

**DRAFT REGULATORY REFORM BILL, 2013****SUMMARY OF INPUTS FROM CUTS**

<b>SR NO</b>	<b>ORIGINAL PROVISION IN DRAFT BILL</b>	<b>PROPOSED AMENDMENTS AS SUGGESTED BY CUTS (<i>IN BOLD</i>)</b>	<b>REASONS/REMARKS</b>
1.	<p><b>Name of law</b> Regulatory Reform Bill</p>	<p><b>The Bill should be renamed as Infrastructure Regulatory Reform Bill.</b></p>	<p>Regulatory reform means reform of regulatory regimes, which cover a wider range of reforms to be carried out, such as for business regulations etc, hence proposed to give it a better and shaper name.</p>
2.	<p><b>Short title, extent and commencement</b> <b>Section 1 (3)</b> It shall come into force on such date as the Central Government may, by notification, appoint:</p> <p>Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>	<p><b>Section 1 (3)</b> <b>All provisions of this Act shall come into force at once on such date as the Central Government may, by notification appoint but before the one hundred and twentieth day after its enactment. Provided that all provisions of this Act shall come into force even if the government fails to notify the provisions before the one hundred and twentieth day after enactment</b></p> <p><b>Further, if the said Act is not revised, it shall stand as void, ten years after its notification</b></p>	<p>This is vital to ensure that unnecessary delays on the part of the Government to bring the Bill, relevant provisions, etc in force are avoided. There are many instances where the relevant provisions, etc were not enforced because of the lack of prompt action from the Government.</p> <p>For example, with reference to delay in notification of certain provisions by the Government, it has been articulated in the RTI Act, that whether the Government notifies the provisions or not, within 120 days the Act will come into force.</p> <p>To ensure market efficiency, a sunset clause has been proposed.</p>

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			Thus, given the importance of this Bill such a provision is vital.
3.	<b>Definitions Section 2</b>	The Definition of parliament should be included under the section 2, where the definition should be as follows:  <b>“Parliament” means the Parliamentary/Legislative Committee on Regulatory Institutions or State Legislative Committee on Regulatory Institutions, as the case may be</b>	The Bill provides for independence of the regulatory commission and accountability to the parliament. It is, therefore, important to define “parliament”.  The Parliamentary/Legislative Committee on Regulatory Institutions shall ensure the independence from control of the Government/Line Ministry.  Parliamentary/legislative committee on regulatory institutions” means a special purpose committee to deal with the matters relating to regulatory institutions in addition to the subject matter parliamentary/legislative committees for the specific purpose of governing the overall performance and functioning of such agencies.
4.	<b>Section 3 (5)</b> The chairperson and members of the regulatory commission and appellate tribunals, as the case may be, shall be appointed by the government, on the recommendation of the selection	<b>Section 3 (5)</b> The chairperson and members of the regulatory commission and Appellate Tribunals shall be appointed by the <b>Government after the clearance of the recommendations of the Selection Committee constituted under the</b>	The appointment shall be approved by the subject Parliamentary Standing Committee or a special Parliamentary Standing Committee on Regulatory Regimes (if it is so constituted) and the proceeding will be made public.

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	committee constituted under section 4 this Act.	<b>relevant section of this Act by the Parliamentary Standing Committee, through a due process of a public hearing.</b>	
5.	<b>Proposed new sub-sections Section 4 (1) (F and G)</b>	<b>Section 4(1)</b> The selection committee should consist of:  <b>(F) A member from a Civil Society Organisation, with experience in consumer affairs or economic regulatory issues.</b>  <b>(G) A member from Academic background having experience in relevant sector or law or economics.</b>	Selection Committee needs to be made more representative of the community. At times it is sad to see that such regulatory bodies do not even have members from outside the limited field of government or ex-government functionaries who are in a position to represent the public and consumer interest without a blinkered approach.  The selection committee should include non-government representatives, academia, civil society representatives and professional bodies. This would ensure unbiased selection of experts from the non-government sector.
6.	<b>Section 4(3)</b> The selection committee shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal or at least six months before the completion of the tenure of the chairperson or a member, as the case may be, initiate the process for selection of such chairperson or the member for filling up the vacancy.	<b>Section 4(3)</b> The Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal or at least six months before the completion of the tenure of the chairperson or a member, as the case may be, initiate the process for selection of such chairperson or the member for filling up the vacancy. <b>The responsibility for ensuring adherence to this time line shall be on the</b>	It is often seen that appointments of Chairpersons or members, is often delayed due to pressure from parties having vested interest and no proper reason is provided for such delays. In order to avoid such delays, it is important to ensure that the relevant Secretary is responsible to see that action is taken on time and if there is delay, then proper reasons should be documented.

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		Secretary of the concerned Ministry who shall be required to explain in writing the reasons for the delay.	
7.	Proposed new sub-section Section 4 (4) (A)	<p><b>Section 4 (4) (A)</b> The selection committee may also invite candidates it deems qualified to provide their CV's for its consideration. Persons working as members or chairpersons in other regulatory commissions may also be invited to apply.</p> <p><b>Section (4) (B)</b> The selection committee must shortlist candidates and interview them through a transparent and objective process. For this purpose the selection committee may nominate a sub-committee for undertaking interview of the candidates as all members of the selection committee may not be able to devote the required time.</p>	<p>This is to ensure selection of right candidates in case the selection committee gets poor or inadequate response through the advertisement.</p> <p>This will aid the selection committee during selection process. Further, it is important to ensure that the process is not arbitrary and subject to lobbying.</p>
8.	<p><b>Section 4(5)</b> The selection committee shall finalise its recommendations within a period not exceeding two months and shall recommend a panel of at least two and not more than three suitable persons, in alphabetical order, for each vacancy.</p>	<p><b>Section 4(5)</b> <b>Following the interview process and after duly recording their deliberations,</b> the selection committee shall finalise its recommendations within a period not exceeding two months and shall recommend a panel of at least two and not more than three suitable persons, in alphabetical</p>	<p>This is vital to ensure fair and transparent selection procedure.</p>

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		order, for each vacancy.	
9.	<p><b>Section 4(7)</b> Notwithstanding anything to the contrary contained in this Act, the selection of the chairperson or judicial members, as the case may be, of an Appellate Tribunal shall be undertaken by a selection committee under the chairmanship of a judge of the Supreme Court to be nominated by the Chief Justice of the Supreme Court of India and the selection committee hereunder shall select and recommend a panel of two suitable persons, in alphabetical order, for each vacancy.</p>	<p><b>Section 4(7)</b> Notwithstanding anything to the contrary contained in this Act, the selection of the chairperson or judicial members, as the case may be, of an Appellate Tribunal shall be undertaken by a selection committee under the chairmanship of a <b>retired</b> judge of the Supreme Court to be nominated by the Chief Justice of the Supreme Court of India and the selection committee hereunder shall select and recommend a panel of two suitable persons, in alphabetical order, for each vacancy.</p>	<p>This is vital to ensure that the chairman of the committee has ample time to devote for the task laid down. Only a retired judge can do justice to the position, than a serving judge, as the serving judge might not be able to devote ample time, given the pressures of the judicial system.</p>
10.	<p><b>Section 4(8)</b> The recommendations of the selection committee referred to in sub-sections (5) and (7), shall be submitted to the Prime Minister who may, in consultation with the Union Finance Minister and the Leader of the Opposition in the Lok Sabha, select a suitable person from the panel submitted to him and forward his recommendation to the President for</p>	<p><b>Section 4(8)</b> The recommendations of the selection committee referred to in sub-sections (5) and (7), shall be submitted to the <b>Parliamentary/Legislative Standing Committee to select suitable person(s) from the panel submitted to them and after conducting a public hearing, forward their recommendations to the President/Governor for concurrence, whereupon the selected person(s) shall be appointed.</b></p>	<p>It is important to involve the parliament/legislature to formally approve the nominated candidates to ensure high levels of probity and also to create an arms-length distance from the executive. This practice is followed in the US and UK, and is healthy.</p>

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	his occurrence whereupon the selected person shall be appointed.		
11.	<b>Section 4</b> All references to Planning Commission	All references to Planning Commission must be substituted by NITI Aayog.	The Planning Commission has been replaced by NITI Aayog, thus consequent change is necessary.
12.	<b>Qualification for appointment of members</b> <b>Section 5 (1)</b> The members shall have the qualifications specified in the applicable law but subject to the condition that at least one member each of the regulatory commission and appellate tribunal, as the case may be, shall have the following qualifications and experience.	<b>Proposed new sub-section</b> <b>Section 5 (1) (d)</b> <b>At least one member having qualifications and experience in consumer affairs and academia.</b>	It is important to ensure appointment of at least one member with experience in consumer affairs, so as to better understand and comprehend issues on behalf of consumers.  Further, we should also provide for Part Time Members, as is the case in TRAI, UPSC, TAMP or National Monument Authority to enable skilled persons who would otherwise be not available for full time appointment.
13.	<b>Section 5(2)</b> No member of the regulatory commission or appellate tribunal shall have any share or interest, whether in his own name or otherwise, in any licensee.	<b>Section 5(2)</b> No member of the regulatory commission or appellate tribunal shall have any <b>substantial</b> share or interest, whether in his own name or otherwise, in any licensee.	This can be a slippery slope because persons do acquire shares of companies for investment purposes. This should be qualified to say that the member should not have substantial shares which would have enabled him to be in the category of management. This in a sense is covered by the word: 'interest' but that may not be sufficient.
14.	<b>Section 5(5)</b>	<b>Section 5(5)</b>	

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	No person shall be appointed as member if he has attained sixty four years of age. Provided, however, that a retired judge of the Supreme Court or a High Court may be appointed up to the age of sixty six years.	No person shall be appointed as member if he has attained <b>sixty</b> years of age.	<p>Regulatory commissions and appellate tribunals require younger people because the tasks are vigorous and rigorous. Globally this is the practice except in the case of India. On the contrary in India retired civil servants and judges lobby for their appointment to such commissions which include doing and taking favours from and to powers or ensuring that they do not work in an anti-establishment manner and thus compromising their integrity. Even the UN Convention on Corruption, to which India is a signatory, frowns on such appointments.</p> <p>It is not our case that retired civil servants and judges do not have the skills but that they can be appointed as members of non-regulatory bodies rather than such commissions for which they are not really suitable, as experience shows from and outside India.</p> <p>To enable such recruitment, rules relating to civil services and judiciary will need to be amended to ensure that serving civil servants and judges will be mandated to take up such appointments for at least five years. This will enable them to enhance their own skills which will be useful when they are discharging their basic duties.</p>
15.	<b>Terms of office and conditions</b> <b>Section 6(1)</b> A member shall hold office for a term	<b>Section 6(1)</b> A member shall hold office for a term of four	Same as mentioned Sr.No.16

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	of four years from the date on which he enters office or till he attains the age of sixty eight years.	years from the date on which he enters office or till he attains the age of <b>sixty</b> years.	
16.	<b>Section 6(2)</b> A member shall, on ceasing to hold office, be ineligible for re-appointment in a regulatory commission or appellate tribunal.	<b>Section (6) (1)</b> A member shall, on ceasing to hold office, be <b>eligible</b> for re-appointment in a regulatory commission or appellate tribunal <b>subject to the ceiling of age.</b>	A member after earning expertise in his respective sector for four years shall be allowed to be re-appointed for the purpose of continuity and bringing adequate skills and knowledge for the job.
17.	<b>Removal of member</b> <b>Section 7(3)</b> An order under sub section (2) shall not be issued unless a recommendation to this effect is made by the Prime Minister and approved by the President of India.  Provided that no member shall be removed from his office on any ground specified in clauses (d), (e), (f) or (g) unless an enquiry has been conducted for this purpose and the member has been given an opportunity to defend himself.	<b>Section 7(3)</b> An order under sub section (2) shall not be issued unless a recommendation to this effect is made by the Prime Minister and approved by the President of India.  Provided that no member shall be removed from his office on any ground specified in clauses (d), (e), (f) or (g) unless an <b>independent</b> enquiry has been conducted for this purpose and the member has been given an opportunity to defend himself.	The insertion of the term “independent” is to ensure maximum transparency and fairness in the process.
18.	<b>Officers and Staff</b>		



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	<p><b>Section 8</b> Provided further that a regulatory commission may engage on contract for a period not exceeding three years at a time and on such terms and conditions as the regulatory commission may determine.</p>	<p><b>Section 8</b> Provided further that a regulatory commission <b>shall</b> engage on contract for a period not exceeding three years at a time and on such terms and conditions as the regulatory commission may determine.</p>	<p>For effectiveness of the regulatory commission it is necessary to involve sector experts.</p>
19.	<p><b>Proceedings of the regulatory commission and appellate tribunal</b> <b>Section 9(7)</b> All proceedings of the regulatory commission shall be conducted in a transparent manner.</p>	<p><b>Section 9(7)</b> All proceedings of the regulatory commission <b>and appellate tribunal</b> shall be conducted in a transparent manner.</p>	<p>It is important to include transparency in proceedings at appellate tribunals as well.</p>
20.	<p><b>Functions of regulatory commissions</b> <b>Section 11 (3) (b)</b> to promote competition, efficiency and economy and prevent market domination, cartelisation and anti-competitive behaviour and for orderly growth of the relevant public utility industry;</p>	<p><b>Section 11 (3) (b)</b> to promote competition for orderly growth of the relevant public utility industry but not check anticompetitive conduct which is under the ambit/jurisdiction of the Competition Act, 2002</p>	<p>The part of the provision reading “<i>efficiency and economy and prevent market domination, cartelisation and anti-competitive behaviour</i>” should be deleted because it lists actions that the Competition Commission of India has already been vested with powers under the Competition Act, 2002 to look into.</p> <p>Creating another authority and empowering it with the similar powers will certainly lead to conflicts arising from overlapping jurisdictions as has already been witnessed in many cases and thus adversely impact the integrity of the economic governance</p>

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			system.
21.	<b>Functions of regulatory commissions</b> 11 (3) The regulatory commission shall exercise, perform and discharge the powers, functions and duties in a manner which it considers is best calculated	(k) the ensure greatest net benefits to the society	Every action of the regulatory commission must be motivated by public good. Therefore, the commission must ensure that the costs imposed on stakeholders on account of any action of the commission are outweighed by the expected societal benefits.
22.	<b>Section 11 (4) (d)</b> Specify the principles and methodologies relating to determination of tariff for licensees.	<b>Section 11(4) (d)</b> Specify the principles and methodologies relating to determination of tariff for licensees. <b>Further, the regulatory commissions are enjoined that under no circumstances shall justifiable costs of the applicant be postponed for tariff purposes and posted as “regulatory assets”. If government desires postponement, it must reimburse such costs to the applicant.</b>	
23.	<b>Proposed new sub-clause Section 11 (4)(k)(v)</b>	<b>Section 11(4)(k)(v)</b> <b>Give description of costs and benefits of the decision of the regulatory commission, and clear justification for any costs that are not approved for tariff purposes</b>	Along with full discussion and underlying rationale for the decision, the regulatory commission and appellate tribunals need to categorically mention the expected costs and benefits of its decisions, and specifically must provide reasons for not approving costs to maintain transparency.
24.	<b>Section 11(5)</b>	<b>Section 11(5)</b>	The regulations prescribed under this Act for the

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	The regulatory commission shall, not later than the first anniversary of the appointed date, unless the context otherwise requires, notify all the regulations necessary for discharging its duties and functions under the applicable law and this Act, as the case may be.	The regulatory commission shall, not later than the first anniversary of the appointed date, unless the context otherwise requires, notify all the regulations necessary for discharging its duties and functions under the applicable law and this Act, as the case may be. <b>No such regulation shall be in variance with the applicable law.</b>	discharge of duties and functions shall not in any way contradict or overlap any regulations prescribed under primary law.
25.	<b>Certain powers of the regulatory commission</b> <b>Section 12(e)</b> to levy and collect fees as may be prescribed; and	<b>Section 12(e)</b> to levy and collect fees, <b>penalties, fines,</b> etc as may be prescribed; and	It is recommended to include within this ambit penalties for misdoings wherever necessary to be levied and collected by the commission in addition to fees.
26.	<b>Proposed new Section</b> <b>Section 12(g)</b>	<b>Section 12(g)</b> <b>The Commission should ensure sustained funding to registered consumer organisations for making representation before the Commission or the Appellate Tribunal which will enable them to engage services of technical experts or professional advocates to represent the consumer cause.</b>	Consumer organisations are in a good position to take up the cause of aggrieved consumers and present their case. In order to ensure that they perform this task of research and advocacy meeting the appropriate standards, it is necessary to equip them with sufficient and sustained financial resources that they often lack so they can undertake the activities needed as well as bear the fees of engaging experts along the way. Such provisions exist in US regulatory laws.

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27.	<p><b>Proposed new section Section 12(h)</b></p>	<p><b>Section 12(h)</b>  <b>The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act. Further, if any person does not comply with the orders or directions issued, or fails to pay the fine imposed, he shall, without prejudice to any proceeding under this Act, be punishable with imprisonment for a term which may extend to three years, or with fine or with both, as the Chief Metropolitan Magistrate may deem fit.</b></p> <p><b>Provided that the Chief Metropolitan Magistrate shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its authorised officers.</b></p>	<p>Penal powers such as fines, imprisonments etc. are necessary here because given the nature of the services involved which are essentially for public utility, revocation of license is most often not an effective option.</p>
28.	<p><b>Power to require statistics and returns Section 14</b></p> <p>It shall be the duty of every licensee or any other person to whom a request is made by the regulatory commission to furnish to the regulatory commission</p>	<p><b>Section 14</b></p> <p>It shall be the duty of every licensee or any other person to whom a request is made by the regulatory commission to furnish to the regulatory commission such statistics, returns or other</p>	<p>The proviso has been inserted in order to ensure due respect for the process and to take special care that the critical procedure of information gathering does not get misled and have negative</p>

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	such statistics, returns or other information relating to the relevant public utility industry as it may require and at such times and in such form and manner as may be specified by the regulatory commission.	information relating to the relevant public utility industry as it may require and at such times and in such form and manner as may be specified by the regulatory commission. <b>Provided that in case of non-compliance of the request made by the commission or tendering wrong information penalty shall be imposed on the delinquent licensee.</b>	repercussions/consequences.
29.	<p><b>Directions to the regulatory commission</b></p> <p><b>Section 15(1)</b></p> <p>In the discharge of its functions, the regulatory commission shall be guided by such directions in matters of policy involving public interest as the Government may give to it in writing.</p>	<p><b>Section 15(1)</b></p> <p>In the discharge of its functions, the regulatory commission shall be guided by such directions in matters of policy involving public interest as <b>the Parliamentary Standing Committee</b> may give to it in hearings or in writing.</p> <p>Provided that such directions shall be general in nature and not relate to specific regulatory decisions or orders of the regulatory commission.</p> <p>Provided further that no such direction shall be issued unless it has been approved in writing by the Chairman of the <b>Parliament Standing Committee</b>.</p> <p>(2) If any question arises as to whether any such direction relates to a matter of policy involving</p>	<p>In many places the parliament (Parliamentary/Legislative Committee on Regulatory Institutions) has been given the role in place of the government and this has been deliberately done to ensure autonomy and independence.</p>

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		public interest, the decision of the <b>Parliamentary Standing Committee</b> thereon shall be final.	
30.	<p><b>Reports by the regulatory commission</b> <b>Section 16(1)</b></p> <p>The regulatory commission shall, as soon as practicable, after the end of each year make to the government a report on its activities during that year.</p>	<p><b>Reports by the regulatory commission and appellate tribunal</b> <b>Section 16(1)</b></p> <p>The regulatory commission <b>and appellate tribunal</b> shall, <b>within two months after the end of each year submit to the parliament</b> a report on its activities during that year.</p>	<p>It is important to provide specific timelines to ensure compliance with the task and take necessary measures if the deadlines have passed and compliance has not been met. This will instil due respect for the procedure as well as ensure timeliness.</p>
31.	<p><b>Section 16(3)</b></p> <p>The regulatory commission shall, before the commencement of each year, make to the government a report on the annual plan for the year containing a general description of work, other than that comprising routine activities in the exercise of its functions, which it plans to undertake during the year in furtherance of its objectives and the outcomes the regulatory commission expects to achieve during that year.</p>	<p><b>Section 16(3)</b></p> <p>The regulatory commission shall, before the commencement of each year, <b>directly submit to the Parliament a Strategic Business Plan</b> for the year containing a general description of work, <b>financial statements</b>, other than that comprising routine activities in the exercise of its functions, which it plans to undertake during the year in furtherance of its objectives and the outcomes the regulatory commission expects to achieve during that year.</p>	<p>There is need to have a strategic business plan that includes financial statements in addition to the general description of work, routine activities etc. This would greatly help in selecting and focusing on projects and activities. It would also provide a good overview of why they are undertaken, in what manner they would be undertaken, the time and expenditure involved in these activities.</p>
32.	<p><b>Section 16(4)</b></p> <p>(4) The regulatory commission shall,</p>	<p><b>New Section 16(4A)</b> <b>(4A) After considering representations,</b></p>	<p>The exercise of public consultation is not limited to</p>

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	before finalizing the annual plan referred to in subsection (3), publish a draft thereof and provide sixty days' notice for inviting representations and objections from the government, consumers and public and all interested parties and upon receipt of such representation, comments and observations and objections, shall consider the same.	<b>comments, as the case may be, received under Section 16(4), the regulatory commission will publish the revised draft of the plan for informational purposes. It must explain the changes made, if any, and provide a general response with respect to the comments, suggestions, as the case may be, which were not accepted by the regulatory commission.</b>	soliciting suggestions from interested stakeholders. In order to generate ownership and buy-in, the regulatory commission must provide reasons for rejection of suggestions and publish a revised draft after considering public comments.
33.	<b>Section 16(5)</b> The government shall lay a copy of every report made by the regulatory commission under sub-section (1) and (3) before each house of the parliament and shall arrange for copies of every report to be published in such manner as it considers appropriate.	<b>Section 16(5)</b> <b>The Parliamentary/Legislative Standing Committee</b> shall lay a copy of every report made by the regulatory commission under sub section (1) and (3) before each House of Parliament/State Legislature and shall arrange for copies of every such report to be published in such manner as it considers appropriate.	As in the above proposed amendments, the parliament here means Parliamentary/Legislative Committee on Regulatory Regimes (as explained under definitions)  In many places the Parliamentary/Legislative Standing Committee on Regulatory Regimes has been given the role in place of the government and this has been deliberately done to ensure autonomy and independence.
34.	<b>Keeping of register</b> <b>Section 17(4)</b> The contents of the register shall be available for inspection by the public during such hours and subject to payment of such fee as may be notified in an order made by the regulatory commission.	<b>Section 17(4)</b> The contents of the register shall be <b>uploaded on the website of the regulatory commissions and be made freely available for inspection by the public.</b>	This insertion is so as to ensure that all reap the fruits of technological empowerment especially on important issues such as making information public accessible for free and at all hours. This is also in line with the Right to Information Act.

SR N O	ORIGINAL PROVISION IN DRAFT BILL	PROPOSED AMENDMENTS AS SUGGESTED BY CUTS ( <i>IN BOLD</i> )	REASONS/REMARKS
35.	<p><b>Expenses of the regulatory commissions and appellate tribunals</b> <b>Section 19(1)</b></p> <p>The expense of the regulatory commissions and appellate tribunals shall be paid out of the Consolidated Fund of India to the extent that such payment is necessary to meet their expense after taking into account other revenues of the regulatory commission and the appellate tribunal, as the case may be.</p>	<p><b>Section 19</b></p> <p>The expense of the regulatory commissions and appellate tribunals shall be paid out of the Consolidated Fund of India to the extent that such payment is necessary to meet their expense after taking into account other revenues of the regulatory commission and the appellate tribunal, as the case may be, <b>which are deposited under the respective Fund of the regulatory commission or the appellate tribunal, as the case may be.</b></p>	<p>This change flows from section 18 which proposes to deposit all revenues of the regulatory commission and the appellate tribunal in their respective funds.</p> <p>The change is necessary to ensure that revenue generated by regulatory commissions or appellate tribunal and deposited under the respective Fund, is utilised to meet their expenses, before taking recourse to the Consolidated Fund of India.</p>
36.	<p><b>Budget of the regulatory commissions and appellate tribunals</b> <b>Section 20(3)</b></p> <p>Upon approval of the budget by the Parliament, the total amount so approved for the year shall be transferred by relevant Ministry to the Fund of the regulatory commission or the appellate tribunal, as the case may be and the regulatory commission or the appellate tribunal shall be accountable to the Parliament and the Comptroller and Auditor General of India for utilization thereof.</p>	<p><b>Section 20(3)</b></p> <p>Upon approval of the budget by the Parliament, the total amount so approved for the year shall be transferred by the <b>Ministry of Finance</b> to the Fund of the regulatory commission or the appellate tribunal, as the case may be and the regulatory commission or the appellate tribunal shall be accountable to the Parliament and the Comptroller and Auditor General of India for utilization thereof.</p>	<p>The relevant ministry has been specified as the Ministry of Finance that is well-equipped to deal with the activities mentioned in this provision and it will help promote independence of the regulatory commission.</p>



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37.	Proposed New Section Section 20(4)	Section 20(4) <b>Further, the regulatory bodies may also raise funds through cess/fees, etc in order to further the objective of their enabling legislations.</b>	It is important to have adequate funding so that the regulatory bodies have adequate funding to discharge their functions well and hence this provision recommends a justifiable manner that it can employ to do so.
38.	Exemption from licensing Section 24	Section 24(7) <b>In addition to compliance with other provisions in this Act with respect to issue of orders, any order under this Section must be accompanied by a statement of impact on market and competition on account of the preferential treatment</b>	Differential treatment with respect to licensing amongst market players has the potential to create uneven playing field between competitors, which might hurt long term interests of market and consumers. Consequently, it is necessary to understand the rationale for exempting licensing require for specific market players.
39.	Procedure for grant of license Section 26(4)  The regulatory commission shall consider all suggestions or objections and the recommendations, if any, which are duly made and not withdrawn	Section 26(4)  The regulatory commission shall consider all suggestions or objections and the recommendations, if any, which are duly made and not withdrawn, <b>and shall issue a general or specific response, as appropriate, with respect to suggestions/ objections/ recommendations, as the case may be, which it proposes to reject</b>	The exercise of public consultation is not limited to soliciting suggestions from interested stakeholders. The regulatory commission must provide reasons for rejection of suggestions, to build trust and greater engagement with public
40.	Conditions of license		

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	<b>Proposed New Section Section 27(10)</b>	<b>Section 27(10)</b> <b>The Commission shall at public hearings establish the duration of a license, taking account of the capital costs, returns etc; and the conditions for renewal if any including the use of any assets (wires, pipelines, etc) created by the first licensee.</b>	Transparency and accountability have become vital components for any system to work efficiently. Thus, it is important to ensure public participation in the process by means of public hearing.  Secondly, access to common carriers also need to be provided on fair, reasonable and non-discriminatory (FRAND) terms.
41.	<b>Amendment of license Section 29(2)</b> The regulatory commission may not make any amendments under this section unless the licensee has consented to the amendments and in case of standard conditions of the license, the regulatory commission is of the opinion that the amendments...	<b>Section 29(2)</b> The regulatory commission <b>must</b> not make any amendments under this section unless the licensee has consented to the amendments <b>at a public hearing</b> , and in case of standard conditions of the license, the regulatory commission is of the opinion that the amendments.	Transparency and accountability have become vital components for any system to work efficiently. Thus, it is important to ensure public participation in the process by means of public hearing.
42.	<b>Amendment of license Section 29(10)</b> Notwithstanding anything to the contrary in this section, where the regulatory commission deems it necessary to amend the conditions of a particular license for complying with the provisions of any law for the time being in force, it may make the required	<b>Proviso to section 29(10)</b>  Provided that no such amendment shall be made except with the consent of the licensee unless such consent has, in the opinion of the regulatory	In order to prevent abuse of discretion, greater transparency and accountability is required.

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	modifications in the license. Provided that no such amendment shall be made except with the consent of the licensee unless such consent has, in the opinion of the regulatory commission, been unreasonably withheld.	commission, been unreasonably withheld. <b>When the amendment has been made without the consent of the licensee, the regulatory commission must provide a statement of justification and efforts undertaken to obtain consent of licensee</b>	Consequently, the regulatory commission must be required to issue a statement regarding the circumstances in which it is compelled to amend the license without consent of the licensee.
43.	<b>Revocation of license</b> <b>Section 30(1)</b> If the regulatory commission, after making an enquiry and is satisfied that public interest so requires, it may revoke a license in any of the following cases, namely	<b>Section 30(1)</b> If the regulatory commission, after making an enquiry <b>and a public hearing</b> , is satisfied that public interest so requires, it may revoke a license in any of the following cases, namely: -	Transparency and accountability have become vital components for any system to work efficiently. Thus, it is important to ensure public participation in the process by means of public hearing.
44.	<b>Sale of utilities of licensees</b> <b>Proposed New Section</b> <b>Section 31(1) (f)</b>	<b>Section 31(1) (f)</b> <b>Determination of the price at which the sale shall be made shall be done by an independent evaluator and that price will be taken as the asset price for regulatory purposes.</b>	It is necessary that the evaluation of price of assets is done by an independent evaluator to ensure that the price setting mechanism is transparent and fair
45.	<b>Investigation of enforcement matters</b> <b>Section 36(1)</b> Subject to sub section (2), it shall be the duty of the regulatory commission to	<b>Section 36(1)</b> Subject to sub section (2), it shall be the duty of the regulatory commission to investigate any	The regulatory commission should also be empowered to take up matters <i>suo moto</i> to ensure

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	investigate any matter which appears to it to be an enforcement matter and which is the subject of a representation made to the regulatory commission by or on behalf of a person appearing to the regulatory commission to have an interest in that matter.	matter which appears to it to be an enforcement matter, <b>either suo motu or</b> when it is the subject of a representation made to the regulatory commission by or on behalf of a person appearing before the regulatory commission.	effective regulation of their respective sectors
46.	<b>Tariff</b> <b>Section 39(2)</b> Regulations made under this section may provide for review of tariff by the regulatory commission in the specified manner and time.	<b>Section 39(2)</b> Regulations made under this section may provide for review of tariff by the regulatory commission in the specified manner and time.  <b>Provided where some consumers are supplied at below cost, taking adequate measures to identify beneficiaries and ensure the benefits go only to them and are not diverted, and also that there is enough additional revenue from other customers to meet the cost to suppliers.</b>	
47.	<b>Proposed New Section</b> <b>Section 39(4)</b>	<b>Section (39) (4)</b> <b>The regulatory commission will ensure that the licensee does not suffer monetary losses because of non-reimbursement of subsidies, inadequate cross-subsidies, and ambitious loss reduction targets that are not achieved.</b>	

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48.	<p><b>Consumer Protection Section (40)(8)</b> The government may, in accordance with the provisions of this Act and the Consumer Protection Act, 1986 issue guidelines and directions to the regulatory commissions for providing support and assistance to consumers and consumer organizations for redressal of their grievances against a licensee or a class of licensees, as the case may be.</p>	<p><b>Section 40(8)</b> The government may, in accordance with the provisions of this Act and the Consumer Protection Act, 1986 issue guidelines and directions to the regulatory commissions for providing support and assistance <b>including financial assistance</b> to consumers and <b>registered</b> consumer organizations for redressal of their grievances against a licensee or a class of licensees, as the case may be.</p>	<p>In order to ensure that Consumer Organisations perform the said task, it is necessary to equip them with sufficient and sustainable financial resources that they often lack so they can undertake the research needed as well as bear the fees of engaging experts along the way.</p>
49.	<p><b>Proposed New Section Section 40(10)</b></p>	<p><b>Section 40(10)</b> <b>For the purpose of ensuring and in furtherance of consumer welfare, the Central Government shall constitute a consolidated fund to be called the 'Utility Public Education Fund' under the Ministry of Consumer Affairs for enabling consumer advocacy/ public education activities by registered consumer organisations. This fund shall be raised through a nominal consumer cess on utility bills which will be credited to the Utility Public Education Fund. It will be utilised solely for providing resources to registered consumer organisations to enable them to work on the issues in a sustainable manner for awareness and capacity building of consumers</b></p>	<p>Already addressed in Sr. No. 25 and 42</p>

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		<b>and making representations before the regulatory commissions and the Appellate Tribunals.</b>	
50.	<b>Competition Section 43 - 44 : Market domination and anti-competitive behaviour</b>	<b>To be deleted</b>	The said sections overlaps with the provisions of Competition Act, 2002. Therefore, to avoid contravention and confusion, it is better to delete the said section and instead insert the suggested provision below (Sr No. 45)
51.	<b>Proposed New Section  Part VIII (Overlap Issues)</b>	<b>Overlap with the Competition Commission</b>  <b>(1)The best approach is the one which involves continuous cooperation between sector regulators and competition authorities. The starting point however is for both to try and appreciate the difference between technical issues and competition issues. The sector regulators should have the leading role in regulating technical issues. Thus, for structural issues, which in most cases are ex ante, sector regulators should take a leading role. But, for competition issues which are largely behavioural and ex post, competition authorities should take a leading role.</b>  <b>(2) However, both the sector regulator and competition authority shall mandatorily consult</b>	Structural issues generally refer to specified standards guiding players' operations, which players have to address before starting operations. They play a critical part in determining entrance into the industry and hence determining the industrial structure (hence structural).  Behavioural issues on the other hand refer to those regulations aimed at controlling the behaviour that firms may engage in (against each other or consumers) after they are already in operation. Thus it can be shown that ex ante issues are generally structural while ex post issues are generally behavioural.  Structural issues include standard setting and

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		<p>each other on matters which are overlapping and avoid any conflict.</p> <p>Provided, if the sector regulators and competition authority fail to resolve the issues amicably the same will be resolved by a committee comprising of the chairpersons of the Competition Appellate Tribunal, Securities Appellate Tribunal and Appellate Tribunal for Electricity.</p> <p>Overlap issues among sector regulators</p> <p>43A . In cases of overlap of jurisdiction among regulators over any issue, the matter shall be decided and resolved by way of mandatory consultation among the regulators.</p> <p>Provided, if regulators fail to resolve the issues amicably the same will be resolved by an Overlap Arbitration Panel comprising of the chairpersons of the Competition Appellate Tribunal, Securities Appellate Tribunal and Appellate Tribunal for Electricity.</p>	<p>monitoring; safety and externality enforcing; spectrum or rights of way allocation; licensing; price controls; outlining terms of sale, etc. Behavioural issues are largely competition related (abuse of dominance, agreements; M&amp;As).</p> <p>For dealing with overlap and jurisdictional conflict issues, it is proposed to establish a panel comprising of three tribunal chairs as they have the judicial and subject background to deal with them.</p> <p>In UK, there is a concurrence working party of the competition authorities and sector regulators to decide on which issue which agency will take the lead. Furthermore, there is a common appellate body: Competition Appellate Tribunal for the competition agency and all sector regulators thus bringing in healthy convergence.</p>
52.	Section 48 Appeal against orders of the regulatory commission	<p>Section 48(4)</p> <p>The appellate tribunal will hear the matter expeditiously, avoid unnecessary delay, and will pass the order within reasonable time. In</p>	<p>When a matter reaches appellate tribunal, it must be adjudicated expeditiously, and order must be made within a reasonable time frame. This will be necessary to avoid travesty of justice. Consequently,</p>

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		<b>this regard, the appellate tribunal could adopt measures like abstaining from grant of adjournments, imposition of costs on litigants, and conduct day-to-day hearing of matters.</b>	the appellate tribunal must be authorised to adopt several measures to ensure quick disposal of matters.
53.	<b>Applicability to State matters Section 49</b>	<b>Section 49</b> This Act shall apply mutatis mutandis to the applicable law on matters listed in List I and List III in the Seventh Schedule to the Constitution of India and for the purposes of such applicable law – <b>© reference to the Union Public Service Commission shall mean reference to the State Public Service Commission of the respective State.</b>	There are several references to Union Public Service Commission in relation matters of selection of members of regulatory commissions. Such tasks at state level would have to be performed by the members of the State Public Service Commission of the respective State.
54.	<b>Powers of regulatory commission to make regulations Section 57 (2)©</b> Stating the time (not being less than 30 days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made.	<b>Section 57 (2) ©</b> Stating the time (not being less than <b>60</b> days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made.	Thirty days is too short and hence, it is suggested to increase it to sixty days, to provide adequate time to ensure response from relevant stakeholders.

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