

DRAFT
REGULATORY REFORM BILL, 2015

CONTENTS

	<i>Pages</i>	
1. Short title, extent and commencement	43	Field Code Changed
2. Definitions	53	Field Code Changed
3. Constitution of regulatory commissions and appellate tribunals	86	Field Code Changed
4. Selection and appointment of members	86	Field Code Changed
5. Qualification for appointment of members	108	Field Code Changed
6. Term of office and other conditions	119	Field Code Changed
7. Removal of member	119	Field Code Changed
8. Officers and staff	1210	Field Code Changed
9. Proceedings of the regulatory commission and appellate tribunal	1310	Field Code Changed
10. Vacancy etc. not to invalidate proceedings	1310	Field Code Changed
11. Functions of regulatory commissions	1411	Field Code Changed
12. Powers to require evidence etc.	1613	Field Code Changed
13. Power to require statistics and returns	1714	Field Code Changed
14. Directions to the regulatory commission	1714	Field Code Changed
15. Reports by the regulatory commission	1814	Field Code Changed
16. Keeping of register	1915	Field Code Changed
17. Fund of the regulatory commission and appellate tribunal	1915	Field Code Changed
18. Expenses of the regulatory commissions and appellate tribunals	2016	Field Code Changed
19. Budget of the regulatory commissions and appellate tribunal	2016	Field Code Changed
20. Accounts	2016	Field Code Changed
21. Prohibition on unauthorised provision	2116	Field Code Changed
22. Exemption from licensing	2116	Field Code Changed
23. Grant of licenses	2217	Field Code Changed
24. Procedure for grant of license	2217	Field Code Changed
25. Conditions of license	2318	Field Code Changed
26. Open access	2318	Field Code Changed

[Comments from CUTS International](#)
[13 September 2015](#)
[06 May 2016](#)

27. Amendment of license	2418	Field Code Changed
28. Revocation of license and sale of utility	2419	Field Code Changed
29. Provisions where no purchase takes place	2520	Field Code Changed
30. Directions to Licensees		
31. Suspension of license and sale of utility	2621	Field Code Changed
32. Investigation of enforcement matters	2721	Field Code Changed
33. Orders for securing compliance	2721	Field Code Changed
34. Tariff regulations	2822	Field Code Changed
35. Consumer protection	2923	Field Code Changed
36. National Advisory Committee	3024	Field Code Changed
37 Non competitive services	25	
38 Market domination and anti competitive behaviour	25	
39. Reference to Ceompetition eCommission	26	
40. Arbitration	27	
41. Dispute resolution by the licensee	3627	Field Code Changed
42. Appeal against orders of the regulatory commission	3628	Field Code Changed
43. Applicability to State matters	30	Field Code Changed
44. Power of entry etc.	30	Field Code Changed
45. Civil courts not to have jurisdiction	31	Field Code Changed
46. Prohibition on persons	31	Field Code Changed
47. Members, officers etc. to act as public servants	31	Field Code Changed
48. Protection of action taken in good faith	32	Field Code Changed
49. Recovery of sums payable	32	Field Code Changed
50. Service of notices, orders or documents	32	Field Code Changed
51. Power of the government to make rules	32	Field Code Changed
52. Powers of regulatory commission and appellate tribunal to make regulations	34	Field Code Changed
53. Rules and regulations, Directions to the Regulatory Commissions, to be laid in Parliament	4436	Field Code Changed
54. Power to remove difficulty	4436	Field Code Changed
55. Overriding effect	4536	Field Code Changed
56. Repeal and saving	4536	Field Code Changed

[Comments from CUTS International](#)
[13 September 2015](#)
[06 May 2016](#)

SCHEDULE I	38
SCHEDULE II	39

The Infrastructure Regulatory Reform Bill, 2015

An Act to govern the constitution, powers, functioning, and accountability of regulatory commissions for public utilities, and generally for taking measures conducive to development of public utility industries, determination of tariff, enforcement of performance standards, promoting investment and competition, and for protecting the interests of consumers, and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Sixty Sixth Year of the Republic of India as follows:

PART I
PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Infrastructure Regulatory Reform Act, 2015.
- (2) It extends to the whole of India except in respect of regulatory commissions in the State of Jammu and Kashmir.

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 of its enactment.

~~(3) Provided that all provision of this Act shall come into force even if the government fails to notify the provisions before the one hundred and twentieth day of enactment. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.~~

~~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.~~

- (3) This Act shall apply to all regulatory commissions established prior to this Act and to all regulatory commissions which may be constituted hereinafter.
- (4) The provisions of the Act shall the mandatorily reviewed and revised at the expiry of a period of ten years after it comes into effect, on the basis of assessment of its impact, failing which the Act shall cease to remain in force.

Formatted: Font color: Auto

2. Definitions

In this Act, unless the context otherwise requires,



- (1) “**appellate tribunal**” means an appellate tribunal referred to in section 3 of this Act;
- (2) “**applicable law**” means the line Act that governs any specific public utility industry;
- (3) “**appointed date**” means the date referred to in sub-section (3) of section 1;
- (4) “**board**” means the board constituted under the applicable law in relation to the public utility industry;
- (5) “**carriage**” means fixed assets or infrastructure that is used for carrying any goods or services and includes electricity transmission and distribution networks, telephony networks, pipelines, highways, port terminals, railways and airports;
- (6) “**chairperson**” means the chairperson of a regulatory commission or appellate tribunal, as the case may be;
- (7) “**content**” means the goods or services that are transmitted or transported by means of the carriage and includes electricity, voice, oil, and gas;
- (8) “**company**” means a company formed and registered under the erstwhile Companies Act, 1956, or the Companies Act, 2013 and includes any body corporate under a Central or State Act;
- (9) “**consumer**” means a consumer as defined in the Consumer Protection Act, 1986 (68 of 1986);
- (10) “**government**” means the ~~UnionCentral~~ Government except in the case of State Electricity Regulatory Commission constituted under the Electricity Act, 2003, where government shall mean the State Government having jurisdiction.
- (11) “**license**” means a sanction or permission granted under the applicable law to operate a carriage or content, as the case may be and includes an exemption from obtaining such license under the applicable law and the expression “license” shall be construed accordingly;
- (12) “**licensee**” means a company, undertaking or person who has been granted a license under the applicable law and includes a person who is engaged in the provision of public utility services under a valid exemption, concession, or contract in accordance with the applicable law;
- (13) “**licensor**” means the authority which can grant a license under the applicable law;
- (14) “**member**” means the member of a regulatory commission or an appellate tribunal, as the case may be, and includes the chairperson thereof, unless otherwise specified;
- (15) “**minister**” means the minister-in-charge of that department of the ~~UnionCentral~~ Government or the State Government, as the case may be, which is responsible for the relevant public utility industry;
- (16) “**National Advisory Committee**” means the committee referred to in section 35 of this Act;
- (17) “**non-competitive services**”, when used in the context of a licensee means such goods or services as may be licensed under the applicable law and such other services as the regulatory commission

may specify from time to time and the expression 'competitive services' shall include all services other than non-competitive services provided by such licensee;

- (18) “**notification**” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (19) “**open access**” means the provision of non-discriminatory use of carriage including ancillary or incidental equipment and services thereof, to any licensee or consumer in accordance with this Act and the applicable law, and without any undue or unreasonable preference, access, advantage, discount, rebate, waiver, disadvantage or discrimination in any form or manner, as compared to any other consumer or licensee;
- (20) “**prescribed**” means prescribed by rules made under this Act;
- (21) “**person**” includes any company, society, association or body of individuals, trust, limited liability partnership, whether incorporated or not;
- (22) “**public utility industry**” means such industry as is listed out in the Schedule to this Act or any other industry which the ~~Union~~Central Government may notify from time to time under this Act, and the term “public utility” shall be construed accordingly;
- (23) “**regulations**” means regulations made under the applicable law or under this Act by a regulatory commission or appellate tribunal, as the case may be;
- (24) “**regulatory commission**” means a statutory commission or board constituted under and in accordance with the applicable law for the purposes of regulating a public utility industry, licensees or services, that affect consumers, directly or indirectly, but does not include a commission or board constituted for regulation of financial ~~services~~; ~~[The term financial services might be confusing. A better way to exclude financial sector would be to rename the Act as Infrastructure Regulatory Reform Bill and exclude financial sector in a section on applicability]~~
- (25) “**rules**” means rules made by the government under this Act;
- (26) “**selection committee**” means the committee referred to in sub-section (1) of section 4 of this Act;
- (27) “**schedule**” means the schedule to this Act;
- (28) “**specified**” means specified by regulations made under this Act;
- (29) “**State**” means a State of the Republic of India and includes a Union Territory;
- (30) “**unfair trade practice**” shall mean the unfair trade practice as defined in section 2(1)(r) of the Consumer Protection Act, 1986, as amended from time to time, or any substitute thereof;

Comment [PSM1]: [The term financial services might be confusing. A better way to exclude financial sector would be to rename the Act as Infrastructure Regulatory Reform Bill and exclude financial sector in a section on applicability]

(30)

Formatted: Body Text, Indent: First line: 0"

PART II

CONSTITUTION AND PROCEEDINGS OF REGULATORY COMMISSIONS AND APPELLATE TRIBUNALS

3. Constitution of regulatory commissions and appellate tribunals

- (1) The government may from time to time constitute regulatory commissions and appellate tribunals in respect of public utility industries, as the case may be, under and in accordance with this Act or under any applicable law, but always subject to the provisions of this Act.
- (2) A regulatory commission or an appellate tribunal, as the case may be, shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, ~~and~~ to contract, and to sue and be sued.
- (3) Regulatory commissions and appellate tribunals, as the case may be, shall consist of such number of members as may be stipulated by the applicable law.
- (4) The 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 committee constituted under section 4 of this Act;

Provided, however, that a member of a regulatory commission or ~~a~~ Appellate ~~T~~ribunal established prior to this Act shall continue to remain in office till the expiry of the term as envisaged at the time of the member's appointment under the applicable law.

- (5) The government may, by notification, combine and merge two regulatory commissions, and appellate tribunals, constituted under the applicable laws for the respective public utility industries, in such manner as may be prescribed.
- (6) The Central Government may, by notification, designate any appellate tribunal to hear appeals from a regulatory commission for which no appellate tribunal has been constituted under the applicable law, and upon such notification, all appeals from the orders of such regulatory commission shall lie before the appellate tribunal which shall exercise powers and discharge functions as if such appeals have been made to it under the applicable law and this Act.

4. Selection and appointment of members

- (1) The Central Government shall, for the purposes of search and selection of the chairperson and members of a regulatory commission and the members of an appellate tribunal, as the case may be, constitute a selection committee consisting of:
 - (a) the Member of the NITI Aayog in-charge of the concerned sector relating to the public utility;
 - (b) one person having qualifications, and experience of having worked for not less than twenty years in the relevant public utility sector;

(c) one person having qualifications, and experience in academia of not less than twenty years in the relevant public utility sector, or law, or economics;

~~(e)~~(d) one person from civil society and experience of having worked for not less than twenty years in consumer affairs and economic regulatory issues;

~~(d)~~(e) Secretary-in-charge of the Ministry of the government dealing with the relevant public utility sector;

~~(e)~~(f) in the case of selection of a member of a regulatory commission, the chairperson of that regulatory commission and in the absence of such chairperson, the senior most member thereof; and

Provided that in the case of a state selection committee, the Member in clause (a) above shall be such member may be appointed by State Government.

(2) No appointment of a chairperson or member shall be invalid merely by reason of any vacancy in the selection committee if such vacancy does not exceed one.

(3) The persons referred to in sub clause (b) and (c) of Clause (1) of this Section shall be appointed by a committee comprising the Prime Minister, the Leader of Opposition of Lok Sabha, and the Chief Justice of India, and in the case of the state selection committee, the Chief Minister, the Leader of Opposition of the State Legislature, and the Chief Justice of the High Court, in the manner as prescribed.

~~(3)~~ Provided where there is no Leader of Opposition in Lok Sabha or a State Legislature, the member nominated by the largest opposition party, will be part of the committee.

(4) 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 four months before the completion of the tenure of a member, as the case may be, initiate the process for selection of such member for filling up the vacancy. The Secretary of the selection committee shall be responsible for avoiding delay and ensuring compliance with this provision.

~~(4)(g)~~ Provided that not more than half the members of the selection committee will be from government background.

(5) For the purposes of selection of members, the selection committee shall:

(a) invite applications through an advertisement;

(b) consider nominations sent by the government, any organisation, or person; and

(c) consider any other person that it deems fit.

Formatted: Indent: Left: 0.5", No bullets or numbering

Formatted: Heading 5

~~(e)~~(6) The selection process must be transparent and objective in nature, through conducting interviews and an objective scoring pattern. The selection committee will ensure that conflict of interest is avoided during the interview process.

Formatted: Heading 4, No bullets or numbering

~~(6)~~(7) The selection committee shall expeditiously finalise its recommendations, following the interview process and after the deliberation and recording reasons thereof, in a form and manner as prescribed, and shall recommend a panel of at least two and not more than three suitable persons, in alphabetical order, for each vacancy.

(7) Before recommending any person for appointment as the chairperson or other member, the selection committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as chairperson or member, as the case may be.

(8) Notwithstanding anything to the contrary contained in this Act, the selection and recommendation of suitable persons for each post of chairperson or judicial member, as the case may be, of an Appellate Tribunal shall be made by the selection committee under the chairmanship of a sitting or a retired judge of the Supreme Court as nominated by the Chief Justice of India.

(9) The recommendations of the selection committee referred to in sub-sections (5) and (8) shall be submitted to the Parliament through the subject Standing Committee~~Prime Minister~~ who shall, ~~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 ~~them~~ and forward ~~their~~ recommendation to the President of India for his concurrence whereupon the selected person shall be appointed.

~~Provided where there is no leader of opposition in Lok Sabha, the member of Lok Sabha nominated by the largest opposition party would be consulted.~~

Formatted: Font: 11 pt

Formatted: Indent: Left: 0.5"

5. Qualification for appointment of members

(1) Members shall have qualifications specified in the applicable law. Notwithstanding the above provision, every regulatory commission and appellate tribunal shall comprise at least one member each having the following qualifications and experience:

- (a) one member having qualifications and experience in finance, accounts, commerce, management, or economics;
- (b) one member having technical qualifications and experience in the relevant industry; and
- (c) one member having qualifications and experience in law, public administration or management.

~~(e)~~(d) one member having qualifications and experience in consumer affairs, regulatory reforms and academia.

Formatted: Font color: Auto

(2) No member of the regulatory commission or appellate tribunal shall have any interest, financial or otherwise, in any licensee or in any other person, which is likely to prejudice his functioning as a member.

(3) No person who has held any office in a department of the Central Government or the State Government, as the case may be, and has directly dealt with the subjects falling in the jurisdiction

of a regulatory commission or appellate tribunal, as the case may be, shall be eligible for selection until expiry of ~~two~~ one years from the date of demitting such office.

- (4) A member shall not hold any other office of profit.

Explanation: An ‘office of profit’ means a position that brings to the person holding it some financial gain, or advantage, or benefit and carries some remuneration, financial advantage, benefit etc.

- (5) Every person shall, prior to his appointment as member of a regulatory commission or appellate tribunal, as the case may be, submit a statement of his assets as well as that of his spouse and children.

6. **Term of office and other conditions**

- (1) A member shall hold office for a term of five years from the date on which he enters office or till he attains the age of sixty ~~five~~ eight years, whichever is earlier.

Provided that the Chairperson of a regulatory commission or appellate tribunal, as the case may be, shall hold office for a term of five years from the date on which he enters office or till he attains the age of ~~sixty seven~~ two ~~seventy~~, whichever is earlier.

- (2) Notwithstanding anything contained in the applicable law, the conditions of employment of members shall be as prescribed by the government. A parity in emoluments will be maintained among the chairmen and members of the regulatory commissions and appellate tribunals.

- (3) Notwithstanding anything contained in this section, a member may -

- (a) relinquish his office by giving to the government a notice of not less than three months, or
(b) be removed from his office in accordance with the provisions of section 7 of this Act.

- (4) Any member ceasing to hold office as such shall -

- (a) not acquire, hold or maintain, directly or indirectly, any office, employment or consultancy or any kind of professional arrangement or business with any entity or its associates dealing in matters under the jurisdiction of the regulatory commission for a period of three years from the date he ceases to hold such office; and

- (b) not represent any person before the regulatory commission of which he was a member.

7. **Removal of member**

- (1) Notwithstanding anything contained in the applicable law or any other law in force, the government may by order remove from office any member, only if he -

- (a) has been adjudged an insolvent;
(b) has been convicted of an offence which, in the opinion of the government, involves moral turpitude;

- (c) has become physically or mentally incapable of acting as a member;
 - (d) has acquired such financial or other interest as is likely to prejudice his functions as a member;
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest; ~~or~~
 - (f) has been guilty of proven misbehaviour; or
 - (g) has failed to discharge his duties
- (2) An order under sub-section (1) 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 unless an independent and transparent enquiry has been conducted in the manner prescribed for this purpose and the member has been given an opportunity to defend himself.

Provided further that no member of the appellate tribunal shall be removed from his office under sub-section (1) without prior consultation with the Chief Justice of India.

8. **Officers and staff**

A regulatory commission or an appellate tribunal, as the case may be, shall appoint a secretary and such other officers and employees as it considers necessary for the performance of its functions, on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as may be determined by regulations to be issued with prior concurrence of the appropriate government, or as per the applicable law.

Provided that a regulatory commission ~~may shall~~ engage experts on contract for a period not exceeding three years at a time and on such terms and conditions as the regulatory commission may determine.

Formatted: No bullets or numbering

9. Proceedings of the regulatory commission and appellate tribunal

- (1) The chairperson shall be the chief executive of the regulatory commission or the appellate tribunal, as the case may be.
- (2) The regulatory commission shall meet at its head office or any other place at such time as the chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.
- (3) Meetings of regulatory commissions or proceedings before appellate tribunals shall be transparent and open to public, and shall be conducted in the manner prescribed, and as per applicable law.
- (4) A regulatory commission or an appellate tribunal, as the case may be, may ~~authorize~~ any person or appoint an advocate or representative, as it deems fit, to represent the interest of consumers in proceedings before it, and may pay such fee to that person or advocate as it may deem appropriate.
- (5) 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.
- (6) 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 matters under its jurisdiction.

10. Vacancy etc. not to invalidate proceedings

No act or proceeding of a regulatory commission or an appellate tribunal shall be questioned, or shall be invalidated, merely on the ground of existence of any vacancy or defect in the constitution of such regulatory commission or appellate tribunal, as the case may be.

PART III

POWERS AND FUNCTIONS OF REGULATORY COMMISSIONS

11. Functions of regulatory commissions

- (1) The regulatory commission shall exercise, perform and discharge its powers, functions, and duties reasonably with fairness, impartiality, and independence, and in a manner that is timely, transparent, proportionate, accountable, and consistent with this Act and the applicable laws.
- (2) In discharging its functions, the regulatory commission shall have due regard to the need for-
 - (a) meeting all reasonable demands of the consumers with respect to the public utility industry; and
 - (b) securing that licensees are able to finance their activities in order to meet such demands, and having regard to reasonable returns on investment.
- (3) The regulatory commission shall exercise its powers, and perform and discharge its functions and duties mainly to-
 - (a) protect the interests of all consumers, by minimizing costs in providing quality services;
 - (b) protect the interests of licensees to ensure viable operations of the relevant public utility industry;
 - (c) promote competition and efficiency for orderly growth of the relevant public utility industry;
 - (d) encourage market development and participation of private sector in the respective public utility industry for ensuring a fair deal to their customers;
 - (e) promote efficiency and ensure efficient allocation of resources, in the public utility industry;
 - (f) benchmark, where feasible, the public utility industry and licensees as against international standards and specify and enforce standards with respect to the quality, continuity and reliability of service provided by the public utility industry and licensees;
 - (g) associate with environmental regulatory agencies in evolving policies and procedures for appropriate environmental regulation of the concerned public utility;
 - (h) associate with consumer protection councils established under the Consumer Protection Act, 1986 in evolving policies and procedures for appropriate consumer protection in respect of the concerned public utility;
 - (i) provide non-discriminatory open access to the carriage, owned or operated by a licensee, for use by any other licensee or consumer as the case may be, on payment of reasonable fee to be determined by the regulatory commission; and
 - (j) promote equity of access and equitable geographical dispersion of services and access to the public utility.

(4) Without prejudice to the functions expressly assigned to a regulatory commission under the applicable law, the regulatory commission shall perform the following functions and duties, namely –

- (a) issue licenses in all cases where such licenses are required to be issued under the applicable law;
- (b) enforce compliance with rules, regulations, licences and other instruments issued under the applicable laws including suspension or cancellation of the licenses as provided under the applicable law or under this Act, as the case may be;
- (c) amend the terms and conditions of a license issued under the applicable law subject to the provisions of this Act;

(d) specify the principles and methodologies relating to determination of tariff for licensees;

Provided 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.

(4)

- (e) regulate tariffs and other charges in accordance with the applicable law;
- (f) determine tariff for non-discriminatory open access to the carriage owned or operated by the licensee;
- (g) specify and enforce standards with respect to quality and reliability of service provided by its licensees;
- (h) collect, analyse and disseminate information and statistics concerning the relevant public utility industry and in particular matters affecting consumer interest;
- (i) collect and publish data and forecasts on the demand for and use of the carriage or content, as the case may be;
- (j) set and enforce performance standards in accordance with the provisions of this Act and the applicable laws;
- (k) publish reports and investigations and ensure that any decision taken by the regulatory commission be disseminated by way of a publicly available document which shall include, but not limited to, the following –
 - (i) a clear statement of the decision including the cost-benefit analysis;
 - (ii) a description and analysis of all evidence taken into consideration;
 - (iii) a summary of the views offered by participants to the proceedings;
 - (iv) a full discussion of the underlying rationale for the decision;

(l) adjudicate on disputes between licensees, producer/supplier electricity-generating companies, and any statutory authority in respect of the public utility, as per the applicable law;

Formatted: Body Text, Indent: Left: 0.5", No bullets or numbering

Formatted: Font: 11 pt

Formatted: Body Text, No bullets or numbering

- (m) issue directions to licensees for securing equitable distribution or promoting competition in the supply of goods or services that are a subject matter of the licence, it may, by order, provide for regulating the supply, distribution, consumption or use thereof, if is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply;
- (n) levy and collect fees, fines, penalties etc. as may be prescribed;
- (o) promote access to the public utility industry in rural areas and for economically weaker persons through use of universal supply obligation principles;
- (p) aid and advise the government on matters concerning the public utility industry, and on the need to amend any legislation or rules made thereunder for the purpose of more efficient and cost effective operation of the public utility industry or for removing or reducing any burden, or the overall burdens, resulting directly or indirectly on any consumer or class of consumers, or licensees from any applicable law:

For the purposes of this section, the term “burden” shall mean any of the following -

- (i) a financial or a social or an environment cost;
- (ii) an administrative inconvenience;
- (iii) an obstacle to efficiency, productivity or profitability; or
- (iv) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

and

- (q) conduct a Regulatory Impact Assessment of any draft Rules or Regulations before presenting to the Parliament.

Explanation: For the purposes of this section ‘Regulatory Impact Assessment’ means a systemic approach to critically assess the positive and negative effects of proposed and existing rules or regulations and non-regulatory alternatives, comparing different alternatives and the ensuring the selection of such alternative having the potential to result in greatest net benefit to the society.

- (r) Ensure compliance of its orders

12. Powers to require evidence etc.

A regulatory commission or an appellate tribunal, as the case may be, shall, for the purposes of any inquiry or proceedings under this Act or the applicable law, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;

Formatted: Heading 5, Left, Line spacing: single, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Formatted: Font color: Auto

- (b) discovery and production of any document or other material object that may be used as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record;
- (e) issuing commission for the examination of witnesses;
- (f) reviewing its decisions, directions and orders; and
- (g) any other matter which may be prescribed.

13. Power to require statistics and returns

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 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.

14. Directions to the regulatory commission

- (1) 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.

Provided that such directions shall be general in nature and not relate to specific regulatory decisions or orders of the regulatory commission.

Provided further that no such direction shall be issued unless it has been approved in writing by the concerned Minister and the Prime Minister, and in the case of a State Government, by the concerned Minister and the Chief Minister.

~~If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the government thereon shall be final.~~

- (2) Any directions issued under this section must comply with the following process:

- (a) The draft of the direction will be issued for public consultation along with the rationale for direction, the estimated costs and benefits of the proposed direction on the stakeholders, and comparison with costs and benefits of other options considered
- (b) The draft directions will be open for public comments for a period of not less than ~~sixty~~thirty days post which the government could issue the final direction along with the rationale for public comments not accepted by the government

Formatted: Heading 5, Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start at: 1 +
Alignment: Right + Aligned at: 0.19" + Indent
at: 0.44"

(2)(3) The government shall ensure that directions are used in exceptional circumstances and does not impinge on independence and autonomy of the regulatory commission.

15. Reports by the regulatory commission ~~and appellate tribunal~~

(1) The regulatory commission ~~and the appellate tribunal~~ shall, as soon as may be, after the end of each financial year, prepare and submit to the Parliament through the subject Parliamentary Standing Committee ~~the government~~, before such date and in such form and manner as may be prescribed, reports on its activities during that year.

(2) The ~~subject Parliamentary Standing Committee government~~ shall lay a copy of every report made by the regulatory commission ~~and appellate tribunal~~ under sub-section (1) and (3) before each House of Parliament and shall arrange for copies of every such report to be published in such manner as it considers appropriate.

(3) Upon presentation of the documents referred to in sub-section (1), or at any other time, the ~~subject Parliamentary Standing Committee or a committee established by it~~, may call for written representations from, or the presence of, the chairperson and members of the regulatory commission ~~or appellate tribunal, as the case may be~~, in connection with any investigation, debate, or discussion with respect to the powers exercised or function performed by the regulatory commission ~~or appellate tribunal, as the case may be~~, and the regulatory commission ~~or appellate tribunal, as the case may be~~, shall provide such information and render such assistance to the Parliament as may be necessary.

Notwithstanding the above provision, no order of the regulatory commission which is appealable under the applicable law shall be called to question in the Parliament or its committees.

(4) The regulatory commission ~~and the appellate tribunal~~ shall, before the commencement of each year, directly submit to the ~~subject Parliamentary Standing Committee~~ a strategic business plan for the year containing a general description of work, financial statements, 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 ~~and appellate tribunal~~ ~~expects~~ to achieve during that year. The strategic business plan will be used to evaluate the performance of the regulatory commission ~~and the appellate tribunal~~, at the end of the year.

(5) The regulatory commission ~~and appellate tribunal~~ will involve public in the process of development ~~by~~ of the plan by putting out a draft in public domain for public comments, and conducting consultation with public. The regulatory commission ~~and appellate tribunal~~ will provide rationale for rejection of suggestions received.

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

Formatted: Heading 3

Formatted: Numbered + Level: 1 +
Numbering Style: 1, 2, 3, ... + Start at: 1 +
Alignment: Left + Aligned at: 0.25" + Indent
at: 0.5"

16.15. Keeping of register

The regulatory commission ~~or appellate tribunal, as the case may be,~~ shall, at such premises, and in such form and manner as may be prescribed, maintain a register for the purposes of this Act.

Provided that the contents of the register shall also be uploaded on the internet, on the official website of the regulatory commission.

Provided further that if a regulatory commission may exclude certain information from the register in public interest, after recording detailed reasons thereof.

PART IV
FUND AND ACCOUNTS

17.16. Fund of the regulatory commission and appellate tribunal

- (1) Each regulatory commission and appellate tribunal, as the case may be, shall have its own Fund.
- (2) There shall be paid into the Fund of the regulatory commission or the appellate tribunal, as the case may be -
 - (a) any grants and loans received from the government;
 - (b) all fees received under this Act or the applicable law;
 - (c) all sums received from such other sources as may be decided upon by the subject Parliamentary Standing Committee~~government~~; and
 - (d) all such sums of money as are authorised or required to be paid into the Fund by any provision of this Act or applicable law, as the case may be.

18.17. Expenses of the regulatory commissions and appellate tribunals

- (1) 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 or the appellate tribunal, as the case may be.
- (2) The expense of the regulatory commission or appellate tribunal shall include such heads as may be prescribed.
- (2)(3) The regulatory commission should ensure sustained funding to registered consumer organisations through a dedicated Consumer Advocacy Fund, to be created out of levies on the public utilities sales invoices, for making representation before the regulatory commission or the appellate tribunal which will enable them to engage services of technical experts or professional advocates to represent the consumer cause.

19.18. Budget of the regulatory commissions and appellate tribunal

- (1) The regulatory commission and the appellate tribunal, as the case may be, shall prepare, in such form and at such time as may be prescribed, its budget for the next financial year, showing its estimated receipts and expenditure and forward the same to the subject Parliamentary Standing Committee government.

Upon approval of the budget, the total amount so approved for the year shall be transferred by the relevant ministry Ministry of Finance to the Fund of the regulatory commission or the appellate tribunal, as the case may be and the regulatory commission and the appellate tribunal shall be accountable to the Parliament and the Comptroller and Auditor General of India for utilization thereof.

- (2) Further, the regulatory commissionsbodies may also raise funds through cess/fees, etc..

20.19. Accounts

- (1) The accounts of the regulatory commission and the appellate tribunal, as the case may be, shall be prepared and maintained in a form and manner as may be prescribed.
- (2) The accounts of the regulatory commission or appellate tribunal, as the case may be, shall be audited and certified by the Comptroller and Auditor General of India and the audited accounts together with the audit report thereon shall be forwarded annually to the subject Parliamentary Standing Committee government which shall cause the audit report to be laid, as soon as may be, before each House of Parliament.

PART V
LICENSING

21-20. Prohibition on unauthorised provision

No person shall engage in provision of any services in a public utility industry unless he is authorised to do so by a license required as per the applicable law, issued under section 23, or is exempt under section 22.

22-21. Exemption from licensing

- (1) A person may be exempt from licensing in accordance with applicable laws and rules made thereunder.
- (2) A regulatory commission may by order grant exemption to a person from obtaining any license required for provision of services in a public utility industry as per applicable law, but where such exemption results in the setting up of a system, project or plant that would compete with any existing system, project or plant, such exemption shall be granted with due regard to its effect on the person owning such existing system, project or plant and after considering any representation or objection duly made by such person, and its effect on competition and consumers.
- (3) A regulatory commission may by order grant exemption to any person or class of persons from obtaining licenses, but subject to compliance with the provisions of the applicable law or this Act, as the case may be, and such conditions as may be stated in the order.
- (4) An exemption under sub-section (1) and (2) shall be published in the manner as prescribed for bringing it to the attention of the affected persons.
- (5) An exemption under sub-section (1) and (2), unless previously revoked in accordance with any term contained in the order of exemption, shall continue in force for such period as may be stated in or determined by or under such order.
- (6) The Central government may by order, along with detailed reasons, grant exemption from section 21 of this Act to any person if, in its opinion, such exemption is necessary for the purposes of national security or defence and such exemption may specify the provisions of the applicable law or this Act, as the case may be, which shall not apply.

~~(6)~~(7) _____

23-22. Grant of licenses

A regulatory commission may, upon application made to it under this Act or under any applicable law and the rules thereunder, by license authorize any person to engage in the provision of specified services, in any area which may be stipulated in the license.

Provided that any person who is engaged or authorised to engage in the provision of services in accordance with the applicable law shall be deemed to be a licensee under this Act, for the period stipulated in the license, clearance or approval granted to it under the applicable law.

24-23. Procedure for grant of license

- (1) An application for grant of license shall be made in such form and in such manner as may be specified by the regulatory commission and shall be accompanied by such fee as may be prescribed.
- (2) Any person who has made an application for grant of license 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 for the purpose of bringing the application to the attention of persons likely to be affected by the proposed license and stating that any person may make a representation or objection to the regulatory commission within thirty days of such publication.

Provided that the regulatory commission shall also publish such particulars in regard to the application as it may deem fit, within seven days of receipt of such application, in the manner that may be specified.

- (3) The regulatory commission shall consider all suggestions or objections and recommendations, if any, which are duly made and not withdrawn.
- (4) Where a person makes an application for grant of license, the regulatory commission shall, as far as practicable, within one hundred and twenty days after receipt of such application –
 - (a) issue a license subject to the provisions of the applicable law and this Act and the rules and regulations made thereunder, which will clearly specify the conditions of license; or
 - (b) reject the application for reasons to be recorded in writing if such application does not conform to the provisions of the applicable law or this Act, as the case may be, 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.

Provided further that in case the regulatory commission is not able to arrive at a decision within a period of one hundred and twenty days, it must record reasons for delay, along with steps taken to ensure avoidance of such delay in future.

Formatted: Body Text, Indent: Left: 0"

(5) The regulatory commission shall, immediately after issue of license, forward a copy of the license to the government, and to such other person as the regulatory commission considers necessary.

(6) An applicant aggrieved by non-compliance with provisions of sub-section (4) above, could approach the appellate tribunal

~~(5)~~

Formatted: Heading 5, Indent: Left: 0.25"

25-24. Conditions of license

(1) The Conditions of license shall be as specified, in addition to the provisions of the applicable law.

Provided that notwithstanding any condition of license specified under this Act or any other applicable law, every licensee shall, no later than the first anniversary of the appointed date, maintain separate businesses and accounts with respect to each of its licenses, and for this purpose disaggregate its assets, revenues, expenses, operations, services, tariffs and all matters connected therewith or incidental thereto as if each of its aforesaid businesses were separate from and independent of one another.

(2) The regulatory 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,

Formatted: Line spacing: single, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

(3) The regulatory commission may, subject to the conditions of license specified, clearly specify, along with reasons thereof, any general or specific conditions of license to apply either to a licensee or class of licensees and such conditions shall be deemed to be the standard conditions of license and shall have effect in addition to the other conditions imposed.

Formatted: Font: (Default) Times New Roman, Font color: Auto

Provided that the general conditions must be available in public domain, including on the website of regulatory commission.

Formatted: Heading 5, Indent: Left: 0.44", No bullets or numbering

Provided further that the regulatory commission will be guided by the principle of similar treatment to similarly placed entities while granting licenses

Formatted: Body Text, No bullets or numbering

~~(2)~~

26-25. Open access

As a condition of its license, a licensee shall provide non-discriminatory open access to its system for use by -

(a) any licensee on payment of such fee and in accordance with such terms as may be specified by the regulatory commission; or

(b) any other person or consumer on payment of such fee and surcharge thereon, if any, and in accordance with such terms as may be specified by the regulatory commission.

~~(b)~~ Provided that the regulatory commission uses the principles of Fair, Reasonable and Non Discriminatory conditions in allowing open access to rivals.

Formatted: Body Text, No bullets or numbering

Formatted: Indent: Left: 0.5", No bullets or numbering

~~27-26.~~ **Amendment of license**

- (1) The regulatory commission may, subject to the consent of the licensee, amend the conditions of a license issued under the applicable law or this Act, as the case may be:

Provided that standard conditions of a license issued by the regulatory commission under the applicable law or under this Act, as the case may be, may be amended subject to such provisions as shall be specified.

- (2) Notwithstanding the above, the regulatory commission may amend conditions of a license without the consent of the licensee at a public hearing, if in its opinion, which shall be in writing, such consent is unreasonably withheld.

~~(2)~~ Provided that prior to notification of amendment of license, the regulatory commission must inform in advance its decision to the licensee, and must wait for response for at least ~~sixty~~thirty days.

Formatted: Heading 5, Indent: Left: 0.44"

Provided further that the regulatory commission must issue a statement of efforts and justification while amending the conditions of license without the consent of the licensee.

Formatted: English (U.S.)

Formatted: Font: 11 pt

~~28-27.~~ **Revocation of license and sale of utility**

- (1) If the regulatory commission, after making an enquiry in the manner that may be specified, is satisfied that public interest so requires, after following the principles of transparency and recording reasons for the same, it may revoke a license in any of the following cases, namely -

- (a) where the licensee, in the opinion of the regulatory commission, makes willful and prolonged default in doing anything required of him by or under the applicable law or under this Act, as the case may be;
- (b) where the licensee commits material breach of any of the terms or conditions of his license, and such breach is expressly declared by the license to render it liable to revocation;
- (c) where the licensee fails, within the period fixed in this behalf by his license, or any longer period which the regulatory commission may have granted therefor -
- (i) to show, to the satisfaction of the regulatory commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license; or
- (ii) to make the deposit or furnish the security, or pay the fees or other charges required by his license;

- (d) where in the opinion of the regulatory commission the financial position of the licensee is such that he is unable to efficiently discharge the duties and obligations imposed on him by his license.
- (2) Where in the opinion of the regulatory commission, or public interest so requires, it may, on application, with the consent of the licensee, revoke his license as to the whole or any part of the area, upon such terms and conditions as it thinks fit:

Provided that no license shall be revoked unless the regulatory 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 license, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

- (3) Where the regulatory commission revokes a license under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.
- (4) Where the regulatory commission has given notice for revocation of license, without prejudice to any penalty which may be imposed or prosecution which may be initiated under the applicable law, the licensee may, after prior approval of that regulatory commission, sell his utility to any person who is found eligible by that regulatory commission for grant of license, and such purchaser shall have immunity from any prosecution in relation to incidents prior to the purchase.

Provided that such sale of a utility by a licensee shall be in the manner and as per the terms prescribed. 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.

Provided further that upon sale of such utility, the utility shall vest in the purchaser, free from any debt, mortgage or lien arising out of the utility, in the manner prescribed.

Formatted: Body Text

29-28. Provisions where no purchase takes place

If the utility is not sold in the manner prescribed, the regulatory commission may, to protect the interest of consumers or in public interest, issue such directions or formulate such scheme as it may deem necessary for operation of the utility.

Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation under section 28, the regulatory commission may cause the works and assets 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.

30. Directions to licensees

(1) If the regulatory commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution or promoting competition in the supply of goods or services that are a subject matter of the license, it may, in consultation with

Competition Commission of India for competition issues, by order, provide for regulating the supply, distribution, consumption or use thereof.

(2) Any direction or order issued under this section must comply with the following process:

(a) The draft of the direction or order will be issued for public consultation along with the rationale for direction, the estimated costs and benefits of the proposed direction on the stakeholders, and comparison with costs and benefits of other options considered

(a) The draft directions or order will be open for public comments for a period of not less than thirty days post which the government could issue the final direction along with the rationale for public comments not accepted by the government

Formatted: Indent: Left: 0.25", No bullets or numbering

Formatted: Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Right + Aligned at: 0.19" + Indent at: 0.44"

31. Suspension of license and sale of utility

- (1) A regulatory commission may suspend the license of any licensee for such reasons as may be specified.

Provided that no order suspending a license shall be made without giving the licensee a reasonable opportunity of making representations against such suspension, after a hearing in this regard, and such order shall consider such representations, if any.

Provided further that such order must clearly specify the rationale, conditions and period of suspension.

Formatted: Heading 5, Indent: Left: 0.5"

- (2) Upon suspension, the utilities of such licensee shall vest in an administrator in such manner and for such period as may be prescribed.

Provided that the regulatory commission shall, on the application of such licensee indicating fresh proposals or such other remedial action, which shall be made within a period of no later than one year from the date of suspension, review such suspension, and if such suspension is not revoked, shall proceed to direct revocation of the license of the licensee.

Provided further that the sale of the utilities of the licensee upon revocation under the first proviso to sub clause (2) shall be as in the case of revocation of license under Section 28 in the manner and as per terms prescribed.

32. Investigation of enforcement matters

- (1) It shall be the duty of the regulatory commission to investigate any matter pursuant to a representation made by or on behalf of a person appearing to have an interest in that matter to the regulatory commission.

Provided that the regulatory commission shall, prior to commencing any investigations, inquire into the bona fides of such representation, and shall impose an exemplary fine if comes to a conclusion that such representation is false, frivolous, vexatious, or mala fide.

- (2) The regulatory commission, may, require an officer of the regulatory commission to investigate and report to it any matter falling within sub-section (1).

~~(2) — Provided that all investigations under this section must be conducted in transparent manner, and no adverse action must be taken without giving the relevant person an opportunity of being heard.~~

Formatted: Heading 5, Indent: Left: 0.5"

33. Orders for securing compliance

- (1) Where a regulatory commission is satisfied in writing that a licensee is contravening, or is likely to contravene, any material condition stated in the license or exemption, or any provisions of this Act or the applicable law which, in its opinion shall cause prejudice to persons or consumers, it shall by a final order give such directions as required for the purposes of securing compliance with that condition or provision;

Provided that the regulatory commission may issue provisional orders in respect of such contravention, or to prevent a likely contravention, and shall have regard to principles of balance of convenience, irreparable harm, and irreparable prejudice.

- (2) The procedure to be followed in respect of issuance of such final orders or interim orders shall be in the manner prescribed, and no final order shall, under any circumstance, be issued without permitting the licensee to show cause, make representations, and to be heard by the regulatory commission in this regard;

Provided that the licensee may also seek vacation of interim order, by indicating cogent reasons and placing material on record before the regulatory commission, to show that it shall not contravene, or is no longer contravening such condition or provision, and shall undertake to continue so to do.

PART VI TARIFF

34. Tariff regulations

- (1) The regulatory commission shall, subject to the provisions of the applicable law or this Act, as the case may be, specify the terms and conditions for the determination of tariff, the charges for works and the security deposit payable for services, if any, and in doing so, shall be guided by the following principles, namely -
 - (a) promoting and sustaining investment, competition, efficiency, economical use of resources, and quality of service delivery in the public utility industry;
 - (b) safeguarding consumers' interest;
 - (c) determination of recoverable rate of system losses which takes into account all relevant considerations including the efficiency or inefficiency of licensees, pilferage and other technical factors;
 - (d) cross subsidisation among different classes of consumers is reduced progressively; and
 - (e) accessibility of the public utility industry at an equitable tariff in rural areas, and to economically weaker persons.
- (2) Regulations made under this section may provide for review of tariff by the regulatory commission in the prescribed manner and time.
- (3) Notwithstanding anything in this Act or the applicable law, as the case may be, where the government is satisfied that the prevailing market conditions and competition are sufficient to determine the tariff for the respective public utility industry by any or all classes of licensees, it may by notification direct that the regulatory commission shall not determine such tariff subject to specified conditions issued from time to time.
- (4) Where some consumers are supplied at below cost, government should take 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 burden to suppliers
- (5) 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.

Formatted: Heading 4, Left, Line spacing: single, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

PART VII CONSUMER PROTECTION

35. Consumer protection

- (1) The regulatory commission shall in the exercise of its powers under this Act or the applicable law protect the rights of the consumer against unfair trade practices.
- (2) The regulatory commission shall specify the standards of performance for a licensee or a class of licensees, which may include –
 - (a) the circumstances, – manner and frequency in which a licensee is to inform consumers of their rights under this section;
 - (b) the circumstances in which a licensee is to be exempted from any requirements of the standards specified under this section or the applicable law, and
 - (c) such standards of performance in relation to any duty arising under clause (a) as in the regulatory commission's opinion, ought to be achieved in all cases.
- (3) If a licensee fails to meet the standards specified under sub-section (2), 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 regulatory commission:

Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.

- (4) The compensation determined under sub-section (3) shall be paid by the concerned licensee within ninety days of such determination.
- (5) The making of compensation under this section by the licensee to meet the specified standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) The regulatory commission shall, before issuing any regulations or tariff orders, invite such representations, objections or comments from consumer organisations, the public, or any other person, by placing the draft regulations on its website and by publication of a notice in at least two national dailies. In addition, the regulatory commission must set out costs and benefits and comparison of different alternatives of tariff orders to relevant stakeholders and must ensure select selection of such alternative having the potential to result in maximum net benefit to the society.
- (7) The regulatory commission shall render such assistance and data as may be required by such consumer organisations, the public and/or any other person or association for the purposes of making their submissions and the regulatory commission shall consider the representations, objections or comments so received.

Provided that the regulatory commission may refrain from making available such information or data as it may deem fit to withhold in public interest, or in the interest of licensees, after providing reasons for such decision.

Formatted: Font color: Black

(8) 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 financial support and technical assistance to consumers and consumer organizations for redressal of their grievances against a licensee or a class of licensees, as the case may be.

~~(8)~~(9) For the purpose of ensuring and in furtherance of consumer welfare, the Central Government shall constitute a consolidated fund to be called the 'Consumer Advocacy Utility Public Education Fund' under the Ministry of Consumer Affairs for enabling research and 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 Consumer Advocacy Utility Public Education Fund. It will be utilised exclusively 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 and making representations before the regulatory commissions and the Appellate Tribunals.

36. National Advisory Committee

- (1) The regulatory commission shall, by notification, establish a committee to be called the National Advisory Committee.
- (2) The National Advisory Committee shall consist of not more than twenty one members to represent interest of consumers, commerce, industry and MSME, transport, agriculture, labour, non-governmental organisations, environment, and academic and research bodies.
- (3) The chairperson and members of the central regulatory commission shall be *ex officio* chairperson and members of such National Advisory Committee.
- (4) The National Advisory Committee shall meet at least four times in a year and its proceedings shall be conducted in accordance with the regulations to be specified.
- (5) The objectives of the National Advisory Committee shall be to advise the regulatory commission on -
 - (a) major questions of policy;
 - (b) matters relating to quality, continuity and extent of service provided by the licensees;
 - (c) compliance by the licensees with the conditions and requirements of their license; ~~and~~
 - (d) protection of environment; and
- ~~(4)~~(e) protection of consumer interest.
- (6) A state regulatory commission shall, by notification, establish a state advisory committee and the provisions of this section shall apply *mutatis mutandis* to such a committee.

Comments from CUTS International
13 September 2015
Chambers of ASP
Draft for discussion purposes only



PART VIII COMPETITION

37 Non competitive services

Commencing from the second anniversary of the appointed date or such earlier date as the regulatory commission may notify, all non-competitive services provided by a licensee under the applicable law shall be charged separately from all its competitive services.

38 Market domination and anti-competitive behavior

~~(1) No licensee shall engage in any act, omission, practice or procedure that has as its objective or effect an appreciable prevention, restriction or distortion of competition in connection with any public utility industry.~~

~~(2) The regulatory commission shall prohibit, prevent or restrict any agreement, action, omission, practice or procedure that~~

~~(a) has as its objective or effect an appreciable prevention, restriction or distortion of competition in connection with a public utility industry; or~~

~~(b) directly or indirectly fixes prices or market shares, impose minimum resale prices or is one of the series of similar agreements, actions, omissions, practices or procedures that have as a cumulative effect the prevention or restriction of competition; or~~

~~(c) has the effect of market power or monopoly situations being abused for affecting the interest of consumers adversely; or~~

~~(d) has the effect of creation or suspected creation of a merger situation.~~

~~(3) An agreement, action, omission, practice or procedure in violation of sub-sections (1) or (2) shall be void.~~

~~(4) If a licensee contravenes any rules, regulations, condition of license or directions of the regulatory commission in furtherance of sub-section (2), the regulatory commission, may by injunction enforce the provisions thereof, and impose fines up to ten per cent of the turnover of the licensee for each year or part thereof in which the contravention occurred.~~

~~(5) The provision of this section shall be enforced by the regulatory commission not later than the second anniversary of the appointed date.~~

Comment [U2]: The best approach is 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.

~~(6) The regulatory commission may at any time after the second anniversary of the appointed date, specify regulations to give effect to the provisions of this section, and may enforce the regulations through such directions as may be necessary for the purposes thereof.~~

~~For the purposes of clause (d) of sub-section (2) of this section, a merger situation shall be taken to exist if a person including a body corporate, acquires or proposes to acquire directly or indirectly, any shares or assets of any other person which results or would result in a change or control of that other person -~~

~~(i) the object or effect of which is that the persons taken together are or are likely to be or would be in a dominant position in a market in any public utilities industry; or~~

~~(ii) where both persons are engaged, exclusively or otherwise, in the provision of, and hold a dominant position within the same utility network or utility service in a public utilities industry, in the same or different geographical areas, even if the circumstances in (i) above are not satisfied.~~

389. Reference to the Competition Commission

(1) Notwithstanding anything contained in ~~section 38 of~~ this Act, a regulatory commission ~~may shall~~ collect and review information relating to ~~competition matters contained in sub-section (2) of section 38 and~~, where necessary ~~the regulatory commission is mandated to~~, refer relevant matters for investigation or adjudication of disputes, as the case may be, to the Competition Commission ~~of India~~ constituted under the Competition Act, 2002 and provisions of Competition Act, 2002 shall apply to such matters as if the matter was referred under the Competition Act, 2002.

(2) On an application made to it or *suo moto*, if the Competition Commission determines that any restrictive or anti-competitive behaviour of a licensee or a group of licensees is affecting the consumers ~~or licencees~~ of a public utility industry in violation of the provisions of the Competition Act, 2002, it may, after ~~mandatorily consultation with consulting~~ the relevant regulatory commission, make a reference to the government to seek approval of investigation and adjudication of such matter by the Competition Commission ~~of India~~ and upon receiving such approval, the matter shall be determined by the Competition Commission ~~of India~~ under the Competition Act, 2002 and all proceedings in relation thereto in any regulatory commission shall abate.

40. Overlap issues among sector regulators

Formatted: Font: 11 pt

Formatted: Justified

Comments from CUTS International
13 September 2015
Chambers of ASP
Draft for discussion purposes only

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. 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, Telecom Disputes Settlement and Appellate Tribunal, and Appellate Tribunal for Electricity, whose decisions will be final and binding.

Provided that the Overlap Arbitration Panel will develop its own regulations of conducting the proceedings of the Panel.

Formatted: Font: 11 pt

Formatted: Font: 11 pt

Formatted: Justified



PART IX
DISPUTE RESOLUTION

40. Arbitration

(1) Where any dispute between the licensees remain unresolved after an attempt for conciliation has been made under section 45, the affected person shall refer such dispute to the regulatory commission for arbitration.

Provided that nothing contained in this section shall restrict the right of the licensees by agreement to refer the dispute to any other person or persons in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(2) Where a dispute is referred to the regulatory commission for arbitration, it shall, if the dispute refers to a matter of policy involving public interest, or an interpretation of the provisions of the applicable law or this Act, as the case be, or rules or regulations made thereunder or a matter widely affecting the rights or liabilities of consumers or licensees, it shall constitute an arbitral tribunal in accordance with the regulations made by it, to resolve the dispute.

(5) Arbitration under this section shall be governed by the Arbitration and Conciliation Act, 1996 and the rules framed thereunder.

Provided that the regulatory commission may specify the number of arbitrators, the place of sitting of the arbitral tribunal, the reasonable period during which the award may be made, the fee payable for arbitration and such other matters which are not provided in the Arbitration and Conciliation Act, 1996 or which have been left thereunder to the mutual agreement of the parties to the dispute.

(6) The arbitrators appointed under this section shall be entitled to such fees as may be specified.

Provided that the fees received by members shall be paid into the Fund of the regulatory commission.

(7) Notwithstanding anything in the Arbitration and Conciliation Act, 1996, an award made under this section may be challenged only before the appellate tribunal.

(8) The provisions of this section shall apply, *mutatis mutandis*, to any dispute which is required to be resolved by arbitration under any other provisions of the applicable law or this Act, as the case may be.

Comment [U3]: Add a provision on conciliation, as given below:

“No licensee shall move any court, tribunal, the regulatory commission or other forum for resolution of any dispute, difference or disagreement with any other licensee in respect of any matter arising out of the provisions of the applicable law or this Act, as the case may be, until he has made an attempt for conciliation in accordance with such rules as the government may prescribe.”

41. Dispute resolution by the licensee

- (1) The regulatory commission shall specify a dispute resolution procedure requiring a licensee to address any complaint of a consumer alleging violations of the provisions of the applicable law or this Act, as the case may be.
- (2) The procedure specified under sub-section (1) shall require a licensee to designate a dedicated senior level person within its company to conduct investigation of the complaint [person conducting investigation must be different from person adjudicating – consequently the investigator must submit the report of investigation to the adjudicator within the licensee which must take an impartial view of the matter and decide on the complaint. The decision making cell, investigator and adjudicator must be completely divorced from each other to ensure independence and transparency] and convey the result thereof to the complainant within thirty days from the date on which the complaint was received.
- (3) The communication sent to the complainant under sub-section (2) shall include a description of any action taken and statements describing the complainant's right to seek further remedies if he is not satisfied with the results of the investigation and the action taken thereon.
- (4) A licensee shall maintain a log of all complaints received and actions taken thereon, and such record shall be subject to review by the regulatory commission from time to time.
- (5) Within sixty days of receiving a reply from the licensee under sub-section (2), and if no such reply is received then within ninety days from the date of making the complaint, the complainant may make a representation before the competent forum under the provisions of the Consumer Protection Act, 1986 or under the applicable law, as the case may be.
- (6) Without prejudice to the generality of sub-section (5), a complainant may make a representation to the regulatory commission for such investigation thereof as the regulatory commission may deem fit.

42. Appeal against orders of the regulatory commission

- (1) Any person or a licensee aggrieved by the decision of the regulatory commission may file an appeal before the appellate tribunal constituted under the applicable law or under this Act, as the case may be, within thirty days from the date of communication of the decision or order by the regulatory commission:

Provided that the appellate tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, condone the delay in filing such Appeal, subject to such costs as it may deem appropriate.

Provided further that strict principles of locus standi shall not apply to intervenors during the course of such hearings.

Provide further that the appellate tribunal will hear the matter expeditiously, avoid unnecessary delay, and will pass the order within a reasonable time period. In 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.

- (2) An appeal shall lie to the Supreme Court from an order passed by the appellate tribunal, which shall be made within thirty days of communication of such order by the appellate tribunal, and such appeal shall lie only in relation to a question of law in such orders passed by the appellate tribunal, or the procedures adopted by the regulatory commission or the appellate tribunal, as the case may be, in arriving at its final decisions and orders:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, condone the delay in filing such Appeal, subject to such costs as it may deem appropriate.

Provided further that no such appeal shall lie from a person who had the opportunity of making a representation before the regulatory commission or the appellate tribunal, as the case may be, in accordance with this Act or the applicable law, as the case may be, but did not make such representation before the regulatory commission or the appellate tribunal, as the case may be.

- (3) An appellate tribunal shall have the power to require the regulatory commission to reconsider the decision or the order passed by it.

PART XI
MISCELLANEOUS

43. Applicability to State matters

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 -

- (a) reference to government in this Act shall mean reference to the state or union territory government;
- (b) reference to Parliament in this Act shall mean reference to the State legislative assembly;
- (c) reference to Prime Minister in this Act shall mean reference to the Chief Minister of the respective State or Administrator of the Union Territory;
- (d) reference to leader of opposition in the Lok Sabha shall mean reference to leader of opposition in the State legislative assembly; and
- (e) reference to the President of India shall mean reference to the Governor of the respective State or the Administrator of the Union Territory.

44. Power of entry etc.

(1) Any officer or other employee of the regulatory commission or of a licensee generally or specially authorised by the regulatory commission or by the licensee, as the case may be, in this behalf may, at any reasonable time after giving the owner or occupier of any land or premises reasonable notice including rationale thereof, enter upon such land or premises and do such things as may be reasonably necessary for the purposes of making any survey, examination or investigation preliminary or incidental to the exercise of powers or the performance of duties by the regulatory commission or the licensee as the case may be under the applicable law or this Act, as the case may be.

(+) Provided that summary of any survey, examination or investigation conducted, including results thereof, must be provided to the licensee promptly.

Formatted: Heading 5, Indent: Left: 0.44",
No bullets or numbering

(2) Without prejudice to the generality of sub-section (1) above, any officer of the regulatory commission specially authorised in this behalf by the regulatory commission, may enter any building or place where he has reason to believe that any document relating to the subject matter of any inquiry before the regulatory commission may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, insofar as it may be applicable.

(2) Provided that copy of any document, extract or copies taken by the officer of the regulatory commission, must be handed over by such officer to the occupier of the building.

Formatted: Heading 5, Indent: Left: 0.44", No bullets or numbering

(3) Without prejudice to the generality of sub-section (1) above, a licensee or any person duly authorised by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter upon the premises to which any of the carriage or content, as the case may be, is provided for or any premises or land, under, over, along, across, in or upon which any of the carriage or content, as the case may be, have been lawfully placed by him for the purposes of inspecting, testing, repairing, altering or removing the system, plant, apparatus, meters, fittings or works installed for carriage or content, as the case may be.

(4) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises or land in pursuance of the provisions of sub-section (3), when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by sub-section (3) to perform, or fails to give reasonable facilities for such entry or performance, the licensee may after the expiry of twenty four hours from the service of a notice in writing on the consumer, cut off the supply of the carriage or content, as the case may be, to the consumer for so long as such refusal or failure continues, but for no longer, after recording reasons in writing and providing opportunity of hearing to such consumer(s).

45. Civil court not to have jurisdiction

(1) No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the regulatory commission or any authority or officer thereunder is empowered by or under the applicable law or this Act, as the case may be to determine.

Formatted: Font color: Black

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Heading 5

(f) If any person approaches a civil court the appellate tribunal shall have the authority to impose penalty on such person.

Formatted: Font color: Black

Formatted: Heading 5, Left, Line spacing: single, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Font color: Black

Formatted: Font color: Black

46. Prohibition on persons

No person dealing in matters under the jurisdiction of the regulatory commission shall in any manner employ or engage a former member of the regulatory commission within a period of two years from the date on which such member demits office and any contract entered into between such company, firm or person and a former member shall be unlawful.

47. Members, officers etc. to act as public servants

All members and officers and other employees of the of the regulatory commission or the appellate tribunal, as the case may be shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the applicable law or this Act, as the case may be, to be public servants within the meaning of section 2 (c) of the Prevention of Corruption Act, 1988.

48. Protection of action taken in good faith

(1) No suit, prosecution or other proceeding shall lie against the regulatory commission or appellate tribunal, as the case may be or any officer of regulatory commission, or any member, officer or other employees of the appellate tribunal or any members, or any public servant for anything done or in good faith purporting to be done under this Act or the applicable law.

(2) No court shall take cognizance of an offence under the applicable law by a public servant purporting to be done under this Act or any applicable law except with prior sanction from such authority as may be prescribed.

~~(3) The obligation to prove good faith under this section would be on the regulatory commission or appellate tribunal, or officer of regulatory commission, or member, officer or other employees of the appellate tribunal or members, or public servant, as the case may be.~~

49. Recovery of sums payable

Any amount due from a person under the applicable law or under this Act shall be recovered from him as if it were an arrear of land revenue recoverable under the Revenue Recovery Act, 1890 or under any other similar or such Act for the time being in force in the respective State.

50. Service of notices, orders or documents

Every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means of delivery, including electronic delivery, in the manner and as per conditions as may be prescribed.

51. Power of the government to make rules

- (1) The government may, by notification, make rules for carrying out the provisions 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 manner of combining and merging two regulatory commissions, and appellate tribunals, constituted under the applicable laws for the respective public utility industries, under sub-section (5) of section 3;
 - (b) the manner of appointing persons referred to in sub clause (b) and (c) of Clause (1) of Section 4, under sub-section (3) of section 4;
 - (c) the form and manner in which the selection committee shall finalise its recommendations of a panel of two and not more than three suitable persons, under sub-section (6) of section 4;
 - (d) the conditions of employment of members of the regulatory commission or the appellate tribunal, as the case may be, under sub-section (2) of section 6;
 - (e) the manner of conducting an enquiry for removal of a member from his office, under proviso to sub-section (2) of section 7;
 - (f) the manner of conducting the meetings of regulatory commissions or proceedings before appellate tribunals, under sub-section (3) of section 9;
 - (g) levying and collecting fees, fines, penalties etc. under clause (n) of sub-section (4) of section 11;
 - (h) any other matter under clause (g) of section 12;
 - (i) the form, manner in which and date within which the regulatory commission shall prepare and submit to the government, reports on its activities under sub-section (1) of section 15;
 - (j) the form, manner and premises at which the regulatory commission shall maintain a register for the purposes of this Act, under section 16;
 - (k) the expense heads of the regulatory commission or appellate tribunal under sub-section (2) of section 18;
 - (l) the form, manner in which and time at which the regulatory commission or the appellate tribunal, as the case may be, shall prepare its budget under sub-section (1) of section 19;
 - (m) the form and manner in which the accounts of the regulatory commission and the appellate tribunal, as the case may be, shall be prepared and maintained under sub-section (1) of section 20;
 - (n) the manner in which an exemption under sub-section (1) and (2) of section 22 shall be published in under sub-section (4) of section 22;
 - (o) the fee to be accompanied with the application for grant of license under sub-section (1) of section 24;

- (p) the manner and terms of sale of a utility by a licensee under first proviso and the manner in which the utility shall vest in the purchaser, free from any debt, mortgage or lien arising out of the utility, under second proviso, to sub-section (4) to section 28;
- (q) the manner and period in which upon suspension, the utilities of such licensee shall vest in an administrator under sub-section (2) of section 30;
- (r) the manner of the procedure to be followed in respect of issuance of final orders or interim orders under sub-section (2) of section 32;
- (s) the manner and time in which the regulations may provide for review of tariff by the regulatory commission under sub-section (2) of section 33;
- (t) the authority from which prior sanction may be sought under sub-section (2) of section 43;
- (u) the manner and conditions as per which every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him under of section 45; and
- (v) any other matter which is required to be, or may be, prescribed under this Act.

(3) Before notifying the rule, the government shall give notice –

- (a) stating that it proposes to notify the rules and setting out the provisions of such rules and their effect;
- (b) stating the reasons as to why it proposes to notify the rules;
- (c) explaining the costs and benefits of the proposed rules on different stakeholders;
- (d) highlighting the other options considered and establishing, in its view, how the proposed rule is expected to result in greatest net benefit to the society
- (e) stating the time (not being less than ~~sixty~~thirty days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made, and
- (f) providing a general response with respect to the representations or objections, which were not accepted, along with the rationale

Formatted: Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Heading 5, Left, Indent: Left: 0.64", Line spacing: single, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Right + Aligned at: 0.19" + Indent at: 0.44", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

52. Powers of regulatory commission and appellate tribunal to make regulations

- (1) The regulatory commission or the appellate tribunal, as the case may be, by notification make regulations consistent with the applicable law and this Act, as the case may be, and generally to carry out the provisions of such applicable law and this Act.
- (2) Before notifying the regulations, the regulatory commission or the appellate tribunal as the case may be, shall give notice –
 - (a) stating that it proposes to notify the regulations and setting out the provisions of such regulations and their effect;
 - (b) stating the reasons as to why it proposes to notify the regulations;
 - (c) explaining the costs and benefits of the proposed regulations on different stakeholders;
 - ~~(d)~~ explaining the other options considered and establishing, in its view, how the proposed regulation is expected to result in greatest net benefit to the society, and
 - (e) stating the time (not being less than ~~sixty~~thirty days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made, and
 - ~~(f)~~ providing a general response with respect to the representations or objections, which were not accepted, along with the rationale-
- (3) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations notified by the regulatory commission may provide for all or any of following matters, namely -
 - (a) the form and manner in which and the time at which the statistics, returns, or other information relating to the relevant public utility industry may be provided to the regulatory commission by a licensee or any other person under section 13;
 - (b) the services in which the regulatory commission may by license authorize any person under section 23;
 - (c) the form and the manner of the application and such fee under sub-section (1) of section 24 for licensing;
 - (d) the particulars and manner of publishing a notice of a licensee's application under sub-section 2 of section 24 and the manner in which a regulatory commission shall publish the details of an application under the proviso to sub-section 2 of section 24;
 - (e) the conditions of license either general or specific under section 25;
 - (f) the fee and terms in accordance with which any licensee or any other person or consumer shall be provided by such other licensee a non-discriminatory open access to such other licensee's system for use under section 26;

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

- (g) the provisions subject to which the standard conditions of a license issued by the regulatory commission may be amended under proviso to sub-section (1) of section 27;
- (h) the manner of making an enquiry under sub-section (1) of section 28;
- (i) the reasons for which a license may be suspended under sub-section (1) of section 30;
- (j) the terms and conditions for the determination of tariff under sub-section (3) of section 33;
- (k) the standards of performance for a licensee or a class of licensees under sub-section (1) of section 34;
- (l) the National Advisory Committee meeting proceedings under sub-section (4) of section 36;
- (m) dispute resolution procedures for licensees under sub-section (1) of section 36; and
- (n) any other matter which is to be, or may be, specified by regulations.

(4) All regulations made by the regulatory commission under the applicable law or this Act, as the case may be shall be subject to the conditions of previous publication, in written and/or digital form and requirements under sub-sections 4(k) and 4(q) of section 11 of this Act.

2.

Formatted: No bullets or numbering

53. Rules and regulations, directions to the Regulatory Commissions, to be laid in Parliament

Every rule made by the ~~Union~~Central Government, or regulations made by the central regulatory commissions or appellate tribunals, or the directions given to the regulatory commissions by the government, as the case may be, 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 modifications in the rule or the regulation or such directions or agree that the rule or regulation or such directions 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, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Provided that such rules, regulations or directions, as the case may be, shall comply with the requirements under sub-sections 4(k) and 4(q) of section 11 of this Act.

Formatted: Heading 5, Indent: Left: 0.5"

54. Power to remove difficulty

- (1) If any difficulty arises in giving effect to the provisions of this Act, the government may, by order published in the Official Gazette, within one year of this Act coming into effect make

provisions, not inconsistent with the provisions of the applicable law or this Act, as the case may be, as appear to be necessary or expedient for removing the difficulty:

(+) Provided that such order shall comply with the requirements under sub-sections 4(k) and 4(q) of section 11 of this Act.

Formatted: Heading 5, Indent: Left: 0.5", No bullets or numbering

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each house of Parliament.

55. Overriding effect

- (1) Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

Provided that nothing contained in this Act or any instrument having effect by virtue of this Act shall have effect in so far as it is inconsistent with any provisions of the Atomic Energy Act, 1962, the Consumer Protection Act, 1986, and the Competition Act, 2002.

- (2) The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

56. Repeal and saving

- (1) Save as otherwise provided in this Act, all provisions of any law for the time being in force, to the extent of their contravention or inconsistency with the provisions of this Act, shall stand repealed from the appointed date, and any such sections repealed shall expressly be mentioned in Schedule II to this Act.

- (2) Notwithstanding such repeal -

- (a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.
- (b) all rules made under the laws repealed hereunder shall continue to have effect until such rules are rescinded or modified, as the case may be but in no case beyond one year from the appointed date;
- (c) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government. .

Comments from CUTS International

13 September 2015

Chambers of ASP

Draft for discussion purposes only

- (3) The Central Government may, as and when considered necessary, by notification, amend Schedule I to this Act.
- (4) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.



SCHEDULE I

1. Electricity
2. Telecommunications and internet
3. Broadcasting and Cable TV
4. Posts
5. Airports
6. Ports
7. Railways
8. Mass Rapid Transit System
9. Highways
10. Oil and Gas
11. Coal
12. Water supply and sanitation
13. Waterways

SCHEDULE II
[See Section 51(1)]

Sr. No.	Act	Section repealed	Date of repeal

