

Draft  
Regulatory Reform Bill, 20\*\*





INFRASTRUCTURE  
Building for Growth



Government of India

# Draft

## Regulatory Reform Bill, 20\*\*

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## Perface

After a series of wide ranging consultations with experts and stakeholders, the Government published a paper titled “Approach to Regulation of Infrastructure”. It analyses the current state of economic regulation and suggests an overarching framework with a view to addressing the divergent mandates and practices prevailing in different sectors. The Approach Paper underscores the need to establish a level playing field wherever the industry structure is amenable to competition. It recommends sound regulatory principles and practices where monopoly services are to be regulated.

The Approach Paper identifies some general principles which are critical to the institutional design of regulation in the context of values enshrined in the Constitution. The principle of *separation of powers* among the three branches of government would have to be complied with. This would require rule making and enforcement functions to be separated from judicial functions which may be vested in Appellate Tribunals. To secure *democratic accountability*, the regulator should be directly responsible to the legislature and to the people at large. Moreover, a fair and transparent process for selection of regulators would need to be reinforced through statutory provisions with a view to ensuring that the regulatory system remains insulated from interference and capture.

Adoption of an agreed philosophy of regulation would require legislative action with a view to addressing the diverse provisions in sector-specific enactments. The Approach Paper, therefore, suggests an overarching law for giving effect to the agreed principles of regulation and for guiding the next stage of regulatory development. To facilitate an informed debate, a draft Bill has been prepared to give effect to the recommendations contained in the Approach Paper. After a broad consensus emerges from further consultations, the draft Bill could be considered for enactment with a view to adopting a consistent approach to regulation across sectors.

The key provisions of the Draft Bill include an institutional framework for regulatory commissions, their role and functions, accountability to the legislature and interface with the markets and the people. The proposed statute, if enacted, would supplement the existing sector-specific laws that set out sectoral objectives. The sectors to which the Draft Bill applies include electricity, oil, gas and coal, telecommunications and internet, broadcasting and cable T.V., posts, airports, ports and inland waterways, railways, Mass Rapid Transportation Systems, highways, water supply and sanitation.

The need for such an initiative arises because economic liberalization has distanced the relationship between State ownership and the responsibility for providing infrastructure services, as compared to the earlier arrangement where infrastructure was provided almost exclusively by the public sector. This has ushered in a gradual shift towards private investment in infrastructure services where independent regulation assumes a critical role.

The Draft Bill is being placed in public domain for eliciting views and opinions on the nature and extent of legislative action necessary for reforming the regulation of key infrastructure services.



**(Gajendra Haldea)**

Adviser to Deputy Chairman  
Planning Commission

April 8, 2009

# **The Regulatory Reform Bill, 20\*\***

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

Be it enacted by Parliament in the \*\*\* Year of the Republic of India as follows:

## **PART I PRELIMINARY**

Short title, extent and commencement

1. (1) This Act may be called the Regulatory Reform Act, 20\*\*.
- (2) It shall come into force on such date as the Central Government may, by notification, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

### **Definitions**

2. In this Act, unless the context otherwise requires,
  - (1) “annual plan” means annual plan prepared under sub section (3) of section 16 of this Act;
  - (2) “annual report” means annual report prepared under sub section (2) of section 16 of this Act;
  - (3) “appellate tribunal” means an appellate tribunal referred to in section 3 of this Act;
  - (4) “applicable law” means an Act that governs any specific public utility industry.
  - (5) “appointed date” means the date referred to in sub section (2) of Section 1;
  - (6) “board” means the board constituted under the applicable law in relation to the public utility industry;
  - (7) “carriage” means fixed assets or infrastructure that is used for carrying any goods or services and includes electricity transmission and distribution networks, telephony networks, pipelines, highways, port terminals, railways and airports;

- (8) “chairperson” means the chairperson of a regulatory commission or appellate tribunal, as the case may be;
- (9) “content” means the goods or services that are transmitted or transported by means of the carriage and includes electricity, voice, oil and gas;
- (10) “company” means a company formed and registered under the Companies Act, 1956 and includes any body corporate under a Central, State or Provincial Act;
- (11) “consumer” means any person who buys or avails of any goods or services as the case may be, for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes-
  - (i) any user of such goods or beneficiary of such services other than the person who buys or avails of such goods or services, as the case may be, for a consideration paid or promised, partly paid and partly promised or under any system or deferred payment when such use is made or services are availed of with the approval of the first mentioned person;
  - (ii) any prospective buyer or beneficiary of such goods or services, as the case may be;
- (12) “government” means the Central Government except in the case of State Electricity Regulatory Commission constituted under the Electricity Act, 2003 where government shall mean the State Government having jurisdiction.
- (13) “license” means a sanction or permission granted under the applicable law to operate a carriage or content, as the case may be and includes an exemption from obtaining such license under the applicable law and the expression “license” shall be construed accordingly;
- (14) “licensee” means a company, undertaking or person who has been granted a license under the applicable law and includes a person who is engaged in the provision of services under a valid exemption, concession, or contract in accordance with the applicable law;
- (15) “member” means the member of a regulatory commission or an appellate tribunal, as the case may be, and includes the chairperson thereof;
- (16) “minister” means the minister-in-charge of that department of the Central Government or the state government, as the case may be, which is responsible for the relevant public utility industry;

- (17) “National Advisory Committee” means the committee referred to in section 41 of this Act
- (18) “non-competitive services”, when used in the context of a licensee means such goods or services as may be licensed under the applicable law and such other services as the regulatory commission may specify from time to time and the expression ‘competitive services’ shall include all services other than non-competitive services provided by such licensee;
- (19) “notification” means notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (20) “open access” means the provision of non-discriminatory use of carriage including ancillary or incidental equipment and services thereof, to any licensee or consumer in accordance with this Act and the applicable law and without any undue or unreasonable preference, access, advantage, discount, rebate, waiver, disadvantage or discrimination in any form or manner, as compared to any other person or licensee;
- (21) “prescribed” means prescribed by rules made under this Act;
- (22) “person” includes any company, society, association or body of individuals, whether incorporated or not ;
- (23) “public utility industry” means such industry as is listed out in Schedule 1 to this Act or any other industry which the Central Government may notify from time to time and the term “public utility” shall be construed accordingly;
- (24) “regulations” means regulations made under the applicable law or this Act, as the case may be;
- (25) “regulatory commission” means a statutory commission or board constituted under and in accordance with the applicable law for the purposes of regulating public utility industry, licensees or services, that affect the consumers, directly or indirectly, but does not include a commission or board constituted for regulation of financial services;
- (26) “regulations” means regulations made under this Act by a regulatory commission or appellate tribunal, as the case may be;
- (27) “rules” means rules made by the government under this Act;

*Draft for Discussion*

- (28) “selection committee” means the committee referred to in sub section (1) of section 4 of this Act;
- (29) “schedule” means the schedule to this Act;
- (30) “specified” means specified by regulations made under this Act;
- (31) “State” means a State of the Republic of India and includes a Union Territory;
- (32) “unfair trade practice” shall mean the unfair trade practice as defined in section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 or any substitute thereof;
- (33) “Union Public Service Commission” means the Union Public Service Commission established under Article 315 of the Constitution of India; and
- (34) “year” means an year commencing on April 1 and concluding on March 31;

## **PART II**

### **CONSTITUTION AND PROCEEDINGS OF REGULATORY COMMISSIONS AND APPELLATE TRIBUNALS**

#### **Constitution of regulatory commissions and appellate tribunals**

**3.** (1) The government may from time to time constitute regulatory commissions and appellate tribunals, as the case may be, under and in accordance with this Act or under any applicable laws, but always subject to the provisions of this Act.

(2) The Government may by notification constitute a tariff regulatory commission under this Act for determination of tariff in the provision of goods and services in a public utility industry where competition is either restricted or the prices of such goods or services are determined by the government or an entity owned or controlled by the government, and shall assign such functions to such commission as it may by notification provide.

(3) A regulatory commission or an appellate tribunal, as the case may be, shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract.

(4) The regulatory commission and appellate tribunals, as the case may be, shall consist of such number of members as may be stipulated by the applicable law or this Act, as the case may be.

(5) The chairperson and members of the regulatory commission shall be appointed by the government, on the recommendation of the selection committee constituted under section 4 of this Act.

(6) The government may, by notification combine and merge two regulatory commissions constituted under the applicable laws for each of the respective public utility industries and upon such notification, the reconstituted regulatory commission shall be deemed to be a regulatory commission under the respective applicable laws and shall exercise the functions and discharge the duties as if it were acting under the respective applicable law.

(7) The Central Government may by notification designate any appellate tribunal to hear appeals from a regulatory commission for which no appellate tribunal has been constituted under the applicable law, and upon such notification, all appeals from the orders of such regulatory commission shall lie before the appellate tribunal which shall exercise powers and discharge functions as if such appeals have been made to it under the applicable law and this Act.

(8) The government may, by notification combine and merge two appellate tribunals constituted under the applicable laws for each of the respective public utility industries and upon such notification, the reconstituted appellate tribunal shall be deemed to be an appellate tribunal under the respective applicable laws and shall exercise the functions and discharge

the duties as if it were acting under the respective applicable law.

#### **Selection and appointment of members**

4. (1) There shall be a selection committee for search and selection of the chairperson and members of a regulatory commission and the members of an appellate tribunal, as the case may be. The constitution of selection committee shall be as follows:

- (a) Cabinet Secretary of the Central Government;
- (b) a member of the Union Public Service Commission to be nominated by the chairperson of the commission;
- (c) in the case of selection of a chairperson or member of a regulatory commission, the chairperson of the respective regulatory commission of which the chairperson or member is sought to be selected and where there is no such chairperson, the senior most member thereof;
- (d) in the case of selection of a member of appellate tribunal, a member of the appellate tribunal for the respective public utility industry to be nominated by the chairperson of the appellate tribunal; and
- (e) Secretary in charge of the Ministry dealing with the public utility industry.

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

(3) The selection committee shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal or at least six months before the completion of the tenure of the chairperson or a member, as the case may be, initiate the process for selection of such chairperson or the member for filling up the vacancy.

(4) The selection committee shall invite applications through an advertisement and shall also consider nominations that may be sent to it by any other organisation or person and may also consider any other person that it deems fit.

(5) The selection committee shall finalise its recommendations within a period not exceeding two months and shall recommend a panel of at least two and not more than three suitable persons, in alphabetical order, for each vacancy.

(6) Before recommending any person for appointment as the chairperson or other member, the selection committee shall satisfy itself that such person does not have any financial

or other interest which is likely to affect prejudicially his functions as chairperson or member, as the case may be.

(7) Notwithstanding anything to the contrary contained in this Act, the selection of the chairperson or judicial members, as the case may be, of an Appellate Tribunal shall be undertaken by a selection committee under the chairmanship of a judge of the Supreme Court to be nominated by the Chief Justice of the Supreme Court of India and the selection committee hereunder shall select and recommend a panel of two suitable persons, in alphabetical order, for each vacancy.

(8) The recommendations of the selection committee referred to in sub section (5) and (7) shall be submitted to the relevant minister who shall forward the panel of names to the Prime Minister with his recommendations, within a period of one month from the date of receiving the recommendations.

(9) The Prime Minister may select a suitable person from the panel submitted to him and forward his recommendation to the President of India for his concurrence whereupon the member shall be appointed.

### **Qualification for appointment of members**

5. (1) The members shall have the qualifications specified in the applicable law but subject to the condition that at least one member each of the regulatory commission and appellate tribunal, as the case may be, shall have the following qualifications and experience.

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

(2) No member of the regulatory commission or appellate tribunal shall have any share or interest, whether in his own name or otherwise, in any licensee;

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

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

### **Terms of office and conditions**

6. (1) The chairperson and members shall hold office for a term of four years and shall not be eligible for re-appointment.

Provided that no member shall hold office as such after attaining the age of sixty six years.

(2) The salary and allowances payable to and the other terms and conditions of service of the chairperson and other members shall be such as may be prescribed.

Provided that any pension or other benefit from a previous employment of a member shall not be reckoned for determining such salary and allowances.

Provided further that such salary, allowances and conditions of service shall not be varied to his disadvantage after his appointment.

(3) A member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form and manner and before such authority as may be prescribed.

(4) A member shall, in discharge of his duties, be governed by the conduct rules applicable to the members of the Union Public Service Commission, to the extent such rules are not inconsistent with the provisions of this Act and the rules made thereunder.

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

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

(6) Any member ceasing to hold office as such shall –

- (a) be ineligible for further employment under the government for a period of one year from the date he ceases to hold office;
- (b) not accept any commercial employment for a period of two years from the date he ceases to hold such office;
- (c) not acquire, hold or maintain, directly or indirectly, any office, employment or consultancy arrangement or business with any entity or its associates dealing in matters under the jurisdiction of the regulatory commission ; and

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

*Explanation:* For the purposes of this sub section

- (i) “employment under the government includes employment under any local or other authority within the territory of India under the control of the Central Government or a State government, or under any corporation or society owned or controlled by the government.
- (ii) “commercial employment” means employment in any capacity in any organisation which has been a party to the proceedings before the regulatory commission or employment in any capacity under, or agency of, a person engaged in trading, commercial, industrial or financial business in relevant industry and includes a director of a company or partner of a firm or setting up practice either independently or as partner of a firm or as an advisor or a consultant.

#### **Removal of member**

7. (1) No member shall be removed from office except in accordance with the provisions of this section.

(2) The government may by order remove from office any member, if he-

- (a) has been adjudged an insolvent by the competent court; or
- (b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as a member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has been guilty of proved misbehavior; or
- (g) has failed to discharge his duties.

(3) An order under sub section (2) shall not be issued unless a recommendation to this effect is made by the Prime Minister and approved by the President of India.

Provided that no member shall be removed from his office on any ground specified in clauses (d), (e), (f) or (g) unless an enquiry has been conducted for this purpose and the member has been given an opportunity to defend himself.

### **Officers and staff**

**8.** The regulatory commission and the appellate tribunal, as the case may be, shall appoint a secretary and such other officers and employees as they consider necessary for the performance of their functions and on such terms as to salary, remuneration, fee, allowance, pension, leave and gratuity, as they may in consultation with the appropriate government, fix.

Provided that the appointment of the secretary shall be subject to the approval of the government.

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

#### Proceedings of the regulatory commission and appellate tribunal

**9.** (1) The chairperson shall be the chief executive of the regulatory commission or the appellate tribunal, as the case may be.

(2) The regulatory commission shall meet at its head office or any other place at such time as the chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as it may specify.

(3) The chairperson, or if he is unable to attend a meeting of the regulatory commission, any other member nominated by the chairperson in this behalf and in the absence of such nomination or where there is no chairperson, any member chosen by the members present from among themselves shall preside at the meeting.

(4) All questions which come up before any meeting of the regulatory commission shall be decided by a majority of votes of the members present and voting, and in the event of an equality of votes, the chairperson or the person presiding shall have the right to exercise a second or casting vote.

(5) Save as otherwise provided in sub section (4), every member of the regulatory commission shall have one vote.

(6) The regulatory commission or the appellate tribunal, as the case may be, may authorize any person or appoint an advocate, as it deems fit, to represent the interest of consumers in the proceedings before it and may pay such fee to that person or advocate as it may deem appropriate.

(7) All proceedings of the regulatory commission shall be conducted in a transparent manner.

(8) All orders and decisions of the regulatory commission shall be authenticated by the secretary or any other officer of the regulatory commission duly authorised by the chairperson in this behalf.

(9) The appellate tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the appellate tribunal shall have powers to regulate its own procedure.

(10) The appellate tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the matters under its jurisdiction.

**Vacancy etc. not to invalidate proceedings**

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

## **PART III**

### **POWERS AND FUNCTIONS OF REGULATORY COMMISSIONS**

#### **Functions of regulatory commissions**

**11.** (1) The regulatory commission shall exercise, perform and discharge its powers, functions and duties reasonably with fairness, impartiality and independence and in a manner that is timely, transparent, proportionate, accountable and consistent with this Act and the applicable laws.

(2) In discharging its functions, the regulatory commission shall have due regard to-

- (a) the need for meeting all reasonable demands of the consumers with respect to the public utility industry; and
- (b) the need for securing that licensees are able to finance their activities for meeting such demands.

(3) The regulatory commission shall exercise, perform and discharge the powers, functions and duties in a manner which it considers is best calculated-

- (a) to protect the interests of all consumers, by ensuring quality of service and lowering of costs;
- (b) to promote competition, efficiency and economy and prevent market domination, cartelisation and anti-competitive behavior and for orderly growth of the relevant public utility industry;
- (c) to encourage market development and participation of private sector in the respective public utility industry for ensuring a fair deal to the customers;
- (d) to promote efficiency in the public utility industry;
- (e) to promote an efficient allocation of resources in the public utility industry;
- (f) to promote service quality in the public utility industry;
- (g) to benchmark, where feasible, the public utility industry and licensees as against international standards and specify and enforce standards with respect to the quality, continuity and reliability of service provided by the public utility industry and licensees;
- (h) to associate with environmental regulatory agencies in evolving policies and procedures for appropriate environmental regulation of the public utility industry;
- (i) to provide non-discriminatory open access to the carriage, owned or

operated by a licensee, for use by any other licensee or consumer as the case may be, on payment of fee to be determined by the regulatory commission; and

- (j) to promote equity of access and equitable geographical dispersion of services.

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

- (a) issue licenses in all cases where such licenses are required to be issued under the applicable law;
- (b) enforce compliance with the provisions of rules, regulations, licences and other instruments issued under the applicable laws including suspension or cancellation of the licenses as provided under the applicable law or this Act, as the case may be;
- (c) amend the terms and conditions of a license issued under the applicable law subject to the provisions of section 29 of this Act;
- (d) specify the principles and methodologies relating to determination of tariff for licensees;
- (e) regulate tariffs and other charges in accordance with the applicable law;
- (f) determine the tariff for non-discriminatory open access to the carriage owned or operated by the licensee;
- (g) specify and enforce standards with respect to quality and reliability of service provided by its licensees;
- (h) collect, analyse and disseminate information and statistics concerning the relevant public utility industry and in particular matters affecting consumer interest;
- (i) collect and publish data and forecasts on the demand for and use of the carriage or content, as the case may be, and to require the licensees to collect and publish such data;
- (j) set and enforce performance standards in accordance with the provisions of this Act and the applicable laws;
- (k) provide for the publication of reports and investigations and ensure that

any decision taken by the regulatory commission be disseminated by way of a publicly available document which shall include the following:

- (i) A clear statement of the decision.
- (ii) A description and analysis of all evidence taken into consideration.
- (iii) A summary of the views offered by participants to the proceedings.
- (iv) A full discussion of the underlying rationale for the decision;
- (l) adjudicate on disputes among licensees and between the licensees and any governmental authority and refer any dispute for arbitration;
- (m) promote access to public utility industry in rural areas and for economically weaker persons;
- (n) discharge such other functions as may be provided under this Act or the applicable law, as the case may be; and
- (o) aid and advise the government on matters concerning the public utility industry and on the need to amend any legislation or rules made thereunder for the purpose of more efficient and cost effective operation of the public utility industry or for removing or reducing any burden, or the overall burdens, resulting directly or indirectly on any consumer or class of consumers from any applicable law:

For the purposes of this section “burden” means any of the following—

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

(5) The regulatory commission shall, not later than the first anniversary of the appointed date, unless the context otherwise requires, notify all the regulations necessary for discharging its duties and functions under the applicable law and this Act, as the case may be.

### **Certain powers of the regulatory commission**

**12.** Without prejudice to the powers expressly conferred on the regulatory commission

under the applicable law, if any, the regulatory commission shall have the power-

- (a) to engage, subject to section 8 of this Act, from time to time the services of consultants or advisors, as the case may be, as it may consider necessary to assist in the discharge of its functions and remunerate such persons out of the Fund of the regulatory commission.
- (b) to acquire and hold property movable and immovable, and to sell, lease, mortgage, exchange, or otherwise dispose of, the same;
- (c) to enter into such contracts as may be necessary for the exercise, performance and discharge of its powers, duties and functions;
- (d) to acquire such rights, privileges, licenses and authorities as may be necessary for the effective discharge of its functions;
- (e) to levy and collect fees as may be prescribed; and
- (f) generally to do all such other acts and things as are incidental to or consequential upon the exercise, performance and discharge of its powers, duties and functions under this Act and any other applicable law.

**Powers to require evidence etc.**

**13.** (1) The regulatory commission and appellate tribunal, as the case may be, shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

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

(2) The regulatory commission or the appellate tribunal shall have the powers to pass such interim order in any proceeding, hearing or matter before the regulatory commission or appellate tribunal, as the case may be, as it may consider appropriate.

#### **Power to require statistics and returns**

**14.** It shall be the duty of every licensee or any other person to whom a request is made by the regulatory commission to furnish to the regulatory commission such statistics, returns or other information relating to the relevant public utility industry as it may require and at such times and in such form and manner as may be specified by the regulatory commission.

#### **Directions to the regulatory commission**

**15.** (1) In the discharge of its functions, the regulatory commission shall be guided by such directions in matters of policy involving public interest as the government may give to it in writing.

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

Provided further that no such direction shall be issued unless it has been approved in writing by the concerned Minister and the Prime Minister.

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

(3) Every direction issued under this section shall, as soon as may be, laid on the table of both Houses of Parliament.

#### **Reports by the regulatory commission**

**16.** (1) The regulatory commission shall, as soon as practicable after the end of each year make to the government a report on its activities during that year.

(2) Every such report shall-

- (a) include a general survey of developments during the year to which the annual report relates in respect of matters falling within the scope of the regulatory commission's functions;
- (b) details of enforcement orders, final or provisional decisions along with the status of compliance thereof;

- (c) details of general directions given to the regulatory commission during that year by the government;
- (d) details on general survey of activities during the year of the Advisory Committee, and
- (e) report on such other matters as the government may in consultation with the regulatory commission, from time to time require.

(3) The regulatory commission shall, before the commencement of each year, make to the government a report on the annual plan for the year containing a general description of work, other than that comprising routine activities in the exercise of its functions, which it plans to undertake during the year in furtherance of its objectives and the outcomes the regulatory commission expects to achieve during that year.

(4) The regulatory commission shall, before finalizing the annual plan referred to in sub section (3), publish a draft thereof and provide 60 days notice for inviting representations and objections from the government, consumers and public and all interested parties and upon receipt of such representation, comments and observations and objections, shall consider the same.

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

(6) The regulatory commission shall also make to the government-

- (a) such reports with respect to matters mentioned in clause (a) of sub section (2) as the government may from time to time require; and
- (b) such other reports with respect to those matters as may appear to it to be expedient, and the regulatory commission shall, if government so directs, arrange for copies of any report made under this sub section to be published in such manner as is stipulated in the direction.

(7) Upon presentation of the documents referred to in sub section (1) of this section, or at any other time, the Parliament or a committee thereof may require written replies from, or the presence of, the chairperson and members of the regulatory commission in connection with any investigation, debate or discussion with respect to the powers exercised or function performed by the regulatory commission and the regulatory commission shall provide such information and render such assistance to the Parliament as may be necessary.

(8) No order of the regulatory commission which is appealable under the applicable law shall be called to question in the Parliament.

### **Keeping of register**

**17.** (1) The regulatory commission shall at such premises and in such form as it may determine, maintain a register for the purposes of this Act.

(2) Subject to sub section (3) and to any direction given under sub section (4), the regulatory commission shall cause to be entered in the register the provisions of –

- (a) every licensee and every exemption granted under the applicable law;
- (b) every modification or revocation of license;
- (c) every direction or consent given or determination made under a license;  
and
- (d) every final or provisional order, every revocation of such order and every notice issued in respect of a licensee under the applicable law;

(3) If it appears to the regulatory commission that the entry of any provision in the register would be against public interest, it may direct not enter that provision in the register.

(4) The contents of the register shall be available for inspection by the public during such hours and subject to payment of such fee as may be notified in an order made by the regulatory commission.

(5) Any person may, on payment of such fee as may be notified in an order made by the commission, require the regulatory commission to furnish him with a copy of, or extract from any part of the register, being a copy or extract which is certified to be a true extract and upon request being made to this effect, such copy or extract shall be provided within a period of five working days.

## **PART IV FUND AND ACCOUNTS**

### **Fund of the regulatory commission and appellate tribunal**

**18.** (1) Each regulatory commission and appellate tribunal, as the case may be, shall have its own Fund.

(2) There shall be paid into the Fund of the regulatory commission or the appellate tribunal, as the case may be-

- (a) any grants and loans made by the government;
- (b) all fees received under this Act;
- (c) all sums received from such other sources as may be decided upon by the government; and
- (d) all such sums of money as are authorised or required to be paid into the Fund by any provisions of this Act or applicable law, as the case may be.

### **Expenses of the regulatory commissions and appellate tribunals**

**19.** (1) The expense of the regulatory commissions and appellate tribunals shall be paid out of the Consolidated Fund of India to the extent that such payment is necessary to meet their expense after taking into account other revenues of the regulatory commission and the appellate tribunal, as the case may be.

(2) The expense of the regulatory commission or appellate tribunal shall include

- (a) the remuneration of, and any traveling or other allowances payable to its members, officers, consultants and staff;
- (b) all expenses duly incurred in the exercise, performance and discharge of its powers, duties and functions under this Act or any other applicable law; and
- (c) the expenses incurred in connection with the objects and for purposes of this Act.

### **Budget of the regulatory commissions and appellate tribunal**

**20.** (1) The regulatory commission and the appellate tribunal, as the case may be, shall prepare, in such form and in such manner and at such time in each year as may be prescribed, its budget for the next financial year, showing its estimated receipts and expenditure and forward the same to the Parliament through the concerned Ministry for its approval.

(2) The regulatory commission and the appellate tribunal, as the case may be, shall incur expenditure subject to the budget approved by the Parliament (hereinafter referred to as the “approved budget”) and may seek re-appropriation thereof or supplementary grants thereto as may be necessary.

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

#### **Audit of accounts**

**21.** (1) The Comptroller and Auditor-General shall examine the accounts of the regulatory commission and the appellate tribunal, as the case may be, and furnish a report in accordance with sub section (2) of this section-

- (a) stating whether it has or has not obtained all the information and explanations required by it;
- (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the regulatory commission; and
- (c) drawing attention to any item in the accounts which in its opinion may be of interest in any examination of the activities and accounts of the regulatory commission.

Provided that the report of the Comptroller and Auditor General of India shall be prepared only with respect to the matters relating to expenses and not with respect to policy review of regulatory decisions and orders passed by the regulatory commission or appellate tribunal, as the case may be.

(2) The accounts of the regulatory commission or appellate tribunal, as the case may be, as certified by the Comptroller and Auditor General of India together with the audit report thereon shall be forwarded annually to the government which shall cause the audit report to be laid, as soon as may be, before each House of Parliament.

(3) The Comptroller and Auditor-General and any person assisting it in the audit of the accounts of the regulatory commission and appellate tribunal, as the case may be, shall have access to all such books, deeds, contracts, accounts, vouchers and documents as the

Comptroller and Auditor-General may consider necessary for the purposes of such audit and shall be furnished by the regulatory commission and appellate tribunal, as the case may be, or its officers with such information within their knowledge as may be required for such purposes.

(4) For the purpose of meeting the expenses incurred by it in the audit of the accounts of the regulatory commission or the appellate tribunal, as the case may be, the Comptroller and Auditor-General shall be paid out of the Fund of the regulatory commission or the appellate tribunal, as the case may be, such remuneration as the Comptroller and Auditor-General may determine.

(5) The regulatory commission or the appellate tribunal, as the case may be, may invest such moneys as are not immediately required for its purposes, in such government securities as it may consider fit and transfer or sell such securities, as and when required.

#### **Power to Borrow**

**22.** The regulatory commission may borrow temporarily by way of overdraft or otherwise, such sums of money as the regulatory commission may reasonably require for performing or discharging its duties and functions under this Act or the relevant applicable law:

Provided that the aggregate of the amounts outstanding in respect of any temporary loans raised under this section shall not at any time exceed such sum as may be determined by the regulatory commission in consultation with the government.

## **PART V LICENSING**

### **Prohibition on unauthorized provision**

**23.** No person shall engage in provision of any services in a public utility industry unless he is authorised to do so by a license issued under section 25, or is exempt under section 24.

### **Exemption from licensing**

24. (1) A person may be exempt from licensing in accordance with applicable laws and rules made thereunder.

(2) A regulatory commission may by order grant exemption to a local authority, or to a society or co-operative society registered under any law for the time being in force, from obtaining any license for provision of services in a public utility industry but where such exemption results in the setting up a system, project or plant that would compete with any existing system, project or plant, such exemption shall be granted with due regard to its effect on the person owning such existing system, project or plant and after considering any representation or objection duly made by such person.

(3) A regulatory commission may by order grant exemption to any person or class of persons from obtaining licenses, but subject to compliance with the provisions of the applicable law or this Act, as the case may be, and such conditions (if any) as may be stated in the order.

(4) An exemption under sub section (1) and (2) shall be published in such manner as may be considered appropriate for bringing it to the attention of the affected persons.

(5) An exemption under sub section (1) and (2), unless previously revoked in accordance with any term contained in the order of exemption, shall continue in force for such period as may be stated in or determined by or under such order.

(6) The Central government may by order grant exemption from section 23 of this Act to any person if, in its opinion, such exemption is necessary for the purposes of national security or defence and such exemption may specify the provisions of the applicable law or this Act, as the case may be, which shall not apply.

### **Grant of licenses**

25. (1) A regulatory commission may, upon application made to it, by license authorize any person to engage in the provision of specified services, in any area which may be stipulated in the license.

Provided that any person who is engaged or authorised to engage in the provision of

services in accordance with the applicable law shall be deemed to be a licensee under this Act, for the period stipulated in the license, clearance or approval granted to it under the applicable law.

(2) The licensee shall operate within the authorised area stipulated in the license and such area as may be extended or restricted by the regulatory commission.

### **Procedure for Grant of Licence**

**26.** (1) An application for grant of license shall be made in such form and in such manner as may be specified by the regulatory commission and shall be accompanied by such fee as may be prescribed.

(2) Any person who has made an application for grant of license shall, within seven days after making such application, publish a notice of his application with such particulars and in such manner as may be specified for the purpose of bringing the application to the attention of persons likely to be affected by the proposed license and stating that any person may make a representation or objection to the regulatory commission within 30 days of such publication.

(3) Before issuing an order, the regulatory commission shall give notice-

- (a) stating that it proposes to issue the order and setting out the provisions of such order and their effect;
- (b) stating the reason why it proposes to issue the order, and
- (c) stating the time (not being less than 30 days from the date of publication of the notice) within which the representation or objections with respect to the proposed order may be made.

and publish a notice in such manner as the regulatory commission may consider appropriate for bringing it to the attention of the persons likely to be affected by the proposed order.

(4) The regulatory commission shall consider all suggestions or objections and the recommendations, if any, which are duly made and not withdrawn.

(5) Where a person makes an application for grant of license, the regulatory commission shall, as far as practicable, within 120 days after receipt of such application –

- (a) issue a license subject to the provisions of the applicable law and this Act and the rules and regulations made thereunder; or
- (b) reject the application for reasons to be recorded in writing if such application

does not conform to the provisions of the applicable law or this Act, as the case may be, or the rules and regulations made thereunder or the provisions of any other law for the time being in force:

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

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

(7) A license shall continue to be in force for a period stated in the license unless such license is revoked.

### **Conditions of license**

**27.** (1) Every licensee shall, no later than the first anniversary of the appointed date, maintain separate businesses and accounts with respect to each of its licenses, and for this purpose disaggregate its assets, revenues, expenses, operations, services, tariffs and all matters connected therewith or incidental thereto as if each of its aforesaid businesses were separate from and independent of one another.

(2) A license may include such other conditions (whether or not relating to the activities authorized by the license) as appear to the regulatory commission to be requisite or expedient having regard to the duties imposed on the regulatory commission by the applicable law or this Act, as the case may be, and may be issued subject to payment of such annual fee as may be prescribed.

(3) Conditions included in a license by virtue of sub section (2) may require a licensee-

- (a) to comply with any direction given by the regulatory commission as to such matters as are stated in the license or are of description so stated;
- (b) except in so far as the regulatory commission consents to his doing or not doing them, not to do or to do such things as are stated in the licenses or are of description so stated;
- (c) to refer for determination by the regulatory commission such questions arising under the license as are stated in the licenses or are of description so stated; and
- (d) to refer for approval by the regulatory commission such things as are required

to be so referred under the license and such contracts or agreements made before the issue of license, as are stated in the license or are of a description so stated.

(4) Conditions included in a license in pursuance of sub section (3) may require the licensee to-

- (a) instead of stating or describing any contract or agreements to which they apply, refer to contract or agreements (whether before or after the imposition of condition) by the regulatory commission;
- (b) instead of containing any provision, refer to provision set out in the documents so designated and direct that those provisions shall have effect as may be stated in the conditions,

and may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.

(5) Conditions included in a license may contain provisions for the conditions to –

- (a) have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
- (b) be modified in such manner as may be stipulated in the conditions at such time and in such circumstances as may be so determined.

(6) Any provision included by virtue of sub section (4) shall have effect in addition to the provision made by the applicable law or this Act, as the case may be, with respect to the modification of the conditions of a license.

(7) The regulatory commission may, subject to section 27, specify any general or specific conditions of license to apply either to a licensee or a class of licensees and such conditions shall be deemed to be the standard conditions of license and shall have effect in addition to the other conditions imposed in accordance with this section.

(8) Upon unbundling or separation of any activity of a licensee, the regulatory provision may by license or exemption, authorise any person to carry out such activity subject to such terms and conditions as may be specified.

(9) A licensee may transfer his license, but subject to any term as to transfer contained in the license and such transfer may relate to the whole or any part of the license.

### **Conditions relating to open access**

**28.** As a condition of its licence, a licensee shall provide non-discriminatory open access to its system for use by-

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

### **Amendment of license**

**29.** (1) Subject to the provisions of sub section (2), the regulatory commission may amend the conditions of a particular license issued under the applicable law or this Act, as the case may be.

(2) The regulatory commission may not make any amendments under this section unless the licensee has consented to the amendments, and in case of standard conditions of the license, the regulatory commission is of the opinion that the amendments-

- (a) are necessary for meeting the circumstances of the particular case; and
- (b) are such that-
  - (i) the licensee would not be unduly disadvantaged in competing with other licensees of that type; and
  - (ii) no other licensee of the same type would be unduly disadvantaged in competing with other licensees holding similar licenses (including the licensee whose license is amended).

(3) Subject to the provisions of sub section (4) to (10), the regulatory commission may amend the standard conditions of a license of any type issued by the regulatory commission under the applicable law or this Act, as the case may be.

(4) Where at any time the regulatory commission amends the standard conditions of licenses of any type under this section, the regulatory commission may make such incidental or consequential amendments as it considers necessary or expedient of any conditions of any license of that type.

(5) Before making any amendments under this section, the regulatory commission shall give notice –

- (a) stating that it proposes to make amendments and setting out such amendments and their effect;
- (b) stating the reason why it proposes to make the amendments; and
- (c) specifying the time (not being less than 30 days from the date of publication of the notice) within which representation or objections with respect to the proposed amendments may be made,

and shall consider any representation or objection which are duly made and not withdrawn.

(6) A notice under sub section (5) shall be given by publishing the notice in such manner as the regulatory commission considers appropriate for the purpose of bringing the notice to the attention of person likely to be affected by the proposed amendments.

(7) The regulatory commission may not under this section make any amendments of the standard conditions of licenses of any type unless –

- (a) no notice of objection to those amendments is given to the regulatory commission within the time specified in the notice under sub section (5) by any relevant licensee; or
- (b) if one or more relevant licensees give notice of objection to the regulatory commission within that time-
  - (i) the proportion (expressed as a percentage) of the relevant licensees who have given notice of objection is less than 33 per cent of such lower percentage as may be prescribed; and
  - (ii) the percentage given by sub section (8) is less than 33 percent or such lower percentage as may be prescribed.

(8) The percentage given by this sub section is the proportion (expressed as a percentage) of the relevant licensees who have given notice of objection, weighted according to the market share in such manner as may be prescribed.

(9) Where the regulatory commission amends the standard conditions of licenses of any type-

- (a) the regulatory commission shall also make (as nearly as may be) the same amendments of those conditions for the purposes of their incorporation in licenses of that type granted after that date; and
- (b) the regulatory commission shall publish the amendments in such manner as it considers appropriate.

*Explanation:* For the purposes of this section, the expression “relevant licensee”, in relation to standard conditions of licenses of any type means a licensee whose license incorporate the standard conditions being amended.

(10) Notwithstanding anything to the contrary in this section, where the regulatory commission deems it necessary to amend the conditions of a particular license for complying with the provisions of any law for the time being in force, it may make the required modifications in the license.

Provided that no such amendment shall be made except with the consent of the licensee unless such consent has, in the opinion of the regulatory commission, been unreasonably withheld.

### **Revocation of license**

**30.** (1) If the regulatory commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a license in any of the following cases, namely: -

- (a) where the licensee, in the opinion of the regulatory commission, makes willful and prolonged default in doing anything required of him by or under the applicable law or this Act, as the case may be, or the rules or regulations made thereunder;
- (b) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation;
- (c) where the licensee fails, within the period fixed in this behalf by his license, or any longer period which the regulatory commission may have granted therefore –
  - (i) to show, to the satisfaction of the regulatory commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license; or

- (ii) to make the deposit or furnish the security, or pay the fees or other charges required by his license;
- (d) where in the opinion of the regulatory commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his license.

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

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

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

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

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

### **Sale of utilities of licensees**

**31.** (1) Where the regulatory commission revokes any license, the following provisions shall apply, namely:-

- (a) the regulatory commission shall invite applications for acquiring the utility of the licensee whose license has been revoked and determine which of such applications should be accepted, primarily on the basis of the highest and best price offered for the utility;
- (b) the regulatory commission may, by notice in writing, require the licensee to sell his utility and thereupon the licensee shall sell his utility to the person

(hereafter in this section referred to as the “purchaser”) whose application has been accepted by that regulatory commission;

- (c) all the rights, duties, obligations and liabilities of the licensee, on and from the date of revocation of license or on and from the date, if earlier, on which the utility of the licensee is sold to a purchaser, shall absolutely cease except for any liabilities which have accrued prior to that date;
- (d) the regulatory commission may make such interim arrangements in regard to the operation of the utility as may be considered appropriate including the appointment of administrators;
- (e) The administrator appointed under clause (d) shall exercise such powers and discharge such functions as the regulatory commission may direct.

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

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

(4) Where for any reason the sale of the utility system has not been affected under this section, the government may assume control over the utility system upon revocation of license and shall perform all the obligations of the licensee until such time as the utility system is sold.

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

### **Vesting of utility in purchaser**

**32.** Where a utility is sold under section 31, then, upon completion of the sale or on the date on which the utility is delivered to the intending purchaser, as the case may be, whichever is earlier-

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

Provided that any such debt, mortgage or similar obligation shall attach to the purchase money in substitution for the utility; and

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

### **Provisions where no purchase takes place**

**33.** If the utility is not sold in the manner provided under section 31 and 32, the regulatory commission may, to protect the interest of consumers or in public interest, issue such directions or formulate such scheme as it may deem necessary for operation of the utility.

Provided that, if the licensee does not dispose of the utility, within a period of six months from the date of revocation under section 9, the regulatory commission may cause the works of the licensee in, under, over, along, or across any street or public land to be removed and every such street or public land to be reinstated, and recover the cost of such removal and reinstatement from the licensee.

### **Directions to licensees**

**34.** If the regulatory commission is of the opinion that it is necessary or expedient so to do for maintaining the efficient supply, securing the equitable distribution or promoting competition in the supply of goods or services that are a subject matter of the licence, it may, by order, provide for regulating the supply, distribution, consumption or use thereof.

### **Suspension of licence and sale of utility**

- 35.** (1) If at any time the regulatory commission is of the opinion that a licensee –
- (a) has persistently failed to maintain uninterrupted supply of certain goods or services conforming to standards regarding quality of such services to the consumers; or
  - (b) is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act or the applicable law, as the case may be; or
  - (c) has persistently defaulted in complying with any direction given by the regulatory commission; or
  - (d) has broken the terms and conditions of licence,

and circumstances exist which render it necessary for it in public interest so to do, the regulatory commission may, for reasons to be recorded in writing, suspend, for a period not exceeding one year, the licence of the licensee and appoint an administrator to discharge the functions of the distribution licensee in accordance with the terms and conditions of licence:

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

(2) Upon suspension of licence under sub-section (1) the utilities of the licensee shall vest in the administrator for a period not exceeding one year or up to the date on which such utility is sold in accordance with the provisions contained in section 31, whichever is later.

(3) The regulatory commission shall, within one year of appointment of the administrator under sub-section (1) either revoke the licence in accordance with the provisions contained in section 30 or revoke suspension of the licence and restore the utility to the licensee whose licence had been suspended, as the case may be.

(4) In case where the regulatory commission revokes the licence under sub-section (3), the utility of the licensee shall be sold within a period of one year from the date of revocation of the licence in accordance with the provisions of section 31 and the price after deducting the administrative and other expenses on sale of utilities be remitted to the licensee.

### **Investigation of enforcement matters**

**36.** (1) Subject to sub section (2), it shall be the duty of the regulatory commission to investigate any matter which appears to it to be an enforcement matter and which is the subject of a representation made to the regulatory commission by or on behalf of a person appearing to the regulatory commission to have an interest in that matter.

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

(3) It shall be the duty of every officer of the regulatory commission to refer to the regulatory commission any matter which –

- (a) appears to him to be an enforcement matter; and
- (b) is the subject to a representation made to him by or on behalf of a person appearing to him to have an interest in that matter.

*Explanation:* In this section, the expression ‘enforcement matter’ means any matter in respect of which any functions of the regulatory commission are or may be exercisable.

### **Orders for securing compliance**

**37.** (1) Where the regulatory commission is satisfied that the a licensee is contravening, or is likely to contravene, any condition stated in the license or exemption (the “relevant condition”) or any provisions of this Act, it shall by a final order give such directions as is requisite for the purposes of securing compliance with that condition or provision.

(2) Where it appears to the regulatory commission

- (a) that the licensee is contravening or is likely to contravene any relevant condition or any provision of this Act; and
- (b) that it is requisite that a provisional order be made,

it shall (instead of taking steps towards the making of the final order) by a provisional order give such directions as appear to it requisite for the purpose of securing compliance with such condition or provisions .

(3) In determining for the purpose of clause (b) of sub section (2), whether it is requisite that a provisional order be made, the regulatory commission shall have regard –

- (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
- (b) to the fact that the effect of the provision of this section is to exclude availability of any remedy in respect of any contravention of relevant condition or any provision of this Act.

(4) Subject to sub section (5) and section 38, the regulatory commission shall confirm a provisional order, with or without modifications, if –

- (a) it is satisfied that the licensee to whom the orders relates is contravening, or is likely to contravene, any relevant condition or any provision of this Act; and
- (b) the directions given by the order (with modifications) are requisite for the purpose of securing compliance with such condition or provision.

(5) The regulatory commission shall not make a final order or make or confirm a provisional order in relation to an order if it is satisfied –

- (a) that the duties imposed on it by the applicable law or this Act, as the case may be preclude the making or, as the case may be, of confirmation of the order;
- (b) that the licensee has agreed to take and is taking all such steps as it appears to the regulatory commission, for the time being, to be appropriate for the licensee to take for the purposes of securing compliance or facilitating compliance with the condition or requirement in question; or
- (c) that the contraventions were, or apprehended contraventions are, of a trivial nature.

(6) Where the regulatory commission is satisfied with regard to the matters referred to in sub section (5), it shall –

- (a) serve notice on the licensee that it is so satisfied; and
- (b) publish the notice in such manner as it considers appropriate for the purposes of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(7) A final or provisional order –

- (a) shall require the licensee to whom it relates (according to the circumstances of the case) to do, or not to do, such things stipulated in the order or are of a description so stipulated;
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
- (c) may be revoked at any time by the regulatory commission.

### **Procedural requirements**

**38.** (1) Before it makes a final order or confirms a provisional order under this section, the regulatory commission shall give notice –

- (a) stating that it proposes to make or confirm the order and setting out its effect;
- (b) setting out-

- (i) the relevant condition or provision of this the applicable law or this Act, as the case may be, for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in its opinion, constitute or would constitute contraventions o such condition or provisions; and
  - (iii) the other facts which, in the opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 30 days from the date of publication of the notice) within which representation or objections with respect to the proposed order or proposed modification may be made,

and shall consider any representation or objection which is duly made and not withdrawn.

(2) A notice under sub section (1) shall be given-

- (a) by publishing the notice in such manner as the regulatory commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licensee to whom the order relates.

(3) The regulatory commission shall not make a final order with modifications, or confirm a provisional order with modifications, except

- (a) with the consent to the modifications of the licensee to whom the order relates; or
- (b) after complying with the requirements of sub section (4).

(4) The requirements mentioned in sub section (3) are that the regulatory commission shall -

- (a) serve on the licensee to whom the order relates such notice as appears to it requisite of its proposal to make or confirm the order with modifications;
- (b) in the notice specify the period (not being less than 30 days from the date of publication of the notice) within which representation or objections with respect to the proposed order or proposed modification may be made; and

- (c) consider any representation or objection which is duly made and not withdrawn.

(5) As soon as practicable after making the final order or making or confirming a provisional order, the regulatory commission shall –

- (a) serve a copy of the order on the licensee to whom the order relates; and
- (b) publish the order in such manner as the regulatory commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it;

(6) Before revoking a final order or a provisional order which has been confirmed, the regulatory commission shall give notice –

- (a) stating that it proposes to revoke the order setting out its effect; and
- (b) specifying the period (not being less than 30 days from the date of publication of the notice) within which representation or objections with respect to the proposed order or proposed modification may be made,

and shall consider any representation or objection which is duly made and not withdrawn;

(7) If after giving the notice under sub section (6), the regulatory commission decides not to revoke the order to which the notice relates, it shall give notice of its decision –

(8) A notice under sub section (6) or (7) shall be given –

- (a) by publishing the notice order in such manner as the regulatory commission considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
- (b) by serving a copy of the notice on the licensee to whom the order relates.

## **PART VI TARIFF**

### **Tariff Regulations**

**39.** (1) The regulatory commission shall, subject to the provisions of the applicable law or this Act, as the case may be specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) commercial principles that would promote investment, competition, efficiency, economical use of the resources and good performance in public utility industry;
- (b) safeguarding of consumers' interest;
- (c) determination of recoverable rate of system losses which takes into account all relevant considerations including the efficiency or inefficiency of licensees, pilferage or other technical factors;
- (d) cross subsidisation among different classes of consumers is reduced progressively;
- (e) rural areas have access to the public utility industry at an equitable tariff; and
- (f) economically weaker persons have access to the public utility industry at an equitable tariff;

(2) Regulations made under this section may provide for review of tariff by the regulatory commission in the specified manner and time.

(3) Notwithstanding anything in this Act or the applicable law, as the case may be, where the government is satisfied that the prevailing market conditions and competition are sufficient to determine the tariff for the respective public utility industry by any or all classes of licensees, it may by notification direct that the regulatory commission shall not determine such tariff in the circumstances and subject to such condition and in such cases as may be stipulated in the notification from time to time.

## **PART VII CONSUMER PROTECTION**

### **Consumer Protection**

**40.** (1) The regulatory commission shall in the exercise of its powers under any applicable law or any regulation made there under protect the rights of the consumer against unfair trade practices.

(2) The regulatory commission shall specify the standards of performance for a licensee or a class of licensees.

(3) Standards of performance to be specified under this section may include-

- (a) the circumstances in which a licensee is to inform consumers of their rights under this section;
- (b) the circumstances in which a licensee is to be exempted from any requirements of the standards specified under this section, and
- (c) such standards of performance in relation to any duty arising under clause (a) as in the regulatory commission's opinion, ought to be achieved in all cases.

(4) If a licensee fails to meet the standards specified under sub-section (2), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the regulatory commission:

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

(5) The compensation determined under sub-section (4) shall be paid by the concerned licensee within ninety days of such determination.

(6) The making of compensation under this section by the licensee to meet the specified standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

(7) The regulatory commission shall, before issuing any regulations or tariff orders, invite representations, objections or comments from consumer organisations and shall render such assistance and data as may be required by such consumer organisations for the purposes of making their submissions and the regulatory commission shall consider such representations, objections or comments from consumer organisations.

(8) The government may, in accordance with the provisions of this Act and the Consumer Protection Act, 1986 issue guidelines and directions to the regulatory commissions for providing support and assistance to consumers and consumer organizations for redressal of their grievances against a licensee or a class of licensees, as the case may be.

(9) The regulatory commission shall at least once in every year arrange for the publication, in such form and in such manner as it considers appropriate, of such information collected or furnished to it as it may appear to it expedient to give to consumers or potential consumers.

#### **National Advisory Committee**

**41.** (1) The regulatory commission shall by notification establish within 90 days from the appointed date, a committee to be called the National Advisory Committee.

(2) The National Advisory Committee shall consist of not more than 21 members to represent interest of consumers, commerce, industry, transport, agriculture, labour, non-governmental organisations and academic and research bodies.

(3) The chairperson and members of the central regulatory commission shall be ex-officio chairperson and members of such National Advisory Committee.

(4) The National Advisory Committee shall meet at least four times in a year and its proceedings shall be conducted in accordance with the regulations to be specified.

(5) The objectives of the National Advisory Committee shall be to advise the regulatory commission on-

- (a) major questions of policy;
- (b) matters relating to quality, continuity and extent of service provided by the licensees;
- (c) compliance by the licensees with the conditions and requirements of their license; and
- (d) protection of consumer interest.

## **PART VIII COMPETITION**

### **Non competitive services**

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

### **Market domination and anti-competitive behavior**

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

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

- (a) has as its objective or effect an appreciable prevention, restriction or distortion of competition in connection any of the public utility industry; or
- (b) directly or indirectly fixes prices or market shares, impose minimum resale prices or is one of the series of similar agreements, actions, omissions, practices or procedures that have as a cumulative effect the prevention or restriction of competition; or
- (c) has the effect of market power or monopoly situations being abused for affecting the interest of consumers adversely; or
- (d) has the effect of creation or suspected creation of a merger situation.

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

(4) If a licensee contravenes any rules, regulations, condition of license or directions of the regulatory commission in furtherance of sub section (2), the regulatory commission, may by injunction enforce the provisions thereof, and impose fines upto 10% of the turnover of the licensee for each year or part thereof in which the contravention occurred.

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

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

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

- (i) the object or effect of which is that the persons taken together are or are likely to be or would be in a dominant position in a market in any public utilities industry; or
- (ii) where both persons are engaged, exclusively or otherwise, in the provision of, and hold a dominant position within the same utility network or utility service in a public utilities industry, in the same or different geographical areas, even if the circumstances in (i) above are not satisfied.

#### **Reference to the Competition Commission**

**44.** Notwithstanding anything contained in section 43 of this Act, a regulatory commission may collect and review information relating to matters contained in sub section (2) of section 43 and, where necessary, refer relevant matters for opinion, investigation or adjudication of disputes, as the case may be, to the Competition Commission constituted under the Competition Act, 2002 and provisions of Competition Act, 2002 shall apply to such matters as if the matter was referred under the Competition Act, 2002.

## **PART IX DISPUTE RESOLUTION**

### **Conciliation**

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

### **Arbitration**

**46.** (1) Where any dispute between the licensees remain unresolved after an attempt for conciliation has been made under section 46, the affected person shall refer such dispute to the regulatory commission for arbitration.

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

(2) Where a dispute is referred to the regulatory commission for arbitration, it shall, if the dispute refers to a matter of policy involving public interest, or an interpretation of the provisions of the applicable law or this Act, as the case be, or rules or regulations made thereunder or a matter widely affecting the rights or liabilities of consumers or licensees, nominate from amongst its own members such persons as it deems proper to act as arbitrators.

(3) Where three or more members have been nominated as arbitrators, the chairperson of the regulatory commission shall be a member of the tribunal and shall act as the presiding arbitrator.

(4) Where the regulatory commission does not nominate its members under sub section (2), it shall constitute an arbitral tribunal in accordance with the regulations made by it, to resolve the dispute.

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

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

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

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

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

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

#### **Dispute resolution by the licensee**

**47.** (1) The regulatory commission shall specify a dispute resolution procedure requiring a licensee to address any complaint of a consumer alleging violations of the provisions of the applicable law or this act, as the case may be.

(2) The procedure specified under sub section (1) shall require a licensee to designate a person within its company to conduct investigation of the complaint and convey the result thereof to the complainant within 30 days from the date on which the complaint was received.

(3) The communication sent to the complainant under sub section (2) shall include a description of any action taken and statements describing the complainant's right to seek further remedies if he is not satisfied with the results of the investigation and the action taken thereon.

(4) A licensee shall maintain a log of all complaints received and actions taken thereon, and such record shall be subject to review by the regulatory commission from time to time.

(5) Within 60 days of receiving a reply from the licensee under sub section (2), and if no such reply is received then within 90 days from the date of making the complaint, the complainant may make a representation before the competent forum under the provisions of the Consumer Protection Act, 1986 or the applicable law, as the case may be.

(6) Without prejudice to the generality of sub section (5), a complainant may make a representation to the regulatory commission for such investigation thereof as the regulatory commission may deem fit.

#### **Appeal against orders of the regulatory commission**

**48.** (1) Any person or a licensee aggrieved by the decision of the regulatory commission may file an appeal before the appellate tribunal constituted under the applicable law or under

this Act, as the case may be, within 30 days from the date of communication of the decision or order by the regulatory commission.

(2) An order passed by the appellate tribunal shall be final in all respect and an appeal to the Supreme Court of India against such order may be made within 30 days of communication of such order by the appellate tribunal only in relation to a question of law in such order passed by the appellate tribunal or the procedures adopted by the regulatory commission or the appellate tribunal, as the case may be, in arriving at its final decisions and orders:

Provided that the Supreme Court of India may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days:

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

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

## **PART X MISCELLANEOUS**

### **Applicability to State matters**

**49.** This Act shall apply *mutatis mutandis* to the applicable law on matters listed in the Union List I and the Concurrent List III in the Seventh Schedule to the Constitution of India and for the purposes of such applicable law -

- (a) reference to government in this Act shall mean reference to the state government;
- (b) reference to Parliament in this Act shall mean reference to the State legislative assembly;
- (c) reference to Prime Minister in this Act shall mean reference to the Chief Minister of the respective State; and
- (d) reference to the President of India shall mean reference to the Governor of the respective State.

### **Power of entry etc.**

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

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

(3) Where a consumer refuses to allow a licensee or any person authorized as aforesaid to enter his premises or land in pursuance of the provisions of sub section (2), when such licensee or person has so entered, refuses to allow him to perform any act which he is authorized by sub section (2) to perform, or fails to give reasonable facilities for such entry or performance, the licensee may after the expiry of twenty four hours from the service of a notice in writing on the consumer, cut off the supply of the carriage or content, as the case may be, to the

consumer for so long as such refusal or failure continues, but for no longer.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall, as far as may be, apply to searches and seizures under the applicable law or the Act, as the case may be.

#### **Civil court not to have jurisdiction**

**51.** No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the regulatory commission or any authority or officer is empowered by or under the applicable law or this Act, as the case may be to determine and no injunction shall be granted by any court or any other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

#### **Protection of action taken in good faith**

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

(2) No court shall take cognizance of an offence under the applicable law by a public servant except with the sanction-

- (a) in the case of a person employed in connection with the affairs of the Union, of the Central Government;
- (b) in the case of a person employed in connection with the affairs of the State, of the State Government; and
- (c) in the case of a person employed in connection with the affairs of the regulatory commission or the appellate tribunal, as the case may be, of the regulatory commission or the appellate tribunal, as the case may be.

#### **Members, officers etc. to act as public servants**

**53.** All members and officers and other employees of the of the regulatory commission or the appellate tribunal, as the case may be shall be deemed, when acting or purporting to act in pursuance of any of the provisions of the applicable law or this Act, as the case may be, to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

### **Recovery of sums payable**

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

### **Service of notices, orders or documents**

**55.** (1) Every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means of delivery as may be prescribed -

- (a) where the appropriate Government is the addressee, at the office of such officer as the appropriate Government may prescribe in this behalf;
- (b) where the regulatory commission is the addressee, at the office of the regulatory commission;
- (c) where the appellate tribunal is the addressee, at the office of the appellate tribunal;
- (d) where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India; and
- (e) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(2) Every notice, order or document by or under this Act required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

### **Power of the government to make rules**

**56.** (1) The government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) Salary, allowances and other conditions of service of a chairperson or members of the regulatory commission or the appellate tribunal, as the case may be, under sub section (2) of section 6;
- (b) the form and manner in which and the authority before whom oath of office and secrecy should be subscribed under sub-section (3) of section 6;
- (c) the form in which and time at which the regulatory commission as the case may be shall prepare its annual report under section 16;
- (d) the form in which the regulatory commission or the appellate tribunal, as the case may be, shall prepare its annual statements of accounts under section 21;
- (e) the form in which and time at which the regulatory commission or the appellate tribunal, as the case may be, shall prepare its budget under section 20;
- (f) the form and the manner of verifying such form, and fee for filing appeal under section 48;
- (g) conciliation of disputes between licensees under section 46;
- (h) the manner of delivery of every notice, order or document to be served under sub-section (1) of section 57; and
- (i) any other matter which is required to be, or may be, prescribed.

#### **Powers of regulatory commission to make regulations**

**57.** (1) The regulatory commission may, by notification make regulations consistent with the applicable law and this Act, as the case may be, and generally to carry out the provisions of such applicable law and this Act.

- (2) Before notifying the regulations, the regulatory commission shall give notice-
  - (a) stating that it proposes to notify the regulations and setting out the provisions of such regulations and their effect;
  - (b) stating the reason why it proposes to notify the regulations; and
  - (c) stating the time (not being less than 30 days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made.

(3) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of following matters, namely:-

- (a) the form and the manner of the application under sub-section (1) of section 26 for licensing;
- (b) the conditions of license under section 27;
- (c) the manner and particulars of notice under sub-section (2) and (3) of section 26 ;
- (d) publication of alterations or amendments to be made in the license under sub-section (6) of section 26 ;
- (e) standards of performance of a licensee or class of licensees under sub-section (2) of section 40;
- (f) the period within which information to be furnished by the licensee under section 14;
- (g) the terms and conditions for the determination of tariff under section 39;
- (h) the powers and duties of the secretary of the regulatory commission under section 8;
- (i) terms and conditions of appointment of consultants under section 8;
- (j) constitution of the arbitral tribunal, the number of arbitrators, place of sitting etc of arbitrators appointed under sub section (4) of section 46;
- (k) dispute resolution procedures for licensees under section 47; and
- (l) any other matter which is to be, or may be, specified by regulations.

(4) All regulations made by the regulatory commission under the applicable law or this Act, as the case may be shall be subject to the conditions of previous publication.

#### **Powers of appellate tribunal to make regulations**

**58.** (1) The appellate tribunal may, by notification make regulations consistent with the applicable law and this Act, as the case may be, and generally to carry out the provisions of such applicable law and this Act.

(2) Before notifying the regulations, the appellate tribunal shall give notice-

- (a) Stating that it proposes to notify the regulations and setting out the provisions of such regulations and their effect;
  - (b) Stating the reason why it proposes to notify the regulations; and
  - (c) Stating the time (not being less than 30 days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made.
- (3) All regulations made by the appellate tribunal under the applicable law or this Act, as the case may be shall come into force and effect upon publication thereof.

#### **Rules and regulations to be laid in Parliament**

**59.** Every rule made by the Central Government, or regulations made by the central regulatory commissions, as the case may be, shall be laid, as soon as may be after it is made, before each house of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modifications in the rule or the regulation or agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

#### **Power to remove difficulty**

**60.** (1) If any difficulty arises in giving effect to the provisions of this Act, the government may, by order published, make such provisions not inconsistent with the provisions of the applicable law or this Act, as the case may be, as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

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

#### **Overriding effect**

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

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

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

### **Repeal and saving**

**62.** (1) Save as otherwise provided in this Act, all provisions of any law for the time being in force are, to the extent of their contradiction with this Act, hereby repealed.

(2) Notwithstanding such repeal, -

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

(3) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(4) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals.

*Draft for Discussion*

## **SCHEDULE 1**

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





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