

UNIT - I

THEORIES OF REGULATION

Public Interest Theory: This theory envisages that regulation is based on the necessity to control free exercise of market forces, consumer and producer behavioral aspects when it becomes a hurdle to the maximization of societal welfare, by reducing and gradually eliminating externally created obstacles. This is justified on grounds of equity.

This theory is based on the purview that markets are incapable of self-regulation; hence the Government takes initiatives to regulate the markets & aim at controlling and eliminating inequitable practices. Intervention by the Government is in the interest of the public at large. Some of the areas wherein Government takes measures in this regard are pertaining to social, economic and environmental matters, national defense, Legal institutions that have a nexus to the public interest. Social and environmental regulations include protection of human rights and rights of animals. Economic regulations are to bring about nondiscriminatory conditions of play in the various markets.

“Public interest” theory was foreshadowed by a previous generation of economists to the present generation of law practitioners. This theory holds that regulation is in response to the demand of the public for the correction of inefficient or unfair trade practices prevailing in the markets.

Private Interest Theory: This theory is based on the assumption that if regulation did not yield expected beneficial results to the public, it is because of deficit in regulations and/or ineffective implementation of regulations. The private interest theory is based on motivating the politicians and bureaucrats alike to fulfill the requirements of private interest groups.

Institutional Theory: In this theory emphasis is on formal legal aspects of government structures and on the deeper and more resilient aspects of social structure. It considers the process by which structure, including schemes, rules, norms become established as authoritative guidelines of said behaviours. Different components of institutional theory explain how these elements are created, diffused, adopted and adapted over space and time and how they fall into decline. Institutions are social structures that have attained a high degree of resilience, composed of cultural, cognitive, normative and regulative elements that together with associated activities and resources provide stability and meaning to social life.

UNIT – II

THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

INTRODUCTION:

Act No.15 of Year 1992, dated 4th.April, 1992.

Objectives:

Establishment of a Board to -

- a Protect - interests of investors in securities;
- b Promote – development/regulate-securities market;
- c Matters connected therewith or incidental thereto.

Application: To the whole of India.

DEFINITIONS: [S.2]

S.2(1):

- (a) Board: Securities & Exchange Board of India [established under section 3];
- (b) Chairman: Chairman of the Board;
- (ba) Collective investment scheme: Any scheme/arrangement which satisfies the conditions specified in s.11AA [Sub-section introduced in the Amendment Act of 1999];
- (c) Existing Securities & Exchange Board: Securities & Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No. 1(44)SE/ 86, dated the 12th day of April, 1988;
- (d) Fund: As constituted under s.14;
- (e) Member: A member of the Board & includes the Chairman;
- (f) Notification: A notification published in the Official Gazette;
- (g) Prescribed: Prescribed by rules made under this Act;
- (h) Regulations: The regulations made by the Board under this Act;
- (i) Securities: Meaning assigned to it in s.2 of the Securities Contracts (Regulation) Act, 1956.

[S.2(h) of 1956 Act: Securities include-

- (i) shares, scrips (i.e., a provisional certificate of money subscribed to a bank/company-entitling the holder to a formal certificate & dividends), stocks, bonds, debentures, debenture stock or other marketable securities of a like nature of any incorporated company or other body corporate;
- (ia) derivative;
- (ib) units (or any other instrument) issued by any collective investment scheme to the investors in such schemes;
- (ic) security receipt as defined in clause of s.2(zg) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act).

[S.2(zg): Security receipt – Meaning – A receipt/other security-issued by a securitisation, reconstruction company (SC/RC-is neither a bank nor a financial institution as declared by RBI as per SARFAESI Act, 2002) to any qualified institutional buyer [QIB] pursuant to a scheme, evidencing the purchase or interest in the financial asset involved in securitisation; acquisition by the holder thereof, of an undivided right/title];

[QIB: QUALIFIED INSTITUTIONAL BUYER: These are institutional investors (possess expertise reg investing in capital markets).

As per Clause 2.2.2B (v) of DIP [Disclosure & Investor Protection] Guidelines, a QIB shall mean any of the following (they need not be registered with SEBI as QIB):-

1. Public financial institutions (as defined in S.4A of Companies Act, 1956);
2. Scheduled commercial banks;
3. Mutual funds;
4. FII registered with SEBI;
5. Bilateral & multilateral development financial institutions;
6. Venture capital funds registered with SEBI;
7. Foreign venture capital investors registered with SEBI;
8. State Industrial Development Corps;
9. Insurance Companies registered with IRDA;
10. Provident Funds (minimum corpus 25 crores);
11. Pension Funds (minimum corpus 25 crores).

[Brief Introduction to SC/RC:

SARFAESI ACT-Why: REASON- Banks wanted reforms in controlling their non-performing assets (NPA) & recovery of dues. DRT Act wasn't sufficient - Reason - matters had to be dealt with thru Courts necessitating lengthy legal procedures, adjournments, vacations, # of Courts being less-pendency of cases etc. + when the matter was sub-judice Banks/Institutions couldn't take any recovery action such as sale of securities. To plug these lacunas-SARFAESI Act was enacted.

SC/RC are companies registered under the Companies Act, 1956-having as their main objects-securitization & asset reconstruction; Has to be mandatorily registered under the Securitization Act + a minimum financial stability of Rs.2 crores or 15% of the total financial assets acquired/to be acquired; Shall be regarded as a Public Financial Institution.

Process of Securitization:

Lender sells his loans to a Securitisation Company.

Optional: SC makes payment to the original lender.

These loans are converted by the Securitisation Company into pools of securities for issuing Pass Through/ Pay Through Certificates (PTC).

These PTCs are sold to individual investors or qualified institutional buyers (QIB).

Returns to QIB: The principal & interest on the debt, underlying the security, is paid to the various investors regularly.

Securities backed by mortgage are termed as 'mortgage backed securities' (MBS).

Recovery from original borrower/s is obtained by-lender in case of Pass through & SC in case of Pay thru. If original lender makes collection he is obliged to pass on the amt to the SC.

SC passes on the amts to the individual investors.

Profit for SC: Spread between purchase price of bundled loan assets & difference in coupon rate of PTCs.]

Process of Reconstruction:

Acquiring right/interest in a loan-from a bank/financial institution-purpose-realization of the loan/asset for reconstruction purpose.

RC-towards this goal-may take any of the following measures:-

- o Change/take-over business of borrower;
- o Sell/lease (Partly/wholly) business of borrower;
- o Reschedule repayment program;
- o Enter into onetime or other settlement with the borrower;
- o Take possession of the secured assets;
- o Appoint manager to take charge of the secured assets taken possession of.

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

[Explanation — For the removal of doubts, it is hereby declared that the term 'securities' SHALL NOT INCLUDE any unit linked insurance policy (ULIP) or scrips or any such instrument or unit, by whatever name called, which provides a COMBINED BENEFIT RISK ON THE LIFE OF THE PERSONS & INVESTMENT by such persons & issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938]

(ii) Government securities;

(iia) Such other instruments that maybe declared by C.Govt. as securities;

(iii) rights or interests in securities;

S.2(2): Words & expressions used & not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996 shall have the meanings respectively assigned to them in that Act.

ESTABLISHMENT OF THE SECURITIES & EXCHANGE BOARD OF INDIA: [S.3]

Established by – C.Govt.

The SEBI is a body corporate (having all attributes of a company, eg: Perpetual succession, hold dispose of property, contract in its name, sue & be sued etc).

Head Office – Mumbai. Offices [Branches] at other places in India.

Management of SEBI:

Constitution of the Board:

S.4 (1):

a) Chairman;

b) 2 members [from amongst the officials of the Ministry of Central Government dealing with Finance and administration of the Companies Act].

c) 1 member from amongst officials of the Reserve Bank of India.

d) 5 other members (of whom at least 3 shall be whole time members) to be appointed by the Central Government.

Chairman and members shall be persons of integrity, ability and standing who have shown capacity in dealing with problems relating to securities market and have special knowledge or experience in Law, finance, accountancy, economics, administration or in other disciplines which, in the opinion of the Central Government, shall be useful to the Board.

General superintendence, direction and management of the affairs of the Board shall vest with the members of the Board, which may exercise all powers and do all acts and things which may be exercised or done by the Board.

Powers of general superintendence and direction of the affairs of the Board shall vest with the chairman. He shall have and exercise all powers and do all acts and things, which may be exercised and done by the Board.

Term of office & conditions of service of Chairman & members of the Board: Shall be such as may be prescribed.

Termination/Relinquishment-Service:

- 1) C.Govt. shall have the right to terminate the services of the Chairman/member appointed u/s.4(1)(d)- at any time before the expiry of the period prescribed-by giving him notice of not less than 3 months in writing OR 3 months' salary + allowances in lieu thereof;
- 2) Chairman/member-shall also have the right to relinquish his office, at any time before the expiry of the period prescribed-by giving to the C.Govt. notice of not less than 3 months in writing.

Removal of member from office:

S.6: The C.Govt. shall remove a member from office if he-

- (a) Is or at any time has been, adjudicated as insolvent;
- (b) Is of unsound mind & st&s so declared by a competent court;
- (c) Has been convicted of an offence which, in the opinion of the C.Govt., involves, a moral turpitude;
- (e) Has, in the opinion of the C.Govt., so abused his position as to render his continuation in office detrimental to the public interest:

PROVIDED that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter [Audi altrem partem].

Meetings: S.7:

- (1) The Board shall meet at such times & places, & shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.
- (2) The Chairman or, if for any reason, he is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.
- (3) All questions which come up before any meeting of the Board shall be decided by a majority votes of the members present & voting, & in the event of an equality of votes, the Chairman or in his absence, the person presiding, shall have a 2nd or casting vote.

Member not to participate in meetings in certain cases:

S.7A: Any member, who is a director of a company & who as such director has any direct/indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting & such disclosure shall be recorded in the proceedings of the Board, & the member shall not take any part in any deliberation/decision of the Board with respect to that matter.

Vacancies:

S.8: No act/proceeding of the Board shall be invalid merely by reason of:-

- (a) Any vacancy/defect in the constitution of, the Board; or
- (b) Any defect in the appointment of a person acting as a member of the Board; or
- (c) Any irregularity in the procedure of the Board not affecting the merits of the case.

Officers & employees of the Board:

S.9: (1) The Board may appoint such other officers/employees as it considers necessary for the efficient discharge of its functions under this Act.

- (2) The terms & other conditions of service of officers & employees of the Board appointed under sub-section (1) shall be such as may be determined by regulations.

Transfer of assets, liabilities, etc. of existing Securities & Exchange Board to the Board:

S.10: (1) On/from the date of establishment of the Board-

- (a) Any reference to the existing Securities & Exchange Board in any Law other than this Act or in any contract or other instrument shall be deemed as a reference to the Board;
- (b) All properties/assets [movable/immovable] of, or belonging to, the existing Securities & Exchange Board, shall vest in the Board;
- (c) All rights/liabilities of the existing Securities & Exchange Board shall be transferred to & be the rights & liabilities of the Board;

- (d) Without prejudice to the provisions of clause (c), all debts/obligations/liabilities incurred, all contracts entered into & all matters & things engaged to be done by, with or for the existing Securities & Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into or engaged to be done by/with/for the Board;
 - (e) All sums of money due to the existing Securities & Exchange Board immediately before that date shall be deemed to be due to the Board;
 - (f) All suits/other legal proceedings instituted or which could have been instituted by/against the existing Securities & Exchange Board immediately before that date may be continued or may be instituted by or against the Board; &
 - (g) Every employee holding any office under the existing Securities & Exchange Board immediately before that date shall hold his office in the Board by the same tenure/terms & conditions of service as respects remuneration, leave, PF, retirement & other terminal benefits as he would have held such office if the Board had not been established & shall continue to do so as an employee of the Board OR until the expiry of the period of 6 months from the date IF such employee opts not to be the employee of the Board within such period.
- (2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law & no such claim shall be entertained by any Court/Tribunal/Authority.

POWERS & FUNCTIONS OF THE BOARD:

Functions of Board:

S.11: (1) Subject to the provisions of this Act, it shall be the duty of the Board to

Protect the interests of investors in securities

Promote the development of,

Regulate the securities market,

by such measures as it thinks fit.

(2) May provide for:-

(a) Regulating the business in stock exchanges & any other securities markets;

(b) Registering & regulating the working of:-

Stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers & such other intermediaries who may be associated with securities markets in any manner;

(ba) Depositories, participants, custodians of securities, FII, credit rating agencies & such other intermediaries as the Board may, by notification, specify in this behalf [inserted in 1995];

(c) Venture capital funds & collective investment schemes, including mutual funds:

(a) Self-regulatory organisations;

- (e) Prohibiting fraudulent & unfair trade practices relating to securities markets & insider trading in securities
 - (f) Promoting investors' education & training of intermediaries of securities markets;
 - (g) Regulating substantial acquisition of shares & take-over of companies & insider trading in securities;
 - (i) Calling for information from, undertaking inspection, conducting inquiries & audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries & self-regulatory organisations in the securities market;
 - (ia) Calling for information/record from any person including any bank or any other authority or board or corporation established/constituted by/under any Central/State Act-which in the opinion of the Board shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;
 - (ib) Calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard: Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;
 - (j) Performing such functions & exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the C.Govt.;
 - (k) Levying fees/other charges for carrying out the purposes of this section;
 - (l) Conducting research for the above purposes;
 - (la) Calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;
 - (m) Performing such other functions as may be prescribed.
- (3) While exercising the powers u/s.11(2)(i) & (ia)-the Board shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-
- (i) Discovery & production of books of account & other documents, at such place & such time as may be specified by the Board;
 - (ii) Summoning/enforcing the attendance of persons & examining them on oath;
 - (iii) Inspection of any books, registers & other documents of any person referred to in section 12, at any place.
 - (iv) Issue commissions for the examination of witnesses/documents.
- (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry OR on completion of such investigation or inquiry, namely:— (a) suspend the trading of any security in a recognised stock exchange; (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities; (c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position; (d)

impound and retain the proceeds or securities in respect of any transaction which is under investigation; (e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder: Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached; (f) direct any intermediary or any person associated with the securities market in any manner not to dispose/alienate an asset forming part of any transaction which is under investigation: Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market: Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.]

(5) The amount disgorged, pursuant to a direction issued, u/s 11B of this Act or S.12A of the Securities Contracts (Regulation) Act, 1956 or S.19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.

Matters To Be Disclosed By The Companies:

S.11A: Without prejudice to the provisions of the Companies Act, 1956, the Board, may, for the protection of investors, specify by regulations:-

- (a) Matters relating to issue of capital, transfer of securities & other matters incidental thereto; &
- (b) Manner in which such matters, shall be disclosed by the companies.

Collective Investment Scheme:

S.11AA: (1) Any scheme/arrangement which satisfies the conditions referred to in sub-section (2) or (2A) shall be a collective investment scheme.

Provided that any pooling of funds under any scheme/arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme. (Inserted by 2014 Amendment).

(2) Any scheme/arrangement made or offered by any person (word company replaced by person in 2014) under which:-

- (i) The contributions/payments made by the investors, by whatever name called, are pooled & utilised for the purposes of the scheme or arrangement;
- (ii) The contributions/payments are made to such scheme or arrangement by the investors with a view to receive profits, income, property [movable/immovable] from such scheme/arrangement;
- (iii) The property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) The investors do not have day-to-day control over the management & operation of the scheme or arrangement.

(2A) Any scheme/arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act (inserted by 2014 Amendment)

(3) Not (deemed to be) a Collective Investment Scheme: Notwithstanding anything contained in sub-section (2) or (2A), any scheme/arrangement:-

(i) Made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) Under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

(iii) Being a contract of insurance to which the Insurance Act, 1938, applies;

(iv) Providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees' Provident Fund & Miscellaneous Provisions Act, 1952;

(v) Under which deposits are accepted u/s.58A of the Companies Act, 1956;

(vi) Under which deposits are accepted by a company declared as a Nidhi/mutual benefit society u/section 620A of the Companies Act, 1956;

(vii) Falling within the meaning of Chit business as defined the Chit Fund Act, 1982 u/s.2(d);

(viii) Under which contributions made are in the nature of subscription to a mutual fund.

(ix) Such other scheme or arrangement which the Central Government may, in consultation with the Board, notify (inserted by 2014 amendment).

Power To Issue Directions:

S.11B: (Save as otherwise, provided in section 11) if after making or causing to be made an enquiry, the Board is satisfied that it is necessary-

(i) In the interest of investors, OR orderly development of securities market; or

(ii) To prevent the affairs of any intermediary or other persons referred to in s.12 (stock brokers, sub-brokers & share transfer agents) being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) To secure the proper management of any such intermediary by person, it may issue such directions-

(a) To any person/class of persons referred to in s.12, or associated with the securities market; or

(b) To any company in respect of matters specified in s.11A (issue of capital, transfer of securities & other matters incidental) as may be appropriate in the interests of investors in securities & the securities market.

Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention (2014 Amendment).

REGISTRATION CERTIFICATE:

S.12: Registration of stock-brokers, sub-brokers, share transfer agents, etc.- (1) No stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser & such other intermediary who may be associated with securities market shall buy/sell/deal in securities except under, & in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser & such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

Also, any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

(1A) No depository, participant, custodian of securities, FII, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy/sell/deal in securities except under & in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:

Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, participant, custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy/sell securities or otherwise deal with the securities market until such time regulations are made u/s.30 (2) (d).

(1B) Certificate of registration-from Board: For-Person sponsoring or causing to be sponsored or carry on or caused to be carried on any venture capital funds or collective investment scheme including mutual funds or operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made u/s.30 (2) (d).

(2) Application for registration – prescribed format & payment of fee (as determined by regulations).

(3) The Board may, by Order – suspend/cancel a certificate of registration in such manner as may be determined by regulations (after giving the parties a reasonable opportunity of being heard).

13. Grants (Central Govt) – To the Board to utilize for the purposes of the Act (Procedure: Through Parliamentary Law sanctioning due appropriation).

14. Fund - (1) There shall be constituted a Fund to be called the Securities & Exchange Board of India General Fund.

CREDITS TO THE FUND:-

- (a) All grants/fees/charges received by the Board under this Act;**
- (aa) All sums realised by way of penalties under this Act; &**
- (b) All sums received by the Board from such other sources as may be decided upon by the C.Govt.**

FUND TO BE APPLIED FOR:-

- (a) Salaries/allowances/remuneration of the members/Officers/ Other employees of the Board;**
- (b) Expenses of the Board in the discharge of its functions under section 11;**
- (c) Expenses on objects/purposes authorised by this Act.**

S.15: ACCOUNTS & AUDIT- (1) The Board shall maintain proper accounts & other relevant records & prepare an annual statement of accounts in such form as may be prescribed by the C.Govt. in consultation with the Comptroller & Auditor-General of India.

(2) The accounts of the Board shall be audited by the Comptroller & Auditor-General of India at such intervals as may be specified by him & any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller & Auditor-General of India.

(3) Comptroller & Auditor-General of India & any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights & privileges & authority in connection with such audit as the Comptroller & Auditor-General generally has in connection with the audit of the government accounts &, in particular, shall have the right to demand the production of books, accounts, connected vouchers & other documents & papers & to inspect any of the offices of the Board.

(4) A/cs – certified by-Comptroller & Auditor-General of India or any other person appointed by him in this behalf.

Certificate+audit report-forwarded to C.Govt.-laid before both Houses of Parliament.

Penalty for failure to furnish information, return, etc:

S.15A: If any person, who is required under this Act or any rules or regulations made thereunder, fails - penalty is:-

- (a) Any document/return/report to the Board –Fine which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which such failure continues subject to a maximum of Rs.1 crore (2014);**
- (b) File any return or furnish any info/books/other documents (within the time specified therefor in the regulations) - Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which such failure continues subject to a maximum of Rs.1 crore;**
- (c) To maintain books of account or records - Fine which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which such failure continues subject to a maximum of Rs.1 crore.**

S.15B: Penalty for failure by any person to enter into agreement with clients- If any person, who is registered as an intermediary & is required under this Act/rules/regulations made thereunder, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a-Penalty which shall not be less

than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which such failure continues subject to a maximum of Rs.1 crore.

S.15C: If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which such failure continues subject to a maximum of one crore rupees (2014).

S.15D: Penalty for certain defaults in case of mutual funds: If any person, who is-

(a) Required under this Act/rules/regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, does without obtaining such certificate of registration, he shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore (2014);

(b) Registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms & conditions of certificate of registration, he shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore (2014);

(c) Registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore (2014);

(d) Registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore (2014);

(e) Registered as a collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a- Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore (2014);

(f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore (2014).

S.15E: Penalty for failure to observe rules & regulations by an asset management company- Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies, such asset

management company shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which such failure continues subject to a maximum of Rs.1 crore.

S.15F: Penalty for default of stock brokers- If any person, who is registered as a stock broker under this Act-

(a) Fails to issue contract notes in the form & manner specified by the stock exchange of which such broker is a member, he shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to (2014) (the sum) for which the contract note was required to be issued by that broker;

(b) Fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a-Penalty which shall not be less than Rs.1,00,000 but which may extend to Rs.1,00,000 for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of Rs.1 crore;

(c) Charges a brokerage amt. which is in excess of the brokerage specified in the regulations, he shall be liable to a- Penalty which shall not be less than Rs.1,00,000 but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

S.15G: Penalty for insider trading- If any insider who-

(i) Either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) Communicates any unpublished price, sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) Counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information, shall be liable to a-Penalty which shall not be less than Rs.10,00,000 but max to Rs.25 crores OR 3 times the amount of profits made out of insider trading, whichever is higher.

S.15H: Penalty for non-disclosure of acquisition of shares & takeovers- If any person, who is required under this Act or any rules or regulations made thereunder, fails to-

(i) disclose the aggregate of his share holding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer-he shall be liable to a penalty which shall not be less than Rs.10,00,000, max Rs.25 crores or 3 times the amount of profits made out of such failure, whichever is higher.

S.15HA: Penalty for fraudulent and unfair trade practices.

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than Rs.5,00,000 but which may extend to Rs.25 crores or 3 times the amount of profits made out of such practices, whichever is higher.

S.15HB: Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than Rs.1,00,000, max Rs.1 crore.

S.15-I: Power to adjudicate: (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G & 15H, the Board shall appoint any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon & enforce the attendance of any person acquainted with the facts & circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry & if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings -

if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter (*Audi Altrem Partem*):

Provided further that nothing contained in this sub-section shall be applicable after an expiry of 3 months from the date of the order passed by the adjudicating officer OR disposal of the appeal under section 15T, whichever is earlier.

S.15J: Factors to be taken into account by the adjudicating officer -While adjudging the quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

S.15JA: All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

S.15JB: Settlement of administrative and civil proceedings:

(1) Any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.

ESTABLISHMENT – JURISDICTION – AUTHORITY - PROCEDURE OF APPELLATE TRIBUNAL:

15K. Establishment of Securities Appellate Tribunals.- (1) The Central Govt. shall, by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers & authority conferred on such Tribunal by or under this Act or any other law for the time being in force.

(2) The Central Govt. shall also specify in the notification referred to in sub-section (1) the matters & places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

S.15L: Composition of Securities Appellate Tribunal – A Securities Appellate Tribunal shall consist of one person only, referred to as Presiding Officer of the Securities Appellate Tribunal, to be appointed by notification by the Central Government.

S.15M: Qualifications for appointment as Presiding Officer of the Securities Appellate Tribunal.- (1) A person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he -

(a) is a sitting/retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or

(b) (b) is a sitting/retired Judge of a High Court who has completed not less than 7 years of service as a Judge in a High Court.

(c) (1A) The Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

(d) (2) A person shall not be qualified for appointment as member of a Securities Appellate Tribunal unless he is a person of 1.ability, integrity and standing who has 2.shown capacity in dealing with problems relating to securities market and has 3.qualification and experience of corporate law, securities laws, finance, economics or accountancy: Provided that a member of the Board or any person holding a post at senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of a Securities Appellate Tribunal during his service or tenure as such with the Board OR within 2 years from the date on which he ceases to hold office as such in the Board.

S.15N. Term of office: The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of 5 years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of 68 years:

Provided further that no person shall hold office as a Member of the Securities Appellate Tribunal after he has attained the age of 62 years.

S.15-O. Salary & allowances & other terms & conditions of service of Presiding Officers.- The salary & allowances payable to & the other terms & conditions of service (including pension, gratuity & other retirement benefits) of, the Presiding Officer and other Members of a Securities Appellate Tribunal shall be such as may be prescribed:

PROVIDED that neither the salary & allowances nor the other terms & conditions of service of the said Presiding Officers and other Members shall (not) be varied to their disadvantage after appointment.

S.15P: Filling up of vacancies- If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer and any other member of a Securities Appellate Tribunal, then the Central Govt. shall appoint another person in accordance with the provisions of this Act to fill the vacancy & the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

S.15Q: Resignation & removal.- (1) The Presiding Officer or any other member of a Securities Appellate Tribunal may, by notice in writing under his hand addressed to the Central Govt., resign his office:

PROVIDED that the said Presiding Officer/member shall, unless he is permitted by the Central Govt. to relinquish his office sooner, continue to hold office until the expiry of 3 months from the date of receipt of such notice OR until a person duly appointed as his successor enters upon his office OR until the expiry of his term of office, whichever is the earliest.

(2) The Presiding Officer/member of a Securities Appellate Tribunal shall not be removed from his office except by an order by the Central Govt. on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court, in which the Presiding Officer concerned has been informed of the charges against him & given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Govt. may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the aforesaid Presiding Officer/member.

S.15R: Orders constituting Appellate Tribunal to be final & not to invalidate its proceedings.- (1) No order of the Central Govt. appointing any person as the Presiding Officer/member of a Securities Appellate Tribunal shall be called in question in any manner, &

(2) no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

S.15S: Staff of the Securities Appellate Tribunal.- (1) The Central Govt. shall provide the Securities Appellate Tribunal with such officers & employees as that government may think fit.

(2) The officers & employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries & allowances & other conditions of service of the officers & employees of the Securities Appellate Tribunal shall be such as may be prescribed.

S.15T: Appeal to the Securities Appellate Tribunal.- (1) Save as provided in sub-section (2), any person aggrieved,-

(a) by an order of the Board made, on & after the commencement of the Securities Laws (II Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order by an Adjudicating Officer under this Act,

- may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made-

(a) by the Board on & after the commencement of the Securities Laws (IIInd Amendment) Act, 1999;

(b) by an Adjudicating Officer, with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which a copy of the order made by the Board or the Adjudicating Officer, as the case may be is received by him & it shall be in such form & be accompanied by such fee as may be prescribed:

PROVIDED that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, the parties to the appeal & to the concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible & endeavour shall be made by it to dispose of the appeal finally within 6 months from the date of receipt of the appeal.

S.15U: Procedure & powers of the Securities Appellate Tribunal.- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice &, subject to the other provisions of this Act & of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) summoning & enforcing the attendance of any person & examining him on oath:

(b) requiring the discovery & production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex-parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex-parte;

(h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 & 228, & for the purposes of section 196 of the Indian Penal Code (45 of 1860), & the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 & Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

S.15V: Right to legal representation.- The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Explanation: For the purposes of this section,-

(a) “chartered accountant” means a chartered accountant as defined in S.2(1)(h) of the Chartered Accountants Act, 1949 & who has obtained a certificate of practice u/s.6 (1) of that Act;

(b) “company secretary” means a company secretary as defined in S.2 (1)(c) of the Company Secretaries Act, 1980 & who has obtained a certificate of practice u/s.6 (1) of that Act;

(c) “cost accountant” means a cost accountant as defined in S.2 (1)(b) of the Cost & Works Accountants Act, 1959 & who has obtained a certificate of practice u/s.6 (1) of that Act;

(d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, & includes a pleader in practice.

S.15W: Limitation.- The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

S.15X: Presiding Officer & staff of Securities Appellate Tribunals to be public servants.- The Presiding Officer & other officers & employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

S.15Y: Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine & no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

S.15Z: Appeal to High Court.- Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

MISCELLANEOUS:

S.16: Power of Central Govt. to issue directions- (1) Without prejudice to the foregoing provisions of this Act or the Depositories Act, 1996, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Govt. may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Govt. whether a question is one of policy or not shall be final.

S.17: Power of Central Govt. to supersede the Board- (1) If at any time the Central Govt. is of opinion-

(a) that on account of grave emergency, the Board is unable to discharge the functions & duties imposed on it by or under the provisions of this Act; or

(b) that the Board has persistently made default in complying with any direction issued by the Central Govt. under this Act or in the discharge of the functions & duties imposed on it by or under the provisions of this Act & as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Govt. may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board-

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions & duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised & discharged by such person or persons as the Central Govt. may direct; &

(c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Govt..

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Govt. may reconstitute the Board by a fresh appointment & in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for appointment:

Provided that the Central Govt. may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Govt. shall cause a notification issued under sub-section (1) & a full report of any action taken under this section & the circumstances leading to such action to be laid before each House of Parliament at the earliest.

S.18: Returns & reports- (1) The Board shall furnish to the Central Govt. at such time & in such form & manner as may be prescribed or as the Central Govt. may direct, such returns & statements & such particulars in regard to any proposed or existing programme for the promotion & development of the securities market, as the Central Govt. may, from time to time, require.

(2) Without prejudice to the provisions of sub-section (1), the Board shall, within ninety days after the end of each financial year, submit to the Central Govt. a report in such form, as may be prescribed, giving a true & full account of its activities, policy & programmes during the previous financial year.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

S.19: Delegation- The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers & functions under this Act, (except the powers under section 29) as it may deem necessary.

S.20: Appeals- (1) Any person aggrieved by an order of the Board made, before the commencement of the Securities Laws (II Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Govt. within such time as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Central Govt. may condone delay. Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Govt. that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form & shall be accompanied by a copy of the order appealed against & by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

S.20A: Bar of jurisdiction-

1) No order passed by the Board or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20

2) No civil court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer is empowered by, or under, this Act to pass any order

3) No injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the adjudicating officer by, or under this Act.

S.21: Saving- Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

S.22: Members, officers & employees of the Board to be public servants.- All members, officers & other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

S.23: Protection of action taken in good faith- No suit, prosecution or other legal proceedings, shall lie against the Central Govt. or Board or any officer of the Central Govt. or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

S.24: Offences- (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for maximum 1 year or with fine or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not less than 1 month, maximum 3 years &/or with fine which shall not be less than Rs.2,000/-, maximum Rs.10,000/- .

S.25: Exemption from tax on wealth & income- Notwithstanding anything contained in the Wealth Tax Act, 1957 (27 of 1957), the Income Tax Act, 1961 (43 of 1961) or any other enactment for the time being in force relating to tax on wealth, income, profits or gains-

(a) the Board;

(b) the existing Securities & Exchange Board from the date of its constitution to the date of establishment of the Board,

shall not be liable to pay wealth tax, income tax or any other tax in respect of their wealth, income, profits, or gains derived.

S.26: Cognisance of offences by Courts- (1) No court shall take cognisance of any offence punishable under this Act or any rules or regulations made by the Board.

Establishment of Special Courts:

S.26A: (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish/designate as many Special Courts as may be necessary.

(2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.

Offences that can be tried by Special Courts:

S.26B: Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Appeal and revision.

S.26C: The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court.

S.26D: (1) Save as otherwise provided in this Act, the provisions of the Cr.P.C., 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of S.2(u) of the Cr.P.C., 1973.

(2) **Qualification of PP:** The person conducting prosecution should have been in practice as an advocate for not less than 7 years OR should have held a Union/State post, for a period of not less than 7 years, requiring special knowledge of law.

Transitional provisions.

S.26E: Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

But, this shall not affect the powers of the High Court u/s.407 of the Cr.P.C., 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.

S.27: Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, & was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence & shall be liable to be proceeded against & punished accordingly:

Defense for Person: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company & it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence & shall be liable to be proceeded against & punished accordingly.

Explanation: For the purposes of this section-

(a) “company” means any body corporate & includes a firm or other association of individuals; &

(b) “director”, in relation to a firm, means a partner in the firm.

S.28: Omitted by the Securities Laws (Amendment) Act, 1995.

Recovery of amounts.

S.28A: (1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board,

- the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:— (a) attachment and sale of the person’s movable property; (b) attachment of the person’s bank accounts; (c) attachment and sale of the person’s immovable property; (d) arrest of the person and his detention in prison; (e) appointing a receiver for the management of the person’s movable and immovable properties, and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation under the provisions of the Second and Third Schedules— Any reference the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3— Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act. (2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1). (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person. (4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.]

Power to make rules.

S.29: (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :— (a) the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5; (b) the additional functions that may be performed by the Board under section 11; (d) the manner in which the accounts of the Board shall be maintained under section 15; 130[(da) the manner of inquiry under sub-section (1) of section 15-I; (db) the salaries and allowances and other terms and conditions of service of the 131[Presiding Officers, Members] and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S; (dc) the procedure for the investigation of misbehaviour or incapacity of the 132[Presiding Officers, or other Members] of the Securities Appellate Tribunal under sub-section (3) of section 15Q; (dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal;] (e) the form and the manner in which returns and report to be made to the Central Government under section 18;

(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Power to make regulations.

S.30: (1) The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following

matters, namely :— (a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business; (b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9; 134[(c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A; 135[(ca) the utilisation of the amount credited under sub-section (5) of section 11; (cb) the fulfilment of other conditions relating to collective investment scheme under subsection (2A) of section 11AA;] ((d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.] 136[(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB; (db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.] Rules and regulations to be laid before Parliament.

S.31: Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

S.32: Application of other laws not barred.- The provisions of this Act shall be in addition to, & not in derogation of, the provisions of any other law for the time being in force.

Central Govt. has the power to make rules & regulations under this Act.

Power to remove difficulties.

S.34: (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty : Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act. (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 137

Validation of certain acts.

S.34A: Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.

S.35: (1) The Securities and Exchange Board of India Ordinance, 1992 (Ord. 5 of 1992), is hereby repealed. (2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

UNIT - III

THE TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997

The Act extends to the whole of India.

Definition of Service Provider & Telecommunication Service:

Service provider: The Government and includes a licensee.

Telecommunication Service: Service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting services.

TELECOM REGULATORY AUTHORITY OF INDIA

TRAI established by Central Government. It shall be a body corporate.

Constitution:

Chairperson.

Members: Not less than two, but not exceeding six members,

Appointment: To be appointed by the Central Government. The Central Government may appoint one of the members as Vice-Chairperson.

Head office: New Delhi.

Qualification-Chairperson: shall be a person who is or has been a Judge of the Supreme Court or who is or has been the Chief Justice of a High Court.

Qualification-Member: A Member shall be a person who has special knowledge of, and professional experience in, telecommunication, industry, finance, accountancy, law, management and consumer affairs:

Govt. Servant: Provided that a person who is or has been in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of 3 years.

Term of Office: Chairperson - 5 years from the date on which he enters upon his office.

Member - 5 years from the date on which he enters upon his office OR until he attains the age of 65 years, whichever is earlier.

Salary-Allowances-terms of service conditions: Shall be such as may be prescribed.

The salary, allowances and other conditions of service of the Chairperson or of a member shall not be varied to his disadvantage after appointment.

Relinquish or removal from Office: A member may-

Relinquish his office by giving notice [of not less than 3 months] in writing to the Central Government.

The Central Government may remove from office any member, who-

- a. Has been adjudged an insolvent; or
- b. Has been convicted of an offence which, in the opinion of The Central Government, involves moral turpitude; or
- c. Has become physically/mentally incapable of acting as a member ; or
- d. Has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- e. Has so abused his position as to render his continuance in office prejudicial to be public interest.

Vacancy: A vacancy caused to the office of the Chairperson or any other member shall be filled up within a period of 3 months from the date on which such vacancy occurs.

Powers/functions: (1) The Chairperson shall have powers of

- General superintendence and directions in the conduct of the affairs of the Authority and he shall,
- Presiding over the meetings of the Authority,
- Exercise and discharge such powers and functions of the Authority and shall discharge such other powers and functions as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court on a reference by the Central Government, has, on an enquiry, held by it in accordance with such procedure as prescribed in this behalf, reported that the member ought on such ground or grounds to be removed.

Meeting: The Authority shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

Decisions: All questions which come up before any meeting of the Authority shall be decided by a majority vote of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding, shall have a second or casting vote.

Appointment of officers/employees: The Authority may appoint officers and such other employees as it considers necessary for the efficient discharge of its functions under this Act.

Salary and allowances payable to and the other conditions of service of the officers and other employees determined by regulations.

POWERS & FUNCTIONS OF THE AUTHORITY

Functions of the Authority shall be to-

- a. Recommend the need and timing for introduction of new service provider;
- b. Recommend the terms and conditions of licence to a service provider;
- c. Ensure technical compatibility and effective inter-connection between different service providers;
- d. Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;

- e. Ensure compliance of terms and conditions of licence;
- f. Recommend revocation of licence for non-compliance of terms and conditions of licence;
- g. Laydown and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;
- h. Facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services;
- i. Protect the interest of the consumers of telecommunication service;
- j. Monitor the quality of service and conduct the periodical survey of such provided by the service providers;
- k. Inspect the equipment used in the network and recommend the type of equipment to be used by the service providers;
- l. Maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;
- m. Keep register maintained under clause (l) open for inspection to any member of public on payment of such fee and compliance of such other requirements as may be provided in the regulations;
- n. Settle disputes between service providers;
- o. Render advice to the Central Government in the matters relating to the development of telecommunication technology and any other matter relatable to telecommunication industry in general;
- p. Levy fees and other charges at such rates and in respect of such services as may be determined by regulations;
- q. Ensure effective compliance of universal service obligations;
- r. Perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

While discharging its functions the Authority shall not act against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality. The Authority shall ensure transparency while exercising its powers and discharging its functions.

Where the Authority considers it expedient so to do, it may, by order in writing –

- a. Call upon any service provider at any time to furnish in writing such information/explanation relating to its affairs as the Authority may require; or
- b. Appoint 1 or more persons to make an inquiry in relation to the affairs of any service provider; and
- c. Direct any of its officers or employees to inspect the books of account or other documents of any service provider.

- (2) Where any inquiry in relation to the affairs of a service provider has been undertaken under clause (1),
 - a. Every officer of the Government Department, if such service provider is a Government;
 - b. Every director, manager, secretary or other officer, if such service provider is a company;
 - c. Every partner, manager, secretary or other officer, if such service provider is a firm;
 - d. Produce books of a/c/documents/records/sts/info: Every other person or body of persons who has been dealing in the course of business with any of the persons mentioned in clauses (a), (b) and (c) shall be bound to produce before the Authority making the inquiry, all such books of account, documents in his custody or power relating to, or having a bearing on the subject of the inquiry and also to furnish to the Authority with any such statement or information as the case may be, required of him, within such time as may be specified.
- (3) Every service provider shall maintain books of account or other documents as may be specified.
- (4) The Authority shall have the power to issue such directions to service providers as may be necessary for proper functioning by service providers.

SETTLEMENT OF DISPUTES

If a dispute arises, among service providers or between service providers and a group of service providers, such disputes shall be adjudicated by a bench constituted by the Chairperson and such bench members;

The bench constituted under sub-section (1) shall exercise, on and from the appointed day, all the powers and authority as were exercisable immediately before that date by any civil court in relation to matters relating to-

- i. technical compatibility and inter-connections between service providers;
- ii. revenue sharing arrangements between different service providers;
- iii. quality of telecommunication services and interest of consumers;

The Authority shall be guided by the principles of natural justice.

The Authority shall have, for the purpose of discharging their functions, the same powers and authority as a civil court under the Code of civil Procedure, 1908 in respect of the following matters:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed in its absence;
- (h) any other matter which may be prescribed.

Appearance of parties: The applicant may either appear in person or authorize one or more legal practitioners or any of its officers to present his or its case before the Authority.

Appeal: Any person aggrieved by any decision or order of the Authority may file an appeal to the High Court within thirty days from the date of communication of the decision or order of the Authority to him;

Further extension of time: The High Court may, allow the appeal to be filed within a further period not exceeding sixty days.

Every order made by the Authority under this Act or the order made by the High Court in any appeal, shall be deemed to be decree of the civil court and shall be executable in the same manner as a decree of that court.

Non-compliance: If any person willfully fails to comply with the orders of the Authority or any order of the High Court, shall be punishable with - (a) fine which may extend to one lakh rupees; (b) in case of a second or subsequent offence with fine which may extend to two lakh rupees; (c) in case of continuing contravention with additional fine which may extend to two lakh rupees for every day during which the default continues

AMENDMENT TO THE TELECOM REGULATORY AUTHORITY OF INDIA ACT, 1997 IN 2000.

Amendment of section 2	<p>In section 2</p> <p>The following clause inserted:-</p> <p>'(aa) "Appellate Tribunal " means the Telecom Disputes Settlement and Appellate Tribunal established under section 14.</p> <p>(ea) "licensor " means the Central Government or the telegraph authority who grants a license under section 4 of the Indian Telegraph Act, 1885.</p>
Amendment of section 3	<p>In section 3 of the principal Act, for sub-section (3) the following sub-section shall be substituted namely:-</p> <p>(a) The Authority shall consist of a Chairperson, and not more than two whole time members and not more than two-part time members, to be appointed by the Central Government."</p>
Substitution of New section For section 4: Qualifications for appointment of Chairperson and other members.	<p>The section 4 of the principal Act the following section shall be substituted namely:-</p> <p>The Chairperson and other members of the Authority shall be appointed by the Central - Government from amongst persons who have special knowledge of, and professional experience in telecommunication, industry, finance, accountancy, law, management or consumer affairs:</p> <p>Provided that a person who is, or has been , in the service of Government shall not be appointed as a member unless such person has held the post of Secretary or Additional Secretary, or the post of Additional Secretary and Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than three years."</p> <p>In section 5 of the principal Act-</p>

Amendment to sector 5	<p>a. For sub-sections (2) and (3) the following shall be substituted</p> <p>(2) The Chairperson and other members shall hold office for a term not exceeding three years , as the Central Government may notify in this behalf , from the date on which they enter upon their offices or until they attain the age of sixty five years, whichever is earlier.</p> <p>(3) On the commencement of the Telecom Regulatory Authority (Amendment) Ordinance 2000, a person appointed as Chairperson of the Authority and every other person appointed as member and holding office as such immediately before such commencement shall vacate their respective offices and such Chairperson and such other members shall be entitled to claim compensation not exceeding three month pay and allowances for the premature termination of the term of their office or any contract of service."</p> <p>(b) In sub-section (5), for the words "other members" the words "whole-time members" shall be substituted.</p> <p>(c) After sub-section (6), the following sub-section shall be inserted, namely:-</p> <p>(6A) The part-time members shall receive such allowances as may be prescribed.</p> <p>(d) In sub-section (8) -</p> <p>(i) In clause (b) for the words "two years", the words "one year" shall be substituted:</p> <p>(ii) After clause (b), the following provision shall be inserted, namely:-</p> <p>Provided that nothing contained in this sub-section shall apply to the Chairperson or a member who has ceased to hold office under sub-section (3) and such Chairperson or member shall be eligible for re-appointment in the Authority or appointment in the</p> <p>Appellate Tribunal.</p>
Amendment to section 7	<p>In section 7 of the principal Act, for sub-sections (2) and (3). the following sub-section shall be substituted, namely:-</p> <p>(2) No such member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.</p>
Amendment to section 11	<p>In section 11 of the principal Act-</p> <p>(a) For sub-section (1), the following sub-section shall be substituted:-</p> <p>(1) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the functions of the Authority shall be to-</p> <p>(a) Make recommendations, either suo motu or on a request from the licensor, on the following matters, namely:-</p> <p>(i) Need and timing for introduction of new service provider;</p>

- (ii) Terms and conditions of license to a service provider;
 - (iii) Revocation of license for non-compliance of terms and conditions of license;
 - (iv) Measures to facilitate competition and promote efficiency in the operation of telecommunication services so as to facilitate growth in such services.
 - (v) Technological improvements in the services provided by the service providers;
 - (vi) Type of equipment to be used by the service providers after inspection of equipment used in the network;
 - (vii) Measures for the development of telecommunication technology and any other matter relating to telecommunication industry in general;
 - (viii) Efficient management of available spectrum;
- (b) Discharge the following functions, namely:-
- (i) Ensure compliance of terms and conditions of license;
 - (ii) Notwithstanding anything contained in the terms and conditions of the license granted before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, fix the terms and conditions of inter-connectivity between the service providers;
 - (iii) Ensure technical compatibility and effective inter-connection between different service providers;
 - (iv) Regulate arrangement amongst service providers of sharing their revenue derived from providing telecommunication services;
 - (v) Lay down the standards of quality of service to be provided by the service providers and ensure the quality of service and conduct the periodical survey of such service provided by the service providers so as to protect interest of the consumers of telecommunication services;
 - (vi) Lay down and ensure the time period for providing local and long distance circuits of telecommunication between different service providers;
 - (vii) Maintain register of interconnect agreements and of all such other matters as may be provided in the regulations;
 - (viii) Keep register maintained under clause (viii) open for inspection to any member of public on payment of such fee and compliance of such other requirement as may be provided in the regulations;
 - (ix) Ensure effective compliance of universal service obligations.
- (c) Levy fees and other charges at such rates and in respect of such services as may be determined by regulations.
- (d) Perform such other functions including such administrative and financial functions as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

Provided that the recommendations of the Authority specified in the clause (a) of this sub-section shall not be binding upon the Central Government.

Provided further that the Central Government shall seek the recommendations of the Authority in respect of matters specified in sub-clauses (i) and (ii) of clause (a) of this sub-section in respect of new license to be issued to a service provider and the Authority shall forward its recommendations within a period of sixty days from the date on which that Government sought the recommendations.

Provided also that the Authority may request the Central Government to furnish such information or documents as may be necessary for the purpose of making recommendations under sub-clauses (i) and (ii) of clause (a) of this sub-section and that Government shall supply such information within a period of seven days from receipt of such request.

Provided also that the Central Government may issue a license to a service provider if no recommendations are received from the Authority within the period of specified in the second provision or within such period as may be mutually agreed upon between the Central Government and the Authority.

Provided also that if the Central Government having considered that recommendation of the Authority comes to a prima facie conclusion that such recommendation cannot be accepted or needs modifications, it shall, refer the recommendations back to the Authority for its reconsideration, and the Authority may within fifteen days from the date of receipt of such reference, forward to the Central Government its recommendation after considering the reference made by the Government. After receipt of further recommendation, if any, the Central Government shall take a final decision.

For Chapter IV of the principal Act the following Chapter shall be substituted, namely-

CHAPTER IV - APPELLATE TRIBUNAL:

1. Establishment of Appellate Tribunal.

2. Application for settlement of disputes and appeals to Appellate Tribunal.

(1) All appeals pending before the High Court immediately before the commencement of the Telecom Regulatory Authority (Amendment) Ordinance, 2000, shall stand transferred to the Appellate Tribunal on its establishment under section 14.

(2) Where any appeal stands transferred from the High Court to the Appellate Tribunal under sub-section (1):-

a The High Court shall, as soon as may be after such transfer, forward the records of such appeal to the Appellate Tribunal: and

b The Appellate Tribunal may, on receipt of such records, proceed to deal with such appeal, so far as may be from the stage which was reached before such transfer or from any earlier stage or de novo as the Appellate Tribunal may deem fit.

Substitution of
new Chapter for
Chapter IV

Transfer of
appeals

<p>Civil court not to have jurisdiction</p>	<p>No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.</p>
<p>Procedure and powers of Appellate Tribunal</p>	<p>(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.</p> <p>(2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-</p> <ol style="list-style-type: none"> 1. Summoning and enforcing the attendance of any person and examining him on oath; 2. Requiring the discovery and production of documents; 3. Receiving evidence on affidavits; 4. Subject to provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office; 5. Issuing commissions for the examination of witnesses or documents; 6. Reviewing its decisions; 7. Dismissing an application for default or deciding it, ex parte; 8. Setting aside any order of dismissal of any application for default or any order passed by it, ex parte; and 9. Any other matter which may be prescribed. <p>(3) Every proceeding before the Appellate Tribunal shall be deemed to be judicial proceeding when the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure 1973.</p> <p>The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.</p> <p>Explanation - for the purposes of this section,-</p>
<p>Amendment to section 23</p>	<p>In section 23 of the Principle Act, after sub-section (2), the following Explanation shall be inserted, namely:-</p> <p>"Explanation - For the removal of doubts it is hereby declared that the decisions of the Authority taken in discharge of its functions under clause (b) of sub-section (1) and sub-section (2) of section 11 and section 13, being matters appealable to the Appellate Tribunal, shall not be subject to audit under this section."</p>

UNIT – IV

THE ELECTRICITY ACT, 2003

Objective of the Act:

To consolidate the laws relating to generation, transmission, distribution, trading & use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and Appellate Tribunal and for matters connected therewith or incidental thereto.

Section 1: (2) It extends to the whole of India except the State of Jammu and Kashmir.

Section 2: (Definitions):

- (1) Appellate Tribunal means the Appellate Tribunal for Electricity established u/s.110;
- (3) Area of supply means the area within which a distribution licensee is authorized by his license to supply electricity;
- (4) Appropriate Commission means the Central Regulatory Commission referred to in s.76 (1) or the State Regulatory Commission referred to in s.82 or the Joint Commission referred to in s.83.
- (5) Appropriate Government means, -
 - (a) the Central Government -
 - (i) in respect of a generating company wholly or partly owned by it;
 - (ii) in relation to any inter-State generation, transmission, trading or supply of electricity and with respect to any mines, oil-fields, railways, national highways, airports, telegraphs, broadcasting stations and any works of defence, dockyard, nuclear power installations;
 - (iii) in respect of National & Regional Load Despatch Centre;
 - (iv) in relation to any works or electric installation belonging to it or under its control ;
 - (b) in any other case, the State Government, having jurisdiction under this Act;
- (6) Authority means the Central Electricity Authority referred to in sub-section (1) of section 70;
- (7) Board means, a State Electricity Board, constituted before the commencement of this Act, under sub-section (1) of section 5 of the Electricity (Supply) Act, 1948;
- (8) Captive generating plant means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;
- (9) Central Commission means the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76;

- (10) **Central Transmission Utility** means any Government company notified by the Central Government u/s.38(1);
- (11) **Chairperson** means the Chairperson of the Authority or Appropriate Commission or the Appellate Tribunal, as the case may be;
- (12) **Cogeneration** means a process which simultaneously produces 2 or more forms of useful energy (including electricity);
- (13) **company** means a company formed and registered under the Companies Act, 1956 and includes any body corporate under a Central, State or Provincial Act;
- (14) **conservation** means any reduction in consumption of electricity as a result of increase in the efficiency in supply and use of electricity;
- (15) **consumer** means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;
- (16) **dedicated transmission lines** means any electric supply-line for point to point transmission which are required for the purpose of connecting - electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;
- (17) **distribution licensee** means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (18) **distributing main** means the portion of any main with which a service line is, or is intended to be, immediately connected;
- (19) **distribution system** means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;
- (20) **electric line** means any line used to carry electricity for any purpose including -
- (a) any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried or suspended; and
 - (b) any apparatus connected to any such line for the purpose of carrying electricity;
- (21) **Electrical Inspector** means a person appointed as such by the Appropriate Government u/s.162(1) and also includes Chief Electrical Inspector;
- (22) **electrical plant** means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-
- (a) an electric line; or
 - (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
 - (c) an electrical equipment, apparatus or appliance under the control of a consumer;

- (23) electricity means electrical energy-
- (a) generated, transmitted, supplied or traded for any purpose; or
 - (b) used for any purpose except the transmission of a message;
- (24) “Electricity Supply Code” means the Electricity Supply Code specified u/s.50;
- (25) electricity system means a system under the control of a generating company or licensee, as the case may be, having one or more -
- (a) generating stations; or
 - (b) transmission lines; or
 - (c) electric lines and sub-stations;
- and when used in the context of a State or the Union, the entire electricity system within the territories thereof;
- (26) electricity trader means a person who has been granted a licence to undertake trading in electricity under section 12;
- (27) franchisee means a persons authorised by a distribution licensee to distribute electricity on its behalf in a particular area within his area of supply;
- (28) generating company means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns/operates/maintains a generating station;
- (29) generate means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;
- (30) generating station or station means any station for generating electricity, including any building and plant with step-up transformer, switch-gear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof;
- a site intended to be used for a generating station, and
- any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station;
- (31) Government company shall have the meaning assigned to it in section 617 of the Companies Act, 1956;
- (32) grid means the high voltage backbone system of inter-connected transmission lines, sub-stations and generating plants;
- (33) Grid Code means the Grid Code specified by the Central Commission u/s.79(1);
- (34) Grid Standards means the Grid Standards specified u/s.73 (d) by the Authority;
- (35) high voltage line means an electric line or cable of a nominal voltage as may be specified by the Authority from time to time;

- (36) inter-State transmission system includes -
- (i) any system for the conveyance of electricity by means of main transmission line from the territory of one State to another State;
 - (ii) the conveyance of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-State transmission of electricity;
 - (iii) the transmission of electricity within the territory of a State on a system built, owned, operated, maintained or controlled by a Central Transmission Utility.
- (37) intra-State transmission system means any system for transmission of electricity other than an inter-State transmission system;
- (38) licence means a licence granted u/s.14;
- (39) licensee means a person who has been granted a licence u/s.14;
- (40) line means any wire, cable, tube, pipe, insulator, conductor or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity and includes any line which surrounds or supports, or is surrounded or supported by or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;
- (41) local authority means any Nagar Panchayat, Municipal Council, municipal corporation, Panchayat constituted at the village, intermediate and district levels, body of port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with, the control or management of any area or local fund;
- (42) main means any electric supply-line through which electricity is, or is intended to be, supplied;
- (43) Member means the Member of the Appropriate Commission or Authority or Joint Commission, or the Appellate Tribunal, as the case may be, and INCLUDES the Chairperson of such Commission or Authority or Appellate Tribunal;
- (44) National Electricity Plan means the National Electricity Plan notified u/s.3 (4);
- (45) National Load Despatch Centre means the Centre established u/s.26 (1);
- (46) notification means notification published in the Official Gazette and the expression notify shall be construed accordingly;
- (47) open access means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;
- (48) overhead line means an electric line which is placed above the ground and in the open air but does not include live rails of a traction system;
- (49) person shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

- (50) power system means all aspects of generation, transmission, distribution and supply of electricity and includes one or more of the following, namely:-
- (a) generating stations;
 - (b) transmission or main transmission lines;
 - (c) sub-stations;
 - (d) tie-lines;
 - (e) load despatch activities;
 - (f) mains or distribution mains;
 - (g) electric supply-lines;
 - (h) overhead lines;
 - (i) service lines;
 - (j) works;
- (51) premises includes any land, building or structure;
- (52) prescribed means prescribed by rules made by the Appropriate Government under this Act;
- (53) public lamp means any street electric lamp;
- (54) real time operation means action to be taken at a given time at which information about the electricity system is made available to the concerned Load Despatch Centre;
- (55) Regional Power Committee means a committee established by resolution by the Central Government for a specified region for facilitating the integrated operation of the power systems in that region;
- (56) Regional Load Despatch Centre means the Centre established u/s.27 (1);
- (57) regulations means regulations made under this Act;
- (58) repealed laws means the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998 repealed by section 185;
- (59) rules means rules made under this Act;
- (60) schedule means the Schedule to this Act;
- (61) service-line means any electric supply-line through which electricity is, or is intended to be, supplied -
- (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or
 - (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;
- (62) specified means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;

- (63) stand alone system means the electricity system set-up to generate power and distribute electricity in a specified area without connection to the grid;
- (64) State Commission means the State Electricity Regulatory Commission constituted u/s.82(1) and includes a Joint Commission constituted u/s.83(1);
- (65) State Grid Code means the State Grid Code specified u/s.86(1)(h);
- (66) State Load Despatch Centre means the centre established u/s.31(1);
- (67) State Transmission Utility means the Board or the Government company specified as such by the State Government u/s.39(1);
- (68) street includes any way, road, lane, square, court, alley (narrow street with walls on both sides), passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway (road raised above water/marshland/sand);
- (69) sub-station means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switch-gears, capacitors, synchronous condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site thereof;
- (70) supply, in relation to electricity, means the sale of electricity to a licensee/consumer;
- (71) trading means purchase of electricity for resale thereof and the expression "trade" shall be construed accordingly;
- (72) transmission lines means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station/substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works;
- (73) transmission licensee means a licensee authorised to establish or operate transmission lines;
- (74) transmit means conveyance of electricity by means of transmission lines and the expression "transmission" shall be construed accordingly;
- (75) utility means the electric lines/plant, and includes all lands, buildings, works and materials attached thereto belonging to any person acting as a generating company or licensee under the provisions of this Act;
- (76) wheeling means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;
- (77) works includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit/distribute/supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.

NATIONAL ELECTRICITY POLICY AND PLAN

Section 3. (National Electricity Policy and Plan) - (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.

(2) The Central Government shall publish National Electricity Policy and tariff policy from time to time.

(3) The Central Government may, from time to time, in consultation with the State Governments and the Authority, review or revise, the National Electricity Policy and tariff policy referred to in sub-section (1).

(4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five years: Provided that the Authority while preparing the National Electricity Plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed:

Provided further that the Authority shall -

(a) notify the plan after obtaining the approval of the Central Government;

(b) revise the plan incorporating therein the directions, if any, given by the Central Government while granting approval under clause (a).

(5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy.

Section 4. (National Policy on stand alone systems for rural areas and non-conventional energy systems):

The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and other non-conventional sources of energy) for rural areas.

Section 5. (National policy on electrification and local distribution in rural areas)

The Central Government shall also formulate a national policy, in consultation with the State Governments and the State Commissions, for rural electrification and for bulk purchase of power and management of local distribution in rural areas through Panchayat Institutions, users' associations, cooperative societies, non-Governmental organisations or franchisees.

The concerned State Government and the Central Government shall jointly endeavour to provide access to electricity to all areas including villages and hamlets through rural electricity infrastructure and electrification of households.

GENERATION OF ELECTRICITY

Section 7. (Generating company and requirement for setting up of generating station): Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

Section 8. (Hydro-electric generation): - (1) Notwithstanding anything contained in section 7, any generating company intending to set-up a hydro-generating station shall prepare and submit to the Authority for its concurrence, a scheme estimated to involve a capital expenditure exceeding such sum, as may be fixed by the Central Government, from time to time, by notification.

(2) The Authority shall, before concurring in any scheme submitted to it under sub-section (1) have particular regard to, whether or not in its opinion, -

(a) the proposed river-works will prejudice the prospects for the best ultimate development of the river or its tributaries for power generation, consistent with the requirements of drinking water, irrigation, navigation, flood-control, or other public purposes, and for this purpose the Authority shall satisfy itself, after consultation with the State Government, the Central Government, or such other agencies as it may deem appropriate, that an adequate study has been made of the optimum location of dams and other river-works;

(b) the proposed scheme meets the norms regarding dam design and safety.

(3) Where a multi-purpose scheme for the development of any river in any region is in operation, the State Government and the generating company shall co-ordinate their activities with the activities of the person responsible for such scheme in so far as they are inter-related.

Section 9. (Captive generation): (1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use: Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

Section 10. (Duties of generating companies): — (1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall -

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

Section 11. (Directions to generating companies): —(1) Appropriate Government may specify that a generating company shall, in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation. - For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.

(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.

LICENSING

Section 12. (Authorised persons to transmit, supply, etc., electricity): No person shall

- (a) transmit electricity; or
- (b) distribute electricity; or
- (c) undertake trading in electricity,

unless he is authorised to do so by a licence issued under section 14, or is exempt under section 13.

Section 13. (Power to exempt): The Appropriate Commission may, on the recommendations, of the Appropriate Government, in accordance with the national policy formulated under section 5 and in the public interest, direct, by notification that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, the provisions of section 12 shall not apply to any local authority, Panchayat Institution, users’ association, co-operative societies, non-governmental organizations, or franchisees:

Section 14. (Grant of licence):

The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person -

- (a) to transmit electricity as a transmission licensee; or
- (b) to distribute electricity as a distribution licensee; or
- (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional requirements as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity.

Section 15. (Procedure for grant of licence): — (1) Every application under section 14 shall be made in such form and in such manner as may be specified by the Appropriate Commission and shall be accompanied by such fee as may be prescribed.

(2) Any person who has made an application for grant of licence shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified and a licence shall not be granted -

(i) until the objections, if any, received by the Appropriate Commission in response to publication of the application have been considered by it: Provided that no objection shall be so considered unless it is received before the expiration of thirty days from the date of the publication of the notice as aforesaid;

(ii) until, in the case of an application for a licence for an area including the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for defence purposes, the Appropriate Commission has ascertained that there is no objection to the grant of the licence on the part of the Central Government.

(3) A person intending to act as a transmission licensee shall, immediately on making the application, forward a copy of such application to the Central Transmission Utility or the State Transmission Utility, as the case may be.

(4) The Central Transmission Utility or the State Transmission Utility, as the case may be, shall, within thirty days after the receipt of the copy of the application referred to in sub-section (3), send its recommendations, if any, to the Appropriate Commission:

Provided that such recommendations shall not be binding on the Commission.

(5) Before granting a licence under section 14, the Appropriate Commission shall -

(a) publish a notice in two such daily newspapers, as that Commission may consider necessary, stating the name and address of the person to whom it proposes to issue the licence;

(b) consider all suggestions or objections and the recommendations, if any, of the Central Transmission Utility or State Transmission Utility, as the case may be.

(6) Where a person makes an application under sub-section (1) of section 14 to act as a licensee, the Appropriate Commission shall, as far as practicable, within ninety days after receipt of such application,

(a) issue a licence subject to the provisions of this Act and the rules and regulations made thereunder; or

(b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of this Act or the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

(7) The Appropriate Commission shall, immediately after issue of a licence, forward a copy of the licence to the Appropriate Government, Authority, local authority, and to such other person as the Appropriate Commission considers necessary.

(8) A licence shall continue to be in force for a period of twenty- five years unless such licence is revoked.

Section 16. (Condition of licence): The Appropriate Commission may specify any general or specific conditions which shall apply either to a licensee or class of licensees and such conditions shall be deemed to be conditions of such licence: Provided that the Appropriate Commission shall, within one year from the appointed date, specify any general or specific conditions of licence applicable to the licensees referred to in the first, second, third, fourth and fifth provisos to section 14 after the expiry of one year from the commencement of this Act.

Section 17. (Licensee not to do certain things): - (1) No licensee shall, without prior approval of the Appropriate Commission, -

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee: Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.

(4) Any agreement, relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.

Section 18. (Amendment of licence): (1) Where in its opinion the public interest so permits, the Appropriate Commission, may, on the application of the licensee or otherwise, make such alterations and amendments in the terms and conditions of his licence as it thinks fit:

Provided that no such alterations or amendments shall be made except with the consent of the licensee unless such consent has, in the opinion of the Appropriate Commission, been unreasonably withheld.

(2) Before any alterations or amendments in the licence are made under this section, the following provisions shall have effect, namely: -

(a) where the licensee has made an application under sub-section (1) proposing any alteration or modifications in his licence, the licensee shall publish a notice of such application with such particulars and in such manner as may be specified;

(b) in the case of an application proposing alterations or modifications in the area of supply comprising the whole or any part of any cantonment, aerodrome, fortress, arsenal, dockyard or camp or any building or place in the occupation of the Government for defence purposes, the Appropriate Commission shall not make any alterations or modifications except with the consent of the Central Government;

(c) where any alterations or modifications in a licence are proposed to be made otherwise than on the application of the licensee, the Appropriate Commission shall publish the proposed alterations or modifications with such particulars and in such manner as may be specified;

(d) the Appropriate Commission shall not make any alterations or modification unless all suggestions or objections received within thirty days from the date of the first publication of the notice have been considered.

Section 19. (Revocation of licence): - (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely: -

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor -

(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or

(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms and conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where the Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.

Section 20. (Sale of utilities of licensees): - (1) Where the Appropriate Commission revokes under section 19 the licence of any licensee, the following provisions shall apply, namely:-

(a) the Appropriate Commission shall invite applications for acquiring the utility of the licensee whose licence has been revoked and determine which of such applications should be accepted, primarily on the basis of the highest and best price offered for the utility;

(b) the Appropriate Commission may, by notice in writing, require the licensee to sell his utility and thereupon the licensee shall sell his utility to the person (hereafter in this section referred to as the "purchaser") whose application has been accepted by that

Commission;

(c) all the rights, duties, obligations and liabilities of the licensee, on and from the date of revocation of licence or on and from the date, if earlier, on which the utility of the licensee is sold to a purchaser, shall absolutely cease except for any liabilities which

have accrued prior to that date;

(d) the Appropriate Commission may make such interim arrangements in regard to the operation of the utility as may be considered appropriate including the appointment of Administrators;

(e) The Administrator appointed under clause (d) shall exercise such powers and discharge such functions as the Appropriate Commission may direct.

(2) Where a utility is sold under sub-section (1), the purchaser shall pay to the licensee the purchase price of the utility in such manner as may be agreed upon.

(3) Where the Appropriate Commission issues any notice under sub-section (1) requiring the licensee to sell the utility, it may, by such notice, require the licensee to deliver the utility, and thereupon the licensee shall deliver on a date specified in the notice, the utility to the designated purchaser on payment of the purchase price thereof.

(4) Where the licensee has delivered the utility referred to in sub-section(3) to the purchaser but its sale has not been completed by the date fixed in the notice issued under that sub-section, the Appropriate Commission may, if it deems fit, permit the intending purchaser to operate and maintain the utility system pending the completion of the sale.

Section 21. (Vesting of utility in purchaser): Where a utility is sold under section 20 or section 24, then, upon completion of the sale or on the date on which the utility is delivered to the intending purchaser, as the case may be, whichever is earlier-

(a) the utility shall vest in the purchaser or the intending purchaser, as the case may be, free from any debt, mortgage or similar obligation of the licensee or attaching to the utility: Provided that any such debt, mortgage or similar obligation shall attach to

the purchase money in substitution for the utility; and

(b) the rights, powers, authorities, duties and obligations of the licensee under his licence shall stand transferred to the purchaser and such purchaser shall be deemed to be the licensee.

Section 22. (Provisions where no purchase takes place): -- (1) If the utility is not sold in the manner provided under section 20 or section 24, the Appropriate Commission may, to protect the interest of consumers or in the public interest, issue such directions or formulate such scheme as it may deem necessary for operation of the utility.

(2) Where no directions are issued or scheme is formulated by the Appropriate Commission under sub-section (1), the licensee referred to in section 20 or section 24 may dispose of the utility in such manner as it may deem fit: Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation, under section 20 or section 24, the Appropriate Commission may cause the works of the licensee in, under, over, along, or across any street or public land to be removed and every such street or public land to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

Section 23. (Directions to licensees): If the Appropriate Commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution of electricity and promoting competition, it may, by order, provide for regulating supply, distribution, consumption or use thereof.

Section 24. (Suspension of distribution licence and sale of utility): — (1) If at any time the Appropriate Commission is of the opinion that a distribution licensee –

(a) has persistently failed to maintain uninterrupted supply of electricity conforming to standards regarding quality of electricity to the consumers; or

(b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(c) has persistently defaulted in complying with any direction given by the Appropriate Commission under this Act; or

(d) has broken the terms and conditions of licence, and circumstances exist which render it necessary for it in public interest so to do, the Appropriate Commission may, for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the distribution licensee and appoint an Administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of the licence:

Provided that before suspending a licence under this section, the Appropriate Commission shall give a reasonable opportunity to the distribution licensee to make representations against the proposed suspension of license and shall consider the representations, if any, of the distribution licensee.

(2) Upon suspension of license under sub-section (1) the utilities of the distribution licensee shall vest in the Administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 20, whichever is later.

(3) The Appropriate Commission shall, within one year of appointment of the Administrator under sub-section (1) either revoke the licence in accordance with the provisions contained in section 19 or revoke suspension of the licence and restore the utility to the distribution licensee whose licence had been suspended, as the case may be.

(4) In a case where the Appropriate Commission revokes the licence under sub-section (3), the utility of the distribution licensee shall be sold within a period of one year from the date of revocation of the licence in accordance with the provisions of section 20 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the distribution licensee.

TRANSMISSION OF ELECTRICITY

Section 25. (Inter-State, regional and inter-regional transmission): For the purposes of this Part, the Central Government may, make region-wise demarcation of the country, and, from time to time, make such modifications therein as it may consider necessary for the efficient, economical and integrated transmission and supply of electricity, and in particular to facilitate voluntary inter-connections and co-ordination of facilities for the inter-State, regional and inter-regional generation and transmission of electricity.

Section 26. (National Load Despatch Centre) : — (1) The Central Government may establish a centre at the national level, to be known as the National Load Despatch Centre for optimum scheduling and despatch of electricity among the Regional Load Despatch Centres.

(2) The constitution and functions of the National Load Despatch Centre shall be such as may be prescribed by the Central Government: Provided that the National Load Despatch Centre shall not engage in the business of trading in electricity.

(3) The National Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government.

Section 27. (Constitution of Regional Load Despatch Centre):

(1) The Central Government shall establish a centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government in accordance with section 25 for the purposes of exercising the powers and discharging the functions under this Part.

(2) The Regional Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government: Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centre:

Provided further that no Regional Load Despatch Centre shall engage in the business of generation of electricity or trading in electricity.

Section 28. (Functions of Regional Load Despatch Centre): —(1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

(3) The Regional Load Despatch Centre shall -

- (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;
- (b) monitor grid operations;
- (c) keep accounts of quantity of electricity transmitted through the regional grid;
- (d) exercise supervision and control over the inter-State transmission system; and
- (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.

(4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

Section 29. (Compliance of directions): - (1) The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

(2) Every 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 Regional Load Despatch Centres under subsection (1).

(3) All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.

(4) The Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region.

(5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision :

Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.

(6) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (2) or sub-section (3), he shall be liable to a penalty not exceeding rupees fifteen lacs.

Intra-State transmission

Section 30. (Transmission within a State): The State Commission shall facilitate and promote transmission, wheeling and inter-connection arrangements within its territorial jurisdiction for the transmission and supply of electricity by economical and efficient utilisation of the electricity.

Section 31. (Constitution of State Load Despatch Centres): — (1) The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part.

(2) The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government:

Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:

Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.

Section 32. (Functions of State Load Despatch Centres): - (1) The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.

(2) The State Load Despatch Centre shall -

(a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State;

(b) monitor grid operations;

(c) keep accounts of the quantity of electricity transmitted through the State grid;

(d) exercise supervision and control over the intra-State transmission system; and

(e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.

(3) The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.

Section 33. (Compliance of directions): - (1) The State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in that State.

(2) Every 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 State Load Despatch Centre under sub-section (1).

(3) The State Load Despatch Centre shall comply with the directions of the Regional Load Despatch Centre.

(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision:

Provided that pending the decision of the State Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company.

(5) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section(1), he shall be liable to a penalty not exceeding rupees five lacs.

Other provisions relating to transmission

Section 34. (Grid Standards): Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance

with the Grid Standards, as may be specified by the Authority.

Section 35. (Intervening transmission facilities): The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee:

Provided that any dispute, regarding the extent of surplus capacity available with the licensee, shall be adjudicated upon by the Appropriate Commission.

Section 36. (Charges for intervening transmission facilities): - (1) Every licensee shall, on an order made under section 35, provide his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon :

Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.

(2) The rates, charges and terms and conditions referred to in sub-section (1) shall be fair and reasonable, and may be allocated in proportion to the use of such facilities.

Explanation. -For the purposes of section 35 and 36, the expression “intervening transmission facilities” means the electric lines owned or operated by a licensee where such electric lines can be utilised for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.

Section 37. (Directions by Appropriate Government): The Appropriate Government may issue directions to the Regional Load Despatch Centres or State Load Despatch Centres, as the case may be, to take such measures as may be necessary for maintaining smooth and stable transmission and supply of electricity to any region or State.

Section 38. (Central Transmission Utility and functions): - (1) The Central Government may notify any Government company as the Central Transmission Utility:

Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity: Provided further that the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies

shall be deemed to be transmission licensees under this Act.

(2) The functions of the Central Transmission Utility shall be -

(a) to undertake transmission of electricity through inter-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to inter-State transmission system with -

(i) State Transmission Utilities;

(ii) Central Government;

(iii) State Governments;

(iv) generating companies;

(v) Regional Power Committees;

(vi) Authority;

(vii) licensees;

(viii) any other person notified by the Central Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy:

Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the Central Commission:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 39. (State Transmission Utility and functions): (1) The State Government may notify the Board or a Government company as the State Transmission Utility:

Provided that the State Transmission Utility shall not engage in the business of trading in electricity: Provided further that the State Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity, of such State Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as transmission licensee through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the State Transmission Utility shall be -

(a) to undertake transmission of electricity through intra-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with –

(i) Central Transmission Utility;

(ii) State Governments;

(iii) generating companies;

(iv) Regional Power Committees;

(v) Authority;

(vi) licensees;

(vii) any other person notified by the State Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges ; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission: Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy: Provided further that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 40. (Duties of transmission licensees): It shall be the duty of a transmission licensee -

(a) to build, maintain and operate an efficient, co-ordinated and economical inter-State transmission system or intra-State transmission system, as the case may be;

(b) to comply with the directions of the Regional Load Despatch Centre and the State Load Despatch Centre as the case may be;

(c) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or

(ii) any consumer as and when such open access is provided by the State Commission under sub-section (2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the State Commission: Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy: Provided further that such surcharge and cross subsidies shall be progressively

reduced in the manner as may be specified by the Appropriate Commission: Provided of payment and utilisation of the surcharge shall be specified by the Appropriate Commission also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

Section 41. (Other business of transmission licensee): A transmission licensee may, with the approval of the Appropriate Commission, engage in any business for optimum utilisation of his assets, provided that a proportion of the revenues derived from such business shall, as may be specified by the Appropriate Commission, be utilised for

reducing its charges for transmission and wheeling: Provided further that the licensee shall maintain separate accounts for each such business undertaking to ensure that transmission licensee does not subsidise in any way such business undertaking nor encumbers its transmission assets to support such business: Provided also that no transmission licensee shall enter into any contract which shall engage in the business of trading in electricity :

DISTRIBUTION OF ELECTRICITY

Section 42. (Duties of distribution licensee and open access): - (1) It shall be the duty of the distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system of supply and to supply electricity in accordance with the provisions contained in this section.

(2) The State Commission shall introduce open access in such phases and subject to such conditions (including the cross subsidies, and other operational constraints) as may be specified with effect from an appointed date by it and in specifying the extent of open access in successive phases and the charges for wheeling, it shall have due regard to all relevant factors including such conditions and other operational constraints: Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission and that such surcharge shall be utilised to meet the requirements of current level of cross subsidies in the area of supply of the distribution licensee : Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee and being a local authority engaged in the business of distribution of electricity before the commencement of this Act requires a supply of electricity from a generating company or any licensee other than the distribution licensee, such person may, by notice, require the distribution licensee for wheeling of electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee in respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, in addition to the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee shall, within six months from the appointed date or date of commencement of this Act whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

Section 43. (Duty to supply on request): - (1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply: Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission: Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) : Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

Section 44. (Exceptions from duty to supply electricity): Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control.

Section 45. (Power to recover charges): —(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include -

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

Section 46. (Power to recover expenditure): The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

Section 47. (Power to require security): —(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him -

(a) in respect of the electricity supplied to such persons; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

Section 48. (Additional terms of supply): A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept -

(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under section 53;

(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

Section 49. (Agreement with respect to supply or purchase of electricity): Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.

Section 50. (The Electricity Supply Code): The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity; measures for preventing tampering, distress or damage to electrical plant, or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

Section 51. (Other businesses of distribution licensees): A distribution licensee may, with prior intimation to the Appropriate Commission, engage in any other business for optimum utilisation of its assets: Provided that a proportion of the revenues derived from such business shall, as may be specified by the concerned State Commission, be utilised for reducing its charges for wheeling :

Provided further that the distribution licensee shall maintain separate accounts for each such business undertaking to ensure that distribution business neither subsidises in any way such business undertaking nor encumbers its distribution assets in any way to support such business. Provided also that nothing contained in this section shall apply to a local authority engaged, before the commencement of this Act, in the business of

distribution of electricity.

Section 52. (Provisions with respect to electricity traders): — (1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may, specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission.

Section 53. (Provisions relating to safety and electricity supply): The Authority may in consultation with the State Government, specify suitable measures for –

(a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;

(b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;

(c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;

(d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;

(e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;

(f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;

(g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.

Section 54. (Control of transmission and use of electricity): — (1) Save as

otherwise exempted under this Act, no person other than the Central Transmission Utility or a State Transmission Utility, or a licensee shall transmit or use electricity at a rate exceeding two hundred and fifty watts and one hundred volts –

(a) in any street, or

(b) in any place,-

(i) in which one hundred or more persons are ordinarily likely to be assembled; or

(ii) which is a factory within the meaning of the Factories Act, 1948 or a mine within the meaning of the Mines Act, 1952; or

(iii) to which the State Government, by general or special order, declares the provisions of this sub-section to apply, without giving, before the commencement of transmission or use of electricity, not less than seven days' notice in writing of his intention to the Electrical Inspector and to the District Magistrate, or the Commissioner of Police, as the case may be, containing particulars of the electrical installation and plant, if any, the nature and the purpose of supply and complying with such of the provisions of Part XVII of this Act, as may be applicable: Provided that nothing in this section shall apply to electricity used for the public carriage of passengers, animals or goods, on, or for the lighting or ventilation of the rolling stock of any railway or tramway subject to the provisions of the Railways Act, 1989.

(2) Where any difference or dispute arises as to whether a place is or is not one in which one hundred or more persons are ordinarily likely to be assembled, the matter shall be referred to the State Government, and the decision of the State Government thereon shall be final.

(3) The provisions of this section shall be binding on the Government. Section 55. (Use, etc., of meters): -

(1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority: Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter: Provided further that the State Commission may, by notification, extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification.

(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such locations of generation, transmission or distribution or trading, as it may deem necessary.

(3) If a person makes default in complying with the provisions contained in this section or the regulations made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or by any officers of a company or other association or any other person who is responsible for its default.

Section 56. (Disconnection of supply in default of payment): — (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being

the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer: Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the

licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Section 57. (Consumer Protection: Standards of performance of licensee): (1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.

(2) If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission: Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

(3) The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination.

Section 58. (Different standards of performance by licensee): The Appropriate Commission may specify different standards under subsection (1) of section 57 for a class or classes of licensee.

Section 59. (Information with respect to levels of performance): - (1) Every licensee shall, within the period specified by the Appropriate Commission, furnish to the Commission the following information, namely:-

(a) the level of performance achieved under sub-section (1) of the section 57;

(b) the number of cases in which compensation was made under sub-section (2) of section 57 and the aggregate amount of the compensation.

(2) The Appropriate Commission shall at least once in every year arrange for the publication, in such form and manner as it considers appropriate, of such of the information furnished to it under sub-section (1).

Section 60. (Market domination): The Appropriate Commission may issue such directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry.

TARIFF

Section 61. (Tariff regulations): The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;**
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;**
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;**
- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;**
- (e) the principles rewarding efficiency in performance;**
- (f) multi year tariff principles;**
- (g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;**
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy;**
- (i) the National Electricity Policy and tariff policy: Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.**

Section 62. (Determination of tariff): - (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

- (a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;**
- (b) transmission of electricity ;**
- (c) wheeling of electricity;**
- (d) retail sale of electricity:**

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total

consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Section 63. (Determination of tariff by bidding process): Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.

Section 64. (Procedure for tariff order): —(1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.

(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.

(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public -

(a) issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made thereunder or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor.

(6) A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order.

Section 65. (Provision of subsidy by State Government): If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the licence or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

Section 66. (Development of market): The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard.

WORKS

Works of licensees

Licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works.

CENTRAL ELECTRICITY AUTHORITY

Constitution: The Authority shall consist of not more than fourteen Members (including its Chairperson) of whom not more than eight shall be full-time Members to be appointed by the Central Government.

The Central Government may appoint any person, eligible to be appointed as Member of the Authority, as the Chairperson of the Authority, or, designate one of the full time Members as the Chairperson of the Authority.

The Chairperson and all the Members of the Authority shall hold office during the pleasure of the Central Government.

The Chairperson shall be the Chief Executive of the Authority.

The headquarters of the Authority shall be at Delhi.

All questions which come up before any meeting of the Authority shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote.

All orders and decisions of the Authority shall be authenticated by the Secretary or any other officer of the Authority duly authorised by the Chairperson in this behalf.

No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or any defect in, the constitution of, the Authority.

The Chairperson of the Authority and other full time Members shall

receive such salary and allowances as may be determined by the Central Government and other Members shall receive such allowances and fees for attending the meetings of the Authority, as the Central Government may prescribe.

The Authority may appoint a Secretary and such other officers and

employees as it considers necessary for the performance of its functions under this Act and on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as the authority may in consultation with the Central Government, fix: Provided that the appointment of the Secretary shall be subject to the approval of the Central Government.

Functions and duties of Authority: The Authority shall perform such functions and duties as the Central Government may prescribe or direct, and in particular to -

(a) advise the Central Government on the matters relating to the national electricity policy, formulate short-term and perspective plans for development of the electricity system and co-ordinate the activities of the planning agencies for the optimal utilisation of resources to subserve the interests of the national economy and to provide reliable and affordable electricity for all consumers;

(b) specify the technical standards for construction of electrical plants, electric lines and connectivity to the grid;

(c) specify the safety requirements for construction, operation and maintenance of electrical plants and electric lines;

(d) specify the Grid Standards for operation and maintenance of transmission lines;

(e) specify the conditions for installation of meters for transmission and supply of electricity;

(f) promote and assist in the timely completion of schemes and projects for improving and augmenting the electricity system;

(g) promote measures for advancing the skill of persons engaged in the electricity industry;

(h) advise the Central Government on any matter on which its advice is sought or make recommendation to that Government on any matter if, in the opinion of the Authority, the recommendation would help in improving the generation, transmission, trading, distribution and utilisation of electricity;

(i) collect and record the data concerning the generation, transmission, trading, distribution and utilisation of electricity and carry out studies relating to cost, efficiency, competitiveness and such like matters;

(j) make public from time to time the information secured under this Act, and provide for the publication of reports and investigations;

(k) promote research in matters affecting the generation, transmission, distribution and trading of electricity;

(l) carry out, or cause to be carried out, any investigation for the purposes of generating or transmitting or distributing electricity;

(m) advise any State Government, licensees or the generating companies on such matters which shall enable them to operate and maintain the electricity system under their ownership or control in an improved manner and where necessary, in co-ordination with any other Government, licensee or the generating company owning or having the control of another electricity system;

(n) advise the Appropriate Government and the Appropriate Commission on all technical matters relating to generation, transmission and distribution of electricity; and

(o) discharge such other functions as may be provided under this Act.

Power to require statistics and returns.

REGULATORY COMMISSIONS

Central Commission: The head office of the Central Commission shall be at such place as the Central Government may, by notification, specify.

Constitution: A Chairperson and three other Members;

The Chairperson and Members of the Central Commission shall be appointed by the Central Government

Qualifications for appointment of Members of Central Commission: The Chairperson and the Members of the Central Commission shall be persons having adequate knowledge of, or experience in, or shown capacity in, dealing with, problems relating to engineering, law, economics, commerce, finance or, management.

Functions of Central Commission:

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.

State Commission: Every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission:

The head office of the State Commission shall be at such place as the State Government may, by notification, specify.

The State Commission shall consist of not more than three Members, including the Chairperson.

Joint Commission: A Joint Commission may be constituted by an agreement to be entered into -

(a) by two or more Governments of States; or

(b) by the Central Government, in respect of one or more Union territories, and one or more Governments of States, and shall be in force for such period and shall be subject to renewal for each further period, if any, as may be stipulated in the agreement.

The Joint Commission shall consist of 1 Member from each of the participating States and Union Territories and the Chairperson shall be appointed from amongst the Members by consensus, failing which by rotation.

Functions of State Commission:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

(k) discharge such other functions as may be assigned to it under this Act.

The State Advisory Committee: Shall consist of not more than twenty-one members to represent the interests of commerce, industry, transport, agriculture, labour, consumers, non-governmental organisations and academic and research bodies in the electricity sector.

(3) The Chairperson of the State Commission shall be the ex-officio Chairperson of the State Advisory Committee and the Members of the State Commission and the Secretary to State Government in-charge of the Ministry or Department dealing with Consumer Affairs and Public Distribution System shall be the ex-officio Members of the Committee.

Objects of State Advisory Committee: Advise on -

(i) major questions of policy;

(ii) matters relating to quality, continuity and extent of service provided by the licensees;

(iii) compliance by licensees with the conditions and requirements of their licence;

(iv) protection of consumer interest; and

(v) electricity supply and overall standards of performance by utilities.

APPELLATE TRIBUNAL FOR ELECTRICITY

Established by the Central Government.

Entertain appeals against the orders of the adjudicating officer or the Appropriate Commission.

Any person appealing against the order of the adjudicating officer levying any penalty on the appeal, deposit the amount of such penalty:

If, the Appellate Tribunal opines that the deposit of such penalty would cause undue hardship to the appellant, it may dispense with such deposit subject to such conditions as it may deem fit to safeguard the realisation of penalty.

Limitation: Appeal to be preferred within forty five days from the date on which a copy of the order of the adjudicating officer or the Appropriate Commission is received by the aggrieved person, after payment of the prescribed fee.

Appellate Tribunal may condone delay in filing appeal if it is satisfied that there was sufficient cause for the same.

as may be prescribed:

Both parties are to be given an opportunity of being heard.

Pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order of the adjudicating officer or the Appropriate Commission.

The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

The appeal shall be dealt with by it as expeditiously as possible and endeavour shall be made to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal. If further time is taken, the Appellate Tribunal shall record its reasons in writing for the same.

Composition of Appellate Tribunal: Shall consist of a Chairperson and three other Members.

The jurisdiction of the Appellate Tribunal may be exercised by

Benches thereof;

A Bench may be constituted by the Chairperson of the Appellate

Tribunal with two or more Members of the Appellate Tribunal as

the Chairperson of the Appellate Tribunal may deem fit including at least one Judicial member and one Technical member.

No appeal shall lie to the appellate authority against the final order made with the consent of the parties.

When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months.

OFFENCES AND PENALTIES

Theft of Electricity: Shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use - (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity.

Theft of electric lines and materials: Whoever, dishonestly -

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee

or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain, is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three

years or with fine or with both. Punishment for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Punishment for receiving stolen property: Whoever, dishonestly receives any stolen electric line or material knowing or having reasons to believe the same to be stolen property, shall be punishable with imprisonment of either description for a term which may extend to three years or with fine or with both.

Interference with meters or works of licensee: Whoever -

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or the property of a licensee when the said electric line or other works has or have been cut or

(c) lays or causes to be laid, or connects up any works for the purpose of communication works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator from duly registering, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees, or with both, and, in the case of an offence, with a daily fine which may extend to five hundred rupees; and if it is proved that a consumer has made such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or injury as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

Negligently breaking or damaging works: Whoever, negligently breaks, injures, throws or damages any material connected with the supply of electricity, shall be punishable with fine which may extend to ten thousand rupees.

Penalty for intentionally injuring works: Whoever, with intent to cut off the supply of electricity, injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees.

Extinguishing public lamps: Whoever, maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees.

Punishment for non-compliance of directions by Appropriate Commission: Such person shall be punishable with imprisonment for a term which may extend to three months or with fine of penalty, which shall not exceed one lakh rupees for each contravention and in case of a second or subsequent failure with an additional penalty which may extend to six thousand rupees for every day of failure continues after contravention of the first such direction.

Civil courts not to have jurisdiction to entertain any suit or proceeding in respect of any matter which is referred to an assessing officer or an appellate authority or the adjudicating officer appointed under this Act or to any authority created by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Punishment for non-compliance of orders or directions: Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or who attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and

continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

Offences by companies: Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly.

SPECIAL COURTS

The State Government may, for the purposes of providing speedy trial of offences by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

Constitution: Consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

Appeal and revision: The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973, as if the Special Court within the local limits of the jurisdiction of the High Court is a District Court, or as the case may be, the Court of Session, trying cases within the local limits of jurisdiction of the High Court.

Review: The Special Court may, on a petition or otherwise and in order to prevent miscarriage of justice, review its judgment or order passed, but no such review petition shall be entertained except on the ground that it was such order passed under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Provided that the Special Court shall not allow any review petition and set aside its previous order or judgment without hearing the parties affected.

DISPUTE RESOLUTION

Arbitration: Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the Appropriate Commission may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

The Tamil Nadu Electricity (Reorganisation and Reforms) Transfer Scheme, 2010

In exercise of the powers conferred by sections 131 and 133 of the Electricity Act, 2003 (Central Act 36 of 2003), the Governor of Tamil Nadu hereby makes the following Scheme for the purpose of transfer and vesting of property, interest in property, rights, and liabilities of the Tamil Nadu Electricity Board in the State Government and re-vesting thereof by the State Government in corporate entities and also for the transfer of Personnel of the Tamil Nadu Electricity Board to corporate entities and for determining the terms and conditions on which such transfer and vesting shall be made.

3. Classification of Undertakings of the Board:- (1) The Undertakings of the Board, are classified in the following Schedules:-

(a) Generation and Distribution Undertakings as set out in Schedule-A (b) Transmission Undertakings as set out in Schedule - B, & (c) Holding Undertaking as set out in Schedule - C;

(2) If the assets of the Undertaking under sub-clause (1) are subject to any security documents in favour of third parties for any financial assistance or obligation taken by the Board and in respect thereof have been classified in different Undertakings, the State Government, by order issued for the purpose, provide for the apportionment of the liabilities secured by such documents and rights between the different Undertakings and upon such apportionment, the liabilities shall be apportioned to the Undertakings to the extent of the apportioned liabilities only.

Tamil Nadu Electricity Reforms First Transfer Scheme, 2010

4. Transfer of property to the State:- (1) On and from the First day of November 2010 all interests in property, rights and liabilities which before the said date belonged to the Board shall be transferred to and vest in the State Government for the purposes of further transfers under this Scheme.

(2) Sub-clause (1) shall not apply to rights, responsibilities, liabilities and obligations of the Board, its personnel and personnel related matters including the statutory dues such as salary, wages, gratuity, provident fund, compensation, terminal and retirement benefits and the same shall be governed as provided in clause 6 of this Scheme.

5. Transfer of Undertaking by the State:- (1) The Undertakings forming part of Generation Undertakings as set out in Schedule - A together with all assets and liabilities vested in the Board shall stand transferred to and re-vested by the State Government in the "Tamil Nadu Electricity Distribution Corporation Limited" (hereinafter referred to as "TANGEDCO") on and from the First day of November 2010 subject to terms and conditions, of the provisions of the Act and this Scheme.

(2) The Undertakings forming part of Transmission Undertakings as set out in Schedule B together with all assets and liabilities vested in the State Government shall stand transferred to and re-vested by the State Government in the "Tamil Nadu Transmission Corporation Limited" (hereinafter referred to as "TANTRANSCO") on and from the First day of November 2010 subject to terms and conditions, of the provisions of the Act and this Scheme.

(3) The Undertakings forming part of Holding Undertakings as set out in Schedule C together with all assets and liabilities till further orders of the State Government shall stand transferred to and re-vested by the State Government in the "TNEB Limited" on and from the First day of November 2010 subject to terms and conditions, of the provisions of the Act and this Scheme.

(4) On such transfer and re-vesting of the Undertakings in terms of sub-clauses (1) to (3) and otherwise provided, the respective Transferee, shall be responsible for all functions, contracts, deeds, schemes, bonds, agreements and other instruments of whatever nature relating to the Undertakings transferred to it.

(5) As consideration for the transfer and re-vesting of the Undertakings transferred under this Scheme, TANGEDCO and TANTRANSCO shall have the financial and opening balance sheet and shall issue shares and instruments in favour of TNEB Limited, as the State Government may notify by order.

(6) As consideration for the transfer and vesting of the Undertakings transferred as specified in sub-clause (5), TNEB Limited shall have the financial and opening balance sheet and shall issue shares and instruments in favour of the State Government, as the State Government may notify by order.

(7) The Transferee shall continue to function as an agent of the Board till further orders of the State Government.

(8) The State Government may, by an order, to be issued for the purpose amend, vary, modify, add, delete or otherwise change the terms and conditions specified in the Schedules at any time during the provisional period mentioned in clause 9 of this Scheme.

(9) The transfer value of the Fixed Assets of the respective Transferees have been done at book values excluding the land which was revalued based on the guideline value resulting into Revaluation Reserve of Rs. 6868.70 Crores adjusted against the accumulated loss of the Board.

6. Transfer of Personnel:- All personnel of the Board (excluding Chairman and Director of the Board) shall stand transferred to and absorbed in TANGEDCO on a provisional basis, subject to finalisation of Employee Transfer scheme by the State Government in consultation with the Chairman of TNEB Limited.

The Chairman and Director of the Board shall stand transferred to and absorbed as per the directions of the State Government.

A Tripartite Agreement shall be signed between Government of Tamil Nadu, Transferee and the Recognised Unions / Associations to set forth the conditions mutually agreed upon to safeguard the interest of the Personnel and for smooth implementation of the policy of restructuring.

On the date of transfer under clause 5 of this Scheme, the personnel of the Board shall stand assigned to the services of the relevant Transferee, on deputation basis, on "as-is-where-is" basis, namely, that they will continue to serve in the place where they are posted on the date of transfer, till further orders of the State Government in consultation with the Chairman of TNEB Ltd.

On the date of transfer under clause 5, of this Scheme the personnel of the Board rendering services to more than one Undertaking or otherwise the services of personnel of common nature shall continue to render such services in the same manner as before till further orders of the State Government in consultation with the Chairman of TNEB Limited.

The head of Personnel Department of TANGEDCO may issue orders from time to time directing the personnel rendering services relating to an Undertaking or Undertakings to be assigned to the services of another Transferee Undertaking.

The assignment of personnel under and in accordance with sub-clauses (2) and (5) above to the Transferees shall continue till the personnel are transferred to and permanently absorbed in the services of a Transferee, in accordance with the provisions of the Act, this Scheme and orders to be issued by the State Government in consultation with the Chairman of TNEB Limited.

(9) The State Government in consultation with the Chairman of TNEB Limited, will finalize the transfer to and permanent absorption of the personnel in a Transferee taking into account the suitability, ability and experience of the personnel, number and nature of the vacancies and other relevant factors and issue appropriate orders for such permanent absorption within the provisional period of transfer of the Undertakings specified in clause 9 of this Scheme.

(10) The Chairman of TNEB Limited shall, in consultation with TANGEDCO and TANTRANSCO constitute Grievance Handling Committees separately for officers (Class-I and II) and other employees (Class III and IV) to -

(a) receive representations from the Personnel who may raise grievances in regard to their transfer and absorption in a Transferee; and

(b) to make recommendation on such transfer and absorption, within such time as the State Government may specify for the purpose.

The said Committees will be formed at TNEB Limited with senior officers and representatives from TANTRANSCO and TANGEDCO.

(11) The State Government in consultation with the Chairman of TNEB Limited shall take a decision on the transfer and permanent absorption of the personnel in a Transferee and shall issue orders based on the recommendation of the Grievance Handling Committee for such transfer and permanent absorption of the personnel.

(12) Upon the finalization and issue of orders in terms of the sub-clause (9) and (11), the personnel shall form part of the services of the Transferee concerned, in the post, scale of pay or seniority in accordance with the orders that may be issued for this purpose, without any further act, deed or thing to be done by the State Government or the Board or the Transferee or the Personnel or any other person.

(13) Subject to the provisions of the Act and this Scheme, the personnel shall be governed by the Rules and Regulations framed by the Board existing on the date of Transfer. The Transferee shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred to the Transferee under this Scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits including terminal benefits after the date of transfer shall not in any way be less favourable than those which would have been applicable to them if there had been no such transfer under the transfer scheme.

(14) Managements of the companies shall prepare a new Human Resource Policy Handbook taking into account the new requirements. However, until such a Policy Handbook is issued, the existing policies shall be continued as applicable.

(15) In respect of all statutory and other Schemes and employment related matters including the provident fund, gratuity fund, pension (to whom it is applicable on the date of the transfer) and any other superannuation fund or any other fund created or existing for the benefit of the personnel, the relevant Transferee shall stand substituted for the Board for all intent and purposes and all the rights, powers and obligations of the Board in relation to any and all such matters shall be of the Transferee concerned and the services of the personnel shall be treated as having been continuous for the above purpose.

(16) The State Government shall enter into a Tri-partite Agreement to safeguard the pension liabilities and other personnel related liabilities to the extent they are unfunded on the date of the transfer of the Personnel from the Board including due payment of the amounts to personnel who retire on or after the date of the transfer, by the respective Transferees to which the personnel are transferred.

(17) The said Tri-partite Agreement shall provide for safeguarding the terminal benefits to the employees retired before the date of transfer and to the existing pensioners of the Board as on the date of transfer and the payment to such employees. The payments to existing pensioners shall continue to be met from the cash flow of the operation of the Transferee. The payment to the existing pensioners shall be directly from TANGEDCO and TANTRANSCO shall reimburse their proportional share to TANGEDCO as specified in the said Tri-partite Agreement.

Special Provident Fund 2000, Settlement of Contributory Pension Scheme and any other retirement benefits and other applicable benefits including the right to have the appropriate revisions in the above benefits consistent with the practice that were prevalent in the Board.

(18) All proceedings including disciplinary proceedings pending against the personnel prior to the date of transfer from the Board to the Transferee or from such Transferee to another Transferee, as the case may be.

(19) The personnel transferred to the Transferees, shall be deemed to have entered into an agreement with the Transferee concerned to repay loans, advances and other sums due and perform obligations undertaken by them to the Board which remain outstanding as on the date of the transfer.

(20) The personnel shall cease to be in the service of the Board and shall not assert or claim any benefit of service under the State Government or the Board except as provided in this Scheme and in the Tripartite Agreement.

(21) Nothing contained in this Scheme shall apply to personnel of the State Government or other organization on deputation to Board as on the date of transfer but such personnel shall continue on deputation to the Transferee concerned to whose services they are assigned on "as is where is basis" till further orders of the Transferee.

7. Restrictions of rights and obligations of third parties:- Upon the transfer being effected in accordance with the provisions of the Act and this Scheme, the rights and obligations of all persons shall be restricted to the Transferee to whom they are transferred to and notwithstanding anything to the contrary contained in any deed, documents, instruments, agreements or arrangements which such person has with the Board, he shall not claim any right or interest against the State Government, Board or any other Transferee.

8. Pending suits and proceedings:- (1) All Proceedings of whatever nature by or against the Board pending on the date of the transfer shall not abate or discontinue or otherwise in anyway prejudicial be affected by reason of the transfer under this Scheme and the proceedings shall be continued, prosecuted and enforced by or against the Transferee to whom the same are assigned in accordance with this Scheme and orders issued there under.

Classifications and transfer of property, rights, liabilities and proceedings to be provisional in the first instance:- (1) The classification and transfer of Undertakings excluding personnel under this Scheme, unless otherwise specified in any order made by the State Government, shall be provisional for a period of one year from the respective date of transfer. All transfer of personnel from the Board to TANGEDCO under clause 6 shall be provisional for a period of three years from the date of transfer and after this period, the transfer shall be treated as final, subject to any order passed by the State Government under sub-clause (2) of this clause.

(2) At any time within the provisional period specified in sub-clause (1) above from the respective date of transfer, the State Government may, by order to be notified amend, vary, modify, add, delete or otherwise change the terms and conditions of the transfer including items included in the transfer, and transfer the functions or such properties, interests, rights, liabilities, personnel and proceedings forming part of an Undertaking of a Transferee to that of another Transferee or to the State Government in such manner and on such terms and conditions as the State Government may consider appropriate in terms of the provisions of the Act.

(3) On the expiry of the provisional period as specified in sub-clause (1) above from the respective date of transfer and subject to any directions given by the State Government, the transfer of undertakings, properties, interests, rights, liabilities, personnel and proceedings made in accordance with the Scheme shall become final and the transfers under this Scheme shall stand completed for all intent and purposes.

10. Transfer by operation of law:- The transfer under this Scheme shall operate and be effective pursuant to the action of State Government in issuing orders and in terms of this Scheme.

11. Rights, duties and powers of the Transferees during the provisional period:- (1) The Transferees shall continue to function and undertake business activities assigned to them on behalf of and as agents of the

Board till such time the State Government issues a notification authorizing the Transferee to perform such functions and activities on their own and independent of the Board.

The tariff terms and conditions for the sale and supply of electricity for the services and distribution by the Transferee and all other dealings between the Transferee and also the Commission shall be as may be decided by the Board provisionally and shall be subject to the determination of the Commission.

Till further orders of the Commission regarding the tariff determination, the revenues for the transmission and retail supply of electricity shall be collected by TANGEDCO in its entirety and the expenses of TANTRANSCO on actual basis till further order of the Commission on the subject of Tariff for transmission charges.

The expenses incurred by the TNEB Limited will be reimbursed on actual basis by TANTRANSCO in the proportion determined by the Chairman TNEB Ltd in consultation with TANTRANSCO.

12. Decision of the State Government shall be final:- (1) If any doubt, dispute, difference or disagreement regard to the transfers under this Scheme, subject to the provisions of the Act, the decision of the State Government thereon shall be final and binding.

13. Exemption of Duty:- The transfer under this Scheme and its implementation shall be exempt from all taxes, duties, levies of the State Government and all its local bodies.

UNIT - V

THE PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY ACT, 2013

An Act to provide for the establishment of an Authority to promote old age income security by establishing, developing and regulating pension funds, to protect the interests of subscribers to schemes of pension funds and for matters connected therewith or incidental thereto.

The legislation provides subscribers options to invest their funds including for assured returns by purchasing Government Bonds and in other fund schemes depending on their capacity and willingness to take risk.

DUTIES, POWERS AND FUNCTIONS OF AUTHORITY

S.14: (1) Subject to the provisions of this Act and any other law for the time being in force, the Authority shall have the duty, to regulate, promote and ensure orderly growth of the National Pension System and pension schemes to which this Act applies and to protect the interests of subscribers of such system and schemes.

(2) The powers and functions of the Authority shall include—

- (a) regulating the National Pension System (NPS) and the pension schemes to which this Act applies;
- (b) approving the schemes, the terms and conditions thereof and laying down norms for the management of the corpus of the pension funds, including investment guidelines under such schemes;
- (c) registering and regulating intermediaries;
- (d) issuing to an intermediary, on application, a certificate of registration and renewing, modifying, withdrawing, suspending or cancelling such registration; (e) protecting the interests of subscribers by—
- (i) ensuring safety of the contribution of subscribers to various schemes of pension funds to which this Act applies;
- (ii) ensuring that the intermediation and other operational costs under the National Pension System are economical and reasonable;
- (f) establishing mechanism for redressal of grievances of subscribers to be determined by regulations;
- (g) promoting professional organisations connected with the pension system; (h) adjudication of disputes between intermediaries and between intermediaries and subscribers;
- (i) collecting data and requiring the intermediaries to collect such data and undertaking and commissioning studies, research and projects;
- (j) undertaking steps for educating subscribers and the general public on issues relating to pension, retirement savings and related issues and training of intermediaries;
- (k) standardising dissemination of information about performance of pension funds and performance benchmarks;
- (l) regulating the regulated assets;
- (m) levying fees or other charges for carrying out the purposes of this Act;

(n) specifying by regulations the form and manner in which books of account shall be kept and the statement of accounts shall be rendered by intermediaries;

(o) calling for information from, undertaking inspection of, conducting inquiries and investigations and audit of, intermediaries and other entities or organisations connected with pension funds;

(p) exercising such other powers and functions as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, which confers powers under subsection 2 (o), the Authority shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters:

(i) the discovery and production of books of account and other documents, at such place and time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any book, register and other document of any person or intermediary as provided in section 26, at any place;

(iv) issuing commissions for the examination of witnesses or documents;

(v) any other matter which may be prescribed.

(4) Without prejudice to the provisions contained in sub-sections (1), (2) and (3) and section 14, the Authority may, by order, for reasons to be recorded in writing, in the interest of subscribers, take any such measures, pending investigation or inquiry, namely:—

(i) restrain persons from participating in any scheme;

(ii) restrain any office bearer of an intermediary from acting as such;

(iii) impound and retain the proceeds under the scheme in respect of any activity which is under investigation;

(iv) attach, after passing an order, on an application made for approval, by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank accounts or any other account of any intermediary or any person associated with the scheme in any manner involved in violation of the provisions of this Act or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, relating to the scheme, actually involved in the violation of any of the provisions of this Act or the rules or the regulations made thereunder shall be allowed to be attached;

(v) direct any intermediary or any person associated with the scheme in any manner not to sell or alienate an asset forming part of any activity which is under investigation:

Provided that the Authority shall, either before or after, passing such orders, under this section, give such intermediaries or persons concerned an opportunity of being heard.

Power to issue directions.

S.15: Save as otherwise provided in section 14, if after making, or causing to be made, an application, the Authority is satisfied that it is necessary—

(i) in the interests of subscribers or orderly development of National Pension System or a part thereof to which this Act applies; or

(ii) to prevent the affairs of any intermediary or other persons or entities referred to in section 27 being conducted in a manner detrimental to the interests of subscribers; or

(iii) to secure the proper management of any such intermediary or person or entity,

it may issue such directions to such intermediaries or entities or to any person or class of persons referred to in section 27, or associated with the pension fund, as it may deem fit:

Provided that the Authority shall, either before or after passing such orders, give an opportunity of being heard to such intermediaries, entities or persons concerned.

S.16: (1) Where the Authority has a reasonable ground to believe that—
(a) the activities of the pension fund are being conducted in a manner detrimental

to the interest of the subscriber; or

(b) any intermediary or any person associated with the schemes of the pension fund has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Authority thereunder,

it may, at any time, by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the pension fund and to report thereon to the Authority.

(2) Without prejudice to the provisions contained in sections 235 to 241 of the Companies Act, 1956, it shall be the duty of every manager, managing director, officer and other employee of the company, in case of a company and every intermediary or persons or entity referred to in section 27 or every person associated with the pension fund to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person or entity associated with the pension fund in any manner to furnish such information to, or produce such books, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or register, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated or entity with the pension fund by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any book, register, other documents and record if they are required again:

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents or record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents or, as the case may be, record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath any intermediary or any person associated with the pension fund in any manner, in relation to the affairs of his

business and may administer an oath accordingly and for that purpose may require an v
appear before him personally.

(6) Notes of any examination under sub-section (5) shall be taken down in writing and sh
or by, and signed by, the person examined, and may thereafter be used in evidence again

(7) If any person fails without reasonable cause or refuses—

(a) to produce to an Investigating Authority or any person authorised by him in th
register, other document or record which it is his duty under sub- section (2) or sub-sect
or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under
to answer any question which is put to him by the Investigating Authority in pursuance o
or

(d) to sign the notes of any examination referred to in sub-section (6),

he shall be punishable with imprisonment for a term which may extend to one year, or
may extend to twenty-five crore rupees, or with both, and also with a further fine which
lakh rupees for every day after the first day during which the failure or refusal continue

S.17: (1) Where the Authority, in consequence of information in its possession, has reason

(a) any person who has been required under sub-section (3) of section 16 to produce, or cau
any books, accounts or other documents in his custody or power has omitted or failed to
to be produced, such books, accounts or other documents;

(b) any person to whom a requisition to produce any books, accounts or other document
been or might be issued will not, or would not, produce or cause to be produced, any b
other documents which will be useful for, or relevant to, an investigation under sub-sect
16; or

(c) a contravention of any provision of this Act has been committed or is likely to be c
intermediary; or

(d) any claim which is due to be settled by the intermediary, has been or is likely to be r
at a figure higher than a reasonable amount; or

(e) any claim which is due to be settled by an intermediary, has been or is likely to be reje
a figure lower than a reasonable amount; or

(f) any illegal fees and charges have been transacted or are likely to be transacted by an i

(g) any books, accounts, papers, receipts, vouchers, survey reports or other documents,
intermediary are likely to be tampered with, falsified or manufactured, it may authorise a
Authority, not below the rank equivalent to that of a Gazetted Officer of the Government (h
to as the authorised officer), to—

(i) enter and search any building or place where he has reason to suspect that such books, a
documents, or any books or papers relating to any cla im, rebate or commission or any re
reports or other documents are kept;

(ii) break open the lock of any box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available; (iii) seize all or any such books, accounts or other documents, found as a result of such search;

(iv) place marks of identification on such books, accounts or other documents or make or cause to be made extracts or copies therefrom.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such police officer or officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such book, account or other document, specified in sub-section (1), serve an order on the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books, accounts or other documents, and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under this Act.

(5) The books, accounts, papers, receipts, vouchers, reports, or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Authority for such retention is obtained:

Provided that the Authority shall not authorise the retention of the books, accounts, papers, receipts, vouchers, reports, or other documents for a period exceeding thirty days after all the proceedings under this Act, for which the books, accounts, papers, receipts, vouchers, reports, or other documents are relevant, are completed.

(6) The person from whose custody the books, accounts, papers, receipts, vouchers, reports, or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf at such place and time as the authorised officer may appoint in this behalf.

(7) If a person legally entitled to the books, accounts, papers, receipts, vouchers, reports or other documents seized under sub-section (1) objects for any reason to the approval given by the Authority under sub-section (5), he may make an application to the Central Government stating therein the reason for such objection and requesting for the return of the books, accounts, papers, receipts, vouchers, report or other documents.

(8) On receipt of the application under sub-section (7), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it thinks fit.

(9) The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizures shall apply, so far as may be, to every search and seizure made under sub-section (1).

(10) The Central Government may, by notification, make rules in relation to any search or seizure under this section and in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer,—

- (i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available;
- (ii) for ensuring safe custody of any books, accounts, papers, receipts, vouchers, reports, or other documents seized under this section.

S.18: If the Authority finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rule or regulation made thereunder, the Authority may pass an order requiring such person to cease and desist from committing or causing such violation.

S.19: (1) If at any time the Authority has reason to believe that the central recordkeeping agency or pension fund is acting in a manner likely to be prejudicial to the interest of subscribers, it may, after giving the central recordkeeping agency or pension fund, as the case may be, an opportunity of being heard, make a report thereon to the Central Government.

(2) If the Central Government, after considering the report made under sub-section (1) is of the opinion, that it is necessary or proper to do so, it may appoint an Administrator to manage the affairs of the central recordkeeping agency or pension fund, as the case may be, under the direction and control of the Authority, in such manner as may be specified by notification.



MODEL QUESTION PAPER

REGULATORY LAWS

Time: 2 ½ Hours.

Maximum: 70 Marks

PART A – (2 x 12 =24)

Answer TWO of the following in about 500 words each.

1. “Public interest theory helps to understand the desire to pursue collective goal with the aim of promoting the general welfare of community” – Discuss.
2. Evolution of Securities laws and role of Securities and Exchange Board of India in protection of investors – Elucidate.
3. Briefly state the legislative history of electricity laws in India and list out the Salient features of the Electricity Act, 2003.

PART B – (2 x 7=14)

Answer TWO of the following in about 300 words each

4. Private Interest theory of regulation.
5. Regulatory Capture.
6. Powers and Functions of PFRDA.

PART C – (5 x 4 =20)

7. Write short notes on FIVE of the following
 - a. Good regulation.
 - b. Nature of Regulatory Institutions.
 - c. New Telecom Policy.
 - d. Universal Service Obligation.
 - e. TRAI (Amd.), 2002.
 - f. Security Appellate Tribunal.

PART D – (2 x 6 =12)

Answer TWO of the following by referring to relevant provisions of law and decided cases.
Give Cogent reasons.

8. Raj a former executive in a subsidiary of Modern Noodle Co. Ltd. knew that Classic Noodle Co. Ltd. was due to merge with Modern Noodle Co. Ltd. He bought substantive number of shares two days before the public announcement of the merger. The deal misfired in so far Raj expecting to make a profit actually made a loss on the transaction, whether SEBI has a power to try him violation of regulation – decide
9. SOETEL a reputed telecom company licenced to provide telecom service in India. The Central Government under the Public interest to prevent messages on racism revokes its licence under the Indian Telegraph Act, 1885 and the TRAI (Amd.) Act, 2000. – decide the validity of the revocation.
10. A customer filed a complaint before the Telecom Dispute Appellate Tribunal (TDSAT) stating that there is a dispute between him and his service provider regarding false deduction of plan charges. The tribunal without entertaining his complaint dismissed in limine stating it is not the proper forum. He preferred appeal to Supreme Court on this dismissal stating under TDSAT has a power to adjudicate. will he succeed – decide.



SCHEME OF VALUATION – FOR QUESTION PAPER

PART – A:

1. **“Public interest theory helps to understand the desire to pursue collective goal with the aim of promoting the general welfare of community” – Discuss.**

A theory of regulation is set of proposition or hypothesis about

- a. **Why regulation emerges**
- b. **Who (actor) contributing**
- c. **What patterning of interaction between regulatory actors**

Three Minimum Legal components of regulation

- a. **Standard setting**
- b. **Monitoring or Information gathering**
- c. **Behavior Modification**

Public Interest theory

Who are responsible for regulation?

- a. **Legislator**
- b. **Regulatory authority or others**

How they are going to regulate - Designing (Rules and regulations)

Approach

The private interest theory of regulation is concerned about pursue of collective goals or welfare economics or general welfare of the community, in welfare economic approach there are three main areas to concentrate for prevention of market failure.

- a. **Preventing monopoly and natural monopoly**
- b. **Public goods (commodity the benefit from which shared by the public)**
- c. **Other externalities (An activity that imposes costs on third parties)**

Role of Law in public interest theories of regulation

- a. **Welfare economics**
- b. **Substantive political**
- c. **Procedural political**

2. Evolution of Securities laws and role of Securities and Exchange Board of India in protection of investors – Elucidate.

Bombay Securities Contracts Control Act, 1925

First Act to regulate securities transactions in India, regulate, control, purchase and sale of securities in the city of Bombay and elsewhere in Bombay

Defence of India Rules in May 1943 and Defence of India Act, 1939

Central Government framed rules under the Defence of India Act and governed the securities transaction in India.

The control was retained after the war with some modifications as means of controlling the raising of capital by companies and to ensure that national resources were channeled into proper lines, i.e., for desirable purposes to serve goals and priorities of the government, and to protect the interests of investors.

Capital Issues (Control) Act, 1947 (previously continuance of control) (repealed in the year 1992)

A.D. Gorwala Committee, 1951

Committee on public administration constituted by planning commission to study on stock exchange formulate a legislation for the regulation of the stock exchanges and of contracts in securities, emphasized to need of clean, efficient and impartial administration.

Securities Contracts (Regulation) Act, 1956

To provide for direct and indirect control of virtually all aspects of securities trading and the running of stock exchanges and to prevent undesirable transactions in securities and it mainly deals on

- (a) Allotment of securities; and
- (b) Transfer of ownership of securities.

It gives Central Government regulatory jurisdiction over (a) stock exchanges through a process of recognition and continued supervision, (b) contracts in securities, and (c) listing of securities on stock exchanges. As a condition of recognition, a stock exchange complies with conditions prescribed by Central Government. Organised trading activity in securities is permitted on recognised stock exchanges

Change of Economic Policy to LPG

To change India to be an Investor destination and to maintain the international standards the Capital Issues (Control) Act, 1947 was repealed

SEBI Act, 1992

- a. Constitution
- b. Functions
- c. Autonomy and Accountability
- d. Composition of Board
- e. Jurisdiction of SEBI
- f. Monetary Penalties
- g. Empowerment :
- h. Autonomy of SEBI
- i. SATThe Securities Laws (Second Amendment) Act, 1999

Was enacted to empower SAT to deal with appeals against orders of SEBI under the Depositories Act and the SEBI Act

SEBI (Amendment) Act, 2002

The powers of SEBI are enhanced substantially in respect of inspection, investigation and enforcement.

3. Briefly state the legislative history of electricity laws in India and list out the Salient features of the Electricity Act, 2003.

The Electricity Act, 1887 (repealed)

1. Protection of person and property from electricity risk
2. Control & supply of electricity

The Indian Electricity Act, 1903 (repealed)

1. Consumer service
2. Grant and revocation of Licence
3. Special rules for cantonment area

Indian Electricity Act, 1910(repealed)

1. Frame work for Electricity in Industry
2. Licensor and Licensee relationship
3. Licence to specified area
4. Laying down wires and other work

The Electricity (Supply) Act, 1948 (repealed)

1. Electricity to all areas
2. State Electricity Board
3. Central electricity Authority

Electricity Regulatory Commissions Act, 1998

Establishment and composition of State electricity commissions

Objects of the Act,

1. Consolidation of Laws relating to generation, transmission, distribution, trading and usage of electricity
2. Protecting interest of consumers
3. Supply of electricity to all areas
4. Tariff regulation
5. Transparency and efficiency
6. Environmental friendly policies
7. Constitution of Authority, Commission and Appellate tribunal

Salient Features of the Act

- National Electricity policy
- Licence free generation and distribution to rural areas

- Licensing to private parties
- Open Access transmission and distribution
- State electricity regulatory commission
- Prevention of electricity theft

PART – B:

4. Private Interest theory of regulation.

1. Relationship between different formal organization (Government, Regulatory Agency, Corporation, Stakeholder).
2. Why and how the regulation emerges
3. Difference between Public and private actors and between public and private interest.

Different Approaches

1. Tripartism
2. Regulatory Space
3. Systems Theory
5. **Regulatory Capture.**
 1. Corruption
 2. Types of corruption & ways of corruption
 3. Main forms of corruption
 4. Consequences of capture
6. **Powers and Functions of PFRDA.**

Sections 14 to 19.

PART – C:

a. Good regulation.

Criteria for good regulation.

1. Legislative mandate
2. Accountability
3. Procedure established by Law or Due Process
4. Expertise
5. Efficiency

b. Nature of Regulatory Institutions.

1. Independence
2. Accountability
3. Advocacy and Research

c. New Telecom Policy.

1. Access to telecom: social development

2. Universal Service Obligation (USO)
3. Public Call Office (PCO) to Public tele info services
4. Spectrum Management
5. Protection for Defence and security
6. Research and development
- d. Universal Service Obligation.
 1. Legal provisions (International & Domestic Laws)
 2. Object
- e. TRAI (Amd.), 2002.
 1. Clear distinction made between recommendatory or regulatory function.
 2. Inclusive of Additional functions
 3. Establishment of TDSAT
 4. Jurisdiction
- f. Security Appellate Tribunal.
 1. Composition
 2. Jurisdiction
 3. Functions and Powers

PART – D:

1. Raj a former executive in a subsidiary of Modern Noodle Co. Ltd. knew that Classic Noodle Co. Ltd. was due to merge with Modern Noodle Co. Ltd. He bought substantive number of shares two days before the public announcement of the merger. The deal misfired in so far Raj expecting to make a profit actually made a loss on the transaction, whether SEBI has a power to try him violation of regulation – decide

Issues

Whether it is an Insider?

Regulation 2 (1) (g) of SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

“Insider” means any person who is:

i) a connected person; or ii) in possession of or having access to unpublished price sensitive information; and also to constitute a insider trading there must be a dealing with unpublished price sensitive information which is part of same regulation 2(1) (n) which reads as follows,

(n) “Unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

Whether the loss on the transaction can be considered as an insider trading?

According to the regulation if any person being a insider and dealing with an unpublished price sensitive information it can be treated as an insider trading irrespective of whether he is getting profit or loss out of the transaction, SEBI is not concerned with the purpose behind the transaction.

Therefore, both the issues are answered affirmatively, and Raj a former executive is involved in the insider trading and liable under the said regulation.

Case law: R. v. Rushbrooke

2. SOETEL a reputed telecom company licenced to provide telecom service in India. The Central Government under the Public interest to prevent messages on racism revokes its license under the Indian Telegraph Act, 1885 and the TRAI (Amd.) Act, 2000. – decide the validity of the revocation.

The License issued by the Central Government to the service provider is always subject to the reasonable restriction, here the issue is about racism. The Central Government has right to cancel the license, only thing they should give a reasonable opportunity of being heard.

Legal Provisions

The Telecom Regulatory Authority of India Act, 1997 and read with the provisions of the Indian Telegraph Act, 1885 the s.11 (1) (a) (iii) Function of Authority s.8 of Indian Telegraph Act, 1885.

The Central Government may at any time revoke license on two grounds

1. Breach of conditions
2. Default in payment of consideration

Therefore, the decision taken by Central Government to revoke a license is legally valid.

3. A customer filed a complaint before the Telecom Dispute Appellate Tribunal (TDSAT) stating that there is a dispute between him and his service provider regarding false deduction of plan charges. The tribunal without entertaining his complaint dismissed in limine stating it is not the proper forum. He preferred appeal to Supreme Court on this dismissal stating TDSAT has a power to adjudicate. will he succeed – decide.

Issues

Whether TDSAT has a jurisdiction to try the dispute?

S.14 of TRAI Act, 1997 speaks about on what grounds TDSAT has a jurisdiction to try they are mentioned as follows,

I. Adjudicate three type of disputes between

- i. Licensor (Central Government) and a licensee (Service provider)
- ii. Two or more service providers
- iii. A service provider and a group of consumers

II. Hear and dispose of appeal against any direction, decision or order of the Authority under the TRAI Act, 1997. But here the dispute is with only individual consumer, therefore the TDSAT has no jurisdiction to deal with the dispute. And when we referring s.14 (a) (iii) (B) the complaint of individual consumer maintainable before a Consumer Disputes Redressal Forum of a Consumer Dispute Redressal Commission of the National Consumer Redressal Commission established under the s.9 of the Consumer Protection Act, 1986.

Therefore, TDSAT has no jurisdiction to try the individual disputes.

