Consumer Participation and Protection in Electricity Regulation

A Study of Five States in India
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Chapter 1

Introduction

Too often, services fail poor people-in access, in quantity, in quality. But the fact that there are strong examples where services do work means governments and citizens can do better. How? By putting poor people at the center of service provision: by enabling them to monitor and discipline service providers, by amplifying their voice in policymaking, and by strengthening the incentives for providers to serve the poor (World Bank, 2003: 1).

The future of public service delivery has been such an issue of contention, at various levels of governance, that we have seen major shifts in global policy paradigm for public service delivery-from state provision of services to market oriented reforms in the 1990s, to introduction of ‘democratised governance’ in service delivery systems in recent years. The democratised governance paradigm, that emphasises involvement of citizens in matters of service delivery, encourages public participation as a mechanism for entrenching democracy and for promoting social cohesion between government and the citizens, particularly in the provision of quality and sustainable services (Swain, 2011).

The Indian electricity supply industry has been undergoing significant changes over the last two decades. There have been notable improvements, especially in the physical infrastructure. But the state of service delivery continues to be appalling, even though the structural reforms in the sector that evolved and shaped the sector over the 1990s and early 2000s with state level experiments, and later culminated in the Electricity Act 2003, had provisions for consumer protection and participation in the electricity regulatory process. While the reforms process in Indian electricity has been well studied by scholars and policy practitioners, consumer protection and participation in the sector, an important component of the reforms, has been somewhat overlooked in the policy debates.

Consumer protection and participation in the regulatory process is crucial for better governance in the sector. Participation strengthens the information base available to regulators as they make decisions, and helps them understand the consumers’ perspective. Participation also increases the social acceptance of technical decisions that the regulators take, and measures for consumer protection help build consumers’ trust in the system. Together effective consumer protection and participation in the regulatory governance are expected to contribute to democratic legitimacy of independent sector regulators.

With a decade since the E Act came into force, it is now time to look into the current state of consumer protection and participation in Indian electricity. To what extent have the provisions of the E Act been adopted and institutionalised at the state level? How effective have such measures been and what implications do they have for electricity governance? This study reviews the experience in five states (viz. Delhi, Haryana, Karnataka, Maharashtra and Rajasthan), and suggests measures to achieve meaningful consumer participation and enhance consumer protection.
1.1. Research Focus

With the objective to evaluate the current state of consumer participation and protection in electricity regulation, the study looked into practices and experience in five states: Delhi, Haryana, Karnataka, Maharashtra and Rajasthan. The selected states were chosen because they provide a diverse mix in terms of political economy, size, electricity consumer base and level of reforms initiated in the sector.

Consumer protection and participation can be seen as consisting of two parts: (1) grievance redressal; and (2) consumer participation in regulatory proceedings. In order to assess the level of consumer protection and participation, a three level analysis was performed using multiple data sources as given in Table 1.1. A review of the structure and processes was undertaken to understand the statutory and regulatory requirements for consumer protection and participation; a study of the observed outcomes gave an assessment of the level of grievances and the level of consumer participation taking place in the five states. Through surveys and interviews, we checked consumers’ perception of the level of consumer protection and participation in the five states to see if they were consistent with the observed outcomes. Together, the three types of assessments gave an indication of the effectiveness of consumer involvement in the regulatory process.

Table 1.1: Study Approach to Assess Consumer Engagement in Regulatory Process

<table>
<thead>
<tr>
<th>Focus of Assessment</th>
<th>Grievance Related</th>
<th>Inputs for Regulatory Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structure and Processes</td>
<td>Review of documents; Semi-structured interviews</td>
<td>Review of documents; Semi-structured interviews</td>
</tr>
<tr>
<td>Observed Outcomes</td>
<td>Analysis of CGRF and Ombudsman data</td>
<td>Review of proceedings and orders</td>
</tr>
<tr>
<td>Consumers’ Perception</td>
<td>Surveys; Semi-structured interviews</td>
<td>Surveys; Semi-structured interviews</td>
</tr>
</tbody>
</table>

In order to assess consumers’ perception, we collected primary data using surveys for grievance redressal and semi-structured interviews for participation in regulatory proceedings. In order to understand consumer experience with grievance redressal mechanism, the survey targeted three groups of consumers: 1) consumers who have faced a problem with their electricity service but have not approached the CGRF (or Ombudsman); 2) consumers who have registered a complaint with the CGRF; and 3) consumers who have registered a complaint with the Ombudsman. In the case of Delhi, Haryana and Rajasthan, the survey covered all the discoms. In Maharashtra, the survey covered two locations in the state-owned discom MSEDCL and one of the private discoms, R-Infra. In Karnataka, we covered three out of five discoms. The number of survey respondents from each location and category of respondents is provided in Table 1.2. The survey located two electrical divisions, one rural and one urban, in each discom studied to identify the respondents for the first two categories. Because the number of consumers approaching the Ombudsman is much smaller, we decided to...
take only 10 respondents, who have approached the Ombudsman in the last year, in each state in this category. These respondents were identified from the same location.

In the case of Karnataka, the CGRF structure has gone through an overhaul recently (see Chapter 3 for further details)- from discom level CGRFs to district level CGRFs. There are very few consumers in the state who have approached the CGRFs after the overhaul, which is reflected in the second category of respondents in the state. There is no data available for previous CGRF cases. Consequently, the survey has taken a higher number of category one respondents in the state to understand why people have not approached CGRFs.

Table 1.2: Sampling of Consumers Surveyed on their Experience with CGRF and Ombudsman

<table>
<thead>
<tr>
<th>State</th>
<th>Location (Discom)</th>
<th>General Households</th>
<th>Households Registered Complaints to CGRF</th>
<th>Households Registered Complaints to Ombudsman</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delhi</td>
<td>S &amp; W Delhi (BYPL)</td>
<td>20</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>E &amp; C Delhi (BRPL)</td>
<td>19</td>
<td>21</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>North Delhi (TPDDL)</td>
<td>21</td>
<td>19</td>
<td>6</td>
</tr>
<tr>
<td>Haryana</td>
<td>South Haryana (DHBVN)</td>
<td>30</td>
<td>31</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>North Haryana (UHBVN)</td>
<td>38</td>
<td>30</td>
<td>5</td>
</tr>
<tr>
<td>Karnataka</td>
<td>Bangalore (BESCOM)</td>
<td>44</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Hubli (HESCOM)</td>
<td>36</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Mangalore (MESCOM)</td>
<td>36</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Maharashtra</td>
<td>Kolhapur (MSEDCL)</td>
<td>21</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Nagpur (MSEDCL)</td>
<td>19</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Mumbai (R-Infra)</td>
<td>20</td>
<td>20</td>
<td>5</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Ajmer (AVVNL)</td>
<td>16</td>
<td>18</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>Jaipur (JVVN)</td>
<td>24</td>
<td>20</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Jodhpur (JdVVNL)</td>
<td>26</td>
<td>22</td>
<td>3</td>
</tr>
<tr>
<td>Total (666)</td>
<td></td>
<td>370</td>
<td>252</td>
<td>44</td>
</tr>
</tbody>
</table>

In order to understand the experience with consumer participation and representation in regulatory proceedings, we used semi-structured interviews with various stakeholders: consumers belonging to different categories; groups that represent consumer interests; SERC members; and regulatory staff. In addition, members of State Advisory Committees (SACs), who represent consumers’ interests in the regulatory process, were interviewed to get their experience and observations.

In addition to these primary data sources, we also reviewed and analysed relevant documents and literature to map the legal and institutional evolution of consumer participation and protection in the five states. This was complemented by an in-depth analysis of international experience in four countries; USA; UK; Australia; and Brazil, to draw insights for India.

1.2. Organisation of the Report

The report is organised into six chapters. The following chapter (2) gives the rationale for consumer participation in regulatory decision-making. It is based on an extensive literature review, and presents an overview of the theoretical basis for consumer participation in decision making. The chapter also narrates the evolution of the legal and institutional architecture for consumer protection and participation in Indian electricity.
Chapter 3 provides a comprehensive assessment of consumer grievance redressal in the selected five states. Drawing on analyses of documents, consumer surveys and stakeholder interviews, it first describes the legal and institutional structures for grievance redressal in the sector, then describes how they have evolved and what practices are being followed in the selected five states. The chapter identifies gaps in grievance redressal and protection of electricity consumers and the resulting impact on consumer voice in the sector. Building on these findings, it suggests some important policy and practice innovations.

Chapter 4 looks into the implementation of the provisions made under the E Act for consumer participation and representation in regulatory proceedings. It identifies the relevant provisions and then assesses the extent of their adoption, institutionalisation and effectiveness in the selected states. Building on an analysis of the current state of consumer participation in the five states, the chapter highlights that for consumer participation to be effective, there is a need for a supportive eco-system consisting of: informed and assertive consumer groups; a receptive SERC; and a non-interfering government.

Chapter 5 is focused on the international experience in consumer protection and participation. As we consider ways to enhance consumer participation and protection in Indian electricity, we felt it would be very useful to see what lessons could be learned from the experience of other countries. This chapter analyses the experiences in four countries, viz. USA, UK, Australia and Brazil, and draws relevant lessons for India.

The last chapter (6) summarises our findings. Building on the review of international practice and the Indian experience, it recommends key changes necessary to make consumer participation and protection truly effective in the Indian electricity regulatory arena.
Chapter 2

Consumer Participation in the Electricity Regulatory Process and Its Evolution in the Indian Context

2.1 Justifying Public Participation

With the objective to amplify consumer voice in decision-making, direct participation has been encouraged at all levels of policymaking ranging from micro decisions at the local level to technical matters like regulatory policies at the macro level. Is direct public participation justified in technical decision-making? Mitcham (1997) suggests several reasons for direct participation, as opposed to relying primarily on experts to represent public interests. First, no expert decision is free from public values and influences. Experts are in the milieu of the public discourse in the media and thus are subject to ongoing value discussions. Second, participation is necessary to ensure social acceptance of technical decisions (not in my backyard phenomenon). It will make the policies/regulations more sustainable as the public will be aware of and ready to deal with the consequences. Third, experts might have built-in interests (or a mind-set) that vary from public interest.

These reasons for promoting participation by consumers are equally valid in the Indian electricity sector. Electricity regulators are primarily drawn from retired bureaucrats, who come in with their own perspectives and biases. Moreover, with the mandate to rationalise electricity tariffs and balance competing interests in the sector, the regulators seem to be less trusted by consumers, and consequently, there is low social acceptance of their decisions. Consumer participation is thus necessary to ensure representation of public interest and ensure social acceptance to regulatory decisions. While building consumers’ trust in the regulatory system, it also contributes to institutional and democratic legitimacy of the independent regulators. Moreover, in the absence of public inputs, regulators often make major decisions on behalf of the consumers, “on the basis of limited information” (Littlechild, 2008: 33). Active and effective consumer engagement in the regulatory process would be able to address the information asymmetry and improve regulatory decision making.

2.2 Levels of Public Participation

During the past two decades, consensus has emerged in both academic and policy arenas about the importance and desirability of public participation for resource management and service delivery. The advocates of public participation form two groups: one views participation as a means to achieve institutional efficiency, and the other sees participation as furthering the goals of empowerment, equity and democratic governance (Puri, 2004). On the same lines, Beresford (2002) refers to two distinct approaches to participation: consumerist and democratic approaches. The consumerist approach seeks to enhance three ‘E’s- efficiency, economy, and effectiveness.
through collecting external inputs from public/consumers, which the decision-making agency then decides how to use. On the other hand, democratic approach insists that participation should be bestowed with direct capacity and opportunity to effect change. However, both the approaches have their merits and demerits. In case of public service delivery, there is a need for convergence across both approaches.

Although there is agreement on desirability of public participation, there is no consensus on the level, nature and context of participation. In practice, by targeting ‘stakeholders’, ‘beneficiaries’, and ‘consumers’ (in case of public services), initiating agencies often exclude a section of the society who might have an indirect stake in the decision-making process and outcome.

Analysing citizen participation, Arnstein (1969) presents a ladder of participation with eight rungs/levels, which can be put into three broad categories: Non-participation, tokenism and citizen power (Figure 2.1). While ‘citizen power’ is most desirable in the ideal world, it may not be feasible to achieve in real world, especially in the case of technical decision making. The desired goals of transparency and accountability in technical decision-making at the macro level may be better achieved through informing, consultation and placation (Arnstein’s middle three rungs), without much transaction cost.

Building on Arnstein’s ladder of participation, we propose following five incremental levels of consumer participation that can happen within the regulatory framework. While the highest level of participation (i.e. empowerment) has often been desired in rhetoric, it is far from practicable in regulation of electric grid systems. However, an effective regulatory system must strive to achieve the middle level of ‘influence’, with information and consultation as prerequisites. (Source ???)

a. **Information**: Information is the first step towards consumer participation in regulatory process. At this level, the focus is on one-way flow of information from regulators to consumers. This has already been mandated in the E Act.

b. **Consultation**: Consultation is one step ahead where the regulators seek inputs (in form of non-binding advices) from the consumers, other interest groups, and/or their representatives to inform the regulatory process. It can be an ad hoc practice on specific issues or a regular institutionalised practice. However, the E Act requires the regulators to seek regular inputs (comments and objections) from the public on important matters of regulatory decisions.

c. **Influence**: At this level, there is some mechanism to ensure that consumers’ inputs are taken into account in the decision-making process. Ideally, the regulators analyse the consumers’ inputs before making any decisions and offer reasonable justification for accepting or rejecting it. The E Act does not suggest a mechanism to ensure that consumers’ inputs are taken into account in decision-making, but it does require the regulators to ‘consider’ all inputs received from various stakeholders.

d. **Partnership**: This level involves some degree of ‘redistribution’ of decision-making power as consumers are granted the right to negotiate with the regulators and other stakeholders. Given the diffused consumer interests, this may require institutionalised representation of consumers through consumer groups and/or advocates. The E Act does not have any
provision on redistribution of decision-making or institutionalised representation; however, some states have attempted to achieve the latter, though with limited outlook.

e. **Empowerment**: This level implies self-regulation, where the consumers are empowered to manage their own infrastructure. However, such level of participation are more suitable for small infrastructure networks (like micro-grids or community water supply systems) with much more homogeneous consumer base and is likely to be infeasible for large networks like the Indian grid-based electricity systems with large and fissiparous consumer base.

### 2.3 Forums and Limits of Public Participation

What matters most for an effective and inclusive participation is the forum of participation. Public awareness of such forums, ease of access to these forums and size of such forums determine the level of public engagement. To sustain public engagement the forums must be transparent, accountable and responsive to public concerns. Drawing on global experience on consumer participation in electricity regulation, Hira *et. al.* (2005) demonstrate a wide variety of institutional mechanisms for participation, yet no existing system seems to embrace direct participation by a wide set of consumers. They also find that the problem is more acute in developing countries and go on to suggest cultural and political reforms to raise acceptability.

An important reason for this low acceptability, other than the bureaucratic reluctance and public apathy in developing countries, is the transaction costs associated with direct participation. Direct participation may turn to be a major hurdle for most urgent technical decisions. That necessitates a clear guideline for public participation outlining the nature and level of public engagement- what to share with public, what to get from them and how to use it.

On the other hand, while involving consumers in decision-making is a worthwhile goal, it is important to recognise the limitations of consumer participation. Consumer participation is not a panacea for the sector’s ills. In fact, consumer participation may not necessarily lead to better outcomes. First, arriving at regulatory decisions that satisfy all the participants may not mean that the decision is based on good public policy. Regulatory decisions that respond to all the participants’ demands may simply be based on the lowest common denominator. One example of this kind of decision-making is the restructuring of California’s electricity sector. After extensive public participation, the sector was restructured in a way that was a compromise between the major stakeholders, and the solution was seen as satisfactory by all the major participants. However, the results of implementing the decision were disastrous for the sector (Coglianese, 2002).

Second, participants are not the only people affected by a regulatory decision. Non-participants will also be affected and therefore, satisfactory outcomes for participants do not necessarily mean that social welfare improves. Only if all the people who affected by a decision make an informed judgment about the issues and articulate that judgment can we say that participation has led to better outcomes (Coglianese, 2002).

While discussing the role of participation in the decision-making by a government agency, Rossi (1997) describes three models for decision-making: (1) The expertocratic model, where the quality of decisions is determined by the methods and culture of the professions of the agency’s experts; (2) The pluralist model, where decisions are seen as conflict-resolution through balancing preferences, with participation in decision-making viewed similar to participation in the market; and (3)
deliberative democracy. Deliberations are based on dialog where participants respect and engage with the viewpoints of others and use them as starting points to arrive at a consensus. Participants “transcend their own conceptions of self interest” and consider the broader public interest.

Clearly deliberation has great potential for improving regulatory decision-making. However, as Rossi points out, there is tension between participation and deliberation. Upto some threshold level of participation, things may work well with the optimal mix of participation and deliberation that leads to breadth and depth to regulatory decisions. Deliberations ensure that participation will be “meaningful and not perfunctory.” But beyond the threshold level, participation may crowd out deliberation because of (1) information overload; and (2) increased opportunities for strategic behaviour such as delay and obfuscation of issues (Rossi, 1997). Under these circumstances, one way to advance deliberations is to consider the issue of effective representation.

In an ideal (yet practicable) case, Muzzini (2005) identifies three core functions to be performed by the regulators to ensure consumer participation in regulatory process. These functions include informing consumers, resolving consumer complaints (grievances) and soliciting consumer inputs. While these functions are necessary prerequisites for consumer participation, we believe performance of these functions does not necessarily result in effective participation. What is equally important is receptiveness of the regulators to consumer inputs- how and to what extent the consumer inputs are considered for regulatory decisions. In addition, there is a need for a deliberative space where the stakeholders can consider all the policy options based on evidences.

The prevailing Electricity Act 2003, as an evolution from past experiences of sector regulation, has made provisions for multiple forums to ensure direct consumer participation both for the redressal of individual grievances and wider substantive issues. CGRF and Ombudsman are forums where consumers can take up individual grievances, while regulatory consultations and hearings at SERC level offers platform to raise and discuss on more substantive collective issues. But it is not clear whether these forums provide the needed deliberative space.

2.4 Consumer Engagement in Indian Electricity

Since independence, the Indian electricity supply industry has been transformed significantly from an infant industry to the third largest producer of electricity in the world. In quantitative terms, the installed capacity has increased from 1,363 MW to nearly 255 GW; village electrification has increased from 0.25 percent (1,500 villages) to more than 95.8 percent. Yet, India houses the largest number of people (about 400 million) without electricity service; although, the absolute number of people with electricity access has gone up over last six and half decades. Moreover, those who have access to the service are highly dissatisfied with the poor quality of service and supply. While aggregate technical and commercial (AT & C) losses are around 30 per cent and the demand-supply gap hovers around 10 per cent, financially fragile utilities are reluctant to take up new loads. Two decades of reform initiatives have not been able to solve the systemic problems that have plagued the sector.

To better understand the political economy of reforms and significance of consumer engagement in the new structures, we need to look into the shifting patterns of electricity governance in India and the evolution of consumers’ status in this process.
2.4.1 Shifting Patterns of Electricity Governance in India

At the time of independence, India inherited a nascent electricity sector, largely organised around small private companies and concentrated in a few urban pockets. Following the global trend, and with a desire to bridge the rural-urban gap, the Constituent Assembly of India chose the path of public electrification by enacting the Electricity (Supply) Act 1948 and making provision for ‘autonomous’ State Electricity Boards (SEBs). State-owned utilities and public electrification produced good results during the first few decades. However, the outcomes also included some lock-in effects and perverse governance structures (Kale 2004; Swain 2006).

Over time, the SEBs lost their autonomy, as the sector increasingly became an instrument of political process and populist policies (Badiani et al. 2012). Electricity was progressively put under government control and the state governments were authorised to set electricity prices. Successive amendments to the 1948 Act eroded SEB autonomy by gradually diminishing the SEBs’ freedom to set tariffs and by imposing greater political oversight in personnel decision. Over the period of 1970s and 1980s, the SEBs were used for political considerations by governments, political parties and politicians.

State control over the sector and monopoly provision of electricity service resulted in a distorted tariff pattern that was substantially delinked from the cost of supply and thus from global practice. Consequently, the SEBs plunged into a financial crisis and their performance declined. At the same time, aggressive electrification and irrigation pump energisation resulted in an elevated demand that was difficult for the SEBs to cater. Consequently, India entered into a severe power crisis with a huge gap between available supply and demand that was largely unaccounted and unpaid.

By early 1990s, there was an agreement that Indian electricity was in terrible crisis and major policy changes were required to come out of it. At the moment, the global trend was in favour of restructuring and privatisation (Dubash & Rajan 2001). In response to a severe crisis, in 1991, the Central Government opened up the generation segment for private investment, altering the existing policies in favour of public sector led development in the sector. With the objective to encourage the entry of private generating companies into the electricity sector, India’s new Independent Power Producer (IPP) policy made provisions for allowing private sector to set up power plants of any size; allowing foreign investors up to 100 per cent ownership of power projects subject to government approval; setting new price structure; offering a five-year tax holiday and considerable reduction on duties on the import of equipment for power projects.

However, within a few years, the IPP policy faced unexpected challenges. By the mid-1990s, it was realised that neither the IPP policy would ensure significant private sector participation in generation nor private presence in generation would address India’s power crisis. Consequently, India plunged into the second phase of reform with a focus on restructuring and privatisation of the loss making distribution segment. These distribution reforms, implemented at the state level, were guided by the World Bank policy guidelines on private participation in electricity sector. While many states experimented the reforms, most of unbundled the sector, only two states could privatise the distribution segment. As part of the reforms, another significant measure taken was establishment of independent sector regulators- Central electricity Regulatory Commission (CERC) at the central level and State Electricity Regulatory Commissions (SERCs) at state level. The goal was to depoliticise
the sector by transferring the tariff-setting power from state governments to the ‘independent’
regulators and offer a level playing field to new and prospective private entrants.

In response to the hesitant reforms at the state level, in early 2000s, the central government
stepped in to replace the legal framework for electricity governance that has been in place for more
than five decades. The Electricity Act 2003 was enacted in May 2003. The thrust of the Act was to
lead the sector towards market driven competition. The policy makers expected that private sector
participation, with competitive profit motives, would unwind the system of perverse incentives in
the sector. However, the Act has failed to address the poor infrastructure, lack of transparency and
the political-economy problems in the sector that were responsible for the prevailing crisis. While
the states have largely segregated the different segments of electricity system, corporatised them
and established independent regulators, they are far from the desired reform outcomes. In the
absence of much needed political reforms in the sector, these measures have failed to transform the
sector and achieve the reform objectives (Dubash & Singh 2005).

However, the results of structural reforms in the sector have not been all negative, if not as effective
as desired. Unbundling of monolithic SEBs into separate entities for generation, transmission and
distribution is a significant achievement in itself. Opening up the generation segment to private
players has significantly contributed to installed capacity addition, resulting in about 36 percent
contribution from the private players. Overall, there has been some improvement in the service
quality as well as a commendable progress in village electrification.

2.4.2 Evolution of Consumer Participation

While there has been some consideration of consumer safety and consumer interests, the various
legislations for electricity regulation have not emphasised ‘consumer satisfaction and participation’.
Keeping with the changing political economy and governance structures, succeeding legislations
have widened the considerations for consumer interests (See Annexure 2.1). However, even in the
most recent legislation, the considerations remain far from the desired level and global best
practices. In this section, we discuss the key milestones in this process and analyse the evolution of
consumer participation in electricity regulatory process in Indian context.

The Indian Electricity Act 1910 was the first major milestone in Indian electricity policy that governed
the private-sector dominated sector for about four decades, till independence. The Act, for the first
time, emphasised ‘consumer safety’ in electricity system and also identified the obligations of
service providers to their consumers. It also stressed that consumers must be charged on the basis
of their load and actual consumption, not arbitrarily and such charges to be publishes time to time
for consumer information. But there was no mention about consumer participation or even
consumer grievances.

Immediately after independence, seeking to overhaul the sector, India introduced the Electricity
(Supply) Act 1948, which put a deeper thrust on consumers’ interests. Recognising the failure of
existing electric companies to reach to rural areas, the Act emphasised the goal of bridging rural-
urban divide. Striving to be a welfare state and keeping with the prevailing socialist values, the Act
stressed on access to minimum quality and quantity of supply to every citizen, at an affordable price.
Therefore, the state pursued nationalisation of the sector and public electrification in a planned
manner.
While once again there was no mention about consumer participation or consumer grievances, the Electricity (Supply) Act made provisions for advisory committees at two levels. At the state level, the State Electricity Consultative Council was proposed to advise the electricity board and generating companies on major questions of policy and major schemes, to review the progress of work from time to time, and to consider other matters placed before it and suggested by the state government. The council was proposed to have 8-15 members, with at least one representative from board members, generating companies, government, sectoral labour unions, local self-government, commerce, industry, transport and agriculture. However, domestic consumers were not represented. At the local level, Local Advisory Committees were proposed to advise the Board on matters the Board may put before them. The Act did not offer any clarity on composition and function of these committees. Other than these two forums for partial consumer representation, there was no provision for direct consumer participation. Over time, execution of the Act, by granting greater oversight to state governments, institutionalised the long route of accountability, making the SEBs accountable to state governments who in turn were accountable to the citizens/consumers.

By early 1990s, there was a consensus that the sector was in dire need of reform, as was evident in the chronic inefficiencies of the erstwhile SEBs. In response, the first step taken was to open up the sector for private participation as opposed to the much needed management reforms. The second phase of reforms, introduced experimentally in few states during second half of 1990s, was much deeper seeking to unbundle the sector, privatise the distribution segment and introduce independent regulators. These reforms were guided by the World Bank policy guidelines and often supported with soft loans. Though the Bank policy guidelines on electricity restructuring included a strong component of consumer participation in the regulatory process, it was hardly discussed or highlighted at the domestic level. Indian states endeavoured to adopt the whole restructuring package, with varying success, without much deliberation on the local political-economy.

An analysis of the electricity reform acts in the selected states (Delhi, Haryana, Karnataka, Maharashtra, and Rajasthan) suggests that the state legislations had a relatively wider consideration for consumer interests and consumer protection compared to past national legislations. First, all the selected state reform Acts had put an emphasis on the written record, clarity and accessibility of decisions, directions and orders passed by SERCs. Second, they also made provisions for consumer consultation by the SERCs and representation of all categories of consumers in the State Advisory Councils. Finally, from consumer protection perspective, all the legislations made provisions for standards of performance for licensees and periodic reporting on compliance, though there is not any provision on enforceability. However, none of the acts used the word ‘participation’ by consumers. The state reform Acts seem to mark beginning of a new era of electricity governance and consumer protection, and also have contributed to the prevailing Electricity Act 2003.

The Electricity Regulatory Commissions Act 1998 made clear provisions for representation before the regulatory commissions in all their proceedings, which has been retained in the succeeding legislation. However, throughout the 1990s and early 2000s, it appears the governments were much more focused on technical improvements, loss reduction, commercial viability and overall efficiency, which were expected to be achieved through private participation, commercialisation and tariff rationalisation. Unlike the global discourse, there was less consideration of fostering consumer participation as a strategy to ensure social acceptance and legitimacy of the reform initiatives. The
limited scope for representation of consumers’ interests in the regulatory process came as part of the larger restructuring package.

By the late 1990s and early 2000s, the embryonic effects of these reform initiatives were evident in tariff revisions, which received significant social opposition. There were protests from consumers/groups that resulted in the halting of reforms in many states. At the same time, a few consumer groups and CSOs got actively engaged in the process, not just opposing it but possibly guiding and influencing the process. Such interventions were sporadic and it is hard to identify their specific influence on the reform process. At the same time, there was a strengthening global fervour for new governance (Rhodes, 1996) and new public management (Minogue et. al. 1998) that required the retreat of the state and public engagement in governance of public service delivery. The new governance paradigm offered opportunities to the service users to exercise their client power over service providers to hold them accountable (World Bank, 2003).

Consequently, the 2003 Act made three relevant provisions for representation of consumer interests and promotion of consumer participation. First, retaining the provision for State Advisory Committees at the SERC level (as in 1998 Act), the Act allowed representation of various consumer interests in the regulatory process. Second, it required the regulatory commissions to hold regular public consultations and hearings on important matters to seek their inputs. Third, the act made provisions for Consumer Grievance Redressal Forums (CGRFs) at the discom level and one or more Ombudsman at the state level, to ensure accountability of service providers to consumers, and build consumers’ trust in the system. The 2003 Act is the first in the series of regulations to give significant thought to consumers’ requirements, by mentioning ‘protecting interests of consumers’ as one of the objectives in the preamble. Though this is more of a symbolic development, it marks advancement from the past. It further strengthens consumer protection from service providers by proposing a set of standards of performance for the licensees, building on the state reform Acts, and making provision for a multi-level consumer grievance redressal mechanism. It should be noted that while the preamble and the Act include the consumer in their considerations, they still do not give top-most priority to the consumer. The Act has failed to outline the nature and level of consumer engagement, especially at the SERC level. Repeating the past experiences, the SERC are allowed to decide the level of public engagement and how to respond to them. Consequently, regulatory consultations and hearings have been reduced to mere rituals in many cases, while West Bengal ERC has completely stopped these forums. However, some SERCs have been more proactive and serious, and have used these forums for information sharing with consumers as well as receiving their inputs. On the other hand, lack of public awareness and limited accessibility of these forums has been a major hurdle to effective participation. Furthermore, the emergent institutional and regulatory architecture is not free from gaps, but it has evolved by building on the past experiences. For a comparative summary of various legislations, see Annexure 2.1.

2.5 Conclusion

While this regulatory architecture, as advocated in the E Act, is important for consumer participation and protection, having the architecture only is not the end in itself and may not necessarily lead to meaningful participation and effective consumer protection. What is equally necessary is an enabling ‘eco-system’ that offers space of deliberation among the stakeholders. While participation can take various forms as discussed earlier, what is needed for meaningful participation is a two-way communication and deliberation on important policy matters that is reflected in the final decision-
making. To make this happen, there is a need for informed and assertive consumer groups, a proactive regulator that seeks to engage with the stakeholders and a government that allows autonomy to the regulators to make rational decisions. Only then, the architecture could emerge as an effective platform for consumer participation and protection.

This raises several vital questions regarding the regulatory governance in Indian electricity, which have not been studied so far. To what extent the regulatory architecture for consumer participation and protection has been institutionalised in Indian states? To what extent the states have been able to create an enabling eco-system for consumer participation and protection? Does the architecture amplify small and fragmented consumer voices to the level of decision-making? Does the architecture provide a deliberative space for wider stakeholder engagement? What have been the implications for wider regulatory governance in the sector? What are the gaps and how to fill them suitably? This study is a modest attempt to find answers to these questions drawing from experiences in five Indian states and review of international good practices.
### Annexure 2.1: Evolution of Electricity Regulation in India

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<tr>
<th>The Indian Electricity Act, 1910</th>
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<td>An Act to amend the law [the Indian Electricity Act, 1903] relating to the supply and use of electrical energy.</td>
<td>An Act to provide for the rationalisation of the production and supply of electricity, and generally for taking measures conducive to [electrical development].</td>
<td>An Act to provide for the establishment of a Central Electricity Regulatory Commission and State Electricity Regulatory Commissions, rationalization of electricity tariff, transparent policies regarding subsidies, promotion of efficient and environmentally benign policies and for matters connected therewith or incidental thereto.</td>
<td>An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interests of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.</td>
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<td>The first legislation to regulate the sector in India was the Electricity Act 1887, which provided for protection of person and property, from injury and risks, attendant to the supply and use of electricity for lighting and other purposes. The Act was later repealed and replaced by the Indian Electricity Act, 1903. However, both the 1903 and 1910 Acts have retained the objective of ‘protection of person and property’ as set in 1887.</td>
<td>In broad lines with the Electricity (Supply) Act, 1926, in force in the United Kingdom, the 1948 Act aimed to promote coordinated development of electricity in India on a regional basis. The Act aimed to enable the Provincial Governments to set up suitable organisations to work out ‘Grid Systems’ within territorial limits of the Provinces. Although it vested the executive powers under the Provincial Governments, two considerations necessitated Central legislation, and thus put the sector in ‘concurrent list’: • The need for uniformity in the organisation and development of the ‘Grid Systems’; • The necessity for the constitution of semi-autonomous bodies like Electricity Boards to administer the ‘Grid Systems’.</td>
<td>The Common Minimum National Action Plan for Power (CMNPP) found that future development in the power sector cannot be sustained without viable SEBs and improvement of their operational performance, and identified creation of regulatory commissions as a step in this direction. The 1998 Act was enacted to give effect to the aforesaid proposal. The key objective was to improve financial health of the SEBs, through independent regulation. At the same time, it also aimed to provide a level playing field for the private players in the sector.</td>
<td>The Act was introduced as a harmonising self-contained legislation, focused on encouraging private sector participation in all three segments of electricity system and distancing the regulatory responsibilities from the governments. The Act repealed and replaced all the existing electricity laws in the country.</td>
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<td>Provision for private licensees: The State Government may, on application made in prescribed form and on payment of the prescribed fee (if any), ‘grant to any person a license’ [original, later amended in 1959] to supply energy in any specified area. (Sec 3)</td>
<td>Making provisions for SEBs at state level, the Act provided the base for a nationalised electricity sector, barring few prominent private suppliers in Mumbai, Calcutta and Ahmedabad. The Sixth Schedule I (Financial Principles): The licensee shall so adjust his [charges] for sale of electricity whether by enhancing or reducing them that his clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return. Sec 57A: Rating Committees to settle disputes related to costs and charges - The Board or where no Board is constituted under this Act, the State Government may, if satisfied, that the licensee has failed to comply with any of the provisions of the Sixth Schedule; and shall, when so requested by the licensee in writing, constitute a rating committee to examine the licensee’s charges for the supply of electricity and to make recommendations in that behalf to the State Government</td>
<td>Sec 28: Determination of tariff (for generating companies and transmission entities) by Central Commission.  • Restrict abuse of dominance  • Encourage efficiency, economical use of the resources, good performance, optimum investments and other matters which the commission considers appropriate. Sec 29: Determination of tariff by State Commission, for intra-state transmission of electricity and the tariff for supply of electricity, grid, wholesale, bulk or retail.  • The tariff shall progressively reflect the cost of supply of electricity at an adequate and improving level of efficiency.  • Encourage efficiency, economical use of the resources, good performance, optimum investments and other matters which the commission considers appropriate.  • The interests of the consumers are safeguarded and the consumers pay for the use of electricity in a reasonable manner based on the average cost of supply.  • The electricity generation, transmission, distribution and supply are conducted on commercial principles.  • No undue preference to any consumer of electricity.</td>
<td>Sec 42: Duties of distribution licensee and open access.  • Open access within one year of their Commission’s appointment and have due regard to cross subsidies and other operational constraints, while determining wheeling charges.  • No surcharge for captive power plants or those using own carriage.  • Provision to consumers with more than 1 MW load. Sec 45: Power to recover charges.  • Charges fixed as per principles set by commission  • Publicity for such charges and prices.  • No undue preference or discrimination.  • Restrictions on abuse of dominance by the licensee. Sec 61: Tariff regulations. The Appropriate Commission shall specify the terms and conditions for the determination of tariff, guided by the following:  • Principles and methodologies specified by the Central Commission  • Commercial principles.  • Encourage competition, efficiency, economical use of the resources, good performance and optimum investments.  • Safeguarding of consumers’ interest and recovery of the cost of electricity in a reasonable manner.  • Progressively reflect the cost of supply and reduces cross-subsidies. Sec 62: Determination of tariff.  • In case of multiple distribution licensees, the Commission may fix only maximum ceiling of tariff  • No undue preference to any consumer  • Tariffs not to be amended more than once in a year  • Excess recovery to be transferred to the consumer. Sec 79 (2): CERC shall advise the Central Government on:  • Formulation of National electricity Policy and tariff policy  • Promotion of competition, efficiency and economy in activities of the electricity industry  • Promotion of investment in electricity industry  • Any other matter referred to the Central Commission by that Government. Sec 86 (2): SERCs shall advise the State Government on:  • Promotion of competition, efficiency and economy in activities of the electricity industry  • Promotion of investment in electricity industry;  • Reorganization and restructuring of electricity industry in the State</td>
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|                        | Sec 57: Standards of performance of licensee  
• To be specified by the concerned Commission after consultation with the licensee and persons likely to be affected.  
• On failure to meet the standards, licensees are liable to pay compensation to affected parties, within 90 days  
• Different standards of performance for a class or classes of licensees (Sec 58)  
• Periodic compliance and compensation paid report to be filed by the licensees, which will be published annually by the appropriate Commission.  
Sec 42 (5-8): Establishment of Consumer Grievance Redressal Forum (at least one by each distribution licensee) and Ombudsman (at least one at state level) for redressal of consumer grievances, within a specific timeframe and in a defined manner, as may be specified by the state commission.  
Sec 110-124: Appellate Tribunal for Electricity  
Any person aggrieved by an order made by an adjudicating officer under the Act or an order made by any of the Commissions may appeal to the Appellate Tribunal. If not satisfied with the order of the Appellate Tribunal, the person may appeal to the Supreme Court (Sec 125) [Approachable by both the consumers and utilities] |
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Chapter 3

The State of Grievance Redressal and Consumer Protection in Indian Electricity

3.1 Introduction

Consumer awareness, grievance redressal and protection are considered to be some of the key indicators of market effectiveness, progressiveness of civil society, and development in any country. The issue of consumer protection dates back to emergence of trade and commerce. However, until late 1960s, India did not have any systematic movement for safeguarding consumer interests.

In 1986, India took an important step taken towards consumer protection, with the enactment of the Consumer Protection Act, 1986. Recognising the emergent complexities in market and vulnerability of consumers, the umbrella legislation was introduced to better protect the interest of consumers. It provided for establishment of three-tier consumer dispute redressal machinery at the national, state and district levels, with a jurisdiction over all goods and services from both public and private sector players. The Act provides for relief of a specific nature and also for compensation to the consumer as appropriate. The institutions (consumer courts) at each level are guided by respective Consumer Protection Councils.

Over time, with increasing coverage and complexity of markets, especially as an outcome of liberalisation and restructuring of key economic sectors, and rise in consumer awareness, these umbrella dispute redressal mechanisms were gradually over loaded with cases and an increase in pendency. With technical advancement in goods and services provisioning, redressal of disputes among providers and consumers in some sectors required technical knowledge and expertise, creating a need for specialised agencies. Consequently, as an outcome of structural reforms, specialised grievance redressal mechanisms were institutionalised in some of the key public service sectors, including electricity.

This chapter provides a comprehensive analysis of the structures and processes of consumer grievance redressal in Indian electricity. Drawing on analysis of documents, consumer surveys and stakeholder interviews, it explains the legal and institutional structures for grievance redressal in the sector, how they have evolved and what practices are being followed in the selected five states. The chapter identifies gaps in grievance redressal and protection of electricity consumers and the resulting impact on consumer voice in the sector. Building on these findings, it suggests some important policy and practice innovations.

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1 Kautilya’s Arthashastra, written in 3rd century BC, has made reference to the concept of consumer protection from exploitation by traders and retailers with respect to quality and measurement of goods (Planning Commission 2008).

2 In 2013, pendency in these forums across the country was over 3.5 lakhs (PTI 2013).
3.2 The Legal and Institutional Structure of Grievance Redressal in Indian Electricity

Electricity legislations in India seem to have encompassed consumer safety and protection from the very beginning. With every new legislation, this intent has been consolidated, culminating in provisions for a relatively elaborate mechanism in the prevailing Electricity Act, 2003. The preamble of the Act clearly mentions protection of consumer interest as a key goal:

An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto (GoI, 2003).

The Act has made provision for grievance redressal at two levels: First, a forum at the discom level; Second, an Ombudsman at the state level. As per Sec 42 (5), discoms are required to “establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.” For consumers whose grievance is not redressed at this level are offered another avenue at the state level, known as “Ombudsman to be appointed or designated by the State Commission” [Sec 42 (6)], that will ‘settle’ the grievance within a definite time and in certain manner, as specified by the relevant SERC [Sec 42 (7)].

In addition, in keeping with the objective of consumer protection, the Act proposes a set of Standards of Performance (SoP) [Sec 56-59], which the SERCs ‘may’ specify after consulting the licensees and persons likely to be affected. The licensees are liable to pay compensation to the affected persons within 90 days period, as determined by the SERC after providing ‘a reasonable opportunity of being heard’ to the licensees. The licensees are also required to furnish a performance and compliance report to the concerned SERC, at least once a year.

Beyond these guiding principles, the central legislation does not provide any further course of action for institutionalisation of grievance redressal and consumer protection. On a positive note, considering the political economy of states differ widely across India, this provides an opportunity to the SERCs to set the rules and regulations tailored to the local context. On the other hand, it leaves the SERCs with some degree of ambiguity, vulnerability to rent-seeking and opportunity for manoeuvres to accommodate interests, agencies and institutions. Consequently, the resulting structures and processes vary across states. While some SERCs have been proactive and responsive to consumer demands and interests, others seem to maintain a soft corner for state owned utilities or are submissive to state governments.

All the five states covered in this study have established consumer grievance redressal mechanisms for electricity consumers. Both the Consumer Grievance Redressal Forum (CGRF) and Ombudsman are institutionalised as quasi-judicial bodies. CGRFs are set up and directly supported by the discoms, while the Ombudsman is set up and supported by respective SERC. The CGRF is a three member body with varying composition across the states, while the latter is a single member body.
In all the states covered in this study, grievance redressal is carried out through a four-tiered mechanism. First, any consumer with a complaint must contact the respective discom and go through the internal complaint handling process of the discom. If the consumer is dissatisfied by the response or the complaint is not addressed in the stipulated timeframe, the consumer can approach the CGRF for redressal. If the consumer is not satisfied with the outcome at the CGRF level, he/she may appeal the CGRF’s decision to the Ombudsman. If still dissatisfied, the consumer has the choice of approaching the High Court against the decision of the Ombudsman (See Fig 1). At each level, except the judiciary, the responsible authorities are required come to a solution or judgement within a specific timeframe, as prescribed by the respective SERC in its regulations.

While the basic institutional structure remains similar across the states, there are significant differences in the details of the structure and the processes for grievance redressal. Some states have endeavoured to bring the grievance redressal mechanism closer to consumers by setting up multiple CGRFs within a discom (at district level in Karnataka or zonal level in Maharashtra) or by having a mobile CGRF (in Haryana) or a complex web of hierarchical mechanism covering each and every administrative unit (in Rajasthan). Further, the composition and independence of these agencies differ across states. In all cases, the CGRFs and Ombudsmen are required to submit a periodic report to the respective SERCs. The process of grievance redressal has evolved differently in different states. The differences across states are summarised in the Table 1 and discussed in detail in the following section.
<table>
<thead>
<tr>
<th>Table 3.1: Comparison of CGRM across Five States</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Delhi</strong></td>
</tr>
<tr>
<td>No of CGRF/Discoms</td>
</tr>
<tr>
<td><strong>Composition of CGRF and Independence</strong></td>
</tr>
<tr>
<td>Delhi</td>
</tr>
<tr>
<td>3 members (one legal, one technical, &amp; one consumer)</td>
</tr>
<tr>
<td>All members are independent of the discom. To be eligible one must have left the utility at least two years prior to joining CGRF.</td>
</tr>
<tr>
<td><strong>Process followed before approaching CGRF</strong></td>
</tr>
<tr>
<td>Discom’s internal complaint handing mechanism</td>
</tr>
<tr>
<td><strong>Fees</strong></td>
</tr>
<tr>
<td>No fees for CGRF.</td>
</tr>
<tr>
<td>To approach Ombudsman, the appellant must deposit one-third of the amount assessed by CGRF (if any).</td>
</tr>
<tr>
<td>* Sub-division – Rs 50</td>
</tr>
<tr>
<td><strong>Time Limit for CGRF</strong></td>
</tr>
<tr>
<td>– Acknowledgement from CGRF - 7 days</td>
</tr>
<tr>
<td>– Discom to respond- 15 days</td>
</tr>
</tbody>
</table>

3 The Rajasthan Electricity Regulatory Commission (Guidelines for Redressal of Grievances) Regulations, 2008 has made provisions for an independent member in each forum established by the licensee, who will be nominated by the RERC. However, this provision has never been followed.
<table>
<thead>
<tr>
<th></th>
<th>Delhi</th>
<th>Haryana</th>
<th>Karnataka</th>
<th>Maharashtra</th>
<th>Rajasthan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Maximum Time for Consumer to Appeal at Ombudsman</strong></td>
<td>Hearing- 60 days Decision to be passed 60 days.</td>
<td>Hearing- 90 days Decision to be passed 90 days.</td>
<td>Hearing- 60 days Decision to be passed 60 days.</td>
<td>Hearing- 60 days Decision to be passed 60 days.</td>
<td>Decision to be passed 30-45 days.</td>
</tr>
<tr>
<td><strong>Time Limit for Ombudsman</strong></td>
<td>Acknowledgement- 7 days Discom to respond- 15 days Decision to be passed- 90 days.</td>
<td>Acknowledgement- 7 days Discom to respond- 15 days Decision to be passed- 90 days.</td>
<td>Acknowledgement- NA Discom to respond- 15 days Decision to be passed- 60 days.</td>
<td>Acknowledgement- 5 days Discom to respond- NA Decision to be passed- 60 days.</td>
<td>Acknowledgement- NA Discom to respond- NA Decision to be passed- 90 days.</td>
</tr>
<tr>
<td><strong>Issues Addressed by CGRF &amp; Ombudsman</strong></td>
<td>All kind of issues pertaining to electricity supply, except issues falling into Sec 135-139</td>
<td>Only financial matters</td>
<td>Only financial matters</td>
<td>All kind of issues pertaining to electricity supply, except issues falling into Sec 135-139</td>
<td>Only financial matters</td>
</tr>
<tr>
<td><strong>Unique Features of CGRM in States</strong></td>
<td>Independence of CGRF is emphasised though regulation and practice. Restricted oversight of discoms.</td>
<td>Mobile CGRF that visits each circle at least once in a month.</td>
<td>30 CGRF for 30 districts in the state.</td>
<td>11 zonal CGRF for the largest discoms- MSEDCL and 3 respective CGRF for other 3 small discoms. 2 electricity Ombudsman</td>
<td>A complex web of forums, uniquely named as ‘Grievance Redressal cum Settlement Forum, run completely by the discoms. The forum is present at each level including, sub-division, division, circle and corporate.</td>
</tr>
</tbody>
</table>
3.3 Varying Evolution and Practices across States

3.3.1 Delhi

Like for structural reforms, Delhi was one of the frontrunners to act on the consumer protection provisions of the Electricity Act, 2003. In the very year of passage of the E Act, Delhi Electricity Regulatory Commission (DERC) passed a regulation- DERC (Guidelines for Establishment of Forum for redressal of grievances of consumers and Ombudsman) Regulation, 2003- with guidelines for establishment of CGRFs and the Ombudsman. There are four CGRFs, one per each discom (viz. BRPL, BYPL, TPDDL, & NDMC), and one electricity ombudsman in the state. Later in 2011, DERC passed another regulation with much clearer guidelines on constitution, jurisdiction and processes to be followed by these forums.  

CGRFs in Delhi are three-member body, chaired by the technical member. The second member of the forum is a legal person or a person with significant experience on consumer matters. While the composition appears similar to other states, Delhi stands out in terms of its emphasis on independence of these forums. As per the DERC regulation, none of the members can be drawn from the licensees. Even the retired employees of licensee are not eligible to be appointed to the forum within two years of retirement. Appointment of all the members and secretary of the forum is done by the commission directly and their salary and allowances are paid by the commission, which is later reimbursed by the licensees. However, the expenditures and maintenance costs of CGRFs are sponsored by respective discoms directly. To ensure the autonomy of CGRFs, these forums are provided with separate office facility.

As a result, there are observed differences in functioning of CGRFs in Delhi, as seen in their sensitivity and responsiveness to consumer issues. Some notable observations are discussed below. First, driven by DERC guidelines, proactive awareness initiatives by discoms covering various media, including mention of CGRF contact details on the back of consumers’ monthly electricity bills, are likely to have contributed to consumer awareness. In addition, the CGRFs organise a mobile court on every month not only to get closer to the consumers, but also to raise awareness about the grievance redressal mechanism. Second, autonomy of the CGRFs seems to have enabled them to take fair decisions, not being sensitive or responsible to the discoms. For example, it is observed that decisions have been in favour of the consumers in 70-80 percent of cases, compared to other four states in the study. Third, by making the CGRF a full-time and independent office, the authorities have been able to consider consumer grievances in detail and address micro issues. For example, one of the CGRF chairman pointed that earlier office files had the discom name printed in bold letters, which seemed to create distrust among the consumers on whether the CGRF was pro-discom. The Chairman requested the discom to print the CGRF name in bold, followed by the discom name in small letters, emphasising the independence of the CGRF. While the impact may have been subtle, this shows the sensitivity and consumer friendliness of the CGRF authorities.

Fourth, as in other states, though there is no requirement for getting lawyers to represent consumers, some consumers try to hire lawyers to help them in making a case. The CGRF authorities

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4 Delhi Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulation, 2011.
believe that there is no need for hiring lawyers; rather they seem to discourage engagement of lawyers, as it unnecessarily delays the decision. Fifth, the CGRFs entertain all type of complaints from the consumers, except theft and fraud that fall into Sec 135-139 of the Electricity Act, 2003. There are separate courts to handle those matters. In contrast, as we discuss later, CGRFs in some states limit the types of cases they will consider. Sixth, Delhi CGRFs have been pro-consumer in their response to violations of the SoP. While, the forums have not received any complaint solely on non-compliance of SoP, possibly due to low awareness of consumers, yet, in cases where the consumer would have been entitled to compensation from the discom, the forums claim that they have recommended compensation be paid as per regulation.

The Ombudsman receives relatively fewer cases, in the range of 50-80 cases per year, on a variety of issues including billing, faulty meter and delay in releasing connections. As the Ombudsman claimed, the small number of cases “shows that consumers are being served and satisfied” with the discom. Moreover, these cases are not necessarily big value cases; consumers have come up with grievances worth Rs 300-400. The presence of small value grievances at Ombudsman level could be seen as an indication of assertion of consumers to claim their right.

Given the innovations in the grievance redressal mechanisms in Delhi, survey findings suggest relatively higher consumer satisfaction, though it is still far from desired level. About 47 % of the respondents, who approached CGRF, are satisfied and another 46 % are somewhat satisfied with the outcomes at CGRF level, leaving only 7 percent respondents who were dissatisfied with their experience with the respective CGRF (Figure 3.6). This may be the main reason for the low number of cases appealed to the Ombudsman. On the other hand, though the discoms have made efforts to improve internal complaint handling and consumer service, only a quarter of our respondents felt that discom service has improved in last five years, and another 63 % felt it has improved slightly (Figure 3.7).

The consumer grievance redressal mechanism in Delhi is well coordinated and has improved over time, although there is scope for further improvement. All the four CGRFs are required to submit quarterly reports on grievance redressal to the Ombudsman, who, in turn, is supposed to send a consolidated report with Ombudsman level data to the DERC. Earlier, every six months meetings were held on these reports between the regulators, Ombudsman, CGRF members and CEOs & key staffs of discoms resulting in interesting deliberations and insights. However, as some of the respondents pointed out, such meetings are no longer held regularly or with the same regularity.

The CGRFs and Ombudsman claimed that they do not have any sort of capacity or resource constraint, nor they have any kind of clash of interest within the organisation. The Ombudsman pointed out that the only challenge, in case of some illiterate and elderly consumers, is to make them understand the technicalities; moreover, there is a trust deficit in some cases. In that case, he suggested, it is better to invite a young friend or family member of the complainant who can act as an arbitrator. He went on to claim that it works better than a professional lawyer and also builds trust of consumers in the mechanism. Moreover, he suggested, to build the consumers’ trust in the system, there is a need to enhance communication between discoms and consumers. These concerns and thought, in a way, show the consumer-friendliness of Ombudsman.
Consumer grievance redressal and protection in Delhi seem to be in a relatively better state. The constant effort from regulators, ombudsman and CGRFs, and the existence of an effective regulation that ensures autonomy have led to outcomes that have been good for consumers. However, putting consumers through a tedious and hierarchical multi-pronged redressal mechanism is discouraging, though it offers various avenues for appeal.

3.3.2 Haryana

Haryana has established a similar mechanism for grievance redressal, guided by the Haryana Electricity Regulatory Commission (Guidelines for establishment of forum for redressal of grievance of the consumer) & (electricity ombudsman) Regulation, 2004. The state has established two CGRFs (one each for DHBVN and UHBVN) and one ombudsman.

The CGRFs have three members each- one technical, one legal and one consumer representative. Even though the HERC regulation directs that none of the members would be drawn from the licensee, the technical members of both the forums are employees of the discoms. Unlike Delhi, the members are appointed by the discom and the CGRFs operate from office of the discom. Some industrial consumers pointed out that the technical member has an oversight over the forum and being a staff of the utility, she/he tends to be pro-utility. The other two members being appointed by the utility are also more accountable to the utility. Consequently, there appears to be a trust gap in part of the consumers, at least the industrial consumers, in the fairness and effective redressal mechanism. Industrial consumers prefer to not confront the utility staff by approaching CGRF for grievance redressal. As one of the industry group leaders argued, “We try to avoid approaching CGRF... It just delays the solution... And we do not want to have a hostile relation with discom staff. Our industries are dependent on electricity. We cannot have a bad relation with them [utility staff].” Alternatively, they tend to find informal solutions, tapping personal relations. To a certain extent, it is corroborated by our survey findings. Haryana has the highest number of respondents (44%) who did nothing when faced with a problem in electricity service. However, most of them (77%) claim that they do not know what to do.

Yet, Haryana has been able to bring in some innovation by making the CGRFs mobile. The CGRFs visit, at least once in a month, to all the circles offices in their jurisdiction, and cases within the circle are decided on the spot. This has certainly facilitated consumers’ access to CGRF, while in other cases consumers may have to travel long and multiple times to approach CGRF. While the larger consumers tend to be apathetic towards the mechanism, better access could be a possible reason for high level of satisfaction among the consumers who have approached the CGRF. According to survey findings, 41% percent of respondents those approached CGRF are satisfied with the outcome and another 52% are somewhat satisfied- a cumulative satisfaction level as high as Delhi (Figure 3.6). However, both the CGRFs together have decided roughly only 50% of the cases in favour of the consumers.

Yet, some of the consumers tend to bypass the mechanism and approach the judiciary directly. Those consumers, in most cases, are diverted back to the appropriate level in the mechanism. CGRFs and Ombudsman pointed few cases, where the complainant has directly appealed to the High Court and later, the Court has directed them back to appropriate forum. On the contrary, some of the cases falling into Sec 135-139 have reached the CGRF and redirected to the appropriate courts.
Haryana has also a well-functioning electricity Ombudsman in place, located within HERC office. Roughly a quarter of the cases that reach the CGRF are escalated to Ombudsman and the judgement is about half in favour of the consumers and other half in favour of the discom. A regulatory staff member claimed that though grievance redressal mechanism in the state has been effective and helped the consumers, the mechanism is biased against the discoms, who cannot challenge the CGRF decision at ombudsman. He argues that “the discoms should [also] be given an opportunity to appeal [against the CGRF decision]”; if the CGRF decision can be wrong for the consumers, it can also be wrong for the discoms. He also pointed out that some consumers have been able to manoeuvre and get CGRF decision in their favour. If the discoms are allowed to appeal at ombudsman, those cases can be checked. Though the discoms can appeal to the High Court, it is resource intensive.

On the other hand, the state power department and the discoms have made some efforts to improve the internal complaint handling process. Under the APDRP scheme, the state utilities have set up an electronic complaint handling procedure, which is fast, proactive and responsive. The complaint receiving and information facility has been outsourced to a third-party. The utilities are working to set up an internal system, which will start functioning in the immediate future. The discoms have also put up mobile repair units, with essential infrastructure facilities, which are enabled to address complaints quickly. That is reflected in the nature of grievances reaching to the CGRF and ombudsman. Three-quarter of our respondents went to CGRF for incorrect meter reading and billing issues, while all the respondents who have been to ombudsman had the same problem (Figure 3.4). Though power supply interruption is a major problem for the general consumers (88% of the respondents claimed so) (Figure 3.2), it has been an insignificant issue at CGRF or Ombudsman level. This may be due to improved internal complaint handling procedure or because the grievance redressal mechanism’s apathy towards non-monetary issues or an outcome of the both. However, most of the respondents (92%) felt that electricity service has somewhat improved in last five years, while only 2% claimed substantial improvement (Figure 3.6).

### 3.3.3 Karnataka

Karnataka established six CGRFs for six discoms and one ombudsman following Karnataka Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004. However, on recommendation of KERC, district level CGRFs has recently been established, resulting in 30 CGRFs for 30 districts. The objective, according to KERC Chairperson, is “to reach out to consumers.” However, other features, including the composition, of the forum has remained same. Though the CGRFs in the state have three members like others, two of them are from the licensee and there is no provision for a legal member. The Chairperson is an officer of the discom not below the rank of Superintending Engineer (Elec.); the second member is from the utility of Executive Engineer (Elec.) or above. The Third member is nominated by the KERC from among persons with knowledge of electricity sector or consumer affairs. In practice, the discom provides a list of such persons to KERC, who selects one among them for a three year term.

Both the discom designated members have their core responsibilities as Superintending Engineer or Executive Engineer, with additional responsibilities for the CGRF. As it was observed, for obvious reasons, the secondary responsibilities (of CGRF) often get undermined. On the other hand, given a large number of CGRFs in place and limited incentive, the commission and the discoms have not been able to appoint a third member (a consumer representative) to the forum.
While the concept of institutionalising a grievance redressal mechanism is well appreciated, the idea of localised CGRFs in Karnataka is far from achieving its objective of reaching to the consumers. First, consumer awareness on these forums appears to be very low. It may be partly evident in the low number of cases reaching to CGRFs. Though the discom (BESCOM) officials and regulatory staffs claim that there has been adequate communication on existence of CGRFs, the consumers do not feel that way. As a consumer representative claimed, “effectiveness of grievance redressal forums has reached only to educated people”, who are aware of it from few newspaper advertisements. Second, with localised CGRF and two of the members drawn from the discom, any CGRF decision not in favour of the discom would be against immediate subordinate or senior of the utility designated members. Possibly for that reason, most of the CGRF decisions (about 80%) are in favour of the discom. Our survey findings show similar trend, with only 10% of the respondents being happy with CGRF decisions (least among the five states) and another 40% are somewhat satisfied with it. Third, many of the respondents also suggested that whenever the CGRF gives a decision in favour of the consumer, it is not complied with by the discom officials. As a consumer member of one of the CGRFs claimed, “the chairperson of the CGRF may sound tough on the discom representatives in hearing in the court house [hearing], but the decision is never implemented... In reality I do not see [the chairperson] being tough to [his/her] colleagues.” Moreover, he also added that discom officials even do not turn up for the hearings. Fourth, the third person being the only non-discom person in CGRFs, his/her dissent does not hold as the majority decision (decision of two out of three members) prevails. The composition of CGRFs in Karnataka, therefore, is flawed by design. Fifth, the CGRFs only take up cases of financial nature, particularly metering or billing errors. Any other cases are rejected and diverted to discom for action or settlement. As two of the CGRFs under BESCOM suggested, they are authorised to register and hear cases only related to these issues. However, this is a completely wrong interpretation of CGRF jurisdiction- what kind of cases can be taken up at CGRF level. Finally, it was also pointed that some of the consumers have been successfully manipulating the system, in collusion with utility staffs, to reduce their bill. For example, some consumers collude with meter readers and show a reduced reading for a long period while the actual meter runs as per consumption. When the actual reading is detected, the consumers file a complaint that meter has malfunctioned and file case for average payment, with documentary evidence and legal support. Such cases, based on previous meter reading reports, are naturally decided in favour of the consumer by the CGRF.

Office of the Ombudsman was established in 2005, which is located within the KERC office. Unlike Delhi and Maharashtra, the Ombudsman in Karnataka functions as a wing/division of the

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6 The number of cases at CGRF level is so low that we could not find adequate number of respondents for our survey. This is largely because of the institutional changes. While the state moved from discom level CGRF to district level CGRF, old grievance data was not archived nor is it available. This appears to be a major problem in many of the government departments. Consequently, our survey had to rely on the cases registered with new CGRFs, i.e. January 2014. Over January-June, very few cases were registered with the CGRFs, as compared to other states.

7 However, the CGRFs or the Ombudsmen in any of the states do not have any enforcing or penal power. These forums may recommend any action or compensation and seek a compliance report. But they do not have any power to hold the discoms accountable if their recommendations are not complied with.

8 Consequently, all the respondents who had gone to a CGRF in our survey had grievances related to metering or billing error.
commission. There is no provision for separate budget or facilities, but all sort of facilities and resources required are available. Yet, the office seems functioning reasonably well. According to the Ombudsman, during 2005-10, both the CGRFs and ombudsman were there “for the namesake, not functioning at all.” The Ombudsman used to receive 2-3 cases per month, but recently it has increased to 15-20 cases per month. The forum has given decision on 166 cases so far and 100 out of them have been in favour of the consumers, altering the CGRF decision. The forum receives cases of different natures including bill disputes, meter fault, misclassification of tariff, power factor penalty and release of new connections, but all of financial matter, for obvious reason. As pointed out by the Ombudsman, unlike in case of CGRFs, the discoms tend to listen to ombudsman and the commission: “The MDs of discoms are juniors. So, a personal call and they follow what we say.” This may be an effective approach to get things done, but it is not the right way of institutionalising a mechanism.

Low number of cases at CGRFs and ombudsman is blamed on low level of awareness. Initially, the discoms did not do much to inform the consumers. But, in last 3-4 years, things have changed with BESCOM taking several consumer oriented initiatives, which was later followed by other discoms. According to the ombudsman, “discoms were not interested in consumer engagement; they are doing things under our [KERC and ombudsman] pressure.” He went on to add, “Discoms need to be pro-active and pro-consumer. The master-servant relation is still there. It will take time to come out of this mind-set.”

Apart from the district level CGRF, Karnataka has a few other noteworthy innovations. KERC, through a special regulation, established an office of consumer advocacy in 2001. The purpose was to represent consumer interest in regulatory hearings and advise the commission on consumer matters. A recognised consumer activist was holding the office till 2013. However, it is now vacant and the functions are assigned to the Ombudsman. Further details on consumer advocacy cell are discussed in the following chapter. Karnataka is the only state which has a dedicated budget for consumer education and awareness. On directions from KERC, BESCOM (the largest discom) has earmarked Rs 1 crore for this purpose and other the discoms have put in 50 lakhs each, resulting in total expenditure of 3 crores on consumer education and awareness. But this fund has barely been used so far.

Last, but most important is the initiatives taken at discom level to better serve to the consumers. All these initiatives are first taken up by BESCOM, the largest discom in the state. Other discoms are following it and are in the process of institutionalising these measures. The discom has set up a dedicated customer relations division, headed by a General Manager, with the objective to improve interaction with the consumers on a regular basis. It also has an internal customer care cell, linked with all circle and division offices, that receives all sort of complaints from consumers through phone call, email, online form and facebook. To resolve this complaint at the earliest, the discom has put up several mobile maintenance units with required technology and staff and these units are equipped to reach any point of the service within a very short time. All these facilities are available 24/7 throughout the year. Finally, to further improve the interaction with consumers, different levels of

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9 The ombudsman and some regulatory staffs are retired senior officials of the electricity department. They have worked with the current MDs of discoms, in senior positions. That personal relation seems to be tapped for getting things done.
discom offices organise ‘customer interaction meetings’, at least once in a month. Though the attendance is not very high, it has been useful for both the parties. All these measures are important contributions for bringing the service provider closer to the service user and also to improve complaint handling at the discom level. As a result, there is high satisfaction among the consumers in terms of service quality improvement. In Karnataka, 52% of our survey respondents claimed that electricity service have improved significantly in last five years and another 41% felt it has somewhat improved during the period.

The Managing Director of BESCOM claimed that the “idea [behind these innovations] was to interact with consumers.” He attributed four sources of inspiration, viz. KERC instructions, management decision, demand from educated consumers, and the threat of privatisation. There are two major challenges, in his opinion, that hinder further improvement. First, mind-set has been and will remain a major challenge. Training and awarding have helped in breaking through it; new set of employees are more useful here. Second major challenge is shortage of field staff, in the range of 35-40%. But the discom has been working with contract workers.

3.3.4 Maharashtra
CGRFs and Ombudsman were established in the state as per the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2006. This is one of the elaborate regulations with clear guidelines. The regulation requires the forum to protect the interest of consumers and inform consumers of their rights. The latter provision is a unique feature of MERC regulation. Unlike other states, where the SERC regulation requires at least one CGRF for each discom, MERC regulation makes provision for CGRFs at the level of distribution zones. However, the urban suppliers in Greater Mumbai are exempted and required to have at least one forum each. Consequently, MSEDCL has 14 CGRFs for each of the 14 distribution zones and other three service providers in Greater Mumbai have one CGRF each.

In terms of composition of CGRF, the regulation has made provision for a representative of the discom with the rank of Executive Engineer and a representative of a registered voluntary consumer protection organisation of the area. The forum is headed by a Chairperson, who could be a ‘retired’ senior officer from a range of specified services. Keeping with the practice of a legal member in CGRFs of many other states, most of the CGRF Chairpersons in Maharashtra have a judicial background. Remarkably, MERC regulation also requires the Chairperson to preferably have working knowledge of the vernacular language. This is an important provision to ensure better interaction between the consumers and the forums that other states have missed. While the Chairperson is appointed by the discom, the consumer member is appointed by the commission. Remunerations for both the positions are decided and paid by the respective discoms. Consequently, there is some discrepancy in the remunerations across discoms; the private discoms in Mumbai pay a better remuneration than MSEDCL. The CGRF members are assisted by a secretary appointed by the discom. None of these positions are fulltime; the forums meet depending on registration of cases to

10 As per the MERC regulation, the Chairperson shall be a retired senior judicial officer; or a retired civil servant not below the rank of a Collector; or a retired Principal of reputed engineering college; or a retired professor of the electrical engineering department of a reputed institute; or a retired senior electrical engineer of the government. A wide range of choice, but does not seem to have any prioritisation of required skills for the position.
decide. Independent members are allowed to take up other commitments and discom representatives have other (and primary) commitments within the organisation.

Localised (zonal) CGRFs have worked out reasonably well in Maharashtra. Though the number of cases has been increasing over time, consumer awareness on these issues remains low and thus, is an issue of concern. There have been several sporadic efforts in this regard, but not much results. CGRFs receive complaints on a range of issues including quality of service and service related, which are not entertained by the CGRFs in Karnataka, Haryana and Rajasthan. A quantitative snapshot of CGRF cases in the year 2012-13 is presented below (See Table 3.2). As can be noticed, the cases are well spread-out across consumer categories, almost corresponding to consumption pattern. About 62% of the cases were decided in favour of the consumers.

Table 3.2: A Snapshot of Grievance Redressal at CGRFs in Maharashtra (2012-13)

<table>
<thead>
<tr>
<th>Type/Category of Grievance</th>
<th>MSEDCL</th>
<th>Rintra</th>
<th>TPC</th>
<th>BEST</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Grievances from Different Consumer Groups</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential</td>
<td>260</td>
<td>4</td>
<td>7</td>
<td>14</td>
<td>285</td>
</tr>
<tr>
<td>Commercial</td>
<td>108</td>
<td>4</td>
<td>1</td>
<td>25</td>
<td>138</td>
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However, there are few divergences in detail. First, in a three member forum, where majority (of two members) decree prevails, having a discom representation could be anti-consumer, as pointed by some stakeholders. If the Chairperson is sympathetic to the discom, the decision goes in favour of the discom. In that case, appointment of the Chairperson becomes crucial to ensure independence of the forum. Second, considering the Chairpersons are drawn from the judicial service, the system tends to be little legalistic. Even when the consumers are entitled for compensation and the consumer member has pointed out that, on instances, the Chairperson has not recommended any compensation. Referring to a particular case, one of the consumer members pointed out, “the Chairperson does not support for compensation, as the complainant did not put it in prayer.” Third, a related observation was that many of the consumers do not have the capacity to make a strong case. Consumers have complaints, but they are not well informed to make a strong case out of it. In a legalistic grievance redressal system that is not sensitive to consumer interests, the consumers do not get full justice. For example, many of the consumers are unaware about SoP and they do not claim compensation for non-compliance of SoP. In that case, the forum does not take up those aspects suo moto, depriving the consumers from natural justice. However, some consumers who take help from lawyers come well prepared. On the other hand, as pointed by member of a consumer group, the consumers are also not keen to make a formal complaint to CGRF. They face
problems, complain about it, but not willing to register a formal complaint, even when assistance is provided. That is one of the reasons why the number of cases is not so high. Fourth, even when the forum takes decision in favour of the consumer, the discoms rarely follow it. Earlier the discoms used to file a compliance report, which is increasingly stopped now. Considering the forums do not have any penal or enforcing power, they cannot do much to ensure compliance. Finally, some stakeholders find that the grievance redressal mechanism is “not a level playing field”. The discoms on the one side have access to all the resources and they can put their related expenses to the ARR, but consumers do not have any access to resource or support.

As a result, consumer satisfaction with the CGRF decisions is relatively low. Though 62% of the judgements at CGRF level have gone in favour of the consumers, only 30% of our respondents were satisfied with the outcome (Figure 3.6). Another 48% are somewhat satisfied. Rural consumers, who are served by the state-run discom, are relatively less satisfied; only 20% of the rural respondents are satisfied with CGRF verdict and another 53% are somewhat satisfied.

Maharashtra is the only state to have two electricity ombudsmen, one in Mumbai and the other in Nagpur. The state started with one office of Ombudsman in December 2004, but later in July 2011 a second ombudsman was put in place. The Ombudsman offices enjoy relative autonomy, by being appointed by the MERC. Unlike other states and like Delhi, the Ombudsmen are not housed inside the regulatory commission. The idea behind having two ombudsmen was that the state is big and a second ombudsman is required to improve accessibility for consumers. However, according to the first electricity Ombudsman of the state, “it was not required. With 60-70% of time, I was able to deliver by organising camp offices in Nagpur, Pune, and Aurangabad... Second unit further reduces the workload and increases cost.” Such camp offices were organised once or twice each month at each of the locations. Though the big industrial consumers were required to visit main office of Ombudsman, the small consumers were never required to travel too far. However, presence of two Ombudsmen has not increased the number of cases.

Roughly 15-20% of the cases that are registered at CGRFs are appealed to the Ombudsman. In 2012-13, while the CGRFs decided on 1062 grievances, both the ombudsmen decided on 184 cases, about 17% of the CGRF cases. As claimed by the ombudsman’s office in Mumbai, about 60% of cases are redressed in favour of consumers. Another 10-15% of the cases are redressed through settlement. The ombudsman offices also offer some assistance to the consumers in filling the forms to register the grievance. Generally, low level of awareness among the consumers is considered to be a challenge. As per the MERC regulation, the responsibilities of raising consumer awareness have been assigned to the CGRFs. Given that much has not been achieved and the awareness remains abysmally low, the Mumbai Ombudsman opined that this particular role should have been assigned to the Ombudsman’s office for better outcomes.

Though the grievance redressal mechanisms in the state have been functioning reasonably, there has not been much effort to address the first tier, i.e. the internal complaint handling procedures. The procedure is complex even at this first level. Consumers with any problem have to approach the facility centres (call centres) or local office first. If their complaint is not resolved, they have to approach the Internal Grievance Redressal Cell (IGRC). If the grievance is not redressed by IGRC, consumer can go to CGRF. The redressal mechanism adds one more tedious level to the whole grievance redressal system and thus, makes it a harassing experience for the consumer. As a
consumer group member pointed out, IGRC “hearings are often delayed or postponed. Consumers are told that the officer has gone.” He added, “MSEDCL staff needs training.” While the private utilities in Mumbai have made significant efforts to improve service experience, the public utility serving to largest number of consumers has not done much. As a result, only 12% of our respondents expressed satisfaction with service quality improvement in last five years. About one-fifth of the respondents claimed that there has been no improvement (Figure 3.7).

3.3.5 Rajasthan
Rajasthan has a peculiar system of grievance redressal for electricity consumers. Prior to enactment of the Electricity Act 2003, the state had a system in place known as ‘settlement committees’, at each level of the erstwhile electricity board, including sub-division, division, circle and central.\textsuperscript{11} Even after unbundling and division of the distribution segment, this feature was retained by the subsequent three discoms. The committees were headed by administrative heads of each unit, without any external or independent member, and the objective was to settle any dispute between the consumers and the SEB or discom. In practice, all sort of complaints from consumers were transferred to the settlement committee. As one of the senior experts from the sector pointed out, “none of the officers wanted to take a decision on their own and be accountable for it… The settlement committees are used as a protective shield for the board officers. It lost its intent of helping the consumers, rather delayed things.”\textsuperscript{12}

When the Electricity Act 2003 made provisions for establishment of CGRFs, the state assumed that the existing settlement committees meet the conditions of the provision. Consequently, there was no corresponding regulation from the RERC to establish CGRF or make any change in the settlement committees.\textsuperscript{13} For unknown reasons, however, RERC came out with Rajasthan Electricity Regulatory Commission (Guidelines for Redressal of Grievances) Regulations, 2008. The piece of regulation appears to be one of the confusing set of directives. At first, it had made provision for a ‘Grievance Redressal cum Settlement Forum’ at corporate office of each discom. However, the discoms are allowed to have more such forums to ensure timely disposal of consumer grievances. But then, it goes on to define jurisdiction for forums at sub-division, division, circle and corporate levels. It provides specific guidelines on nature and monetary value of cases that falls into jurisdiction of each forum.\textsuperscript{14} It makes a clear distinction between monetary and non-monetary nature of grievances, by putting an incremental fee for registration of monetary nature of grievance at each level of CGRFs.

\textsuperscript{11} This feature was borrowed from Punjab, which was the first state to have such a model, and introduced in Rajasthan during the reforms process, in the tenure of Mr P N Bhandari as Chairman of the erstwhile SEB. The move was well accepted and commended as a measure to improve customer service.
\textsuperscript{12} The settlement committees meet on regular intervals, mostly once in a month. By transferring all complaints to the committee, there was a delay in complaint handling, particularly for those complaints that could have been addressed immediately.
\textsuperscript{13} However, just prior to the enactment of the Electricity Act 2003, in March 2003, RERC has published Rajasthan Electricity Regulatory Commission (‘Distribution Licensees’ Standards of Performance) Regulations, 2003 that defines the SoP for all discoms in the state. Any failure to meet the SoP by the discom entitles the consumer or a perspective consumer to relief and subject the discom to fines and charges as determined by the commission.
\textsuperscript{14} As per the 2008 RERC regulation, sub-divisional forum can accept only monetary nature grievances worth up to Rs 10,000, divisional forum can accept non-monetary grievances from LT consumers and monetary nature grievances worth up to Rs 25,000, circle forum can accept non-monetary grievances from HT consumers and monetary nature grievances worth up to Rs 3,00,000, corporate forum can accept non-monetary grievances from EHT consumers and monetary nature grievances worth more than Rs 3,00,000.
The regulation allows consumers to register a complaint in any form including orally in person or on telephone or in writing to the duty in-charge of the specified offices. As per the regulation, each complaint is assigned with a number and entered in a register meant for the purpose under the RERC (‘Distribution Licensees’ Standards of Performance) Regulations, 2003.

Consequently, the outcome has been equally confusing. Any forms of complaints, including power outage calls, are registered as a grievance, leading to an annual list more than 25,000 cases in the state. But that does not necessarily mean that all the cases are taken seriously. The distinction between monetary and non-monetary complaints is strongly maintained in practice. The non-monetary cases are registered and a note is sent to the responsible office or authority for action. Though the office is expected to submit an action-taken report to the forum, it is rarely practised. However, the monetary nature grievances are heard and discussed in the forums in presence of both the consumer and discom representatives. Until recently, consumers had to pass through all the layers of CGRFs, before they could approach the Ombudsman. For example, depending on nature and consumer type, if a grievance is first registered at the sub-divisional forum, it has to go through divisional, circle and corporate forums, before it can be appealed at the Ombudsman level. This makes the process not only tedious but also harassing for the complainant. However, under continuous demand from the State Advisory Committee, two changes have been introduced through RERC orders. First, a complainant after approaching any one appropriate levels of CGRF can directly approach the Ombudsman. Second, at the corporate level of CGRF, an independent member has been introduced. But the independent member for all the three discoms is same person and drawn from the state Transco, Rajasthan Vidyut Prasaran Nigam.

The history of electricity Ombudsman is no different in the state. After enactment of the Electricity Act, 2003, the RERC notified the RERC (Settlement of Disputes by Ombudsman) Regulations, 2003. Based on the regulation, in May 2004, RERC designated the Divisional Commissioners, Government of Rajasthan, posted at Jaipur, Ajmer and Jodhpur to perform the function of Ombudsman, in addition to their own duties. As a senior expert and SAC member pointed out, “these designated Ombudsmen neither had time for electricity consumers nor the consumers went to them.” He also added that not a single grievance was registered with any of the three Ombudsmen, in six years of their existence. This issue came up several times in the SAC meetings and regulatory hearings, and there was a growing demand for an independent Ombudsman.

Subsequently, the Commission notified the RERC (Settlement of Disputes by Electricity Ombudsman) Regulations, 2010 and has appointed an independent Ombudsman through open advertisement. The Ombudsman is housed inside the RERC. The office of Ombudsman is a one-man office, without any dedicated support staff; yet, the Ombudsman does not feel any resource or capacity constraint. However, the number of grievances has been increasing gradually. Grievances are received through alternative mediums, including postal letters. Cases are decided even in absence of the complainant and in about 50% of the cases, decision has gone in favour of the consumers.

15 The current Ombudsman is a retired officer of RERC and claimed to get assistance from the support staff of the commission, as and when required.
16 Ombudsman received 7 grievances in the first year, 2010-11, which went up to 29 in 2011-12, 45 in 2012-13, 62 in 2013-14 and in the first quarter of 2014-15, 60 grievances have been registered.
There seem to be some degree of hope from the independent Ombudsman, as reflected by the respondents. However, the CGRF experience remains confusing and tedious. In our survey, only 20% of the respondents found CGRF outcome satisfactory, another 20% were dissatisfied with it, and remaining 60% found it somewhat satisfactory (Figure 3.6). As the bottom two tiers of consumer grievance redressal are merged in the state, it is hard to distinguish between the internal complaint handling of discoms and CGRF experience. But, unlike other states, Rajasthan has not done anything significant to improve electricity service and consumer experience. Correspondingly, only 7% of our respondents felt that electricity service has improved significantly in the last five years. Another 75% of respondents claimed that there is somewhat improvement and remaining 18% felt that there is no improvement at all (Figure 3.7).

3.4 Conclusion
Grievance redressal mechanisms for electricity consumers have been established in the selected five states. But the structures, processes and consumer satisfaction vary to a certain extent. Looking into experiences in the five states, we have identified following aspects that matter for effectiveness of the mechanisms.

**Composition of the Forums Matter for Equity:** While all states have single member ombudsmen and three members CGRFs, the composition of CGRFs and appointment of members vary across states. While all the three members in Delhi are independent of discom, Maharashtra has one member from discom, Karnataka and Haryana have two members from discom, and all the members in Rajasthan are from discom. This has had a serious implication for independence of the forum. As discussed earlier, even presence of a single member from the discom and appointment of the Chairperson by the discom is seen as anti-consumer by some stakeholders in Maharashtra. When two or more (majority) members are drawn from the discom, the forum tends to be pro-discom. The impact of having one or two members from the discom in the CGRF can been seen in the number of cases being decided in favour of the consumers. For example, while Delhi CGRFs have decided 70-80% of the cases in favour of the consumer, Maharashtra CGRFs have decided 62% of cases and Karnataka CGRFs have decided only 20% of the cases in favour of consumers. Second, some of the CGRFs have a legal member by provision and others select a Chairperson with a judicial background, resulting in a system that could become too legalistic in some cases. Much depends on how the case is presented.

**Keeping the Process Simple is Important:** Presence and intervention of legal professionals in the system, particularly in cases where a large amount of money is at stake, have fostered legalistic developments with a focus on the quasi-judicial facet of these forums. Though the system is yet open and many of the CGRFs accept grievances through a plain application, further legalisation of the process may make it inaccessible to small consumers.

**Adequacy of Resources for CGRF Impact Efficiency:** The states also vary in terms of the availability of resources for the CGRFs and Ombudsmen. While Delhi seems to doing well here by having separate offices and staffs for both CGRFs and Ombudsmen, in other states, CGRFs are housed with the discoms and Ombudsmen with the SERC. Though it is hard to establish a correlation here, but this

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17 Considering the non-monetary grievances are not heard or discussed in the CGRFs, for our survey, we spoke to the respondents who has a monetary nature grievance and been through complete experience of grievance redressal.
seem to have significant implications for independence of the forums and their responsiveness to the consumers. To a great extent, it is reflected in the outcomes, the number of cases being decided in favour of the consumers. As discussed earlier, the CGRFs and Ombudsman in Delhi are more consumer-friendly as they seem to address subtle issues to build consumer trust in the system.

*The Forums must Accept all Nature of Complaints, including Quality of Supply:* There appears to be a greater emphasis on the monetary nature of grievances in the grievance redressal mechanism. Except Delhi and Maharashtra, all other discoms accept only those grievances where monetary issues involved. Consumers with grievances on the quality of supply and service in these states are left vulnerable to the whims of the discom staff.

*Following SoPs while making Decision and Penalising Utilities for Non-Compliance:* The Standards of Performance set for the discoms seem to be undervalued. Almost no mechanism exists to monitor compliance with SoPs, but neither do the grievance redressal forums consider these as a factor while taking decisions. Delhi seems to be the only case, where CGRFs have considered SoP and recommended compensation to the consumers.

*Non-Compliance of CGRF Decisions Erodes Institutional Credibility and Legitimacy of the Forums:* Compliance with CGRF and Ombudsman orders by the discoms is low and in some cases on a declining trend. Given that CGRFs and Ombudsmen have no enforcing and penal power over the discoms, they cannot do much to ensure compliance. Though the consumers can take up this matter at the regulatory commission level, it becomes another hurdle for consumers. Furthermore, not much has happened at the commission level and the commissions have not taken it up on a suo moto basis.

*Improving Consumers’ Awareness on the Forums is Vital for their Success:* Consumer awareness of the grievance redressal system appears to be low. Though all the discoms have put some effort towards this, again in a varying degree, there are still significant gaps. The responsibility of consumer awareness often rests with the discoms, except in Maharashtra where it is also assigned to the CGRFs. It was observed that most of the discoms aim to meet the requirement by publishing in newspapers; no significant innovation in communicating with the consumers could be noticed. Among the randomly picked general consumers, about 22% of the respondents (highest 44% in Haryana) did nothing when they faced a problem. Most of them did not approach anyone because either they did not know whom to approach or they did not have any trust in the system. A survey on consumer awareness of consumer rights and consumer grievance redressal within the service territory of MSEDCL, commissioned by MERC, found abysmally low level of awareness. Of a sample of 12,177 consumers, only 71 (less than 1 percent) knew about the Electricity Act 2003 or the rights of electricity consumers. Of these 71, only four knew about the CGRF and Ombudsman regulations.

*Incentivising Utility Proactivity in Internal Complaint Handling is Cost & Time Effective:* Even for those who are aware of the CGRM, going through a multi-stepped process to get satisfactory resolution of a grievance can become a tedious experience. In some cases, even the internal complaint handling process in the discom can have many steps and can be complex and tedious. Some examples are the

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internal grievance redressal process in Maharashtra (MSEDCL) which itself has many hoops that the consumer has to jump through and until recently Rajasthan, where the CGRFs were four layered structures. We recognize that it is important and useful to have more than one avenue to resolve grievances, but it would be much better if the first level (discom’s internal complaint handling) is more effective and efficient so that the consumer does not have to go through a tedious experience. This would also save resources. Discoms in Delhi and in Mumbai have to a great extent fixed the internal complaint handling, though more is desired. Karnataka and Haryana are in the course of improving the process and consumer experience. However, not much has been done in Rajasthan or MSEDCL area in Maharashtra.

*Close Monitoring and Oversight on the CGRF Process by the Regulators is a Must*: Existence of grievance redressal forums has provided an opportunity to consumers to present their voice in the form of grievances. But whether they are satisfied or dissatisfied with the outcomes, and whether the overall CGR process is effective, there is almost no further attention paid to these issues in the regulatory process. It seems that the consumers’ voice is heard only in the limited confines of the CGRF and Ombudsman office, and it is not amplified, or even carried forward, in the regulatory process by the Commission to affect regulatory decisions. Though the CGRFs and Ombudsmen are required to submit a periodic report, which is being done, the commissions have not really analysed these reports and drawn insights for regulatory proceedings. This is further discussed in the last chapter with our conclusions and recommendations.

In conclusion, the grievance redressal mechanism in electricity has emerged as a useful platform to the consumers to raise their voice, question the performance of utilities and hold them accountable. But, as yet, it has not reached the desired level of effectiveness. The CGRM provides a great opportunity to improve consumer experience and overall governance of the sector. A lot can be learnt and shared among the states. Drawing on the experience of states and analysis of international experience, chapter 6 provides detailed recommendations and a roadmap for improvement of grievance redressal mechanisms.
**Figure 3.2: Type of Problems Faced by General Consumers (in last 2 years)**

- **Power supply interruptions (Power cut)**
  - Delhi: 10%
  - Haryana: 17%
  - Karnataka: 26%
  - Maharashtra: 12%
  - Rajasthan: 18%

- **Incorrect meter reading and billing**
  - Delhi: 50%
  - Haryana: 0%
  - Karnataka: 4%
  - Maharashtra: 3%
  - Rajasthan: 0%

- **Faulty meters**
  - Delhi: 62%
  - Haryana: 0%
  - Karnataka: 3%
  - Maharashtra: 3%
  - Rajasthan: 33%

- **Change in connected load**
  - Delhi: 88%
  - Haryana: 24%
  - Karnataka: 65%
  - Maharashtra: 4%
  - Rajasthan: 44%

- **Change of name/Address**
  - Delhi: 50%
  - Haryana: 13%
  - Karnataka: 3%
  - Maharashtra: 13%
  - Rajasthan: 14%

- **New Connection**
  - Delhi: 50%
  - Haryana: 10%
  - Karnataka: 2%
  - Maharashtra: 10%
  - Rajasthan: 14%

**Figure 3.3: Percentage of Consumers who did nothing when they Faced Any Problem in Service**

- **Someone else will complain**
  - Delhi: 18%
  - Haryana: 44%
  - Karnataka: 22%
  - Maharashtra: 12%
  - Rajasthan: 18%

- **No faith in the system**
  - Delhi: 50%
  - Haryana: 13%
  - Karnataka: 3%
  - Maharashtra: 13%
  - Rajasthan: 38%

- **Do not know what to do**
  - Delhi: 10%
  - Haryana: 7%
  - Karnataka: 17%
  - Maharashtra: 58%
  - Rajasthan: 50%

- **This is the way it is**
  - Delhi: 15%
  - Haryana: 0%
  - Karnataka: 11%
  - Maharashtra: 26%
  - Rajasthan: 14%

- **Other**
  - Delhi: 0%
  - Haryana: 4%
  - Karnataka: 5%
  - Maharashtra: 10%
  - Rajasthan: 14%

**Figure 3.4: Why Consumers do not Complain?**

(%% of respondents who did nothing when faced any problem in service)
Figure 3.5: Share of Problems for which Consumers Approached Discom, CGRF, and Ombudsman

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<th>CGRF</th>
<th>Ombudsman</th>
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<td><img src="chart14" alt="Pie Chart" /></td>
<td><img src="chart15" alt="Pie Chart" /></td>
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</tbody>
</table>

- **Delhi**
  - Discom: 33% Power supply interruptions, 47% Incorrect meter reading and billing, 8% Faulty meters
  - CGRF: 22% Power supply interruptions, 7% Incorrect meter reading and billing, 7% Faulty meters
  - Ombudsman: 40% Power supply interruptions, 10% Incorrect meter reading and billing, 10% Faulty meters

- **Haryana**
  - Discom: 22% Power supply interruptions, 66% Incorrect meter reading and billing
  - CGRF: 3% Power supply interruptions, 74% Incorrect meter reading and billing
  - Ombudsman: 40% Power supply interruptions, 40% Incorrect meter reading and billing

- **Karnataka**
  - Discom: 14% Power supply interruptions, 43% Incorrect meter reading and billing
  - CGRF: 3% Power supply interruptions, 100% Incorrect meter reading and billing
  - Ombudsman: 100% Power supply interruptions

- **Maharashtra**
  - Discom: 19% Power supply interruptions, 59% Incorrect meter reading and billing
  - CGRF: 7% Power supply interruptions, 47% Incorrect meter reading and billing
  - Ombudsman: 10% Power supply interruptions, 20% Incorrect meter reading and billing

- **Rajasthan**
  - Discom: 6% Power supply interruptions, 46% Incorrect meter reading and billing
  - CGRF: 2% Power supply interruptions, 25% Incorrect meter reading and billing
  - Ombudsman: 10% Power supply interruptions, 40% Incorrect meter reading and billing

*Legend: Power supply interruptions (Power cut), Incorrect meter reading and billing, Faulty meters, Change in connected load, Change of name/address, New connection, Others*
Figure 3.6: Share of Consumers Satisfied with CGRF Decisions

Figure 3.7: Consumer Opinion on Improvement of Service Quality in Last Five Years
Chapter 4
Consumer Participation and Representation in Regulatory Process

4.1 Introduction

In the previous chapter, we analysed current state of consumer grievance redressal in selected states. Grievance redressal mechanism offers a useful forum to the consumers to raise their voice against service providers’ performance and express their (dis)satisfaction with service quality. But these voices are fragmented, limited to individual grievances, and are not necessarily aggregated and taken into consideration in the decision making.

To represent consumers’ voice and interest in decision making, the Electricity Act has made several provisions for regulatory decision making.¹⁹ In this chapter, we aim to highlight those provisions and assess their adoption, institutionalisation and effectiveness in the selected states. The following section 4.2 identifies the provisions for consumer participation and consumer interest representation in the regulatory process. Section 4.3 looks into institutionalisation of these provisions at the state level. Drawing on the state experiences, we have analysed the emerging trends of consumers’ participation and representation in regulatory process in section 4.4. Building on the analysis, this section also makes the case for a holistic approach to consumer participation in regulatory decision making in Indian electricity.

4.2 Legal Provisions

Participatory governance and decision making is a key feature of independent regulation that sets it apart from government regulation. With adoption of independent regulation,

¹⁹ Most of these provisions were introduced in the Electricity Regulatory Commission Act 1998, which were later retained in the overriding 2003 Act.
as part of structural reforms in Indian electricity, consumer participation in the regulatory process was brought into forefront. Though consumer protection has been one of the concerns even in earlier electricity legislations in India, it was only during the recent reforms, that consumer participation in decision making has been highlighted. E Act requires the Commissions to protect consumers by regulating operations of utilities and tariffs, and simultaneously address irrational decision making in the sector through complete transparency and meaningful public participation in the governance process (Rao, 2004: 88).

The Electricity Regulatory Commission Act, 1998 for the first time made provisions for direct participation of consumers in the regulatory (decision-making) process. Later, the Electricity Act 2003 has retained these provisions in order to ensure participatory governance in the sector. These provision (summarised in Box 4.1), require the Commissions to hold regular public consultations and hearings on matters having implication for electricity consumers. Any application from the licensees is also required to be put in the public domain in abridged and comprehensible form so that the public can access and review it. Consumers and other concerned parties are also allowed to question and raise objections to such applications in writing or orally in the public hearings. The Commissions are required to take a decision after listening to all the parties and considering their views.

While the legal framework allows direct participation of consumers and their representatives in the regulatory process, it is neither practically possible for all consumers to participate in the proceedings nor is it possible for the Commissions to accommodate and consider individual concerns and comments. The prevailing legislation also makes provision for consumer interest representation in the regulatory process though State Advisory Committees, whose role is to advise the respective Commissions on important policy issues, quality, continuity & extent of service provided, compliance with licence conditions, protection of consumer interests and standards of performance by utilities. Such Committees are required to draw their members from various consumer groups, other concerned parties and experts so that all kind of interests are represented in the regulatory process.

All these provisions have been adopted by the states being studied. Yet, there are wide differences in the way they have been adopted. In some states, it has been a token adoption while in other states there has been a determined effort to institutionalise these processes. In the following section, we discuss the state experiences in detail.

4.3 State Experiences on Consumer Participation

The selected states for this study have varying political economy and political sociology that is expected to have significant impact on institutionalisation, institutional processes and consequently, on the level of consumer assertion and engagement in electricity regulatory process. While the institutional framework has been put into place in all the states, in this section, we aim to analyse the processes and resulting outcomes. Considering the sensitiveness of consumers to tariff issues, we have looked into the regulatory proceedings around retail tariff fixation. We have also analysed functioning of the SACs in all these states to understand their effectiveness in representing consumer interests in the regulatory process.
4.3.1 Delhi

Delhi has been one of the early movers in adopting electricity reforms and is one of the two states that have completed all the stages of reforms. Consequently, the state has a well restructured electricity sector with the distribution segment completely privatised. Like in other states, Delhi has adopted the mechanisms for consumer participation in regulatory decision making and has been following the procedures as prescribed the legislation.

DERC has been organising the public hearings on regular basis, which are advertised in newspapers and are reasonably attended by consumers, consumer groups and other interest groups. DERC organises a single hearing on tariff petitions from all the discoms. Looking at the last five retail tariff proceedings, we found that participation from the domestic consumers and consumer groups has increased from 99 participants in 2007 to 218 in 2013. However, the number of written objection filed has not changed much, although there have been some fluctuations in between.

Delhi does not have many vibrant and assertive consumer organisations who work on electricity service issues. There are a few smaller CSOs that have been participating in regulatory proceedings, but mostly on tariff issues. The uniqueness of Delhi is the presence of significant number of Resident Welfare Associations (RWAs) who have been consistently engaging in the regulatory process and are reasonably well informed on technical issues. At the same time, there are several individual participants who have technical expertise in the sector. Consequently the deliberation and issues raised in hearings in Delhi are relatively well informed. Number of issues raised in the latest tariff hearing is significantly high compared to other states (See Figure 4.2). Engagement of informed stakeholders is also reflected in the nature of issues discussed: about 40 per cent of the issues were on discoms’ performance followed by other procedural issues and tariff issues. Fewer issues on quality of supply may be because of significant improvements in the past years, as discussed in the previous chapter.

<table>
<thead>
<tr>
<th>Table 4.3: Level of Participation in Retail Tariff Proceedings, Delhi</th>
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<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td>Total Number of participants in public hearings</td>
</tr>
<tr>
<td>Industrial and Commercial Consumers in public hearings</td>
</tr>
<tr>
<td>Domestic Consumers, consumer groups and Others (specified) in public hearings</td>
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Overall, the quality of interventions in Delhi is relatively better and more consistent with the subject of hearing. The tariff orders published by the DERC have considered the issues raised, sought response from the concerned discom(s) and provided the judgment from the commission, as required by the 2003 Act. However, the tariff orders provide a summarised version of interventions, which may have lost the substance or other less relevant interventions. On the other hand, the Commission’s reasoning and decision on specific objections/interventions are not interlinked with the final decision on tariff determination. For consumer information and awareness, the reporting needs to be improved and presented in a simplified manner that is comprehensible to wider
stakeholders. In the current format, it requires some level of technical knowledge to follow the report and outcomes, and also does not explain the linkage of specific interventions with the subject matter, i.e. tariff.

Consumer participation is reactive and circumstantial, especially for retail tariff hikes. In case of hearings on other matters, participation is significantly low. Even the commission orders do not report on details of stakeholder participation. As suggested by a regulatory staff member, tariff hearings are often subject to political activism and appropriation. All the major political parties organised around tariff hearing and oppose any rational tariff hike. In the most recent tariff hearing, AAP, BJP and the Congress leaders came with large groups of supporters, submitted their objections and protested outside the hearing venue. However, all these are seen as political gimmicks to build political support rather than making any substantive intervention in the process. However, DERC may not be completely independent of political pressure; as it has been seen, DERC on multiple occasions has revisited its decision (on rational pricing) seemingly to accommodate political pressures.

DERC has also taken a few initiatives to raise consumer awareness and better equip the stakeholders to participate in the regulatory proceedings. The Commission has published five public awareness bulletins on some of the technical aspects. However, such initiatives are sporadic and need to be intensified for real outcomes. While the consumer participation in regulatory proceedings appears to be fair in Delhi, there is huge scope for further improvement and meaningful participatory governance in the sector.

On similar lines, consumer interest representation through the SACs has a fair performance in Delhi. The SAC of DERC has been performing better compared to other four states in this study. In terms of composition, the SAC has highest number of subject experts and no representation from the discoms or licensees. Yet, the number of consumer representatives is comparative low (see Table 4). The SAC meets at least twice a year to deliberate and advice on important issues. However, the Commission has not put up the minutes of such meetings; minutes of only two meetings in 2011 are available on DERC website. Looking into the minutes of the SAC meeting held in latter part of 2011, we found that the committee has taken up more substantive issues for deliberation, with wider implications for the consumers (see Table 4.7). As pointed out by an SAC member, the Committee has guided the Commission on matters including important policy matters. The Commission has also appointed SAC members in some internal committees to assess important policy issues. According to an SAC member, the perception on DERC’s receptivity may vary across the members. “But if you put something professionally, the DERC listens.” He also went on to add that receptivity also partly depends on the Chairperson; some of the DERC Chairpersons, as ex-officio Chair of SAC, have been more receptive than others.

4.3.2 Haryana

Haryana again was an early mover in reforming the electricity sector, but stopped at the restructuring stage. The state had segregated different segments of electricity supply industry and established an independent HERC, much before the 2003 Act came into force. The state is served by two corporatized public utilities, viz. UHBVNL & DHBVNL. HERC seems to have followed all the
provisions regarding public proceedings, as prescribed in the legislation, but just in letter and not necessarily in spirit.

Consequently, the state of public participation in the state is appalling, just as the consumer grievance redressal system. It also signified low level of trust among the consumers in the regulatory system. Looking into last five retail tariff orders, issued over 2010-2014, we found that the orders do not provide any account of public participation in the regulatory proceedings. The orders however have a list of objections filed, which is significantly low compared to other four states. Moreover, it has declined over the last five years from 13 in 2010 to 8 in 2014 (see Table 4.2). For a state with wide range of consumer base, including a strong group of farmers, and relatively poor quality of service (as discussed in the previous chapter) low level of objections shows consumer apathy towards the regulatory system.

| Table 4.4: Level of Participation in Retail Tariff Proceedings, Haryana |
|---------|---------|---------|---------|---------|---------|
| Number of Objections Filed | 13 | 10 | 12 | 10 | 8 |
| Number of participants in public hearings | None of the orders provide any list of participants in the public hearings. |

Interestingly, Haryana does not have a single consumer group that works on electricity service, although there are a few groups which work actively in other public service delivery sectors. The leader of a consumer group that works on telecom and health services pointed out that the HERC is not interested in engaging with consumers or consumer groups. “Unlike TRAI [the telecom regulator], HERC does not inform or invite us to any of their meetings... Even when we approach them, they do not care.” Moreover, as a respondent pointed out, consumers have a wrong perception that “HERC is an extension of the Bijli Board.”

Consequently, the issues raised in the hearings are thin and largely focused on tariff matters (see Figure 1). Haryana also has lowest number of issues raised and discussed in the latest retail tariff hearings (see Figure 4.2). Within the limited engagement, interventions vary depending on consumption level; while the high consuming consumers focus on quality of supply, the low consuming consumers focus on tariff levels. Organised groups, such as industry bodies, come with well-prepared interventions with a focus on issues like open access and quality of HT supply. RWAs, the only group representing smaller consumers, focus on low tariffs. Individual consumers do not really understand the petitions submitted by discoms and seem to have complaints on high tariffs or engagement with utility staff.

As required by the Electricity Act 2003, HERC orders have discussed the issues raised by objectors, sought response from the concerned discom(s) and provided Commission’s judgement. The tariff orders again provide a summarised version of interventions, which may have lost the details. As in other cases, the Commission reasoning and decision could be better linked with the final judgement.

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20 Interestingly, a prominent CSO leader could not even take the full name of HERC correctly. Although to be fair to him, his organisation did not focus on electricity service issues.
For consumer information and awareness, the reporting needs to be improved and presented in a simplified manner that is comprehensible to wider stakeholders.

On the other hand, consumers feel that HERC issues orders but they are hardly ever followed by the discoms. Being public utilities, the discoms rarely care and comply with HERC orders. The state government lacks the will to let regulators be independent and enforce their orders. While the governments pretend to be pro-consumer by keeping the tariff artificially low, they seem to be more pro-utility by protecting them from any action from the regulators.

Along similar lines, consumer interest representation through SAC also appears to be jeopardised. Though the SAC in Haryana has the highest number of consumer members in the committee, it also has four representatives from the licensees (see Table 4.4). The SAC meetings are held regularly, but merely as a ritual to meet the provisions under the legislation. An SAC member claimed that these meetings are essentially driven by the discom representatives. “The experience has been so frustrating that we are no more attending these meetings.” It was also claimed that the regulators are sympathetic to the discoms in these meetings. Interestingly, HERC has not put up minutes of any of the SAC meetings. Therefore, we could not gather any information on what kind of issues were discussed in these meetings.

4.3.3 Karnataka

Karnataka was not a frontrunner like Delhi and Haryana; yet, it initiated the reforms and established KERC after the 1998 ERC Act was introduced and much before the 2003 Act came into force. The state has separated the generation, transmission and distribution segments of electricity supply industry and has set up five corporatized public discoms (and one distribution cooperative). While following all the provisions for public proceedings, KERC is also seen as a front runner in terms of the consumer interest representation in the regulatory process.

However, the level of public participation in the tariff hearings is not very high. For a state with five separate hearings for each of the discoms, the total number of participants is merely 76, which has not changed much over the last five tariff proceedings (see Table 5). On the other hand, the number of objections filed has declined drastically from 686 in 2009 to 106 in 2013 (total for five discoms) (see Table 5). While some see this as an indicator of better regulatory performance that has reduced the need for consumer participation, others see it as declining trust and growing apathy towards the system. Some consumer groups also pointed to unavailability of resources and capacity to participate effectively in the regulatory process. Karnataka has a presence of enthusiastic CSOs and consumer groups, which are relatively informed and assertive compared to all other states, except Maharashtra. But for these groups representing small consumers, lack of technical expertise and resources have been a hindrance to engage vigorously in the regulatory process. On the other hand, the industry groups are well organised and have adequate resources and knowledge. They have been engaging regularly and consistently on issues of relevance to HT consumers. One of the leading industry groups has even challenged the decision of KERC in the High Court.

We looked into the proceedings for retail tariff determination for the major discom, BESCOM. The number of issues raised in the hearing for a single discom is significantly better than combined hearings in Haryana and Rajasthan. Most of the issues raised were substantive (more than two-third
focused on cost and quality of supply and discom performance) (see Figures 1 & 2) and were directly relevant to the hearing.

While KERC listens to objectors, seeks response from the licensees and finally takes the decision, guided by the provisions, consumers’ perception and satisfaction with the process is low. As a consumer group member argued, “KERC listens to our views, but does not act on it.” He went on to add that the Commission has a pre-decided agenda and they follow it. An industry group leader claimed that “consumer participation is just eyewash... regulators are appointed by the government and are subservient to the government... [They] do what the government wants.” However, the industry groups feel that regulators are favourable to small consumers as the government wants to protect them from rational pricing.

KERC has taken two pioneering initiatives that have put the Commission as a frontrunner in consumer protection and consumer interest representation. First, the Commission has created a fund of Rs 3 crores for consumer education, with a contribution of Rs 1 crore from BESCOM and Rs 50 lakhs each from other four discoms. This makes Karnataka the only state (among the selected five) to have such a sizable dedicated fund for consumer education. But unfortunately, even after three years of establishment, not a single paisa has been spent from this fund.

Second, KERC was the first Commission to set up a dedicated Office of Consumer Advocacy (OCA). The OCA headed by a consultant, with expertise on consumer issues, is responsible to represent the common interests of the consumers, empower consumers to participate effectively in the regulatory process, disseminate information to consumers, arrange workshops and training programmes for consumer advocacy groups, publish newsletters, fact sheets and other informative materials, handle grievances and complaints of electricity consumers\(^{21}\), interact with the media, conduct survey and publish reports, and advise the Commission on matters relating to consumer protection. A consumer expert was appointed to the position and served continuously for 13 years. But his service was terminated in 2013 and the office has been vacant since then. There are mixed opinion on performance of the OCA. While many people feel that the OCA did reasonably well, with limited capacity and resources, to empower the consumers and raise their awareness. However, the Commission feels that the OCA was not very effective. Rather, they feel that, the officer was pursuing his personal agenda. The officer claims that the Commission was scared of rising consumer awareness, assertion and demands and moreover, the current office bearers of KERC are not pro-consumer.\(^{22}\) Generally, the role and significance of OCA cannot be discredited; whether it was adequately effective or not, the presence of the office did matter for consumer interest representation, at least symbolically. Currently, the functions of OCA, especially consumer awareness, have been assigned to the Ombudsman and the KERC intends to fill the office soon.

KERC has performed fairly in terms of SAC composition and functioning. On the positive side, the Committee has more than one-third of the members representing various consumer interests, but

\(^{21}\) This particular role was assigned to the OCA prior to enactment of the Electricity Act 2003 and establishment of CGRFs and Ombudsman.

\(^{22}\) The OCA also claims that the consumer awareness fund was his initiative and he was also instrumental in the shift from three months minimum deposit to two months deposit. However, several others also claim their contribution to the second measure. FKCCI, a leading industry body, seem to have fought a case for the reduction in minimum deposit.
on the down side, it has a high representation from the licensees. There are four members from the licensees and other licensees are also invited to the SAC meetings. SAC meetings are held at regular intervals and well attended. Looking into the most recent minutes of meeting, we found that the issues discussed were substantive and had a focus on consumer interests (see Table 7). Though there was no pessimism as there was in Haryana, the general perception is that the SAC has not been as effective as it could be. The Commission listens to all sorts of suggestions on matters like power purchase, quality of supply, tariff and investment, but it rarely acts. As an SAC member pointed, “the Commission reacts fairly to the suggestions... [but it] should respond faster to suggestions.” He also added that the Committee members have good experience and knowledge on the subject and the members work cooperatively. What is needed is prompt response and action on the suggestions made to the Commission.

4.3.4 Maharashtra

MERC was established in 1999 on the basis of the provisions of the 1998 Act. The state later segregated different segments of the electricity sector. At present, Mumbai is served by three relatively small pre-existing private utilities, while the rest of the state is served by a monolithic publicly owned discom, i.e. MSEDCL. Until recently, MERC followed the provisions for consumer participation, as provided in in the 1998 Act as well as the 2003 Act, in letter and spirit. Maharashtra has been the birthplace of many social movements and there is a spirit of social activism that prevails in the state. In keeping with this reputation, Maharashtra was until recently, as we discuss later, a shining example of consumer participation in electricity regulation.

MERC holds separate hearings for each of the four discoms. The level of participation in the hearings on tariff determination for the largest discom (MSEDCL) has been astonishingly high (see Table 6). At its peak in 2010 it reached almost 25,000 several orders of magnitude higher than any of the other states. Even at its lowest in 2012, it was much higher than the other states.

There are several reasons for this enthusiastic and effective participation:

- A group of dedicated and capable consumer groups. The initial group consisted of four organizations: Mumbai Grahak Panchayat; Prayas Energy Group; Thane-Belapur Industry Association (TBIA); and Vidharbha Industry Association (VIA).
- These groups were willing to look beyond their own interests and advocate in the general public interest. For example, in the first tariff order, rather than focus on reducing category-wise tariffs, the consumer groups advocated reducing T&D losses. Given this common interest, there is strong cooperation and networking among them, further enhancing their effectiveness.
- The early group of regulators were very receptive. They encouraged the participation of consumer groups and responded to their suggestions. In the words of one of the early participants, this bolstered the confidence of consumer groups that they were saying something useful. This encouragement was critical in the nascence of these groups and regulation in the state.

23 KERC has appointed representatives to the SAC from two of the discoms (BESCOM & GESCOM), along with KPTCL and KPCL. However, representatives from other discoms are invited to SAC meetings.
In accordance with Section 94(3) of E Act which empowers a commission to authorise any person to represent the interests of consumers in proceedings before it, MERC appointed a group of ‘authorised consumer representatives’, who were invited to represent consumer interest in all kind of regulatory deliberations. Initially, the commission had only four such representatives which were listed above. Later, the number was increased to about twenty. Other initiatives of the Commission included local hearings to facilitate consumer access to such hearings. Considering the large geographical coverage of MSEDCL, the hearings for MSEDCL tariff determination were held in six different locations across the state.

However, over time there has been a decline in the quality of regulation in Maharashtra and a decline in the level of consumer participation. In recent tariff hearings, the participation has decreased drastically from a high point of nearly 25,000 participants in 2010 to a mere 410 in 2012. One of the consumer group members and an authorised consumer representative blames it on the changing attitude of regulators. The positive attitude of the early regulators that promoted consumer participation is missing with the recent set of regulators. Another respondent pointed that “initial set of regulators were focused on improving the sector... They listened to comments and suggestions from CSOs and consumer groups, and responded in an innovative and creative way.” According to him, the recent regulators are missing that orientation and focus.

The process followed by MERC recently in dealing with a petition filed by MSEDCL illustrates the frustration that consumer groups are experiencing in regulatory proceedings in Maharashtra. In early 2014, MSEDCL filed a petition for final true-up for FY 2011-12 and FY 2012-13, allowing carrying cost on deferred approvals, and interim relief. Contrary to established practice, MERC did not hold a technical validation session involving consumer representatives (CRs), and a public hearing was proposed to be held only in Mumbai and not in all the six revenue headquarters of MSEDCL. CRs highlighted that there was a lack of clarity in the calculations affecting up to Rs 4,075 crore, which accounted for about 40 percent of the revenue gap that MSEDCL proposed to recover from consumers. Given the “serious lacunae” in the petition, the CRs felt that it was not possible to arrive at any reasonable decisions regarding the tariff proposal. The CRs reported being extremely distressed that MERC had abandoned practices of technical validation and public hearings at multiple locations which were based on the requirements of transparency and participation in E Act 2003 and the regulations of MERC. Prayas, one of the CRs, felt that it could not meaningfully engage in the process and as a protest did not make any submissions regarding the merits of the proposal. (Prayas, 2014; MVGS, 2014a; Varma, 2014)

In the future, consumer participation in regulatory proceedings is likely to be hit by changes in the selection of authorised CRs. In a meeting of the SAC, the MD of MSEDCL argued that regulations were needed for selection of consumer representatives. He argued that one or two consumer representatives could not be representative of the diversity of the state. Moreover, he said, such regulations would enable MERC to make public details about consumer representatives such as: the nature of the group; their capacity; sources of funding; categories of consumers they represent; political affiliation; availability of audited financial statements; etc. (MERC, 2010). Subsequently, MERC issued regulations for authorized consumer representatives. The regulations state that there will be two types of consumer representatives (CRs): institutional CRs; and individual CRs. There are to be six institutional CRs, one for each of the six regions of Maharashtra; and up to 15 individual
CRs. In addition, the existing four authorized CRs would be deemed to be institutional CRs. Institutional CRs would have a tenure of six years and individual CRs of three years. The terms of the deemed institutional CRs could, depending on MERC, end two CRs at a time from every second year, two years after the first authorization of institutional CRs (MERC, 2012).

While there are benefits to having several CRs in a state, the limited tenures in the regulations may result in weakening the power of CRs. As we discuss in Chapter 5, for effective consumer advocacy in electricity regulation in India, we need advocates who possess three qualities: (1) consistent presence; (2) technical capability; and (3) adequate resources. For advocates to develop these qualities, they need to have long tenures, and therefore, the regulations could end up weakening consumer advocacy. In the interest of strong consumer advocacy in the state, it would have been better to retain the four deemed institutional CRs for as long as they were effective, and allowed additional CRs to develop too.

The regulatory environment in Maharashtra has been gradually deteriorating, and consequently the space for deliberative democracy has been shrinking. There have been clashes between MSEDCL and MERC (ET, 2010). In August 2010, MSEDCL and other top officials walked out of a public hearing held by MERC on load shedding by MSEDCL. According to news reports, MSEDCL officials were irked that consumer representatives were allowed to speak even though they had made their point at a previous hearing. In 2011, there were clashes between the state government and MERC. The Minister of Energy was reportedly furious with the then Chairman of MERC over tariff-setting for one of the utilities, but was unable to remove him because he claimed there were no provisions in the law for such removals (ToI, 2011).

One reason for the decline is the organizational structure of the power sector in Maharashtra. The MD of MSEDCL also holds the position of principal secretary (energy) in the state government. There is a conflict of interest as the head of the discom also decides state policy involving that discom. In addition, the Minister of Energy in the Maharashtra government is the Chairman of the Holding Company of which MSEDCL is a subsidiary. These arrangements encourage interference by the state government in the day-to-day functioning of the power sector and its regulatory framework.

An example of how this institutional framework interferes with the effective functioning of the regulatory environment is on the issue of open access. It has been known that MSEDCL is reluctant to allow open access for its high-end consumers because they subsidize other consumers. When draft regulations for open access were issued, and after the comment period was over, the MD of MSEDCL in his role as Principal Secretary (Energy) wrote a letter to the Secretary, MERC describing the state government's concerns about open access on the tariff for electricity and the impact that would have on the common consumer (Mehta, 2013). This drew the ire of consumer groups. Some felt that given the requirements of transparency, the Principal Secretary could have filed his comments openly in the proceeding on developing regulations for open access and that his writing a letter instead was an attempt to unduly influence the regulatory decision-making and was a misuse of power. They felt that the letter was an attempt to prohibit MERC from issuing long-awaited regulations regarding open access. (Akola, 2013)

There are concerns that the organizational framework of the power sector in Maharashtra detracts from the independence of MERC from the state government and the utilities it regulates. The
appointment of the MERC Chairman is seen as a political process, as a newspaper report stated when the Minister of Energy was from the Nationalist Congress Party (NCP): “It is an open secret in bureaucratic circles that only babus who are close to the NCP get appointed to the corporations or commissions under NCP-controlled departments (ToI, 2011).”

In September 2013, MERC initiated a suo-moto proceeding regarding certain costs incurred by MSEDCL and within the same day issued an order approving the costs and revised tariffs, without giving a public notice and without opportunity for comments from the public. Tata Motors appealed the suo-moto order of MERC at the Appellate Tribunal for Electricity (ATE). ATE set aside the order stating that it was passed in violation of Sections 62, 64 and 86(3) and that MERC should have issued public notice and given consumers an opportunity to raise objections to the tariff revision. In several places in its order, ATE chided MERC for its approach (ATE, 2014):

...we are constrained to record our disapproval over the hurried approach of the State Commission in deciding the very serious issues without hearing any party especially the consumers and without mentioning any urgency, which is not appreciable.

According to the Appellants, to deny the affected consumers an opportunity to be heard would lead to gross injustice and would be blatant violation of the principles of natural justice. We find force in this contention of the Appellants.

A perusal of the impugned Order would clearly indicate that the State Commission was anxious to safeguard the interest of the Distribution Company rather than the interest of the consumers, who are likely to be affected due to the revised tariff Order.

Subsequently, the Maharashtra Veej Grahak Sanghatana (MVGS), a consumer group wrote to the Government of Maharashtra that the Chairman of MERC should be removed because she acted in an arbitrary manner, misused her power, and passed orders that were prejudicial to public interest and consumer interest; and resulted in financial gains for the generation and distribution utilities in the state. As grounds for removal of the Chairman, MVGS asserted that there was no provision in EAct (2003) for suo-moto action without a petition from a company; that MERC did not consider all suggestions and objections from the public as required by Section 64 of the E Act (2003); and that MERC was motivated to safeguard the interest of MSEDCL rather than consumers. (MVGS, 2014b)

In Maharashtra the SAC has been established and until about a year and half ago was meeting regularly. The composition of SAC is well balanced with seven consumer members and four experts (see Table 4). However, it has not been very effective. Until June 2013, the SAC in Maharashtra was meeting at frequent intervals. But there have been no meetings since then. Even when the meetings were held regularly, participation by members had gone down. In the later meetings, the level of participation was as low as 2-5 members out of 20 members. As a result, the substance of deliberation has also been affected. The minutes of the most recent meeting (26th meeting) of the SAC had only two presentations: one on transmission and the other on smart grid road map, and was attended by three members only. Some interviewees pointed out that the SAC has facilitated coordination between different government agencies on matters such as Right of Way, digging of road and laying of wire. However, the SAC has not been able to provide much substantive advice. It has failed to provide a venue for the development of a vision for the electricity sector in Maharashtra, and of course now it has been dormant since June 2013.
Unfortunately, Maharashtra which was held up as a shining example of very effective consumer participation in the electricity sector has lost much of its shine. In the early years after MERC was established, MH provided a healthy eco-system for consumer participation satisfying all three of the key requirements: assertive and capable consumer groups; receptive SERC; and a non-interfering government. The decline started with the state government attempting to influence MERC decisions and publicly deriding the Commission members. This hostility not only interfered with the smooth functioning of the Commission but also damaged its legitimacy. Now, the Commission too is no longer seen as supportive of consumer participation, instead it is seen as being anti-consumer and pro-utility. Space for consumer participation has shrunk with even the ATE expressing its disapproval of the neglect of the consumer voice by the Commission. A healthy relationship between civil society and the Commission has been replaced by acrimony with some consumer groups asking for the removal of the Chairperson of the Commission. So we see that two pillars of the required eco-system for consumer participation (supportive SERC and non-interfering government) have collapsed effectively silencing the consumer voice. As discussed earlier, the regulations regarding the selection of CRs will lead to weakening of the CRs, seriously damaging the first pillar (assertive and informed consumer groups) of the supportive eco-system required for effective consumer participation. Thus, over time, all three pillars of the eco-system have collapsed or are in serious danger of doing so. This is a major loss because in MH, the benefits of effective consumer participation had been demonstrated in the early years of MERC. The decline in consumer participation in Maharashtra is a serious matter of concern and shows that even a relatively well running system can turn dysfunctional, if the required eco-system is allowed to deteriorate.

4.3.5 Rajasthan

Rajasthan established the independent electricity regulatory commission, on basis of the Rajasthan Power Sector Reforms Act, 1999, which draws its provisions on regulatory institutions and processes from the 1998 Act. Following the Act, the state has also restructured the electricity sector and three regulated state owned discoms have been set up to supply electricity across the state. RERC has been following the provisions for public participation in the regulatory process.

RERC has been organising the public hearings on regular basis, which are advertised in newspapers and open to consumers, consumer groups and other interest groups. RERC organises a single hearing on tariff petitions from all the three discoms. Looking at the last five retail tariff proceedings, we found number of written submissions and attendance of consumers in hearings has improved in recent three hearings, compared to earlier two which were abysmally low (see Table 3). However, the level of participation is still terribly low for the seventh most populous state. Total number of objections/issues raised in the latest tariff hearing is lowest among the five states and about 40 per cent of these are about procedural issues (see Figure 4.1 & 4.2).

Furthermore, even at this low level of participation, most of it comes from larger consumers. As suggested by respondents, the industrial consumers participate more actively on issues of their interest. Small consumers tend to participate during tariff raise demanding lower tariff, but provide no substantive intervention. There is a clear absence of consumers groups (representing small
consumers or wider consumer interest) in the regulatory process. However, there are few public citizens who have been intervening and participating regularly and have provided substantive recommendations. Interesting, all these people are retired officials of erstwhile Rajasthan State Electricity Board and they tend to speak from the utility perspective, though their recommendations are constructive and targeted for system improvement. Consequently, the consumers’ perspective, especially the small consumers’ interest, is clearly missed in the regulatory governance.

<p>| Table 4.5: Level of Participation in Retail Tariff Proceedings, Rajasthan |
|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Number of written objections |
| Tariff Order (31.03.2007) | 3 |
| Tariff Order (15.04.2010) | 5 |
| Tariff Order (08.09.2011) | 78 |
| Tariff Order (08.08.2012) | 84 |
| Tariff Order (06.06.2013) | 60 |</p>
<table>
<thead>
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<th>Number of participants in public hearings (excluding RERC staff)</th>
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<td>18</td>
</tr>
<tr>
<td>52</td>
</tr>
<tr>
<td>46</td>
</tr>
<tr>
<td>65</td>
</tr>
<tr>
<td>Consumers/Public (excluding the utility staffs from above)</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>32</td>
</tr>
<tr>
<td>35</td>
</tr>
<tr>
<td>39</td>
</tr>
</tbody>
</table>

There are four issues, as suggested by respondents, that are responsible for low level of consumer participation in Rajasthan. First, low awareness among consumers and accessibility to hearings in the state capital are major difficulties. Second, attitude of the regulators is another barrier that may hinder consumer participation. The electricity governance system in Rajasthan encourages settlement between the consumers and discoms rather than bringing up any issue at the Commission level. As some respondents, pointed out, the Commission has not been keen to engage with the consumers. Third, though the state have several active CSOs and consumer groups, none of them actually have taken up electricity service as an issue of concern. Consequently, the small individual consumers are not mobilised at all. Finally, though the Commission claims that there is no intervention or interference from the government, the general perception among informed stakeholders is that RERC is guided by the state government. The Commission takes up the issues suggested by the government and the government’s strategy has been to keep the tariff low, for political gains, at the cost of quality of supply. This may be one reason why the consumer groups and CSOs are apathetic towards participation and intervention in the regulatory process.

RERC has constituted a SAC, but the functioning of the Committee is not at all effective. By composition, the SAC seems to be pro-utility and pro-government; in a 20 member Committee, there are only two consumer members, but six licensee members and another six representations from various government departments. Though some of the SAC member, particularly the experts, have some good ideas for system improvement, they claim that, the Commission is not ready to listen. The SAC meetings are held regularly, but merely as a ritual. Moreover, the minutes of the recent meeting suggests that there was more discussion on procedural issues than on substantive issues (see Table 4.7). However, in spite of the adversities, the SAC members claim that they have been successful in pushing through some reforms in the grievance redressal mechanism: a)

---

24 While the tariff orders have no mention of such consumer groups, the respondents also pointed out that no consumer groups participate in regulatory hearings. However, the industry groups do intervene on HT supply issues.

25 RERC has appointed a new Chairperson in early 2014 and the new Chairperson comes with experience from KERC. He seems to have a vision to promote consumer participation and improve consumer interaction with the Commission.
appointment of an independent Ombudsman, b) appointment of an independent member in corporate level CGRF, and c) allowing the consumer complainant to move to Ombudsman directly after approaching any one level of the CGRF.

Figure 4.3: Nature & Share of Issues Raised in Latest Retail Tariff Hearings

Figure 4.4: Number of Issues Raised in the Latest Retail Tariff Proceedings

26 DERC, HERC & RERC organise single hearings for all their discoms, while KERC & MERC have separate hearings for each discom. In case of Karnataka and Maharashtra, we have looked into the tariff proceedings for major discoms in the state, BESCOM and MSEDCL respectively.
Table 4.6: Composition of State Advisory Committees

<table>
<thead>
<tr>
<th></th>
<th>Delhi</th>
<th>Haryana</th>
<th>Karnataka</th>
<th>Maharashtra</th>
<th>Rajasthan</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total No of Members</strong></td>
<td>19</td>
<td>21</td>
<td>16</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td><strong>Consumer/Consumer Group Members</strong></td>
<td>5</td>
<td>9</td>
<td>6</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td><strong>Expert Members</strong></td>
<td>6</td>
<td>1</td>
<td>5</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td><strong>SERC Members</strong></td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td><strong>Government Representatives</strong></td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td><strong>Licensee Members</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- DER (3)
- Principal Secretary (Power), GNCTD (1)
- Department of Food Supplies and Consumer Affairs, GNCTD (1)
- Public Grievance Cell, Department of Power, GNCTD (1)
- MNRE, GoI (1)
- BEE (1)
- MCD (1)
- DMRC/Northern Railway (1)
- RWAs (2)
- Consumer Group (1)
- Individual Experts (3)
- IEX (1)
- PTC India (1)
- ICAI (1)
- HERC (3)
- Food and Supplies Department, GoK (1)
- Industries Department, GoK (1)
- Agriculture Department, GoK (1)
- HAREDA (1)
- HVPNL (1)
- HPGCL (1)
- UHBVN (1)
- DHBVN (1)
- RWAs (3)
- Northern Railways (1)
- Industry Groups (3)
- Panchayats (2)
- TERI (1)
- Department of Food & Civil Supplies an& Consumer Affairs, GoK (1)
- KPTCL (1)
- KPCL (1)
- BECOM (1)
- GESCOM (1)
- CPRI (1)
- Individual Experts (4)
- Industry Groups (3)
- RWA (1)
- Farmers Organisation (1)
- Consumer Group (4)
- MERC (4)
- Food, Civil Supplies and Consumer Protection Department, GoM (1)
- Energy and Labour Department, GoM (1)
- MNRE, GoI (1)
- REC, Western Zone (1)
- Central Railway (1)
- Industry Groups (1)
- Consumer Groups (3)
- Academic Experts (3)
- Indian Energy Exchange (1)
- RERC (3)
- Food, Civil Supplies & Consumer Protection Department, GoR (1)
- Department of Agriculture, GoR (1)
- Energy Department, GoR (1)
- RREC (1)
- Labour Commissioner, GoR (1)
- RVPNL (1)
- RRVUNL (1)
- Chairman, Discoms (1)
- JVVNL (1)
- JDVVNL (1)
- AVVNL (1)
- North West Railways (1)
- Industry Group (1)
- Consumer Group (1)
- Individual Experts (3)

* Though the SAC members list for KERC did not list any member of Commission, the Commission Chairman is the ex-officio Chairman of SAC and Commission members are also ex-officio members. In practice, the consumer advocate also participates in the SAC meetings.

* Other licensees are also invited to the SAC meetings.

4.4 Emerging Trends: Mere Symbolic Adoption, Less Substantive Participation

Looking at the experiences with consumer participation in the states, it is evident that all the five states have adopted the provisions for consumer participation and consumer interest representation in electricity regulatory process. But the devil is in the details; while the SERCs have adopted the provisions in letter, adoption in spirit varies across SERCs significantly. First, there is a wide variation in the level of consumer participation across the five states. While Maharashtra and Delhi are doing...
well, participation in Haryana and Rajasthan is abysmally low. Consumer participation is largely focused on retail tariff fixation across the states. It appears that consumers are generally not well informed to follow the linkages between other regulations and retail tariff and thus ignore participation in such hearings.

Second, public participation is also reactive and circumstantial. There seems to be greater reaction and participation around tariff hikes. It is also affected by election periods. Some people also use public hearings to meet their personal agenda like publicity or building their support base, while some consumers also come with personal grievances. This shows lack of awareness and clarity among the consumers.

Third, consumers usually come with two kinds of issues, viz. quality of supply and price. While large consumers are concerned about quality of supply, small consumers are more focused on the price. On the other hand, the quality of intervention varies across consumer groups. In all states, the large consumers appear to be far better informed and articulate than the small consumers. In addition, the small consumers are unorganised and incoherent in presenting their view point. However, the CSOs and consumer groups in Maharashtra and public citizens in Delhi and Rajasthan are well informed and articulate and often make substantive and constructive interventions.

Fourth, while the SERCs claim to maintain transparency, communication with consumers seems to have received lip service only. None of the SERCs have actually taken any innovative approach to communicate their decisions. Much of the information shared in the public domain is incomprehensible. For example, the tariff orders provide a summary of objections from public, the discoms’ responses and regulatory decisions. But, these are not presented systematically; the issues are often listed randomly. None of the orders provide a clear link between objectors’ interventions, their significance and the final regulatory decisions. Similarly, minutes of SAC meetings, that discuss important policy matters, are not regularly posted on SERC websites (see Table 4.7, that lists the available minutes of SAC meetings for each state).

Fifth, though all the SERCs have constituted SACs, the composition, functioning and effectiveness of these advisory committees vary across states. While some Commissions have a more balanced composition, others have over representation of licensees and government departments (see Table 4.4). While the meetings are held regularly, in some cases, it is treated like a ritual to be performed to meet the provisions under the legislation. Participation of members in such meetings has gone down drastically; for example, in case of Maharashtra, recent few SAC meetings had presence of less than 25 percent of the members. At the same time, as discussed earlier, Delhi is doing relatively better in terms of constructive comments and engagement coming from SAC members. Overall, SACs as a potential source of guidance for improving system performance has been less utilised across the states.

Sixth, a subtle issue, but the E Act provision to deem regulatory proceedings as judicial proceedings seems to be misinterpreted. Making any proceeding judicial means that the final decision will be taken on the basis of evidences presented to the decision-making authority and after hearing to all concerned parties. However, in some cases it was found that the commission take a legalistic approach in the hearings. For example, in Karnataka, the consumers are required to submit their objection/comments on stamp paper. In most of the cases, there is increasing presence of
professional lawyers representing the consumers, including the small consumers, in the hearings. Even there are examples, where consumers are being represented by lawyers in the grievance redressal forums. This is an unwarranted development that may push consumers away from effective participation, increase the cost for participation, and also may delay the process.

Finally, though a legal framework has been put in place, the eco-system for effective consumer participation in the regulatory process has not been created. Such an eco-system to facilitate and promote consumer participation would require three key pillars: a) presence of well informed and assertive consumer groups and CSOs; b) a receptive Commission that proactively engages and interacts with consumers; c) a state government that does not interfere, at least in the regulatory process. While some states have some of these components, none of them have all three components. For example, Maharashtra has strong presence of well informed and assertive consumer groups and CSOs. While Karnataka and Delhi have presence of some such groups, Haryana and Rajasthan clearly lack this pillar. To a great extent this reflected in the level of participation and substance of deliberation in regulatory proceedings.

Given the present experiences, the idea of a receptive Commission may sound somewhat utopian. However, this is a crucial pillar to ensure effective participation and achievable. Low receptivity of the Commissions erodes consumers’ trust in the system and raise apathy towards participation. Though none of Commissions have been commended for their receptivity, there is still a wide variation. As per the respondents opinion, DERC and KERC are fairly receptive, who listen to comments and suggestion put professionally. While HERC and RERC are perceived to be not receptive; in fact, respondents pointed that they are not so keen to engage with consumers. The initial set of regulators in Maharashtra had a positive attitude toward consumer participation, which has eroded over time. At present, MERC is reported to not to be so open to engagement with consumers and consumers’ trust in the system has also dropped accordingly. This is quite evident in the drop in number participants in 2012 tariff hearing for MSEDCL. The fact that the institutions have performed better under earlier leadership (e.g. Maharashtra), shows that leadership of institutions matter as much as the institutions themselves. This is further corroborated by anecdotes from several respondents on how specific leaders (office bearers) have been proactive in engagement with the consumers.

Even when the first two pillars are set right, consumer participation can also go wrong if the government interferes in regulatory process. Given the political nature and appropriation of electricity service provisions in India, there is significant political stake in electricity regulation. Governments and political parties have always expressed a keen interest in regulatory process. Yet, political interference across states varies to some extent. In states like Haryana and Rajasthan, the governments have been criticised for setting the regulatory agenda and the regulators are perceived to subservient. However, it is not drastically different in other states, though it is not equally evident or open. Across all the states, the governments have been pushing, be it through backdoor or more directly, for an artificially low tariff for small consumers.

Moreover, the political parties also attempt to misuse public hearings for building political support. For example, in Delhi, political parties often use public hearing venues to stage protests against high tariff of electricity service. On many occasions, political leaders have also participated as representatives of people. While this sort of intervention may be tolerated, undoing of rational
regulatory decisions by the governments or prohibiting the Commission to take any rational decision is more damaging. All the SERCs have at some point faced either of the damaging interference from the government.

In case of public owned discoms, there appears to be an emerging nexus between the government, the discom and the regulator, where the regulators maintain a soft corner to the public discom and are subservient to government. The government, while protecting the discoms from any rational corrective action, pretends to promote consumers’ interest by keeping the price low, though at the cost of service quality. It is hard to prove this nexus through evidence, but it could be fatal for regulatory governance in Indian electricity.

To conclude, several provisions have been made to promote and facilitate consumer participation in regulatory governance in Indian electricity sector. However, like Indian energy governance generally, the execution of these provisions is fragmented and byzantine. In several cases, these provisions are carried out in token fashion only. Further, there is a silo-like approach to fulfilment of the individual provisions with not much effort to integrate them to improve overall service for consumers. As a result, public participation in regulatory processes is far from the desired level and effectiveness. What is needed is a holistic approach that interlinks the different components of regulatory governance and provides an eco-system for effective and meaningful consumer participation. In the last chapter, we have discussed the desired holistic approach and made some specific recommendations in that direction.
Table 4.7: Level of Participation in Retail Tariff Proceedings, Karnataka

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>43</td>
<td>20</td>
<td>28</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>H</td>
<td>24</td>
<td>49</td>
<td>17</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>G</td>
<td>11</td>
<td>5</td>
<td>11</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>M</td>
<td>577</td>
<td>95</td>
<td>122</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>C</td>
<td>31</td>
<td>19</td>
<td>22</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>Number of Objections Filed</td>
<td>13</td>
<td>17</td>
<td>22</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Number of objections made(Orally) in public hearings</td>
<td>10</td>
<td>17</td>
<td>9</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>Number of Participants in Public Hearings</td>
<td>None of the tariff orders issued by KERC provide this information.</td>
<td>None of the tariff orders issued by KERC provide this information.</td>
<td>None of the tariff orders issued by KERC provide this information.</td>
<td>None of the tariff orders issued by KERC provide this information.</td>
<td>None of the tariff orders issued by KERC provide this information.</td>
</tr>
</tbody>
</table>

Discoms considered in this table: BESC, HESC, GESC, MESC, CESC

Table 4.8: Level of Participation in Retail Tariff Proceedings, Maharashtra

<table>
<thead>
<tr>
<th>Discoms Considered</th>
<th>Tariff Order 1</th>
<th>Tariff Order 2</th>
<th>Tariff Order 3</th>
<th>Tariff Order 4</th>
<th>Tariff Order 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>B</td>
<td>43</td>
<td>20</td>
<td>28</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>M</td>
<td>24</td>
<td>49</td>
<td>17</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>R</td>
<td>11</td>
<td>5</td>
<td>11</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>T</td>
<td>577</td>
<td>95</td>
<td>122</td>
<td>22</td>
<td>22</td>
</tr>
<tr>
<td>Number of Objections Filed</td>
<td>13</td>
<td>17</td>
<td>22</td>
<td>17</td>
<td>17</td>
</tr>
<tr>
<td>Number of participants in public hearings</td>
<td>10,657</td>
<td>28</td>
<td>13</td>
<td>42</td>
<td>3,934</td>
</tr>
</tbody>
</table>

Discoms considered in this table: BEST, MSEDCL, R-Infra, TPCL

BEST: Tariff Order 1 (06.06.2008); Tariff Order 2 (15.06.2009); Tariff Order 3 (12.09.2010); Tariff Order 4 (16.05.2012); Tariff Order 5 (28.08.2013).
MSEDCL: Tariff Order 1 (18.05.2007); Tariff Order 2 (20.06.2008); Tariff Order 3 (17.09.2009); Tariff Order 4 (12.09.2010); Tariff Order 5 (16.08.2012).
R-Infra: Tariff Order 1 (04.06.2008); Tariff Order 2 (15.06.2009); Tariff Order 3 (29.07.2011); Tariff Order 4 (15.06.2012); Tariff Order 5 (22.08.2013).
TPCL: Tariff Order 1 (04.06.2008); Tariff Order 2 (15.06.2009); Tariff Order 3 (12.09.2010); Tariff Order 4 (26.08.2012); Tariff Order 5 (28.08.2013).

a Including 36 participants from BEST undertaking.
b Including 33 participants from R-Infra.
Table 4.9: Issues Discussed in (Latest Accessible) SAC Meetings

<table>
<thead>
<tr>
<th>State</th>
<th>Month/Year</th>
<th>Issues</th>
</tr>
</thead>
</table>
| Delhi          | 31st October 2011 | • Public awareness campaign  
• Renewable purchase obligation and renewable energy certificates  
• Perspective plan for electricity system in Delhi  
• Benchmarking of costs & preparation of costs database  
• New MYT regulations  
• Regulations for regulatory accounts & compliance audit  
• Finalisation of revised supply code & performance standards regulations  
• Other consumer friendly measures being considered by the Commission  
• Measures to reduce cost of power purchase  
• Review of financial position of DTL & discoms after issue of tariff order for FY 2011-12  
• Restriction on over illumination of streets  
• As a DSM measure, restriction on erection of huge hoardings  |
| Haryana        |                   | No minutes of SAC meetings are available on HERC website or at any other place.                                                                 |
| Karnataka      | 11th November 2009| • Execution of ATE order  
• Tariff proposal of KPTCL & discoms  
• Effects of revised tariff order  
• Adjustment of subsidy  
• Result of truing up exercise  
• Collection of subsidy & no of IP sets  
• Capitalisation of consumer security deposit  
• Implementation of DSM measures  
• Welfare fund for electricity consumers  
• Generation of power by industrial establishments  
• Load shedding  
• Uniform tariff  |
| Maharashtra    | 28th June 2013    | • Presentation on transmission  
• Presentation on smart grid roadmap for India  |
| Rajasthan      | 22nd February 2014| • 5% rebate for defective meters  
• Non-compliance of intra-state ABT Regulations  
• Updation of TCS by the discoms  
• Issuing of consumer charter by discoms  
• Recovery of compound charges and assessment amount in case of theft  
• Single phase connection to telecom towers  
• Other charges to be billed separately  
• Metering of agricultural connections  
• Bill payment through RTGS/NEFT  
• Quality of supply for agricultural consumers  |
Chapter 5

International Experience in Consumer Protection and Participation

Many countries around the world have included mechanisms for protection of consumer interests and provided avenues for participation by consumers in regulatory processes for their electricity sectors. As we consider reforms of consumer protection measures in India, it will be very useful to see what lessons can be learned from the experience of other countries. Due to limited time and resources, we restrict our review to four countries: (1) USA; (2) UK; (3) Australia; and (4) Brazil. USA has a long history of regulation and consumer advocacy in the electricity sector. We spend much more time on the US in this review compared to other countries because of the richness of the experience and much more work already done on the effectiveness of the US approach. UK and Australia both rely on markets for setting energy prices, and given that India is considering greater introduction of markets and the separation of carriage and content in the electricity sector, it would be useful to understand how these two countries have fared in their respective approaches. Furthermore, both Australia and UK have reviewed their consumer oriented regulatory mechanisms, and have introduced some innovative changes which could be of interest in India. Perhaps no country has embraced public participation in policy-making in the way Brazil has done. The electricity sector too in Brazil has many interesting features for public participation. Therefore, we have included Brazil to see what can be learned from the Brazilian experience.

In the following sections, we first review the experience in each of the four countries. Then we list the lessons for India from that experience.

5.1 USA

In the US, regulated utilities fall into one of two models: (1) In states that allow choice of supplier of energy (also known as retail access) for some or all classes of customers (restructured states), the utility provides distribution service which is regulated. Those who have chosen competitive suppliers for their energy (retail access customers) pay the utility only for distribution service. Those consumers who have not chosen a competitive supplier continue to get their energy from the distribution company under default service (also known as basic service or service of last resort). (2)

In states that do not allow retail access (non-restructured states), the utility charges customers for generation, transmission and distribution service. The energy may come from the utility’s own plants and/or is purchased from other utilities or generators. Retail access was started only in the late 1990s; before that utilities were mostly vertically integrated. As of 2010, fifteen states and the District of Columbia (encompassing more than half the kWh sold in the US) allowed retail access (EIA, 2014).

After the turmoil in the electricity sector in the 1920s and 1930s, and until the late 1960s, regulation of electric utilities in the US was quite straight-forward. Large increases in the size of individual power plants and the associated economies of scale and load growth led to combinations of stable or reduced rates. Therefore, regulation in those years was mostly about how to distribute the benefits of increased efficiency in supply sources. Beginning in the late 1960s, increasing inflation...
and rising costs led to a rapid rise in utility rates. Consumer groups were formed and they started intervening in rate cases to oppose the rate increases (Phillips, 1993: 11-12). Several states created government agencies to represent the interests of consumers (Murphy and Sevel, 2004). In 1979, sixteen state consumer representatives formed the National Association of State Utility Consumer Advocates (NASUCA) (NASUCA, 2014). Now, forty five of the fifty states of the US have independent consumer representatives that go by different names such as Consumer Advocate, Public Advocate and People’s Counsel.

The US system of regulation and participation seems to have done quite well. In their book, *Democracy and Regulation: How the Public can Govern Essential Services*, Palast et.al (2003) assert, based on prices in the late 1990s, that the US provides the average citizen high quality electricity service at prices lower than almost any other nation served by private utilities. They argue that variations in costs of fuel etc. cannot account for the differences in prices. They attribute the low cost and high quality service to two characteristics of the American system: (1) “Complete open access to information;” and (2) “Full public participation in setting prices and standards of service.”

Currently, consumers’ interests are protected through a two-tier system. In the first tier, consumer affairs divisions (CADs), which are present in most public utility commissions (PUCs), handle complaints, help individual consumers with understanding their bills and in resolving disputes with utility companies. In the second tier, consumers’ collective interests are advanced through representation in regulatory proceedings before the PUCs. Two types of advocates represent consumers’ interests. One is a state consumer advocate (SCA) who is appointed to act on behalf of consumers. The other type of advocate is a grass-roots advocate, generally a private organization that promotes the interests of its members or of specific groups of consumers. Some examples are environmental groups or groups focused on low-income consumers. We now look at the details of CADs and the advocacy organizations.

### 5.1.1 Consumer Affairs Division in PUCs

Many PUCs have a consumer affairs division (CAD) to help consumers with issues regarding their utility services. Traditionally, CADs have helped consumers with understanding their bills and in resolving disputes with the utility companies. However, with some states moving to deregulated markets for supply of electricity, changes are occurring in the work of the consumer affairs departments. In this competitive environment for electricity, the Commission performs the role of a referee who sets the rules, imposes penalties for violation of the rules and protects consumers. The CAD’s concerns then also include ensuring that consumers have the knowledge and skills to negotiate effectively and safely in the market for electricity. (Sevel, 2001)

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27 There is some overlap of functions between the two tiers. For example, both CADs and state consumer advocates (SCAs) handle consumer complaints. However, in most cases, the state consumer advocates direct consumers to the CADs first. Another example is that both CADs and SCAs carry out programs for education of consumers. In this chapter, we focus on the main function performed by each type of organization.
Activities of the CAD

a. Complaint Handling

Complaint handling has been, and continues to be, one of the main activities of CADs. CADs receive complaints, investigate them and mediate between the consumer and the utility. In states where the generation of electricity is deregulated, the CADs also carry out an analysis of complaint data to discern trends that help identify potentially troublesome areas and issues that need greater monitoring and scrutiny. In some of these states, CADs also provide inputs for developing standards for complaint handling by utilities.

b. Consumer Research

In an industry structure that relies more on the market, PUCs feel the need to carry out market research to help develop effective material for consumer education and to evaluate existing initiatives for consumer education. In states with a restructured industry, consumer research by CADs cover the following topics:

- Consumer demographics
- Quality of service data
- Evaluation of consumer education initiatives
- Factors influencing participation by consumers in the market
- Evaluation of success of choice programs

c. Consumer Education

The shift to markets for procurement of electricity in some states has greatly increased the need for consumer education. CADs fill this need through development of education materials; organization of meetings where information is provided about choosing an electricity supplier; and coordination with media to ensure wide publicity. CADs are also recognizing that education of legislators and government officials is vitally important for the success of the market based choice programs.

d. General Assistance to Consumers

There are many issues on which CADs assist consumers in the state, such as: understanding bills which may have many additional clauses; new rate designs; smart meters and how they work. In addition, many PUCs provide advice and assistance to individuals and groups who want to participate in the PUC proceedings, including information about procedures for participation. In the case of the California PUC, this function is performed by the Public Advisor’s Office in the Consumer Service and Information Division. It keeps the CPUC and Executive staff informed of issues being raised by consumers, as well as informed of barriers that prevent effective public participation (CPUC, 2014). It also provides consumer education on all CPUC issues and public programs and provides in-language translation and interpretation services.

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28 This section draws extensively from the paper by Francine Sevel (2001).
5.1.3 State Consumer Advocates (SCAs)\(^{29}\)

These independent consumer representatives fall into three categories (Murphy and Sevel, 2004):

1. Separate independent consumer advocate office with the head usually appointed by the Governor (27 states);
2. Divisions in the office of the State Attorney General (15 states);
3. Non-profit public corporations called Consumer or Citizen Utility Board (CUB) (3 states).

Funding of CUBs comes from membership fees.

In spite of the differences in the structure and source of funding for the consumer advocates, the legislative intent for creating them is similar: to protect the interests consumers regarding utility service and rates. The majority of consumer advocates (34 states) represent all utility consumers in the state. Of the remaining minority, in ten states, consumer advocates are required to represent the interests of residential, agricultural and small businesses. Even in the case of the 34 states where they are required to represent the interests of all consumers, their focus is generally on protecting the interests of residential consumers. In addition to representing consumer interests in proceedings related to rates and other issues, consumer advocates also carry out consumer education, outreach and monitoring of the market.

a. Funding

Funding for consumer advocates, except in states that have CUBs, comes from either the state budget or fees levied on utilities. For the three CUBs, the funding comes from membership fees and grants from foundations. The funding levels in the states vary from about $230,000 to $16 million\(^{30}\) per year. The average for the states is about $2.4 million, corresponding to an average per capita of about 53 cents per year.

b. Powers of the SCAs

Consumer advocates are independent of the PUCs and can appeal PUCs’ decisions. Furthermore, PUCs and SCAs differ in their mandates: SCAs focus on consumer issues while PUCs have a broader mandate to balance the interests of all parties and perform quasi-judicial functions. In addition to stable and significant funding, the following powers for SCAs help ensure that they are major players in regulatory proceedings:

- Full rights for intervention in proceedings (RAP, 2014)
- Right to appeal PUC decisions. Most SCAs have the authority to appeal PUC decisions. Knowing that either the utility or the SCA can appeal its decisions, the PUC is likely to be more careful in its decisions ensuring that they are based on the law and evidence in the case. If only the utility can appeal the PUC decisions, then there would be an incentive for the PUC to favour the utility. (RAP, 2014)

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\(^{29}\) This section draws extensively on the information in (Murphy and Sevel, 2004).

\(^{30}\) The funding levels given here are based on the levels given in the paper by Murphy and Sevel (2004). The levels given there have been increased to reflect the impact of inflation from 2004 to 2014 using the GDP deflator. These estimates of funding level are therefore approximate and intended to give an idea of the funding available to consumer advocates.
• Access to information. SCAs have the power granted to a party in a legal proceeding. The SCA has access to all information filed and is served with all documents in cases in which it intervenes.

c. Rationale for SCAs

SCAs have been created to help consumers who are often underrepresented in PUC proceedings. These are mostly small consumers who, when compared with the utilities and other organized interests, are unable to represent themselves for three reasons: (1) because they are dispersed, they are less able to organize; (2) because of lack of expertise and resources they are less able to participate in technical proceedings; and (3) they are less likely to be heard by the PUC. SCAs help overcome these barriers to participation. Earlier, a Commission that had been making decisions with almost no inputs from consumers, “… is now presented with a consistently present and technically capable voice speaking for consumers.” Furthermore, while earlier the only voice was that of the utility and the PUC staff in states where the PUC staff files testimony, with the SCA there is a competing voice. Because the PUCs are required to base their decisions on the evidence presented by the parties, if the PUC decides in favour of the utility, it must explain why it did not agree with the consumer perspective. Otherwise it opens itself to having its decision appealed. (Stein, 2012). In addition to helping the voice of small consumers to be heard by the PUC, the SCA adds to the information base that the PUC uses to set agendas, develop alternatives and make final policy choices (Rossi, 1997).

d. Achievements of SCAs

In order to get a flavour of the kind of issues that SCAs deal with, we look at some examples of the work of SCAs in the recent past:

• The Connecticut Office of Consumer Counsel (CT-OCC) estimates it saved consumers $200 million from a settlement at FERC regarding locational installed capacity (LICAP). It claimed it saved another $140 million from a settlement regarding a proposed merger between Northeast Utilities (NU) and NSTAR. The CT-OCC reports that it vigorously pursued a request to the Public Utilities Regulatory Authority (PURA) to review the proposed merger. The settlement negotiated between the CT-OCC, the Attorney General and other state parties and the utilities includes a freeze on distribution rates; near-term rate relief for consumers through bill credits; payment of $15 million from NU for “several key energy programs;” “preserving jobs and open space;” and addressing future storm response by the merged utilities. In comparison its recurring operating expenses were only about $2.8 million that year. (CT-OCC, 2012a; and 2012b)

• In its annual report for 2013, the California Office of Ratepayer Advocates (CA-ORA) reports that its scrutiny of petitions to increase rates filed by San Diego Gas and Electric (SDG&E) and Southern California Gas (SoCalGas) resulted in cumulative savings to consumers of $1.2 billion over a four year period ending in 2015. (Savings for electricity alone are not provided in the report.) CA-ORA also collaborated with other stakeholders on residential rate reform in the California legislature to ensure several ratepayer protections were included such as low-income discounts and limits on customer service charges. CA-ORA also undertook a detailed analysis of the long term procurement planning process after the closure of the San
Onofre Nuclear Generating Station to ensure that utilities do not over-procure and cause consumers to pay more than is required. (CA-ORA, 2014)

- The Illinois Citizens Utility Board (IL-CUB) and the Illinois Attorney General appealed a decision by the Illinois Commerce Commission (the regulatory body) to the Illinois Appellate Court on rates allowed to Commonwealth Edison (ComEd). The Court ruled that the state regulators were wrong to allow ComEd to raise rates without considering potential savings from accumulated depreciation. The decision resulted in a refund of $37 million for consumers and “...more importantly, set a precedent that will save consumers millions of dollars for years to come.” (IL-CUB, 2012)

- The Ohio Consumers’ Counsel saved residential customers more than $30 million through its individual efforts in addition to an additional $460 million in advocacy with other advocates in which the OCC took a lead role. (OCC, 2009)

- In addition to representing the interests of consumers in their own states, SCAs across states come together to collaborate on issues of importance to consumers. One way is through NASUCA of which they are mostly all members. NASUCA meets twice a year but has committees that confer regularly by conference call and pass resolutions on important consumer issues, for which it then advocates at the appropriate forum. Groups of SCAs also come together in other forums on issues of importance to them. For example, the Critical Consumer Issues Forum (CCIF), launched in 2010, brings together state regulators, SCAs and utilities to discuss important consumer issues (CT-OCC, 2011). Its first area of focus was the smart grid and its impact on costs and rates, consumer privacy and the need for education and outreach. Another example is regional cooperation in New England among SCAs in the six states. In one instance, SCAs from Connecticut, New Hampshire, Maine, Massachusetts and Rhode Island jointly protested ISO New England’s (ISO-NE’s) proposal to increase its budget by ten percent. There was a settlement with regional savings of $2.5 million and an agreement by ISO-NE to have greater transparency and state-level review of its budget (NH-OCA, 2012). Similar coalitions have developed among the PJM states. The electricity committee within NASUCA sometimes coordinates joint efforts among states on a regional and national basis.

5.1.4 Impact on Rates

A recent study, (Fremeth et al., 2013) examined the impact of SCAs on decisions by PUCs regarding rates for consumers and the allowed returns for utilities. They found that SCAs had a significant effect. Specifically, they found:

- States with SCAs had fewer rate reviews with utilities postponing requests for rate review.
- Controlling for differences in the characteristics of states, in states with SCAs, the PUCs allowed a return on equity (RoE) that was 0.45 percentage points lower than states without SCAs, equivalent to a reduction of about 3.7 percent in average utility operating income.

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31 The grouping of states with consumer advocates that Fremeth et al. used was slightly different from the one used by Murphy and Sevel based on how the agency was funded. As a result Fremeth et. al.’s set of consumer advocates had 30 states and not 45 as in the work of Murphy and Sevel. We think that the difference between states with consumer advocates and those without would have been even more stark if all 45 states with consumer advocates had been included.
• States with SCAs had lower residential tariffs relative to other customer classes.

5.1.5 Grass-Roots Advocates (GRAs)

GRAs are private organizations that focus on specific issues that are of interest to their members. Examples of such groups are:

- Environmental groups such as the Sierra Club, National Resources Defence Council (NRDC), and Environmental Defence Fund (EDF).
- Advocates for low-income citizens (example, National Consumer Law Center (NCLC)).
- Advocates for the elderly (American Association of Retired Persons (AARP))

These groups are able to draw the attention of PUCs to neglected issues or sections of society. For example, an advocate for low income consumers in Massachusetts used detailed data to show that when setting standards of performance, system-wide outage indices were not sufficient because the outages in poorer neighbourhoods were much higher than the average for the whole city. Environmental groups such as NRDC, EDF and the Sierra Club were the among the first ones to suggest that demand-side management (DSM) measures be included in the utility’s resource plans.

5.1.6 Public Advocacy in Regulatory Proceedings

5.1.6.1 Division of Issues between SCAs and GRAs

Even though there is no any deliberate or explicit agreement between them, SCAs and GRAs perform complimentary roles in representing the interests of small consumers. Much of our understanding of how this division of labour occurs comes from work done in the early 1980s by Gormley (1983) which still remains valid today. He developed a theory of public advocacy in regulatory proceedings to explain the different roles played by consumer advocates and grass-roots advocates. He asserted that there were four significant differences between these two types of advocates:

1. State consumer advocates were more dependent on a single source of funding from government appropriations.
2. State consumer advocates were much better funded than grass-roots advocates.
3. State consumer advocates possess greater expertise than grass-roots advocates.
4. State consumer advocates were circumscribed by statutes to represent all consumers or the public as a whole, while grass-root advocates did not have such constraints.

Gormley asserted that these differences influence the kind of issues taken up by the two types of consumer advocates. State consumer advocates with ample resources but circumscribed authority, would focus on the overall rate level (revenue requirements) issues “which [did] not pit one segment of consumers against another.” The expertise required to examine revenue requirements issues is not a major obstacle for state consumer advocates. In contrast, according to Gormley, grass-roots advocates with fewer resources, lower level of expertise but more flexibility, would focus on issues of rate design, differences in quality of service between segments of consumers, and other less complex issues. These issues often pit one group of consumers versus another, but “…that conflict is not a legal or political hurdle for grass-roots advocates.”

32 Gormley uses the term “Proxy Advocate” for the State Consumer Advocate.
Based on these observations, Gormley developed a typology of issues that would be the focus of the state consumer advocates and grass-roots advocates along two dimensions: technical complexity and consumer conflict (Table 5.1).

**Table 5.1: Typology of Issues to be Focused by State Consumer Advocates and Grassroots Advocates**

<table>
<thead>
<tr>
<th>Consumer Conflict</th>
<th>Technical Complexity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Both</td>
</tr>
<tr>
<td></td>
<td>State consumer</td>
</tr>
<tr>
<td></td>
<td>Advocates</td>
</tr>
<tr>
<td></td>
<td>Grass-Roots Advocates</td>
</tr>
<tr>
<td></td>
<td>Neither</td>
</tr>
</tbody>
</table>

Source: Gormley (1983)

Gormley used statistical analysis to verify his theory. He analysed regulatory responsiveness to the four types of issues. For each of the four types, he used one or two representative issues: (1) for low complexity, low conflict issues he measured regulatory responsiveness to a ban on penalties for late payment and the number of days that could elapse between notice and actual disconnection; (2) for low complexity, high conflict issues, he used the presence of lifeline rates; (3) for high complexity, low conflict, he used the percentage of the utility’s request for rate increase that was granted by the PUC; and (4) for high complexity, high conflict, he used the differences between the ratio of residential rates to industrial rates. The findings from the analysis were consistent with his theory. In low complexity, low conflict, regulatory responsiveness was significantly related to the presence of both SCAs and GRAs. In low complexity, high conflict case, it was significantly related to the presence of GRAs. Similarly for the other two cases, his findings were consistent with Table ***. (Gormley, 1983)

Given this complementarity between the role of SCAs and GRAs, we can see that both serve an important function and that “…proxy advocacy and citizen activism are not interchangeable solutions to the problem of public underrepresentation in public utility commission proceedings.” (Gormley, 1986)

There are two additional findings in another paper by Gormley regarding the effectiveness of various types of participation that may be relevant for India. One, he found that in PUC proceedings, citizens’ groups had been “moderately influential” but individual citizens had been “largely ineffective” (Gormley, 1986). This is not really surprising, but it may help explain why public participation in hearings which is mostly by individuals has been largely ignored by electricity regulatory commissions (ERCs) in their decisions in India. The second additional finding from Gormley was that citizens often failed to take advantage of public hearings in the US (Gormley, 1986). Even though his findings were from the early 1980s, they still seem to be true. One reason for this may be that in addition to the public hearings, there were evidentiary hearings by PUCs, and that PUCs relied much more on those because the information was provided in a more detailed and cogent fashion.

**5.1.7 Negotiated Settlements and Collaborations**

The US system can sometimes seem very adversarial and hence slow and inefficient. There are two processes in the system that are a bit less adversarial and make space for deliberative democracy.
These approaches are: (1) negotiated settlements between SCAs along with other stakeholders and utilities usually on rate cases and mergers; and (2) collaboration to find common ground between SCAs and other civil society groups who may otherwise have conflicting interests leading to polarization.

Negotiated settlements allow parties to look at the system as a whole and not item by item. They also allow innovative solutions that the PUC would not be able to impose. In a negotiated case, just as in a litigated case, the utility makes its filing, and stakeholders interested in intervening join as parties to the case. Once the parties to the case and the issues have been identified, the parties may decide to negotiate rather than litigate. They may choose an independent mediator or the PUC may appoint one of its staff members to play that role. The mediator does not make decisions or force parties to accept an outcome; he/she is there to make sure everyone has an equal opportunity to be heard. He/she can also be an objective sounding board. All parties can request information but they can also mutually agree to hold some information confidential. Once a settlement is reached, the parties can decide what information to include to support the agreement. If parties do not reach an agreement on all issues, they can still litigate those issues. (Palast, et. al., 2003)

Negotiated settlements are beneficial to consumers. For example, over the period 1976-2002, the Florida Office of Public Counsel (OPC) negotiated settlements in 30 percent of the rate cases. All of them resulted in rate reductions. Furthermore, the rate reductions were greater than what could have been achieved in fully litigated cases. On average, a fully litigated case over the period resulted in a rate reduction of about $7 million, while the average settlement resulted in rate reduction of about $50 million. In addition, the OPC and the utility introduced a novel revenue-sharing agreement providing better incentives for efficiency and cost reduction by the utility. (Littlechild, 2008). Many states do not have mediated settlements and it may improve the functioning of the system if they did. Furthermore, some conditions are required to make settlements successful. First in order to ensure fair negotiations, it is preferable to have all parties to the proceedings in the negotiations and without any side deals. Sometimes a utility will buy off special interest groups by giving them something they want in exchange for them agreeing to a large increase. Measures need to be taken to make sure the process is fair.

Consumer groups and environmental advocates participate regularly in PUC proceedings but often find themselves opposing each other. Rates are the top priority for consumer groups such as SCAs while naturally the environment is the top priority for environmental groups. Often measures to protect the environment lead to increases in rates at least in the short term, although in the long-term they are likely to result in lower bills. However, now both groups are beginning to realize that they are both ultimately interested in protecting the public interest, and are exploring avenues for collaboration. One such initiative is the Finding Common Ground project that has been set up to open up dialog, develop understanding and build bridges. It has been set up by a partnership between the Regulatory Assistance Project (RAP), the Sierra Club and the National Consumer Law Center (NCLC) to bring together about two dozen national, regional and state organizations. (Migden-Ostrander et.al., 2014)
5.1.8  Strengths of the US System of Consumer Protection and Participation

As discussed earlier, the US seems to have done reasonably well compared with other countries in protecting consumers and providing avenues for representation of consumers’ interests. What are some of the reasons for this success?

- Openness to Participation and Transparency. Anyone affected by the subject of a PUC proceeding can file a petition to intervene. Further, any intervenor can obtain any information, for example, construction plans, their economic justification, any reports on performance, employee safety records, etc. Each intervenor can place its findings in the public record. Cross-examination of utility executives is conducted in public and under oath, and any intervening party can ask questions. (Palast, et.al., 2003)

- Availability of Information. All intervening parties can request documents and ask questions about the utility’s filing through a process called discovery. In addition, a lot of information is publicly available even before the discovery process. In the US, every utility must file detailed reports annually to Federal Energy Regulatory Commission (FERC), Department of Energy’s Energy Information Administration (DOE-EIA), state regulators and energy office, and the Securities and Exchange Commission. This is a treasure-trove of information with details on amounts invested by category (generation, transmission, distribution etc), compensation paid to senior management, profits, etc. (Palast, et.al., 2003)

- Presence of the SCA, a strong advocate for small consumers. The SCA presents “...a consistently present and technically capable voice for consumers,” that can challenge the utility on its claims for higher rates.

Of course, as a commenter pointed out:

In any system, including the US, the quality of regulatory appointments is the single largest determinant of the sensitivity of the regulatory process to public concerns. Mediocre appointments will negate any structure of office.

5.2  United Kingdom (UK)

Over the years since privatization of the electricity sector in UK, there have been a lot of changes in the institutional structure and processes for delivering consumer protection and representation. These changes have been motivated to a large extent by a desire to improve the system for consumer protection and satisfaction. It should also be remembered that in contrast to the US, the UK electricity sector relies much more on the market for delivery of electricity, and because consumers have the opportunity to switch suppliers, there is greater reliance on consumers using “exit” strategies rather than “voice” to protect their interests. Therefore, the need for statutory consumer groups is perceived to be much less. (Graham, 2014)

5.2.1 Historical Background of Consumer Protection and Participation

At the time of the privatization of the electricity sector, regional consumer committees were set up as part of the Office of Electricity Regulation (Offer), later known as the Office of Gas and Electricity Markets (Ofgem). The consumer bodies helped consumers with their complaints against companies. However, criticism that they were ineffective and not independent led to proposals for establishment of consumer councils that were independent of the regulator, and that would
represent consumers regionally and nationally. It was also thought at the time, that once effective competition was established in electricity markets, the consumer councils could be replaced by an Ombudsman. This led to the Utilities Act in 2000 which established Energywatch whose formal title was Gas & Electricity Consumer Council. (Graham, 2005)

Energywatch was established to provide consumers “an effective and influential voice within the regulatory system.” Its main tasks were: (1) investigate complaints; (2) represent consumers; and (3) provide advice and information to consumers. A few years later, there was discussion within the government about having a coherent consumer policy across sectors and about rationalization of regulatory bodies. Two studies were carried out that involved an evaluation of the work of Energywatch and other regulatory bodies. One study jointly by the Department of Trade and Industry (DTI) and Treasury reviewed consumer representation in regulated industries, and the other done by the National Audit Office (NAO) looked at Energywatch and Postwatch only. Both reports were released in 2004. Subsequently, there was a report by the Committee of Public Accounts. The reports raised issues the following concerns: (1) The level of expenditure by Energywatch was very high compared to the results that were achieved. Some of this was related to the view that resources were spread across various regional offices; (2) Energywatch did not have processes to monitor the impact of its activities; (3) there was too much time spent on resolving complaints, but not enough on reducing the number of complaints; and (4) that Energywatch was not influential enough on policy debates. (NAO, 2004 and Graham, 2005)

Subsequently, the Consumers, Estate Agents and Redress Act 2007 was passed which abolished Energywatch along with some other organizations. A new body called Consumer Focus was created to replace Energywatch, Postwatch and the National Consumer Council. It had an Extra Help Unit for vulnerable consumers such as the elderly. The government also created Consumer Direct, a government funded call center to provide information and advice to consumers. In case of complaints, consumers were required to contact the energy supplier first. To make the complaint handling of the energy suppliers more effective, Ofgem had set new and more stringent standards for complaints handling, and if the companies failed to meet the standards, they could face heavy fines. If the consumer was not satisfied with the response of the supplier, he/she could seek redress through the Energy Ombudsman. The Ombudsman, which was, and continues to be, independent of the regulator, utilities and consumer groups, was to listen to both sides and take a decision if the two sides did not agree. (Graham, 2005 and Ofgem, 2014)

In addition to these changes in the sector, Ofgem launched the Consumer First program in 2007 to understand energy consumers better and develop “insights into their thoughts, behaviour and needs.” It did this through three activities:

- Consumer First Panel. It organized workshops of 100 diverse domestic energy consumers to meet regularly and get the ordinary person's perspective on “topical and challenging issues.” They covered issues such as what information should be on bills, understanding of different types of tariffs, and understanding of the network companies.

- Consumer Challenge Group. This was a group of six consumer experts to provide the consumer view during regulatory proceedings. In the words of Consumer First, this group acted as Ofgem’s “critical friend.”
- Research. Consumer First carried out its own research studies or commissioned independent companies to do studies. Studies were carried out on: consumer satisfaction with complaint handling processes of supplier; consumer experience with outages on electrical networks; supplier behaviour and tariffs; and experience of vulnerable consumers. (Ofgem, 2009)

The coalition government that came into power in 2010 was committed to reduce the number of public bodies (quasi-autonomous non-governmental organizations, or quangos), and rationalize and make consistent the way consumer protection was delivered. Consequently, it abolished Consumer Focus (which had been renamed Consumer Futures for a short period), and its functions were transferred to Citizens Advice – a generalist charity agency that gives consumers advice and advocates for consumers. Complaints continue to be handled by the Ombudsman. (Graham, 2014)

5.2.3 Consumer Participation

Ofgem is open in its consultations and decision-making. It has worked to bring in consumer representatives, both general and those with a specific focus such as AgeUK. In addition, organizations such as Essential Service Access Network (ESAN) work for representation of consumer perspective. ESAN works to bring together voluntary groups and regulators to ensure access to essential services to all, particularly the vulnerable sections of society. As in other parts of the world and in India in particular, the voluntary sector suffers from a lack of resources and is limited in the actions it takes. (Graham, 2014 and ESAN, 2014)

5.2.4 Consumer Satisfaction

Consumers are not satisfied with their electricity service. One of the main reasons is the rise in energy prices and the perception that prices only go up. A survey commissioned by Consumer Futures in November 2013 of the experiences and priorities for small businesses regarding regulated markets found that the topmost concern was the cost of electricity (Citizens Advice, 2014). Another reason for the dissatisfaction with electricity service is the confusing number and presentation of tariffs by suppliers. The recently passed Energy Act (2013) addresses some of these issues regarding tariffs.

5.3 Australia

Electric utilities in Australia have been unbundled into generation, transmission and distribution, and retail businesses. The extent of deregulation and privatization varies across states and territories. The National Electricity Market (NEM) runs across Queensland, New South Wales, Victoria, South Australia and Tasmania as a connected grid. Generators sell into the NEM. There are smaller grids that serve areas outside the NEM, and these are managed by the respective state or territory. (Australian Govt, 2014)

Electricity prices for households increased in real terms by 72% over ten years to June 2013 (http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/EnergyPrices ). This sharp rise created resentment among consumers against policy makers, regulators and energy supply companies (Houston, 2014). In order to meet the challenge of rising energy prices, the Council of Australian Governments (COAG) endorsed a package
of energy market reforms developed by the Standing Council on Energy and Resources (SCER). The package, named *Putting Consumers First*, was built around four themes: (1) strengthening regulation; (2) empowering consumers; (3) enhancing competition and innovations; and (4) ensuring balanced network development (CUAC, 2013). Various initiatives have been developed to implement this package. Here we focus on two that are directly related to consumer involvement: (1) Better regulation reform package by the Australian Energy Regulator (AER); and (2) Establishment of a national energy consumer advocacy body.

5.3.1 Better Regulation Reform Package

AER is responsible for energy network regulation; wholesale electricity market surveillance and non-price retail market regulation. Given that network charges make up about half of the typical residential electricity bill, and that the main driver of high prices were higher network charges, the reform package deals with the regulation of the network services (Reeves, 2013). AER’s Better Regulation reform package focuses on four aspects of regulation: (1) incentive-based network regulation; (2) Balanced incentives and efficient expenditure forecasts; (3) Rate of return to support necessary and efficient investments; and (4) A strong stakeholder consultation framework (AER, 2014). In this section, we focus on the last aspect: strong stakeholder consultation framework.

5.3.2 Framework for Strong Stakeholder Consultation

5.3.2.1 On-Going Consumer Engagement

In order to ensure that a network business (transmission or distribution licensee) develops plans that are aligned with consumers’ long-term interest, it is required to engage with its consumers throughout the regulatory process. Even before a network business submits its proposal to AER, it must demonstrate “extensive and genuine community consultation” has taken place. AER has provided considerable flexibility regarding the engagement process, saying that the businesses are in the best position to develop a consumer engagement strategy. However, the engagement should be based on four principles: (1) clear, accurate and timely communication; (2) accessible and inclusive; and (3) Transparent; (4) Measurable. The network businesses are expected to identify cohorts and get their views; articulate the outcomes of the engagement processes and how they measure the success of their engagement; and periodically review and evaluate their consumer engagement process. (AER, 2014 and Reeves, 2013)

5.3.2.2 Stronger Consumer Representation in Regulatory Proceedings

Recognizing that ordinary consumers may find it difficult to participate in regulatory proceedings because of the technical nature and complexity of the issues, AER has established a Consumer Challenge Panel (CCP) consisting of thirteen consumer experts. It is expected that the CCP will give the consumer perspective on issues and thus help AER to come to a balanced decision. It is expected that CCP will advise on the following issues:

- Whether the network business’s revenue proposals are justified by the services to be delivered; whether, and to what extent, do consumers want that service; and whether the proposals are in the long-term interest of consumers.
• The effectiveness of the process for consumer engagement followed by the network business, and to what extent, the consumers’ views have been incorporated in the revenue proposals.

(AER, 2014)

5.3.3 Establishment of a National Energy Consumer Advocacy Body

Following the announcement of the reform package developed by SCER, *Putting Consumers First*, Dr John Tamblyn and John Ryan of Cloon Economics were asked to develop a model for a national energy consumer advocacy body. The model developed by them was approved by SCER and the report was released publicly on May 31, 2013. Implementation plans were presented to SCER in December 2013 and approved with the new organization to be called Energy Consumers Australia (ECA) and to be operational by January 1, 2015. (Tamblyn and Ryan, 2013; and SCER, 2014)

The proposed objective for ECA is:

“To promote the interests of all Australian energy consumers over the long term, with respect to their access to the supply of efficiently priced, reliable and safe energy services, by presenting a strong, coordinated consumer advocacy voice on national energy market matters of strategic importance and material consequence for all energy consumers and particularly household and small business energy consumers.”

ECA will advocate on behalf of all consumers but with an emphasis on the interests of residential and small business consumers who are under-represented in proceedings. The reason for expanding the coverage to all consumers is that there is a common interest that all consumers have in improving efficiency and reducing overall costs of the suppliers and network businesses. In addition, Tamblyn and Ryan point out that including all consumers leads to a more comprehensive understanding and holistic analysis.

Tamblyn and Ryan acknowledge that interests and priorities can differ between consumer classes. In such cases, they suggest, that evidence-based analysis can be used to see how best to resolve such differences in the best interest of all. For example, it may be possible to develop an approach whereby most consumers benefit and measures can be identified to mitigate the loss for the others. When conflict of interests is inevitable, ECA plans to advocate for residential and small businesses because the others have sufficient resources and expertise to advocate for themselves. (Tamblyn and Ryan, 2013)

It is planned that ECA will cover all activities related to national energy markets across the supply chain including upstream and downstream sectors such as generation or fuel production. They recognize that this covers a wide range of activities, and therefore, they intend to be strategic in their choice of research and advocacy programs to maximize the benefits from limited resources.

While ECA will focus on national energy markets, it will leave regulation, complaints and concerns at the local level to regional advocates. However, it expects to maintain close cooperation with regional and local advocates, and expect that this will be two-way process. ECA will inform and seek cooperation from regional advocates on national market priorities. On the other hand, market
development and consumer experience at the local level will inform pro-active advocacy at the national level by ECA.

ECA is expected to require a staff of 14 persons with a budget of about $6.2 million which translates into about 65 AUS cents per consumer per year (Tamblyn and Ryan, 2013). On a per capita basis it seems roughly equivalent to the average for the US.

5.4 Brazil

The Brazilian constitution introduced in 1988 as part of the transition to democracy, sanctioned decentralization of policy-making and included mechanisms for citizens to participate in policy formulation and monitoring. Hundreds of thousands of interest groups collected signatures while the constitution was being written demanding the creation of participatory democratic mechanisms. These efforts were based on the belief that increased public participation would lead to more transparent and accountable policy-making, which, in turn, would result in social policies that were responsive to the needs of citizens. This legal foundation has helped create an extensive institutional framework for public participation. (Coelho et. al., 2005)

In keeping with this characteristic of institutions in Brazil, the Brazilian Electricity Regulatory Agency, ANEEL (Agencia Nacional de Energia Electrica) provides several avenues for the public to participate in the electricity sector (ANEEL, 2014).

- **Public Hearings.** ANEEL sees public hearings as an important step in improving its decision-making and in maintaining complete transparency. Public hearings are held to discuss ongoing proposals whenever these are likely to bring any changes to ANEEL’s regulations that are likely to affect the interests of society or of stakeholders in the power sector.

- **Public Consultations.** ANEEL holds public consultations on its proposals, resolutions and action and solicits suggestions and comments in order to promote total transparency and give members of society an opportunity to participate in its decision-making.

- **Electric Power Consumer Councils.** Each distribution licensee is expected to appoint two council members (one effective and one substitute) for each category of consumers: residential, commercial, industrial, rural and public power. These members are to be nominated by civil society organizations. One of the members to the Council should be from a consumers’ defense institution, appointed by the Attorney General’s office or the regional consumer protection councils. The members of the Consumers Council develop their own strategy and associated work plan. The resources for implementation of the work plans are provided by the respective licensee. In addition, the Consumers Council also designs projects to use money collected through fines to benefit consumers. Consumers can voice their concerns about their electricity service through their representatives on these councils.

- **Ombudsman and the Superintendent of Administrative Mediation (SMA)** receive opinions and complaints from consumers. However, consumers must first contact their distribution licensee for new service, information or to lodge complaints. If the licensee does not respond in a reasonable amount of time or they are dissatisfied with the response, they are to appeal to the regulatory agencies (generally for all public utilities) in their respective states and only after that to the Ombudsman at ANEEL.
• **Public Meetings of the Director Board.** The schedule of these meetings including the agendas, minutes of previous meetings, memoranda are available on ANEEL’s website.

• **Virtual Forum for Technical Integration.** This forum provides a space for citizens and entities to discuss issues regarding Brazil’s energy sector.

How well have these mechanisms worked? There is not much information available in English on this matter. However, a study on public hearings at ANEEL provides some interesting insights. The study examined public participation in several public hearings for a tariff review (Castro, 2013). It found that participation was dominated by the regulated entities, with the number of participants from the regulated entities being twice that from participants. The participation was skewed even more when the hearings were focused on more technical subjects such as the methodology. Castro found that consumer representatives played a very weak role. They have “a limited ability to empower social voices and address complex issues.” She notes that, “Indeed, public hearings alone cannot promote social participation.” Therefore, she recommends strengthening of consumer groups and assistance to individual consumers so that they can be better prepared and can participate more effectively in hearings. She points to another trend that we see in India also; misuse of public hearings by politicians and consumer groups by using them for self-promotion, politicking and increasing conflict.

A review of the regulatory reform in Brazil by OECD echoes the concerns of Castro regarding the effectiveness of participation (OECD, 2008). While the observations refer not only to the electricity sector but also transport, private health insurance and telecommunications, they reinforce the concerns about effectiveness of participation. The review finds that in spite of access to means of participation, “…effective participation of citizens in consultation procedures remains a challenge. Social participation is low as civil society can be difficult to represent. There is also a need to build up a voice for consumers.”

A report from the Brazilian Electricity Governance Initiative (B-EGI) confirms these findings. It found that while there were legislative measures that provide space for public participation, there were limited efforts to ensure participation. The report highlighted the need to improve public participation, particularly for more vulnerable groups. (B-EGI, 2009)

**5.5 Lessons for India from International Experience**

The circumstances and industry structure for the four countries that we have studied vary widely. UK and Australia rely on the market for generation. Brazil has regulated supply for small consumers but allows large consumers to shop for electricity in the market. USA has a mixed system with some states allowing competitive supply of electricity while others regulate the generation of electricity. In spite of these variations, there are some common themes that emerge from the practices in these countries regarding consumer protection and participation.

As discussed in Chapter 4, effective consumer participation requires an eco-system with three pillars: informed and assertive consumer groups; receptive regulatory commissions; and a non-interfering state government. Much of the attention in the four countries is focused on the first pillar. This is because the other two are taken for granted. From the efforts being made in these countries by governments and regulators to provide avenues for the consumer voice to be heard,
receptiveness of governments and regulators is obvious. The lack of interference by governments in regulatory proceedings may be attributed to the much greater extent of private participation in the electricity sectors in these countries. The Australia and UK have almost complete private ownership, the US has a mix.

All the four countries have recognized that small consumers cannot, on their own, participate effectively in regulatory decision-making. Hence these countries have seen the need for a separate body to represent consumers in deliberative decision-making that has the following characteristics: (1) independent from the regulatory agency; (2) with sufficient expertise; and (3) capable of representing the consumer perspective. In the US, this role is played by the State Consumer Advocates. UK uses a Consumer Challenge Group of six consumer expert to provide the consumer perspective during regulatory proceedings. In a similar way, Australia has established Consumer Challenge Panel (CCP) consisting of thirteen consumer experts. Once ECA the national advocacy body is established CCP will supplement its work. ECA is of course expected to have the three characteristics listed above. While Brazil has focused much more on public participation through hearings and consultations, it too has established the Electric Power Consumer Councils which partly fulfil the role of the independent consumer advocacy body. However it does not seem that these councils will represent consumers in regulatory proceedings.

These issues and other themes that emerge from the experience of these four countries provide important lessons for India as it looks to reform mechanisms for the protection of, and participation by, consumers in the regulation of the electricity sector.

5.5.1 Make Consumers the Focus of Reforms

With a little thought, it becomes self-evident that the best way to ensure effective consumer protection and participation is by making consumers the focus of reforms. UK and Australia have done so through the Consumer First program (UK) and Putting Consumers First (Australia). These countries have recognized that functioning of the sector is heavily dependent on satisfied and involved consumers. In the US, almost every PUC has a division that is exclusively devoted to consumer affairs. It monitors complaints and compiles statistics through which it informs the respective PUC in its decision-making.

Focusing on consumers requires first an understanding of their needs. There are multiple options for doing this. As we have seen, Australia requires that licensees engage with consumers before filing a petition before the regulatory authority. In addition, Australia and the UK have Consumer Challenge Panels that act as “critical friends” to the regulator and provide the consumers perspective on important issues in regulatory proceedings. Both Australia and UK make special efforts to understand the needs of the vulnerable – the elderly, the sick, and illiterate consumers.

It may be best for the ERCs in India to each have a consumers affairs division (CAD) that handles complaints, resolve disputes between consumers and utilities, and carries out research to understand consumers. Because the CAD will be located with the ERC, it would be easy for it to feed this information to the Commission who could, in turn, use it in its decision-making.
5.5.2 Need to Create Space for Deliberative Democracy in the Electricity Sector

In order to have effective regulatory decision-making in India, we need to move away from the concept of mere participation to deliberative democracy. In other words, consumers and their representatives should not focus solely on presenting consumers’ views but should be actively involved in the decision-making through deliberation. During deliberations, participants are expected to transcend their own private interests and focus instead on the public interest. Participants exchange arguments and attempt to arrive at solutions that are in the long-term public interest.

We recognize that no country has achieved this idealized version of deliberative democracy in its regulatory framework for electricity. However, three out of the four countries that we studied all have provided space for deliberations where there is a give-and-take of views and consumer representatives have an opportunity to influence regulatory decisions. UK and Australia use a Consumer Challenge Group and Consumer Challenge Panel respectively whereby a group of consumer experts provides inputs to the regulatory agency in its decisions. In the US, the regulatory framework relies far too much on an adversarial approach to be called deliberative. However, the evidentiary hearings in cases, where witnesses are cross-examined result in a thorough, but not necessarily collegial, vetting of ideas.

In India, there is almost no space for deliberation between stakeholders. Most of the public participation takes place at public hearings. Technical validation sessions which were held in the case of Maharashtra were one notable exception. However, those sessions focused only on the completeness of the utility’s filing and there was no deliberation on the completed filing by the utility. Unfortunately, even the technical validation sessions may be on their way out in Maharashtra as we discussed in Chapter 4.

SERCs need to create space for deliberations between stakeholders. The lack of strong consumer advocates in the states may limit the use of such meetings but we think that rather than wait until strong consumer advocates are present in a state, it would be best to pursue the creation of regulatory space for deliberations and strengthening consumer advocacy simultaneously.

We think it would be best to continue having public hearings and consultation sessions where deliberation occurs. The public hearings will provide a check on the process becoming too expertocratic. Public hearings provide a corrective mechanism; in addition, many good ideas have been presented there by participants.

5.5.3 Need for a Strong Advocate for Consumers

Residential consumers and small businesses are a dispersed group that lacks expertise and resources and is unlikely to be heard by regulators. Except for the US, in all the countries we studied, these consumers are inadequately represented by a fragmented set of civil society organizations with limited resources and expertise. In all these countries, a need was felt to strengthen these civil society organizations. As the experience in the US has shown, the most effective way to protect and represent consumers interests is to have a consistently present, technically capable advocate with sufficient human and financial resources. Such an advocate can represent all consumers and be a strong countervailing influence at the regulatory commission against the utilities which have access
to large funds and expertise. Without such a strong advocate, the commission could be captured by
the utilities. Grass-roots advocates are still needed to represent special interests such as the elderly.
Australia is likely to have such a strong consumer body, ECA by January 2015. Currently, Australia
and the UK have Consumer Challenge Panels (CCPs) which do represent the consumer interest in
regulatory proceedings. However, we think that given its much wider coverage and independence,
ECA will be able to develop a comprehensive picture of the issues in the energy sector from
consumers’ perspective.

As we can see from the American and Australian experience, there is a need to have at least one
consumer advocacy organization designated in each state. Because the consumer advocate needs to
be consistently present, it must be someone’s job to advocate for consumers in the state. Otherwise,
consumer groups would pick and choose what they wanted to advocate on, and it is possible that on
routine but very important cases, there will be no one to represent consumers.

5.5.4 Presence of Electricity Markets Does Not Obviate Need for Strong Consumer Protection and
Advocacy

It has long been thought that the introduction of electricity markets would obviate the need for
consumer protection and participation because the availability of choice would allow consumers to
opt for the “exit” option, by switching suppliers if dissatisfied with their service. However, this does
not seem to be so. Both UK and Australia rely on electricity markets, but in both countries they find
that small consumers do not participate in the markets to any significant extent. Both countries have
had to introduce measures to prevent exploitative practices by competitive suppliers, and measures
that help consumers with information that would facilitate their participation in the market. And
both countries find that consumers need to be educated in participating in these markets. Strong
representation of the interests of small consumers is required to protect their interests. Clearly, the
availability of “choice” does not obviate the need for expression of the consumer “voice.”

In India, there is a move to allow greater freedom to choose electricity suppliers. At least
theoretically, open access to the transmission and distribution network allows large consumers to
select electricity suppliers other than their discom. There is also talk of separating carriage and
content for all consumers, thus allowing them the same flexibility. It is important that India thinks
ahead of the consumer protection measures that will be required in such a restructured
environment. Otherwise, if reform of consumer measures is tailored to the current industry
structure, it could be rendered obsolete if there is greater reliance later on the market to supply
electricity. Given our much larger percentage of the population that is poor and/or illiterate, it is
important that India pays attention to the challenges that even developed countries have faced
when they opened up the supply market for small consumers.

5.5.5 Ongoing Evaluation of Consumer Protection and Participation Regime

No regulatory regime works perfectly from the first day. As the UK and Australian experience shows,
there is a need to make modifications as and when necessary. Therefore, mechanisms need to be
built into the regulatory structure for consumer protection and participation for ongoing monitoring
of how well it is working, and for making modifications when required. Unfortunately, in India we
have not paid much attention to monitoring and evaluation, but that needs to change.
5.5.6 Availability of Information

As we have seen from the example of the US, ready availability of information makes it easier for all participants in regulatory proceedings. In particular, it makes it easier for consumer advocates to present the consumers’ perspective. In India, we have a long way to go. Even basic information is sometimes difficult to get. But this issue needs to be addressed not just for consumer protection and participation but for many other policy issues too.

5.5.7 Misuse of Hearings

The experience of Brazil regarding the misuse of hearings by politicians and some consumer groups for politicking, self-promotion or creating conflict draws attention to an important issue. In India too, we see some of these things happening. Will greater participation by informed citizens and consumer groups create space for deliberative democracy and reduce the need for misuse of hearings? We will have to wait and see.
Conclusions and Recommendations

In spite of tremendous gains since independence in the electricity generation capacity in the country, and structural change in the sector, the Indian power sector remains mired in problems. Introduction of regulatory commissions has brought about some transparency but has not been able to solve the problems of the sector. Much has been written about reforming the sector and the steps needed to remedy the situation. One aspect of reforms that has not been written about much is consumers’ experience with their electricity service and measures to protect consumers’ interests in the sector. Neither has much been written about incorporating consumers’ voice in decision-making. By themselves, consumer protection and participation will not solve the problems in the sector, but they are likely to lead to improvements in the decision-making environment and thus catalyse other improvements.

It is not that the consumer has been completely absent from the minds of the people drafting laws dealing with the power sector. Successive legislations dealing with the sector have paid increasingly greater attention to consumer interests. However, even in the most recent legislation, E Act 2003, the considerations remain far from the desired level.

6.1 Summary of Findings

6.1.1 Consumer Grievance Redressal

The E Act has a two-tier provision for consumer grievance redressal (CGR): if the consumer is not satisfied with the complaint handling by the utility, he/she can approach the CGRF, and if still not satisfied, can approach the Ombudsman. We find that there are several shortcomings in the CGR mechanism that make it not as effective as it needs to be.

- Awareness among consumers of the CGRF and Ombudsman is very low.
- The structure and composition of the CGRF in four of the five states, seriously limits its effectiveness. Except in Delhi, inclusion of one or two members from the licensee in the three-member CGRF compromises its independence, and could be the reason for fewer decisions in favour of the consumer in those states. In addition, in all the states except Delhi, because funding comes from the licensee, it constrains the CGRF in the discharge of its duties in some cases, for example in the case of MSEDCL.
- Except in Delhi and Maharashtra, the CGRF and Ombudsman focus on monetary issues, leaving consumers with grievances about the quality of supply and service at the mercy of discom staff. Even though, the SERC regulations do not put these limits, the CGRFs seem to have taken the decision by themselves without any correction by the respective SERC.
- SoPs have been set by all the five SERCs, and these could be powerful instruments to ensure the provision of electricity service of high quality to the consumers. Unfortunately, this potential of SoPs has not been tapped. There is almost no mechanism to monitor compliance with the SoPs by the SERCs. Barring a few exceptions, most CGRFs do not take
them into account when deciding a case and setting the level of compensation that is due to consumers when the discom is liable.

- Valuable information is obtained from the CGR processes. However, none of that information is used any further. Thus, the effectiveness of the processes or the level of satisfaction of consumers does not get any further attention in the decision-making process. The voice of consumers in the form of complaints or grievances does not get amplified, or even carried forward, in the regulatory process by the SERC.

6.1.2 Consumer Participation in Regulatory Decision-Making

For consumer participation in regulatory proceedings too there is considerable scope for improvement. Effective consumer participation requires a supportive eco-system with three components: (1) assertive and informed consumer groups; (2) engaging and receptive SERC; and (3) non-interfering government. None of the states that we studied had all three of these required elements. Maharashtra leads in the number and quality of consumer groups, and networking among the groups further strengthens consumer participation. In the other states however, consumer groups are either non-existent or they are struggling due to lack of human and financial resources. While all SERCs want consumers to be better informed, the receptivity to inputs from consumer groups is not perceived to be very high. Soon after its establishment, MERC encouraged participation by consumers but that enthusiasm and encouragement seems to have dwindled in the recent past in that state too. State governments, the third component in the required eco-system, have intervened to promote their own interests and agendas in some states.

The SAC is another body that could potentially play an important role in representing consumers’ interests in regulatory decision-making. Unfortunately, it has not done so in any of the states. First, because the composition of the SAC is skewed in favour of the government and discoms. Second, instead of looking at major policy issues, most of the SACs look at operational issues. The SAC in Delhi seems to be somewhat better and focuses on some major policy issues but that may be credited to the presence of certain individuals.

Consequently, the level of consumers’ participation in the regulatory decision-making remains limited across the states. None of the five states clearly fall into any of the five levels, viz. information, consultation, influence, partnership and empowerment (as discussed in Chapter 2). While all SERCs have made efforts to share information, as required by the E Act, none of them really taken any innovative approach to reach out to the mass. Rather the information sharing initiatives are more directed to comply with the provisions of the E Act. Haryana and Rajasthan seem to be the laggards with negligible participation in regulatory hearings. This may be attributed to absence of informed and assertive consumer groups and/or to the less proactive and receptive commissions in the states. Delhi and Karnataka, with reasonable participation especially in tariff proceedings, seem to be at one step ahead, i.e. ‘consultation’. But there is no evidence that consumers’ inputs are taken into account in the final decision-making. Maharashtra had peaked at the ‘influence’ level, but is at present on a declining trend. The success of Maharashtra in past could be attributed to strong presence of informed and assertive consumer groups, and also the proactiveness and receptiveness of then regulators.
6.2 Need for Holistic Approach to Consumer Protection and Participation

The state governments and the SERCs have established several organisations and developed various processes to protect the interests of consumers and enable them to participate in regulatory decision-making such as: CGRF; Ombudsman; SAC; and SoP. However, rather than working in concert with one another, there is almost no link between the different organizations. This silo-like approach results in a very ineffective system for consumers. For example, the establishment of CGRFs has provided an opportunity to consumers to present their voice in the form of grievances. But whether they are satisfied or dissatisfied with the outcomes, and whether the overall CGR process is effective, there is almost no further attention paid to these issues in the regulatory process. It seems that the consumers’ voice is heard only in the limited confines of the CGRF and Ombudsman office, and it is not amplified, or even carried forward, in the regulatory process by the Commission to affect regulatory decisions.

In order to be really effective, the entire CGR mechanism needs to be seen as a system, as shown in Figure 6.1. While addressing grievances is important, the purpose of having a CGR mechanism should not be simply to handle grievances, instead it should also be used to understand why grievances are occurring and to reduce them to a reasonable level. That goal requires that the CGR mechanism be used by the SERC to monitor all stages of the CGR process, evaluate the performance of each stage, and carry forward the information into the regulatory decision making process. As shown in Figure 6.1, for this purpose, the CGR mechanism should include the following tasks:

- Periodically obtain from the discoms data about all complaints lodged by consumers over that period. Compare the aggregate data on complaints with the benchmarks for aggregate performance measures in the SoP, such as the total number and duration of outages. Ensure that the resulting information about discom performance flows into the regulatory decision making for tariffs etc. for the respective discom. Also compare the performance of the internal complaint handling system of the discom with the benchmarks for individual complaints in the SoP and carry forward that information too into the regulatory decision-making process. Because the SERC will have the required data, it should order the discom to provide compensation, through bill reduction, to those consumers who are eligible for it.

- Similarly, periodically obtain information from the CGRF about the grievances handled over that period. Some CGRFs already provide such information to the SERC either directly or through the Ombudsman. The SERC should monitor the performance of the CGRF in terms of the time taken to resolve grievances. It should see if there are any patterns to the cases handled by the CGRF. What proportion of cases are decided in favour of consumers? Is there any class of consumer that very rarely files a petition at the CGRF? This is may be due to lack of capacity, resources or awareness. Do the utilities in the state comply with CGRF orders? If not, why not? The SERC should push the utilities to comply.

- The SERC should monitor the performance of the Ombudsman in a similar fashion.

- All the information about the performance of the discom and the CGR mechanism should flow into regulatory decision-making. This way the voice of the consumers can be carried forward and amplified by the regulator.
6.3 Suggested Improvements in CGR Mechanism

6.3.1 Improve Internal Complaint Handling Process of Discom

It is important to emphasize that the first and foremost step to improving the handling of consumer grievances is to improve the internal complaint handling process of the discom. Generally when people think of the CGR process they think only about the CGRF and Ombudsman. But the internal complaint handling process of the discom is also a part of the CGR mechanism. The better the complaint handling of the discom is, the fewer the grievances and the better the overall CGR mechanism.

6.3.2 Make CGR Less Tedious

For consumers, going through a multi-stepped process to get satisfactory resolution of a grievance can become a tedious experience. In some cases, even the internal complaint handling process in the discom can have many steps and can be complex and tedious. Some examples are the internal grievance redressal process in Maharashtra (MSEDCL) which itself has many hoops that the consumer has to jump through and until recently Rajasthan, where the CGRFs were four layered structures. We recognise that it is important and useful to have more than one avenue to resolve grievances, but it would be much better if the first level (discom’s internal complaint handling) is more effective and efficient so that the consumer does not have to go through a tedious experience.

6.3.3 Independence

The CGRF should be independent of the discoms. This independence needs to be established at least on the following four issues:

- **Membership.** As in Delhi, there should be no member who is a current employee of the licensee, or has been an employee of the licensee in the previous two years.
- **Office Space.** The office should be separate from the premises of the discom.
- **Funding.** The funding should come from charges on utility revenues and should flow directly to the CGRF or through the SERC.
- **Salaries.** The salaries for all the CGRF members and Chairmen in a state should be uniform and be decided by the respective SERC, based on benchmarking against salaries for other public services.

### 6.3.4 Issues under CGRF Jurisdiction

The CGRF should consider all complaints filed by the customers of a discom regarding their electricity services provided by the discom except complaints related to Sections 126, 127, 135-139, 152 and 161 of E Act which come under the jurisdiction of criminal courts. SERCs must ensure that CGRFs do not decide on their own to restrict themselves to a subset of issues such as those related to monetary matters (billing etc.) as has happened in some states.

### 6.3.5 Compliance with CGRF and Ombudsman Orders

The CGRFs will be effective only to the extent that their orders are complied with by the licensee. Data on compliance is not available for all the states. However, even for Maharashtra where the compliance level was 83% until the end of 2009 (MERC, 2010), in 2012-13 the compliance level had dropped to 44% (MERC, 2014). The SERCs must monitor the compliance level in the periodic reports that are to be submitted by the CGRF and Ombudsman as discussed in Section 6.2 above. If after allowing for reasonable time for the discom to comply with CGRF and Ombudsman orders, the SERC finds that the compliance levels are not satisfactory, it must question the discom and take appropriate action if there is no suitable answer.

### 6.4 Improvements Regarding SoPs

SoP is another valuable tool for ensuring good quality electricity service for consumers. While most states have established SoPs, there is almost no mechanism to ensure or even monitor the performance of the utilities against the SoP, rendering the SoP ineffective.

Section 59 of the E Act requires that all discoms periodically file information on: (1) the performance of the discom on all parameters in the SoP; (2) the number of cases where compensation was paid and the total compensation. This information is to be compiled and published by the SERC at least once a year. The compliance with these requirements by the discoms and SERCs has been spotty. All SERCs should ensure that the discoms under their respective jurisdictions file these periodic reports and that the information is made public at least annually. The periodic filing of information about the performance of a discom should be accompanied by a meeting between the SERC, the discom management, the CGRF and the Ombudsman. Based on these periodic reports, the performance of a discom should be monitored against the SoP at an aggregate level and at an individual complaint level. At the aggregate level, the SERC must ask the discom to explain if and when the performance falls below the threshold established in the SoP for any parameter. In addition, during the annual tariff review, the SERC must include the level of performance of the discom in its considerations when deciding on a tariff increase or decrease.

At the individual complaint level, the SERC must explicitly authorise the CGRF to order payment of compensation for not meeting the guaranteed level of performance whether or not the consumer petitions for it in his/her complaint. Most consumers are unaware that they are entitled to such compensation. Some CGRFs have been ordering compensation even without the consumer requesting it. We suggest that CGRFs be explicitly required to do so. This would correct the
information asymmetry that exists between consumers and the utility on such issues. Furthermore, it would incentivise the utility to make extra effort to meet its guaranteed level of performance.

6.5 Recommendations for Enhancing Consumer Participation

As discussed earlier in this chapter, effective consumer participation requires a supportive ecosystem with three components: (1) assertive and informed consumer groups; (2) engaging and receptive SERC; and (3) non-interfering government. However, none of the states have all three components. We look at what can be done to enhance each of these components. But before that we look at the need to create space in the electricity regulatory framework for deliberative democracy.

6.5.1 Need to Create Space for Deliberations in the Electricity Sector

In order to have effective regulatory decision-making in India, we need to move away from the view of participation merely as consumers petitioning the SERC to remedy problems with electricity service through lower tariffs, or penalties imposed on the utility for poor service. Almost all the states view of consumer participation as mainly public hearings. This reinforces the view of consumer participation as a one-way communication, almost like in a “durbar” where consumers request the authority, in this case the SERC, to reduce their suffering. We need to start thinking about consumer participation as active involvement in the decision-making through deliberation. During deliberations, participants are expected to transcend their own private interests and focus instead on the public interest, and exchange arguments and attempt to arrive at solutions that are in the long-term public interest.

As we saw in Chapter 5, three out of the four countries we studied provide space for such deliberations. In contrast, in India, there is almost no space for deliberation between stakeholders. Most of the public participation takes place at public hearings. Technical validation sessions which were held in the case of Maharashtra were one notable exception. However, those sessions focused only on the completeness of the utility’s filing and there was no deliberation on the completed filing by the utility. Unfortunately, even the technical validation sessions may be on their way out in Maharashtra as we discussed in Chapter 5.

SERCs need to create space for deliberations between stakeholders. By their very nature, deliberations require discussions in a small group. For all major cases, SERCs should set up consultation sessions where such deliberations can occur between all the significant stakeholders. The lack of strong consumer advocates in the states may initially limit the effectiveness of such meetings but we think that rather than wait until strong consumer advocates are present in a state, it would be best to pursue the creation of regulatory space for deliberations and strengthening consumer advocacy simultaneously.

We think it would be best to continue having public hearings even when consultation/deliberation sessions are held in a proceeding. The public hearings provide a corrective mechanism, and will provide a check on the process becoming too expertocratic. In addition, some good ideas may be presented there by participants who are unlikely to be at the deliberative sessions.
6.5.2 Assertive and Informed Consumer Groups

As the US experience shows, there is a need for a consistently present, technically capable advocate for small consumers. First, such an advocate or advocates would represent the interests of small consumers who would otherwise be underrepresented in regulatory proceedings. Second, the advocate would offset the power of the utility who would otherwise have a dominant voice in the regulatory proceedings. Third, the advocate would enhance the information base available to the SERC and thus improve the decision-making by the SERC.

The requirement for technical capability means that the consumer advocate must have a long term involvement in the sector over which such capability can develop. Combined with the need for consistent presence, we see that for effective consumer representation in proceedings, participation by consumer groups cannot be sporadic or according to their whims. Effective consumer representation requires that the consumer representative treats it as its “job.” Simply encouraging CSOs to participate in regulatory proceedings through financial support or training will not be sufficient, because then a CSO will participate only on issues that fit its agenda. This conclusion is supported by the difficulty that has been experienced in various states in getting consumer groups to participate effectively and consistently in electricity regulatory proceedings. Maharashtra is the only exception, but we think it will be difficult to replicate the Maharashtra experience. Furthermore, designated consumer representatives (CRs) would be expected to attend the deliberative sessions and will ensure that consumers’ perspective is presented in those sessions. Therefore in each state, there must be at least one designated CR whose job is to represent consumers.

How do we go about identifying the designated CRs. We do not think it would be appropriate in India to have the consumer advocate be part of the state government as is the case in most of the states in the US. First, given that many of the utilities are state-owned, and that the SERC is appointed by the state government, having a state appointed consumer advocate could very easily lead to a nexus between the utility, the regulator and the consumer advocate.

An alternative is to designate at least one CSO in the state which will be treated as a party to all cases before the SERC and will thus be invited to all proceedings and will be sent copies of all filings in cases before the SERC. This has been done in Maharashtra and has been successful. Another alternative is to have Consumer Challenge Panels (CCPs) as done in UK and Australia. However, CCPs rely on individual consumer experts, and a sufficient number of them may not be available. Moreover, we think that in India we need to focus on building capacity of institutions rather than individuals.

While the designated CR could represent the aggregate interest of all small consumers in the state, there will be a need for representation of vulnerable groups – the poor, farmers, the elderly, etc.. It is unfortunate that in India where we have so many poor consumers, there is no group in regulatory proceedings that advocates for poor consumers. Therefore, we recommend two types of consumer representatives: designated CRs to represent the broad interest of consumers and special interest groups to represent the interest of vulnerable groups.
6.5.2.1 Selection of Designated Consumer Representatives

As discussed above, each state should have at least one designated consumer representative (CR) that will be supported financially and helped with training. The selection of the designated CR should be independent of the respective state government and SERC. The best suited agency for carrying out the selection would be FoR. However, FoR may not be familiar with CSOs in all the states. Therefore, we recommend that FoR selects reputed academic or research institutions in each of the major regions and these institutions would, in turn, select the designated CRs for each of the states in the region. These institutions should solicit applications from organizations interested in being designated CRs, and then select one based on capabilities, motivation and past experience.

6.5.2.2 Financing for Designated CRs and Other Consumer Groups

We suggest the following approach using a fund based on the proposal by Sant and Dubash (2006) with some modifications. The fund could be financed through a cess on electricity. The mechanism for funding should be independent of the government and the SERC, so that decisions to provide financial support are not influenced, or seen to be influenced by whether the government or SERC agree with the positions taken by the potential recipient of the financial support. We think it would be best if the fund is administered by FoR which would ensure independence from individual SERCs.

A Board of five members, appointed by FoR, could be set up to manage the fund. The membership of the Board should be diverse and represent the different sections of society: small consumers, academics, and social activists.

- The designated CRs for all the states should receive payments from the fund semi-annually or quarterly. For the special interest groups, every year proposals or solicitation for funds could be invited, and after a comparative evaluation of the proposals and depending on the funds available, awards made to the deserving proposals. The following principles should guide the disbursal of funds (adapted from Sant and Dubash, 2006):
  - **Broad Coverage of Issues.** Consumer representatives should be supported to participate in regulatory proceedings on all issues, not just “consumer” issues such as grievance redressal.
  - **Need and Public Interest Orientation.** Financial support should be based on need and should be limited to those interveners that act in the public interest rather than private interest.
  - **Accountable.** A system will need to be put in place to ensure that there is accountability in the use of the funds, while at the same time keeping the transaction costs low.
  - **Low Transaction Costs.** It is important that the process for seeking funds be straightforward so that applicants or the management of the fund do not have to expend great effort in using the funds. Thus paperwork will need to be kept at the minimum level that would be sufficient to ensure accountability.

6.5.3 Role of SERCs and State Governments in Nurturing Consumer Participation

In addition to assertive and capable consumer groups, effective consumer participation requires a receptive SERC and supportive state government. As we have seen that not all SERCs and state governments have fulfilled this role.

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The SERCs in the five states have varied in their receptivity to CP in their regulatory proceedings. None of the states are nurturing CP. In some states, consumer groups say they are given a chance to participate, but are not really heard. In Maharashtra, the earlier members of MERC encouraged CP making Maharashtra a shining example of effective CP. However, as discussed in Chapter 4, that receptivity has waned in recent times discouraging many consumer groups. It is important that all SERCs nurture CP as done by the earlier members of MERC.

Similarly, state governments have been lukewarm, at best, of CP. In some cases, as in Maharashtra recently, the state governments have interfered with the regulatory process to stifle CP. Other than exhorting state governments not to interfere, we do not know of any ways to get state governments to desist from interfering.

6.5.4 State Advisory Committees

Having SACs is another good idea that has not lived up to its potential because of poor implementation. SACs are meant to be advisory bodies to advise the SERCs on major policy issues and the service provided by the licensees. Instead they have become bodies to facilitate coordination between different government agencies. One reason is that composition of the SACs has been dominated by the government and the electric companies. The composition needs to be more balanced with a much greater percentage of the members being from civil society and academia, and experts. In addition, the SACs should focus on the “big picture” and not become embroiled in operational issues.

The E Act requires that the Chairperson of the SERC also be the Chairperson of the SAC. Consequently, the agenda of the SAC is dictated by the Chairperson of the SAC, and limits the independence of the SAC. In order to enhance the effectiveness of SACs, the Chairperson of the SAC should be selected independently and ideally should not be the Chairperson of the SERC. We expect that the resulting freedom for the SAC will allow them to focus on major and important policy issues that may not be of immediate concern for the SERC, but are very important for the state electricity sector in the long term.

6.5.5 Need for Two-Way Communication between SERCs and Consumers

During our meetings with stakeholders in the five states, there were several instances when consumers or consumer representatives complained that although SERCs provided space for consumers to give inputs, they did not really listen to what consumers or their representatives said.

In developed countries, particularly in the US, regulators tend to maintain a distance from consumers, and let their orders speak for them. It is required in that context to ensure that the regulators are seen as neutral, unbiased and not under the influence of any particular stakeholder group. We think that in the Indian context, regulators need to interact more with consumers either directly or through the public media. Because not many consumers read orders, they often do not know the reasons for SERC decisions. If SERCs pro-actively explain their decisions, then as consumers begin to understand the reasons for some seemingly undesirable decisions such as tariff increases, they will be more likely to engage constructively with the regulatory processes. This will create greater social cohesion. In addition, it is less likely that politicians will be able to misuse regulatory
proceedings to promote their own agendas, and consequently, the regulatory space for participation is less likely to be vitiated by politicians.

Even SERC orders need to provide more explanation for their decisions. Most orders list the comments received from various stakeholders, and also provide the decision taken by the SERC. However, they do not say much about why some views of stakeholders were accepted while others were rejected. Such explanations will not only provide greater social cohesion, but they will also bring about greater accountability on the part of the SERCs.

6.6 Other Factors for Effective Consumer Protection and Participation

6.6.1 Consumers Cell in Each SERC
In order to ensure that consumers’ issues get addressed, each SERC should consider establishing a consumers cell within the SERC. Such a cell could address the following issues:

- Increase consumer awareness through consumer education
- Receive data from the discoms, CGRF and Ombudsman about number of complaints and their redressal.
- Analyse data on complaints discussed above and monitor performance of the discom, CGRF and Ombudsman. Compare with performance benchmarks and present results to SERC for appropriate action.

6.6.2 Rating Scheme for Consumer Protection and Participation
In order to facilitate more effective consumer protection and participation (CP&P) in the states, it may be useful to have a third-party develop a rating scheme for CP&P, similar to the annual rating of SERCs by ICRA. The annual rating for CP&P should be made public. It would serve two purposes: (1) Help SERCs monitor the performance of the CP&P framework in the state; and (2) Allow comparison across states which would incentivise states to do better on this metric and would also facilitate percolation of ideas and techniques from the well performing states to the poorer performing states.

The rating would have two parts: (1) Rating of the CGRM; and (2) Rating of the Level of Consumer Participation. All data on number of complaints, number of participants etc. would be on the basis of per thousand consumers so as to be able to compare utilities or states of different sizes. For the CGRM, the rating scheme would look at the following statistics:

For each stage of the CGRM process shown in Figure 6.1 earlier in this chapter, such as the internal complaint handling process or CGRF, the rating scheme would consider:

- Number of complaints per thousand consumers received by the utility
- Number of complaints per thousand consumers resolved by the respective stage of the CGRM process;
- Average time taken to resolve complaint.

For rating of the consumer participation for an utility, the following statistics would be included for public hearings and deliberative sessions separately:
- Number of participants;
- Number of participants from vulnerable groups.

### 6.6.3 Need for Ongoing Evaluation of Systems for Consumer Protection and Participation

No regulatory regime works perfectly from the first day. As the UK and Australian experience shows, there is need to make modifications as and when necessary. Therefore, mechanisms need to be built into the regulatory structure for consumer protection and participation for ongoing monitoring of how well it is working, and for making modifications when required. Unfortunately, in India we have not paid much attention to monitoring and evaluation, but that needs to change.

### 6.6.4 Availability of Information

As we have seen from the example of the US, ready availability of information makes it easier for all participants in regulatory proceedings. In particular, it makes it easier for consumer advocates to present the consumers’ perspective. In India, we have a long way to go. Even basic information is sometimes difficult to get. But this issue needs to be addressed not just for consumer protection and participation but for many other policy issues too.
## Summary of Recommendations

<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Issue</th>
<th>Nature of Required Change</th>
<th>Agency Responsible for Change</th>
</tr>
</thead>
</table>
| 1.  | Establish Consumer Cell in each SERC with mandate to:  
  - Carry out awareness and educational programs  
  - Analyse data from utilities, CGRF and Ombudsman for trends and potential problems, to support SERC efforts for monitoring and oversight.  
  | Low consumer awareness; Need analysis for monitoring and oversight                                                                                                                                          | Admin |
|     |                                                                                                                                                                                                               | SERC |
| 2.  | Holistic Approach to consumer protection  
  - Encourage discoms to improve internal complaint handling process so that grievances to CGRF are kept at reasonable level  
  - Periodic review of complaint data from discom, CGRF and Ombudsman  
  - Comparison with benchmarks in SoP  
  - Periodic meetings with discom, CGRF and Ombudsman to discuss performance and compliance with CGRF & Ombudsman orders  
  - Information on discom performance to be carried forward into SERC decision-making on tariffs etc.  
  | Silo-like approach to grievance redressal                                                                                                           | Admin |
|     |                                                                                                                                                                                                               | SERC |
| 3.  | Make CGRF independent of discom  
  - No member from discom  
  - Separate office  
  - Funding from electricity revenues flowing through SERC  
  - Salaries to be set by SERC by benchmarking against other public services  
  | Independence of CGRF from discom                                                                                                                     | Admin |
|     |                                                                                                                                                                                                               | SERC |
| 4.  | Enforce compliance with SoP  
  - Periodic filing of all SoP performance data  
  - Periodic filing of data on compensation given  
  - Review SoP performance in meeting with SERC, discom, CGRF and Ombudsman as in recommendation 1 above.  
  | Discom performance to match or better SoP                                                                                                            | Admin |
|     |                                                                                                                                                                                                               | SERC |
| 5.  | Ensure CGRF considers all non-criminal complaints  
  | CGRFs being selective in issues                                                                                                                       | Admin |
|     |                                                                                                                                                                                                               | SERC |
| 6.  | Explicit direction to CGRF to award SoP based compensation where applicable  
  | Consumers unaware of compensation entitlement                                                                                                        | Admin |
|     |                                                                                                                                                                                                               | SERC |
### Recommendations for Improving Consumer Participation

<table>
<thead>
<tr>
<th>7.</th>
<th>Each SERC to have consultation sessions on all major cases</th>
<th>Need to create space for deliberative democracy</th>
<th>Admin</th>
<th>SERC</th>
</tr>
</thead>
</table>
| 8. | Create fund for consumer advocacy using cess on electricity sector revenues  
- Nominate 5-member board | Need for financial support for consumer advocates | Legislative and Admin | MoP, FoR |
| 9. | Set up system to select designated CRs  
- Select regional institutes  
- Regional institutes to identify CSOs who would be good CRs | Need for consistently present, technically capable consumer advocates | Admin | FoR |
| 10. | Encourage and provide financial and other support to advocates for vulnerable groups  
- Invite proposals from CSOs  
- Select deserving candidate CSOs | Need to support advocacy for vulnerable groups | Admin | FoR |
| 11. | Modify SAC mandate and composition  
- SACs should focus on medium and long-term policy issues  
- SAC to have higher percentage of members from civil society, academics and experts.  
- Chairperson of SAC to be independent, and not same as Chairperson of SERC. | Make SACs more effective and providing support to SERC on long term policy issues | Legislative Admin | MoP, FoR and SERCs |
| 12. | SERCs to have more interaction with public through media and directly  
- Explain reasons for decisions to general public.  
- In orders, SERC should lay out clearly the reasoning behind decisions. | Public needs to understand decisions. Makes vitiation of regulatory space by politicians more difficult | Admin | SERC |
| 13. | Make all information from discoms and SERCs available to all | Reduce information asymmetry and improves efficacy of consumer groups | Admin | SERC |

### Recommendations for both CGRM and Consumer Participation

| 14. | On-going monitoring and evaluation of systems for consumer protection and participation | Need to make mid-course corrections | Admin | FoR and SERCs |
| 15. | Development by 3rd party of rating system for consumer protection and participation  
- Help SERCs monitor performance of CP&P framework  
- Allow comparison across states | Need to incentivize better consumer protection and participation | Admin | FoR |
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