through open access, DISCOM loses that support.

So, cross-subsidy surcharge balances:

1. consumer choice, and
2. DISCOM's duty to supply subsidised consumers.

It should be progressively reduced.

D. Additional Surcharge

Additional surcharge compensates DISCOM for fixed costs arising from its obligation to supply.

Example:

DISCOM entered long-term power purchase agreements expecting demand from large consumers. If those consumers leave through open access, DISCOM may still have fixed cost burden.

Simple distinction:

1. **Cross-subsidy surcharge** = compensates subsidy loss.
2. **Additional surcharge** = compensates fixed cost/stranded capacity.
3. **Wheeling charge** = payment for using wires.

---

9. Captive Generation Exception

If a person has a captive generating plant and uses electricity for its own consumption, cross-subsidy surcharge is not payable.

Example:

A factory generates power in its own captive plant and carries it to its own factory. It may pay network charges, but not cross-subsidy surcharge.

---

10. Open Access and Universal Service Obligation

Under **Section 43**, DISCOMs have a duty to supply electricity to eligible applicants in their area.

Problem:

If profitable industrial consumers leave through open access, DISCOMs may be left with subsidised consumers.

Therefore, open access creates tension between:

1. competition and consumer choice, and
2. financial viability of DISCOMs.

Cross-subsidy surcharge and additional surcharge try to balance this tension.

---

11. Power Market and Power Exchange

Open access supports the power market.

A **power exchange** is a platform where electricity is bought and sold.

Important markets:

1. **Day-ahead market** – electricity is bought/sold one day before delivery.
2. **Real-time market** – electricity is bought/sold close to actual delivery.

Open access makes these transactions possible because electricity can move through the grid.

Simple formula:

Power exchange gives market platform.

Open access gives network route.

Load Despatch Centre gives operational control.

---

12. Scheduling, Deviation and Grid Discipline

Electricity must be scheduled because it cannot be stored easily.

Scheduling
Deciding in advance how much electricity will be injected or drawn.
Deviation
Difference between scheduled and actual injection/drawal.
Overdrawal
Drawing more electricity than scheduled.
Over-injection
Injecting more electricity than scheduled.
Deviation affects grid frequency and may create instability.

---

13. UI Charges and Deviation Mechanism
Earlier, **Unscheduled Interchange Charges** were used to discipline deviations.
Purpose:

1. discourage overdrawal,
2. discourage unscheduled injection,
3. maintain grid discipline,
4. give financial signal for imbalance.

Today, this has evolved into deviation settlement mechanisms.

---

14. Grid Code
Grid Code gives rules for secure and reliable grid operation.
It deals with:

1. scheduling,
2. despatch,
3. frequency control,
4. grid security,
5. coordination among participants.

Grid frequency in India is around **50 Hz**.
Simple meaning:
Frequency is like the heartbeat of the grid. If demand is more than supply, frequency falls. If supply is more than demand, frequency rises.

---

15. Ancillary Services
Ancillary services are support services for grid stability.
Example:
If the grid suddenly needs more power, some generators may be directed to increase generation.
Purpose:

1. maintain reliability,
2. manage congestion,
3. balance supply and demand,
4. support open access transactions.

---

16. Section 65: Government Subsidy
Cross-subsidy and government subsidy are different.
Cross-subsidy
One consumer class pays more so another pays less.
Government subsidy under Section 65
If the State Government wants to give subsidy, it must pay the subsidy amount in advance to the affected licensee.
Simple point:
Government may give free or cheap electricity, but it must pay for it.
Section 65 brings transparency and protects DISCOM finances.

17. Challenges of Open Access

Open access is difficult because of:

1. network congestion,
2. DISCOM resistance,
3. cross-subsidy surcharge disputes,
4. additional surcharge disputes,
5. metering and accounting problems,
6. scheduling difficulties,
7. deviation management,
8. different State regulations,
9. risk to DISCOM finances,
10. need to maintain grid stability.

Important Case Laws

1. Keshree Metallurgies Pvt. Ltd. v Telangana SERC

Issue: Cross-subsidy surcharge payable by open access consumer.

Principle:

Open access consumer cannot avoid cross-subsidy surcharge if it uses the network and shifts away from DISCOM. The surcharge protects DISCOM's universal supply obligation.

---

2. Damodar Valley Corporation v Jharkhand SERC

Issue: Waiver of fixed/demand charges during COVID-19 and effect on distribution licensee.

Principle:

Consumer relief must be balanced with DISCOM viability. If relief is really a subsidy, Section 65 must be followed and government must compensate the licensee.

Tariff under Electricity Act, 2003

1. Meaning of Tariff

Tariff means the **price or charge payable for electricity service**.

It may include charges for:

1. supply of electricity,
2. transmission,
3. wheeling,
4. retail sale to consumers.

Simple meaning:

Tariff = electricity price fixed or approved under law.

---

2. Importance of Tariff

Tariff is important because it affects:

1. consumers — how much they pay;
2. generators — whether investment is viable;
3. transmission licensees — recovery of network cost;
4. distribution licensees — financial stability;
5. government — subsidy and welfare policy;
6. regulators — balance between consumer interest and cost recovery.

So tariff is the **economic heart of the electricity sector**.

---

3. Shift from Government Control to Regulatory Control

Earlier, tariff was largely controlled by Government and Electricity Boards.

After reforms:

1. **Electricity Regulatory Commissions Act, 1998** created independent regulators.
2. **Electricity Act, 2003** made tariff determination a function of Regulatory Commissions.

Now:

Function	**Authority**
Tariff determination	Regulatory Commission
Policy and subsidy	Government

Government may frame policy under **Section 3**, but tariff is fixed by the Commission.

---

4. CERC and SERC Jurisdiction

CERC — Section 79

CERC deals mainly with:

1. tariff of Central Government generating companies;
2. tariff of composite schemes involving more than one State;
3. inter-State transmission tariff;
4. regulation of inter-State transmission.

SERC — Section 86

SERC deals with:

1. generation tariff within State;
2. supply tariff within State;
3. transmission and wheeling within State;
4. retail tariff for consumers;
5. power procurement by distribution licensees.

Simple distinction:

CERC = Central/inter-State matters.

SERC = State/intra-State matters.

---

5. Section 61: Tariff Principles

Section 61 gives the principles for tariff determination.

It tells the Commission how tariff should be framed.

Important principles:

1. commercial principles;
2. competition;
3. efficiency;
4. economical use of resources;
5. consumer interest;
6. reasonable cost recovery;
7. reward for efficiency;
8. multi-year tariff;
9. reduction of cross-subsidy;
10. promotion of renewable energy;
11. National Electricity Policy and Tariff Policy.

Simple point:

Section 61 = guiding principles for tariff.

---

6. Consumer Interest and Cost Recovery

This is the central balance in tariff law.

Consumers want cheaper electricity.

Generators/licensees want cost recovery and return on investment.

The Commission must balance both.
So tariff should be:

1. affordable for consumers;
2. sufficient for reasonable cost recovery;
3. efficient and non-arbitrary.

---

7. Multi-Year Tariff

Multi-Year Tariff, or MYT, means tariff principles are fixed for a longer control period instead of changing unpredictably every year.
Purpose:

1. regulatory certainty;
2. investment confidence;
3. better planning;
4. stable tariff structure.

---

8. Cross-Subsidy and Cost of Supply

Section 61 says tariff should progressively reflect cost of supply and reduce cross-subsidy.
This means consumers should gradually move toward paying the real cost of electricity.
But cross-subsidy cannot be removed suddenly because poor, rural and agricultural consumers may suffer.
So the approach is:
gradual reduction, not sudden abolition.

---

9. Section 62: Tariff Determination

Section 62 is the main provision for actual tariff determination.
The Appropriate Commission determines tariff for:

1. supply of electricity by generating company to distribution licensee;
2. transmission of electricity;
3. wheeling of electricity;
4. retail sale of electricity.

Simple point:
Section 62 = actual fixation of tariff by Commission.

Difference between Section 61 and Section 62

Section 61	Section 62
Gives tariff principles	Determines actual tariff
Framework provision	Application provision
Says how tariff should be fixed	Fixes tariff in real cases

---

10. Tariff Ceiling during Shortage

Under Section 62, during shortage of electricity, the Commission may fix minimum and maximum tariff ceiling for sale or purchase of electricity.
Purpose:

1. prevent profiteering;
2. protect consumers;
3. maintain market stability.

This ceiling cannot be for more than **one year**.

---

11. No Undue Preference — Section 62(3)

The Commission cannot show undue preference to any consumer.

But reasonable classification is allowed based on:

1. load factor;
2. power factor;
3. voltage;
4. total consumption;
5. time of supply;
6. geographical position;
7. nature of supply;
8. purpose of supply.

Example:

Industrial consumers may be charged differently from domestic consumers.

This is valid if classification is reasonable and not arbitrary.

---

12. Article 14 Link

Tariff classification must satisfy Article 14 principles:

1. there must be intelligible differentia;
2. the differentia must have rational nexus with the purpose.

So tariff differentiation is allowed, but arbitrary discrimination is not allowed.

---

13. Tariff Stability

Under Section 62(4), tariff should ordinarily not be amended more than once in a financial year.

Exception: fuel surcharge formula or permitted adjustment.

Purpose:

1. stability;
2. predictability;
3. investor confidence;
4. consumer certainty.

---

14. Over-Recovery Prohibited — Section 62(6)

If a licensee or generating company charges more than approved tariff, the excess amount must be refunded with interest.

Simple point:

No one can charge above Commission-approved tariff.

---

15. Section 63: Tariff through Competitive Bidding

Section 63 applies where tariff is discovered through a transparent competitive bidding process.

If bidding is done according to Central Government guidelines, the Commission shall adopt the tariff.

Simple point:

Section 63 = tariff discovered by bidding and adopted by Commission.

Difference between Section 62 and Section 63

Point	Section 62	Section 63
Nature	Regulated tariff determination	Competitive bidding tariff
Who fixes tariff?	Commission	Bidding process
Commission role	Determines tariff	Adopts tariff
Method	Cost-plus / normative	Market-discovered price
Risk	Lower commercial risk	Higher bidder risk
Flexibility	More regulatory adjustment	PPA terms important

16. Difference between "Determine" and "Adopt"

Under **Section 62**, Commission **determines** tariff.

Under **Section 63**, Commission **adopts** tariff already discovered through bidding.

But the Commission is not a mere post office. It must check:

1. whether bidding was transparent;
2. whether Central Government guidelines were followed;
3. whether consumer interest is protected.

---

17. Cost-Plus Approach

Under cost-plus method, tariff is based on actual cost plus reasonable return.

Main components:

1. fixed cost;
2. variable cost;
3. reasonable return.

Fixed Cost

Fixed cost exists even if electricity is not generated.

Examples:

1. interest on loan;
2. depreciation;
3. return on equity;
4. capital cost;
5. tax liability.

Variable Cost

Variable cost changes with actual generation or supply.

Examples:

1. fuel cost;
2. operation and maintenance cost;
3. cost of purchased power;
4. loss-related cost.

---

18. Two-Part Tariff

For generating stations, tariff is often divided into:

1. **capacity/fixed charge** — recovers fixed cost;
2. **energy/variable charge** — recovers fuel and running cost.

This helps balance investment recovery and actual electricity generation.

---

19. Transmission Tariff

Transmission tariff is usually linked with availability of the transmission system.

If system availability is above benchmark, incentive may be given.

If availability is below benchmark, disincentive may apply.

Transmission tariff focuses on:

1. availability;
2. reliability;
3. maintenance;
4. performance.

---

20. Normative Approach

Normative approach means tariff is based on benchmarks, not merely actual cost.

Examples of benchmarks:

1. reasonable O&M cost;
2. heat rate;
3. auxiliary consumption;
4. plant availability factor;
5. transmission availability.

Purpose:
Consumers should not pay for inefficiency of generators or licensees.

---

21. Hybrid Approach
Modern tariff regulation uses a hybrid approach:

1. actual cost is considered;
2. efficiency benchmarks are applied.

Simple formula:
reasonable cost recovery + efficiency norms = fair tariff

Important Case Laws
1. Jharkhand State Electricity Board v Laxmi Business & Cement Co.
Issue: Whether old agreement tariff could continue after Electricity Act, 2003 and Commission tariff order.
Held:
After the 2003 Act, tariff determined by Regulatory Commission prevails over old inconsistent arrangements.
Principle:
Old contractual tariff cannot override Commission-approved tariff.

---

2. Central Coalfields Ltd. v JSERC
Issue: Whether every private tariff dispute falls under Section 62.
Principle:
Section 62 applies only to statutory tariff categories. A private/captive arrangement between generator and consumer may be governed by contract and may not automatically become Section 62 tariff determination.

---

3. Kerala State Electricity Board v Principal Sir Syed Institute
Issue: Different tariff for government/aided educational institutions and self-financing institutions.
Held:
Differential tariff is valid if based on Section 62(3) and reasonable classification.
Principle:
Tariff differentiation is allowed; arbitrary preference is not.

---

4. Energy Watchdog v CERC
Issue: Whether competitively bid tariff under Section 63 can be reopened due to increase in imported coal price.
Held:
Tariff cannot be reopened merely because performance becomes commercially difficult, unless PPA or law permits relief.
Principle:
Section 63 tariff has sanctity; force majeure/change in law depends on PPA terms.

---

5. All India Power Engineers Federation v Sasan Power
Principle:
Even in competitive bidding, consumer interest and statutory scheme of the Electricity Act remain important.

6. Essar Power / Noida Power Case

Issue: Whether a non-bidder offering lower tariff later can be introduced after bidding process.

Principle:

A lower tariff from a non-bidder cannot be introduced through backdoor after bidding concludes.

Competitive bidding process must remain fair and final.

Consumer Protection under Electricity Act, 2003

1. Consumer Protection as an Objective

The Electricity Act, 2003 is not only about liberalisation, private participation and competition. It also protects consumers because electricity is an essential public service.

The **Preamble** itself refers to:

1. development of electricity industry;
2. promotion of competition;
3. protection of consumer interest;
4. supply of electricity to all areas.

So, consumer protection is one of the basic purposes of the Act.

2. Meaning of Consumer — Section 2(15)

A consumer means a person who is supplied electricity for his own use.

It also includes a person whose premises are connected for receiving electricity.

Important point:

Electricity must be for **own use**, not resale.

A tenant or occupier may also be protected because actual use of premises matters, not only ownership.

3. Universal Service Obligation — Section 43

Section 43 gives a statutory right to electricity connection.

Every distribution licensee must supply electricity to the owner or occupier of premises within the prescribed time after receiving a complete application.

Important points:

1. owner or occupier can apply;
2. tenant can also apply;
3. application must be complete;
4. supply must generally be given within one month;
5. failure may attract penalty.

Simple meaning:

A DISCOM cannot arbitrarily refuse electricity connection to an eligible applicant.

4. Standards of Performance — Section 57

The Appropriate Commission lays down standards of performance for licensees.

These standards may relate to:

1. quality of supply;
2. continuity of supply;
3. time for new connection;
4. complaint handling;
5. restoration of supply;
6. metering and billing service.

If the licensee fails to meet these standards, compensation or penalty may follow.

Persistent failure to maintain uninterrupted supply may even become a ground for suspension of licence.

5. Tariff Protection — Sections 61 and 62

Consumer interest is protected during tariff determination.

Under **Section 61**, the Commission must safeguard consumer interest while allowing reasonable recovery of electricity cost.

Under **Section 62(3)**, the Commission cannot give undue preference to any consumer.

But tariff differentiation is allowed on reasonable grounds such as:

1. load factor;
2. power factor;
3. voltage;
4. total consumption;
5. time of supply;
6. geographical area;
7. nature of supply;
8. purpose of supply.

Example:

Domestic, agricultural, commercial and industrial consumers may have different tariffs.

---

6. Subsidy — Section 65

If the Government wants to give cheaper electricity to a class of consumers, it may grant subsidy.

But the Government must pay the subsidy amount to the licensee in advance as directed by the Commission.

Simple point:

Government may give subsidy, but it must pay for it. DISCOM should not suffer financially.

---

7. Protection against Disconnection — Section 56

Section 56 protects consumers from arbitrary disconnection.

If a consumer neglects to pay electricity charges, the licensee may disconnect supply only after giving **15 clear days' notice**.

Important points:

1. notice is compulsory;
2. disconnection cannot be sudden;
3. if consumer pays under protest, disconnection should not continue;
4. old dues cannot be used for disconnection after two years unless continuously shown as arrears.

---

8. Public Participation

Consumer protection is also ensured through public participation.

The Commission must consider objections and suggestions in:

1. licensing matters under Section 15;
2. tariff matters under Section 64.

This makes the regulatory process more transparent and accountable.

---

9. Consumer Grievance Redressal Forum — Section 42(5)

Every distribution licensee must establish a **Consumer Grievance Redressal Forum**, or CGRF.

Purpose:

1. resolve consumer complaints;
2. provide informal and quicker remedy;
3. reduce need for court litigation;
4. correct billing, metering and supply-related grievances.

The forum should function fairly and should include independent participation to avoid bias in favour of the licensee.

10. Electricity Ombudsman — Section 42(6)

If the consumer is not satisfied with the CGRF decision, he may approach the **Electricity Ombudsman**.

The Ombudsman is appointed by the State Commission.

It is not merely a mediator. It also performs an appellate/adjudicatory function in consumer grievance matters.

Simple flow:

Consumer complaint → CGRF → Electricity Ombudsman

---

11. Difference between CGRF/Ombudsman and Commission

CGRF and Ombudsman mainly deal with consumer grievances.

They generally do not impose statutory penalties like the Commission.

If there is violation of statutory directions or standards, penalty-related powers may lie with the Appropriate Commission, for example under **Section 142**.

---

12. Remedies under Consumer Protection Act

The Electricity Act does not completely take away other consumer remedies.

But where the dispute relates to special electricity matters like:

1. unauthorised use,
2. theft,
3. assessment under Section 126,
4. offences under Sections 135–140,

then the Electricity Act mechanism applies.

Normal deficiency in service may still go to consumer forum where applicable.

---

13. Electricity (Rights of Consumers) Rules, 2020

These Rules strengthen consumer rights.

Important protections:

1. simple and time-bound new connection process;
2. online application;
3. proper metering;
4. transparent billing;
5. online payment facility;
6. advance payment option;
7. reliable 24x7 supply subject to practical exceptions;
8. automatic outage monitoring;
9. rights of prosumers;
10. smart meters and prepaid meters.

Timelines mentioned in the lecture:

1. 7 days for metro cities;
2. 15 days for other municipal areas;
3. 30 days for rural areas.

---

14. Metering Rights

No connection should normally be given without a correct meter.

Proper metering protects both:

1. consumer — against wrong billing;
2. licensee — against theft and revenue loss.

Prepaid meters and smart meters are encouraged.

Under **Section 47(5)**, if the consumer is ready to take supply through a prepaid meter, security deposit should generally not be demanded.

15. Smart Meters

Smart meters help in:

1. accurate billing;
2. reducing theft;
3. understanding consumption patterns;
4. demand-side management;
5. better planning by DISCOMs.

But smart meters also raise privacy concerns because consumption data may reveal lifestyle patterns. Therefore, privacy protection is also necessary.

---

16. Prosumer Rights

A prosumer is a consumer who also produces electricity, usually through rooftop solar.
A prosumer continues to enjoy consumer rights.
Two models:

1. **Net metering** — exported electricity is adjusted against consumed electricity.
2. **Gross metering** — consumer sells all generated electricity to licensee and separately buys electricity from licensee.

Important Case Laws

1. Sadita Industries v Himachal Pradesh Electricity Regulatory Commission

Issue: Billing was based on meter at grid sub-station instead of consumer premises.

Principle:

Metering and billing must follow regulations. Billing cannot be based on an unauthorised metering arrangement.

---

2. U.P. Power Corporation Ltd. v Anis Ahmad

Issue: Whether consumer forum can decide electricity disputes.

Principle:

Consumer forums may deal with normal deficiency in service, but unauthorised use, theft and special electricity assessment matters must follow the Electricity Act mechanism.

---

3. Ajmer Vidyut Vitran Nigam Ltd. v Rahamatullah Khan

Issue: Recovery of old/supplementary electricity dues.

Principle:

Supplementary demand may be raised, but disconnection for old dues is restricted by Section 56(2) unless arrears were continuously shown as recoverable.

---

4. Superintending Engineer v Minakshi India Ltd.

Issue: Nature of Electricity Ombudsman's role.

Principle:

Electricity Ombudsman is not merely a mediator; it also performs an appellate/adjudicatory role in consumer grievance matters.

Theft and Unauthorised Use of Electricity

1. Basic Idea

The Electricity Act, 2003 protects consumers, but it also prevents misuse of electricity. If consumers steal electricity, tamper meters or use electricity beyond permission, the DISCOM suffers revenue loss, and honest consumers also suffer.
Main provisions:

1. **Section 126** — Unauthorised use of electricity
2. **Section 127** — Appeal against assessment
3. **Section 135** — Theft of electricity
4. **Section 151B** — Offences are cognizable and non-bailable

---

2. Unauthorised Use of Electricity — Section 126

Unauthorised use means the person has access to electricity, but uses it in a manner not permitted by law or licence conditions.

It is mainly a **civil assessment proceeding**, not a criminal trial.

Example:

1. domestic connection used for commercial purpose;
2. electricity supplied to premises other than authorised premises;
3. use through unauthorised means;
4. use through tampered meter;
5. sanctioned load exceeded improperly.

Simple meaning:

Permission exists, but use goes beyond permission.

---

3. Assessing Officer

The assessing officer is an officer of the State Government, Board or licensee designated by the State Government.

He inspects:

1. premises,
2. equipment,
3. gadgets,
4. machines,
5. devices,
6. records.

If unauthorised use is found, he makes provisional assessment.

---

4. Best Judgment Assessment

Under Section 126, assessment is made to the **best of judgment** of the assessing officer.

It does not mean arbitrary guesswork. It means reasonable estimation based on:

1. inspection report;
2. connected load;
3. consumption pattern;
4. meter condition;
5. available records;
6. nature of unauthorised use.

---

5. Procedure under Section 126

Steps:

1. inspection by assessing officer;
2. provisional assessment order;
3. order served on person in occupation/possession/charge;
4. consumer may accept and pay within **7 days**;
5. or file objections;
6. hearing must be given;
7. final assessment order must be passed within **30 days** from service of provisional order.

So, natural justice is followed.

---

6. Period and Rate of Assessment

Current position:

1. if period of unauthorised use can be identified — assessment for that actual period;
2. if period cannot be identified — assessment limited to **12 months before inspection**;
3. rate — **twice the applicable tariff**.

---

7. Appeal — Section 127

A person aggrieved by final assessment under Section 126 may file appeal under Section 127.

Important points:

1. appeal must be filed within **30 days**;
2. appellant must deposit **half of the assessed amount**;
3. appellate authority hears parties;
4. appellate order is final.

Purpose of deposit:

To prevent delay tactics and protect revenue of the licensee.

---

8. Theft of Electricity — Section 135

Theft is more serious than unauthorised use.

Section 135 deals with **dishonest abstraction, consumption or use of electricity**.

Two elements:

1. **mental element** — dishonest intention;
2. **physical element** — act such as tapping, tampering, damaging meter or using illegal device.

Simple meaning:

Theft = dishonest use of electricity to avoid proper payment.

---

9. Meaning of Dishonestly

Dishonestly means intention to cause:

1. wrongful gain to oneself; or
2. wrongful loss to the licensee.

Example:

A person tampers meter to reduce recorded consumption. He gains electricity without paying, and DISCOM loses revenue.

---

10. Presumption of Dishonesty

Section 135 creates a presumption.

If artificial or unauthorised means are found for abstraction, consumption or use of electricity, it is presumed that the consumer dishonestly caused it unless he proves otherwise.

Simple meaning:

If illegal arrangement is found, burden shifts to consumer to explain.

---

11. Acts Amounting to Theft

Theft includes:

1. tapping electricity lines or cables;
2. tampering meter;
3. using tampered meter;
4. using current reversing transformer or loop connection;
5. using any device interfering with correct metering;
6. damaging meter, apparatus or wire;
7. using electricity for unauthorised purpose dishonestly.

Examples:

1. direct hooking from electric line;
2. breaking meter seal;

3. slowing down meter;
4. using domestic connection dishonestly for industrial purpose;
5. damaging meter to hide consumption.

---

12. Difference between Section 126 and Section 135

Point	Section 126	Section 135
Nature	Civil assessment	Criminal offence
Focus	Unauthorised use	Dishonest theft
Intention	Dishonesty not always necessary	Dishonesty essential
Authority	Assessing officer	Criminal court/Special Court
Result	Assessment and recovery	Punishment, fine, civil liability
Appeal/Trial	Appeal under Section 127	Criminal trial

---

13. Can Section 126 and Section 135 Overlap?

Yes.

If there is only unauthorised use, Section 126 applies.

If unauthorised use is accompanied by dishonest intention, Section 135 may also apply.

Example:

Using domestic connection for commercial purpose may be unauthorised use. If done dishonestly to avoid higher tariff, it may also amount to theft.

Formula:

Unauthorised use + dishonest intention = theft may be attracted.

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14. Immediate Disconnection in Theft Cases

When theft is detected, supply may be immediately disconnected by authorised officer.

But:

1. complaint must be lodged in police station within **24 hours**;
2. supply must be restored within **48 hours** after payment of assessed amount/electricity charges;
3. criminal case may still continue.

Payment restores supply, but does not automatically remove criminal liability.

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15. Search and Seizure Powers

Authorised officer may:

1. enter and inspect premises;
2. break open and search;
3. seize devices, wires, instruments or articles;
4. examine or seize books of account/documents.

These powers are given because theft is often hidden.

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16. Safeguards during Search

Consumer protections:

1. occupant or representative may remain present;
2. list of seized items must be prepared;
3. copy must be given to occupant/person present;
4. domestic premises should not be searched between sunset and sunrise except in presence of adult male member;
5. CrPC search and seizure safeguards apply as far as possible.

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17. Punishment for Theft — Section 135

General punishment:

Imprisonment up to 3 years, or fine, or both.

Fine depends on load and repeated offence.

If load does not exceed 10 kW

1. first conviction — fine not less than 3 times financial gain;
2. second/subsequent conviction — fine not less than 6 times financial gain.

If load exceeds 10 kW

1. first conviction — fine not less than 3 times financial gain;
2. second/subsequent conviction — imprisonment not less than 6 months, may extend to 5 years, and fine not less than 6 times financial gain;
3. may also be debarred from electricity supply for 3 months to 2 years.

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18. Cognizable and Non-Bailable — Section 151B

Offences under Sections **135 to 140** and **Section 150** are cognizable and non-bailable.

This shows that electricity theft is treated seriously.

Regulatory Commissions and Other Institutions

1. Basic Idea

The Electricity Act, 2003 creates independent regulatory institutions because electricity is a technical, public-interest and market-sensitive sector.

After liberalisation, private players entered generation, transmission, distribution and trading.

Therefore, the sector could not be left only to Government control or pure market freedom.

Simple point:

Government makes policy. Regulatory Commission regulates the electricity sector.

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2. Need for Regulatory Commissions

Regulatory Commissions are needed to:

1. reduce political interference;
2. regulate tariff fairly;
3. grant and control licences;
4. protect consumer interest;
5. promote competition;
6. encourage investment;
7. decide disputes;
8. maintain orderly development of the electricity sector.

They act as a balance between:

public interest + consumer protection + private investment + market competition.

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3. Types of Regulatory Commissions

The Act provides for:

1. **Central Electricity Regulatory Commission — CERC**
2. **State Electricity Regulatory Commissions — SERCs**
3. **Joint Electricity Regulatory Commission — JERC**

There is no strict hierarchy between CERC and SERC. Each works within its own statutory field.

Simple distinction:

Body	Main Area
CERC	Central / inter-State matters
SERC	State / intra-State matters
JERC	Joint regulation for two or more States/Union Territories

4. Legal Status of Commission

The Commission is a **body corporate**.

This means it has:

1. separate legal identity;
2. perpetual succession;
3. common seal;
4. power to hold property;
5. power to enter contracts;
6. power to sue and be sued.

So, it is not merely a Government department.

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5. Composition and Appointment

The Commission has:

1. Chairperson;
2. Members.

Members may have expertise in:

1. engineering;
2. law;
3. economics;
4. commerce;
5. finance;
6. management.

CERC also includes the Chairperson of the Central Electricity Authority as an **ex-officio member**.

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6. Independence of Commission

The Act tries to protect independence through:

1. fixed tenure;
2. separate legal status;
3. protection of service conditions;
4. cooling-off period after retirement;
5. conflict of interest restrictions.

But autonomy is not complete because selection and financial dependence may still involve Government influence.

Balanced exam point:

The Act aims to create independent Commissions, but their real autonomy may be affected by appointment process and financial dependence on Government.

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7. Accountability and Transparency

Although Commissions are independent, they are accountable.

They must:

1. prepare reports;
2. forward reports to Government;
3. place reports before Parliament or State Legislature;
4. publish draft regulations;
5. allow public consultation in important matters.

This ensures transparency and democratic supervision.

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8. Advisory Committees

Sections **80** and **87** provide for Central and State Advisory Committees.

They may include representatives from:

1. commerce;
2. industry;
3. transport;
4. agriculture;
5. labour;
6. consumers;
7. NGOs;
8. academic and research institutions.

Purpose:

to make electricity regulation participatory and stakeholder-oriented.

Powers and Functions of Regulatory Commissions

9. Three Main Functions

Regulatory Commissions perform three broad functions:

1. **Mandatory/statutory functions**
2. **Advisory functions**
3. **Regulation-making functions**

They may also perform adjudicatory functions.

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10. Mandatory Functions — Sections 79 and 86

CERC — Section 79

CERC deals mainly with:

1. tariff of Central Government generating companies;
2. tariff of composite schemes involving more than one State;
3. inter-State transmission;
4. inter-State transmission tariff;
5. electricity trading in inter-State matters;
6. disputes involving generating companies and licensees in central/inter-State matters.

SERC — Section 86

SERC deals mainly with:

1. tariff for generation, supply, transmission and wheeling within State;
2. intra-State transmission;
3. licensing for transmission, distribution and trading within State;
4. power procurement by DISCOMs;
5. promotion of renewable energy;
6. disputes between generating companies and licensees within State.

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11. Advisory Functions

Under Sections **79(2)** and **86(2)**, Commissions advise Government on:

1. electricity policy;
2. tariff policy;
3. promotion of competition;
4. promotion of investment;
5. efficiency and economy in electricity industry.

Since Commissions are expert bodies, their advice should be taken seriously.

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12. Regulation-Making Power

CERC and SERC can make regulations under:

1. **Section 178** — CERC regulations;
2. **Section 181** — SERC regulations.

They may frame regulations on:

1. licensing;
2. tariff;
3. open access;
4. grid code;
5. trading margin;
6. transmission charges;
7. standards of performance;
8. consumer protection;
9. regulatory procedure.

This is a **legislative function**.

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13. Legislative vs Adjudicatory Function

Function	Meaning
Legislative function	Making general regulations for future
Adjudicatory function	Deciding disputes between parties

Example:
Regulation on open access = legislative function.
Dispute between generator and DISCOM = adjudicatory function.
In adjudication, natural justice is more important.

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14. Adjudicatory Powers

The Commission can decide disputes between:

1. generating companies;
2. licensees.

The Commission must not only decide private disputes but also consider larger sectoral interest, consumer interest and public interest.

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15. Civil Court-like Powers — Section 94

The Commission has powers similar to a civil court, such as:

1. summoning witnesses;
2. examining witnesses on oath;
3. receiving evidence on affidavit;
4. calling documents;
5. reviewing its orders;
6. entering premises and seizing relevant documents.

Proceedings before the Commission are treated seriously as legal proceedings.

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16. Non-Compliance with Commission Orders

If Commission directions are not followed, action may be taken under:

1. **Section 142** — penalty for non-compliance;
2. **Section 146** — punishment for non-compliance.

So Commission orders are enforceable.

Appellate Tribunal for Electricity — APTEL

17. Meaning and Purpose

APTEL is the specialised appellate body under the Electricity Act, 2003.
It was created because electricity disputes are technical and urgent.
Purpose:

1. faster dispute resolution;
2. expert appellate review;

3. reduce burden on ordinary courts;
4. combine legal and technical expertise.

APTEL was established under **Section 110**.

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18. Jurisdiction of APTEL — Section 111

Any person aggrieved by an order of:

1. Appropriate Commission; or
2. Adjudicating Officer,

may appeal to APTEL.

Only an **aggrieved person** can appeal. A person must show legal injury or direct legal grievance.

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19. Limitation for Appeal

Appeal must generally be filed within **45 days** from receipt of order.

Delay may be condoned if sufficient cause is shown.

If appeal is against penalty, deposit may be required, though APTEL may waive it in case of undue hardship.

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20. Powers of APTEL

APTEL may:

1. confirm order;
2. modify order;
3. set aside order;
4. call records;
5. hear parties;
6. exercise civil court-like powers.

It should normally dispose of appeal within **180 days**. If not, reasons must be recorded.

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21. Composition of APTEL

APTEL has:

1. Chairperson;
2. Judicial Members;
3. Technical Members.

A bench normally includes at least one judicial member and one technical member.

This is important because electricity disputes require both legal and technical expertise.

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22. Supervisory Power of APTEL — Section 121

APTEL can issue directions to Commissions for performance of statutory functions.

Example:

If a Commission is not regularly determining tariff, APTEL may direct it to perform its statutory duty.

But APTEL cannot take over and decide the original matter under Section 121.

Simple point:

Section 121 is supervisory, not a substitute for Commission proceedings.

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23. Appeal to Supreme Court — Section 125

An appeal from APTEL lies directly to the Supreme Court.

The High Court route is bypassed because APTEL itself is a specialised appellate body.

Arbitration under Electricity Act

24. Arbitration — Section 158

The Commission may refer disputes to arbitration.

Sections **79(1)(f)** and **86(1)(f)** allow the Commission to:

1. adjudicate disputes itself; or
2. refer disputes to arbitration.

The word “and” is practically read as “or”.
Simple meaning:
Commission may either decide the dispute or refer it to arbitration.

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25. Special Nature of Arbitration
Parties cannot bypass the Electricity Act and directly appoint an arbitrator under the general Arbitration Act if the dispute falls under the Electricity Act mechanism.
The arbitrator gets jurisdiction only through reference by the Appropriate Commission.

Central Electricity Authority — CEA
26. Meaning of CEA
The Central Electricity Authority is a technical institution under the Electricity Act.
It is established under **Section 70**.
CEA performs mainly:

1. technical;
2. advisory;
3. standard-setting;
4. monitoring;
5. safety-related functions.

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27. Functions of CEA — Section 73
CEA performs four broad functions.
A. Advisory Function
CEA advises Central Government on:

1. National Electricity Policy;
2. technical matters;
3. electricity planning.

B. Standard-Setting Function
CEA lays down technical standards for:

1. electrical plants;
2. electric lines;
3. grid connectivity;
4. safety requirements;
5. grid standards;
6. metering.

C. Monitoring and Data Function
CEA monitors:

1. project completion;
2. implementation of schemes;
3. electricity statistics;
4. tariff and duty data.

D. Research and Safety Function
CEA promotes research and deals with safety of electrical installations.
Simple point:
CEA is mainly the technical brain of the electricity sector.

Coordination and Other Institutions
28. Coordination Forum — Section 166
Coordination Forums help different authorities and market players coordinate.
They may include:

1. CERC;
2. SERC;
3. CEA;
4. generating companies;
5. transmission licensees;
6. distribution licensees;
7. other stakeholders.

Purpose:

smooth and coordinated development of electricity sector.

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29. District Committees

District Committees review:

1. quality of power supply;
2. consumer satisfaction;
3. local electricity problems.

They are important because many electricity issues are local, such as power cuts, voltage problems, transformer failure and billing issues.

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30. Forum of Regulators — Section 166(2)

The Forum of Regulators consists of:

1. Chairperson of CERC;
2. Chairpersons of SERCs.

The Chairperson of CERC is the Chairperson of the Forum.

Purpose:

1. coordination among regulators;
2. sharing best practices;
3. studying tariff orders;
4. promoting uniform regulatory approach;
5. reducing inconsistency across States.

Simple point:

Forum of Regulators helps electricity regulators learn from each other and maintain consistency across India.

Important Case Laws

1. State of Gujarat v Utility Users Welfare Association

Principle:

Regulatory Commissions perform adjudicatory functions, so legal expertise is necessary. A person with proper legal background should be part of the Commission.

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2. PTC India Ltd. v CERC

Principles:

1. Commission can exercise statutory powers even if regulations are not yet framed.
2. Once regulations are framed, Commission must follow them.
3. APTEL can interpret regulations but cannot strike down their validity.

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3. West Bengal Electricity Regulatory Commission v CESC

Principle:

Electricity appeals should go before a specialised expert appellate body with judicial and technical members. This supported creation of APTEL.

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4. Gujarat Urja Vikas Nigam Ltd. v Essar Power

Principle:

Electricity Act is a special law. For electricity disputes covered by the Act, the Electricity Act mechanism prevails over the general Arbitration Act.

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5. TANGEDCO v PPN Power

Principle:

Commission's decision to refer or refuse arbitration must be fair, reasonable and non-arbitrary.

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6. MP Power Trading Case

Principle:

If arbitrator is appointed by wrong authority, the defect is jurisdictional and can be raised even later.

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7. M.K. Ranjitsinh v Union of India

Principle:

Electricity infrastructure, especially overhead lines under Section 68, must balance energy development with environmental protection. Expert-based and site-specific approach is preferred over blanket prohibition.