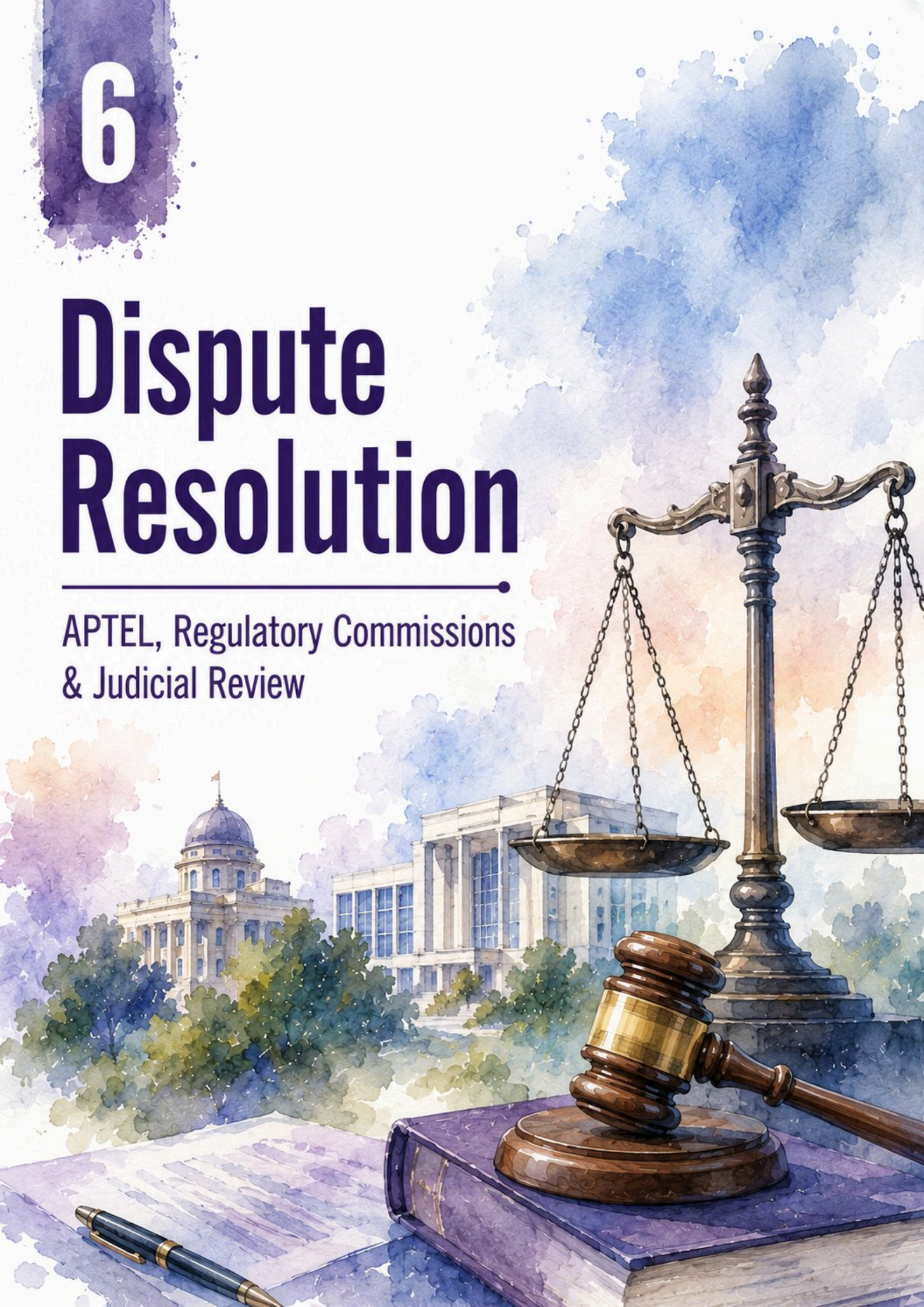


6

Dispute Resolution

APTL, Regulatory Commissions
& Judicial Review



Dispute Resolution: APTEL, Commissions & Judicial Framework

Regulatory Adjudication, APTEL, Consumer Redressal, Arbitration & Enforcement

Booklet VI of VI

Bhatt & Joshi Associates, Advocates & Legal Consultants

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CHAPTER ONE

Regulatory Commissions as Adjudicators

CERC and SERC Adjudicatory Jurisdiction, Section 79(1)(f) and 86(1)(f), Quasi-Judicial Principles

The Central Electricity Regulatory Commission (CERC) and the State Electricity Regulatory Commissions (SERCs) exercise both regulatory and adjudicatory functions under the Electricity Act, 2003. This chapter examines the scope and principles of the commissions' adjudicatory jurisdiction, and the procedural framework for regulatory dispute resolution.

1.1 Dual Character of Regulatory Commissions

CERC and the SERCs are creatures of statute, established under the Electricity Act, 2003 with a dual character: as regulatory bodies determining tariffs, granting licences, and issuing directions for the governance of the electricity sector; and as quasi-judicial bodies adjudicating disputes between electricity sector participants. This dual character — simultaneously legislator (in the regulatory function of making binding rules and tariff determinations applicable to the entire sector) and judge (in the adjudicatory function of resolving disputes between specific parties) — is a recognised feature of modern utility regulation in India and internationally, reflecting the need for specialised expert bodies to both frame the regulatory framework and apply it in specific cases.

The Supreme Court has confirmed the quasi-judicial character of CERC's and the SERCs' adjudicatory functions, holding that the principles of natural justice — including the right to be heard, the right to a reasoned decision, and the right of an adversely affected party to know the case against it — apply to Commission proceedings in the same way as to court proceedings. Regulatory commissions must, in their adjudicatory proceedings, observe the procedural safeguards of: notice to all parties whose interests may be affected; opportunity for each party to present its case; consideration of all relevant evidence; and the issuance of a reasoned written order that explains the factual findings and legal conclusions that support the decision. These procedural requirements provide the foundation for meaningful appellate review by APTEL and the Supreme Court.

1.2 Section 79(1)(f): CERC Adjudicatory Jurisdiction

Section 79(1)(f) of the Electricity Act, 2003 vests CERC with jurisdiction over "disputes involving generating companies or transmission licensees" in relation to matters within CERC's overall regulatory domain. The scope of Section 79(1)(f) has been extensively elaborated through CERC's adjudicatory decisions and APTEL's review of those decisions. The key principles established include: Section 79(1)(f) covers all commercial disputes arising from the implementation of regulated electricity sector agreements (including PPAs, transmission service agreements, and connectivity agreements) where at least one party is a generating company or transmission licensee exercising inter-state functions; Section 79(1)(f) does not confer jurisdiction on CERC to adjudicate disputes between entities that are not within CERC's regulatory domain (such as disputes between two intra-state distribution licensees or between a distribution licensee and a large consumer where no inter-state transaction is involved); and Section 79(1)(f) operates concurrently with the jurisdiction of civil courts to resolve contractual disputes, but the Supreme Court has held that specialised regulatory jurisdiction under Section 79(1)(f) must be exhausted before a civil court can exercise jurisdiction over disputes involving regulated electricity tariffs and contracts.

CERC regularly adjudicates disputes on matters including: the interpretation and enforcement of PPAs (particularly disputes about change-in-law, force majeure, payment defaults, scheduling obligations, and termination rights); the terms of transmission service agreements and open access approvals; the calculation and recovery of tariff components; the DSM-related settlement disputes arising from the deviation settlement mechanism; and disputes about the implementation of CERC's regulatory orders. CERC's adjudicatory proceedings follow a standardised procedure: petition filing by the aggrieved party with supporting documents; service of notice and opportunity for the respondent to file a reply; admission hearing and determination of whether the matter falls within CERC's jurisdiction; evidentiary hearing and consideration of submissions; and issuance of a reasoned order. Complex matters may involve multiple rounds of hearings and written submissions before the order is issued.

1.3 Section 86(1)(f): SERC Adjudicatory Jurisdiction

Section 86(1)(f) of the Electricity Act, 2003 is the SERC equivalent of Section 79(1)(f), vesting each SERC with jurisdiction to "adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration." The SERC's adjudicatory jurisdiction under Section 86(1)(f) covers: disputes between distribution licensees and state-level generating companies (including disputes about PPA performance, tariff claims, and contractual obligations); disputes between distribution licensees and transmission licensees (regarding wheeling charges, open access terms, and network usage); disputes between the distribution licensee and large consumers (particularly regarding open access, cross-subsidy surcharges, and billing disputes); and disputes between different distribution licensees in the same state (regarding franchise boundaries, supply overlaps, and common

infrastructure).

SERC adjudicatory proceedings follow a similar procedure to CERC proceedings but may vary in detail across states depending on each SERC's own rules of procedure. All SERCs must observe the natural justice requirements applicable to quasi-judicial proceedings, and APTEL's review of SERC adjudicatory orders provides a consistent appellate framework ensuring that fundamental procedural requirements are met uniformly across states. Where a SERC fails to provide adequate reasons for its adjudicatory decision, fails to consider relevant evidence, or departs from the applicable legal principles, APTEL can remand the matter for re-decision with directions on the applicable standards.

1.4 Inherent Powers and Implied Jurisdiction

The regulatory commissions have been held to possess inherent powers necessary for the effective exercise of their statutory jurisdiction, even where those powers are not explicitly conferred by the Electricity Act, 2003. The principle of implied jurisdiction holds that a statutory authority created to achieve a specific purpose necessarily has all the powers reasonably required for the achievement of that purpose, unless expressly excluded. Applying this principle, CERC has exercised powers including: the power to grant interim relief (injunctions and stays) pending final disposal of regulatory petitions; the power to impose costs on parties who bring vexatious or frivolous petitions; the power to review and recall its own orders in cases of material error or changed circumstances; and the power to hold entities in contempt for non-compliance with CERC's orders. These implied powers are consistent with the Supreme Court's view that regulatory commissions exercising quasi-judicial functions must have the tools necessary for the effective administration of justice.

Appellate Tribunal for Electricity (APTEL)

Constitution, Jurisdiction, Powers, Practice, and Key Jurisprudence

The Appellate Tribunal for Electricity, established under Part XIV of the Electricity Act, 2003, is the primary appellate forum for electricity sector disputes, bearing appeals from orders of CERC, the SERCs, and the Joint Electricity Regulatory Commissions. This chapter examines APTEL's legal architecture, jurisdiction, and developing jurisprudence.

2.1 APTEL: Constitution and Composition

The Appellate Tribunal for Electricity (APTEL) is established under Section 110 of the Electricity Act, 2003 as a specialist appellate forum with exclusive jurisdiction to hear appeals against orders of CERC, the SERCs, and the Joint Electricity Regulatory Commission (JERC). APTEL consists of a Chairperson (who must be a sitting or retired judge of the Supreme Court of India or a sitting or retired Chief Justice of a High Court) and such number of Technical Members and Judicial Members as the Central Government may by notification determine. The combination of legal expertise (provided by the judicial members) and technical expertise (provided by the technical members, who must have expertise in the technical, financial, economic, or other aspects of electricity) is designed to ensure that APTEL can effectively review both the legal and technical aspects of Commission orders.

APTEL exercises its appellate jurisdiction through Benches, with the composition of each Bench depending on the nature of the matter: regulatory tariff matters and technically complex adjudicatory orders are typically heard by Benches including both judicial and technical members; procedural and legal questions may be heard by Benches comprising only judicial members. The Principal Bench of APTEL is located in New Delhi, with Circuit Benches sitting at Chennai for the convenience of parties from the southern states. APTEL's Registry maintains the records of all proceedings, manages the listing of appeals, and provides administrative support for the Tribunal's functioning.

2.2 Appellate Jurisdiction: Section 111

Section 111 of the Electricity Act, 2003 specifies APTEL's appellate jurisdiction: any person aggrieved by an order of an Adjudicating Officer or an order of the appropriate Commission made before or after the appointed date may prefer an appeal to APTEL within 45 days of receipt of the order, subject to APTEL's discretion to admit late appeals on sufficient cause being shown. The right of appeal to APTEL is not limited to the parties to the proceeding before the Commission: any "aggrieved person" can appeal, including persons who were not parties to the original proceeding but whose interests are adversely affected by the Commission's order. This broad standing for appeal ensures that regulatory decisions with wide commercial impact are subject to comprehensive review.

APTEL's appellate jurisdiction is subject to the limitation that it does not have the power to question the wisdom of regulatory policy choices by the Commission. APTEL can review regulatory orders for: legality (whether the Commission has acted within its statutory powers); procedural correctness (whether natural justice principles were observed); rationality (whether the

Commission's conclusions are supported by the evidence and reasoning in the record); and the correct application of legal principles (whether the Commission has applied the applicable law accurately). APTEL cannot substitute its own judgment for the Commission's on matters of regulatory policy where the Commission has applied the correct legal principles and acted within its discretion. This standard of review — regulatory deference on policy judgments combined with full review of legality and procedural correctness — balances the need for expert regulatory autonomy with the requirement for appellate oversight.

2.3 APTEL Powers: Section 121

Section 121 of the Electricity Act, 2003 confers on APTEL broad powers in the disposal of appeals: APTEL can confirm, modify, or set aside the order of the Commission; remit the matter to the Commission for reconsideration with or without specific directions; make such other orders as APTEL deems just and proper. APTEL also has the power under Section 121 to "call for the records" of the Commission and to require the Commission to furnish any additional information or material relevant to the appeal. These powers give APTEL the tools for comprehensive review of Commission decisions, including the ability to supplement the record with additional material where the Commission's record is incomplete or where new information has come to light since the Commission's order was issued.

APTEL's power to issue interim orders (stays or interim reliefs) pending the final disposal of an appeal is an important ancillary jurisdiction. Where a Commission order would, if implemented, cause irreversible harm to the appellant before the appeal can be finally decided, APTEL can grant a stay of the order or other appropriate interim relief to preserve the status quo. The conditions for grant of interim stay (prima facie case on the merits, balance of convenience, and irreparable injury) follow the standard injunction principles applicable in civil proceedings, adapted to the regulatory context. APTEL's interim relief jurisdiction has been invoked in numerous significant cases, particularly where Commission orders involve large one-time payments or irreversible changes to regulated contracts.

2.4 APTEL Jurisprudence: Key Principles

APTEL has developed an extensive body of jurisprudence on electricity law through its review of CERC and SERC orders over two decades. The most significant principles established include: the non-discrimination principle in open access (Torrent Power v. CERC series of cases, establishing that transmission and distribution network owners must provide open access on equal terms to all eligible entities); the change-in-law principles for PPAs (Energy Watchdog v. CERC, the Supreme Court decision arising from APTEL's review of CERC's change-in-law determination for Adani and Tata Ultra Mega Power Projects, establishing the framework for foreign law changes in competitive PPAs); the regulatory deference principle (multiple APTEL decisions establishing that CERC's and SERCs' regulatory policy judgments are entitled to deference and will not be substituted by APTEL's own preferences); and the Section 86(1)(b) tariff consistency principle (establishing that SERCs must ensure that distribution tariffs are consistent with the Tariff Policy and the National Electricity Policy).

APTEL's jurisprudence on PPA disputes has been particularly significant for commercial practice. APTEL has addressed: the definition of "Change in Law" and the scope of events that qualify as CiL (distinguishing between domestic regulatory changes that qualify as CiL and foreign regulatory or market changes that do not); the calculation of CiL relief (the incremental cost methodology versus the net present value of future incremental costs); the burden of proof in CiL petitions (on the generator to demonstrate the qualifying CiL event and its quantified impact); the force majeure standard in PPAs (whether coal supply

interruptions or price increases due to government policy changes qualify as FM, addressed in numerous cases including APTEL's decisions on the fallout of Indonesia's coal pricing regulations in 2011); and the treatment of PPA termination and buyout provisions (including the regulatory oversight of PPA termination in distressed projects).

2.5 Section 125: Appeal to the Supreme Court

Section 125 of the Electricity Act, 2003 provides for a further appeal from APTEL's orders to the Supreme Court of India, on any question of law arising out of the APTEL order. The limitation of the Section 125 appeal to "questions of law" (as distinguished from questions of fact or regulatory policy) reflects the principle that the Supreme Court's role in electricity sector governance is confined to clarifying the law, not substituting its regulatory judgment for that of APTEL or the Commissions on technical or policy matters. A "question of law" for Section 125 purposes has been interpreted by the Supreme Court to include: questions about the statutory interpretation of provisions of the Electricity Act, 2003 or its subsidiary legislation; questions about the constitutional validity of regulatory orders or statutory provisions; questions about the procedural requirements applicable to Commission proceedings; and questions about the correct principles for regulatory decision-making (including the standard of review applicable to specific categories of decisions).

The Supreme Court has decided several landmark cases on electricity law under the Section 125 route, clarifying major questions including: the primacy of the Central Government's Tariff Policy in guiding SERC decisions on distribution tariffs (*PTC India v. CERC*); the scope of CERC's jurisdiction over trading licensees (*PTC India v. CERC*, the foundational case establishing CERC's jurisdiction over electricity trading); the constitutional validity of the Electricity Act, 2003's reorganisation of the electricity sector (*Reliance Energy v. Maharashtra Electricity Regulatory Commission*, addressing the validity of MERC's orders on the Mumbai electricity market); and the Change-in-Law framework for competitive PPAs (*Energy Watchdog v. CERC*, establishing the definitive legal framework for CiL in Section 63 PPAs).

Consumer Grievance Redressal: CGRF and Ombudsman

Section 42(5)-(6), CGRF Composition and Powers, Ombudsman Jurisdiction, and Consumer Protection

The Electricity Act, 2003 provides a specific consumer grievance redressal framework at the distribution level through Consumer Grievance Redressal Forums (CGRFs) and the Electricity Ombudsman, providing accessible and low-cost dispute resolution for electricity consumers without requiring them to approach the Commission or courts.

3.1 Consumer Grievance Redressal Forums: Section 42(5)

Section 42(5) of the Electricity Act, 2003 requires every distribution licensee to establish one or more Consumer Grievance Redressal Forums (CGRFs) for the resolution of complaints filed by consumers about the distribution licensee's services. The CGRF is an internal dispute resolution mechanism operated by the distribution licensee, providing consumers with a structured forum for the redressal of common grievances including: billing disputes (erroneous meter readings, incorrect tariff application, disputed charges); connection and disconnection disputes (wrongful disconnection, delay in new connection, reconnection after payment); supply quality complaints (frequent interruptions, voltage fluctuations, transformer failures); and service standard complaints (non-responsiveness to consumer complaints, failure to maintain supply commitments). The CGRF must include at least one consumer representative (nominated by the SERC) to ensure independence from the distribution licensee's perspective in its decisions.

The CGRF process begins with the consumer filing a written complaint with the distribution licensee's CGRF, supported by relevant documents (meter readings, bills, prior correspondence). The CGRF is required to acknowledge the complaint, investigate the facts, give the consumer and the licensee an opportunity to present their respective positions, and issue a written decision within the timeframe specified in the SERC's CGRF Regulations. Where the CGRF upholds the consumer's complaint, it can direct the distribution licensee to: correct the billing error; restore supply on specified terms; pay compensation for losses caused by the supply failure or billing error; or take other appropriate remedial action. The CGRF's decisions are binding on the distribution licensee and implementable through the Electricity Ombudsman if the licensee fails to comply.

3.2 Electricity Ombudsman: Section 42(6)

The Electricity Ombudsman, designated under Section 42(6) of the Electricity Act, 2003, provides an independent appellate forum for consumers who are dissatisfied with the CGRF's decision or who are aggrieved by the CGRF's failure to decide their complaint within the prescribed timeframe. The Ombudsman is designated by the SERC and must be a person with legal, judicial, or technical expertise, who is independent of the distribution licensee and of the SERC itself. Most SERCs have designated retired judicial officers (typically retired District Court judges or High Court judges) as the Electricity Ombudsman, ensuring a combination of legal competence and independence.

The Ombudsman's jurisdiction covers: appeals from CGRF decisions by consumers who are dissatisfied with the outcome; complaints about CGRFs that have failed to decide complaints within the prescribed time; and complaints about distribution

licensees that have failed to comply with CGRF decisions. The Ombudsman can: call for records from the CGRF and the distribution licensee; hear the parties; direct the licensee to provide relief if the consumer's complaint is upheld; and in appropriate cases recommend to the SERC that regulatory action be taken against the licensee for systemic failures in consumer service or CGRF performance. The Ombudsman's decisions are binding on the distribution licensee and can be enforced through the SERC's regulatory powers if necessary.

3.3 Consumer Protection: SERC Framework

The SERCs exercise a broader consumer protection function beyond the specific CGRF and Ombudsman framework. SERCs establish and enforce Standards of Performance (SoP) for distribution licensees under Section 57 of the Electricity Act, 2003, specifying the minimum levels of service that licensees must provide to consumers, including: the maximum interruption duration and frequency per consumer in specified periods; the maximum time for restoration of supply after a reported fault; the maximum time for new connection or reconnection; the billing accuracy requirements; and the response time requirements for consumer complaints. Distribution licensees whose performance falls below the SoP are required to pay automatic compensation to affected consumers and are subject to regulatory enforcement proceedings before the SERC.

SERC's tariff regulatory function also serves a consumer protection purpose by ensuring that the distribution tariff is cost-reflective, non-discriminatory, and consistent with the principles of the Tariff Policy. Consumer groups (including consumer representative bodies and large industrial consumer associations) participate actively in SERC tariff proceedings to challenge proposed tariff increases, question the prudence of utility expenditures, and advocate for consumer-friendly tariff design. SERC's consideration of consumer group submissions in tariff proceedings provides an important check on the regulatory capture risk inherent in a regulatory framework in which the regulated utility has substantially more resources and information than any individual consumer. APTEL's review of SERC tariff orders includes examination of whether the SERC has adequately considered and addressed consumer submissions, providing further protection against regulatory outcomes that unfairly burden consumers.

Arbitration and Alternative Dispute Resolution in the Electricity Sector

Regulatory Jurisdiction vs Arbitration, IBC Interface, and Commercial Dispute Resolution

The electricity sector generates a wide range of commercial disputes that may be resolved through arbitration under the Arbitration and Conciliation Act, 1996, as an alternative to regulatory adjudication before the Commissions. This chapter examines the interface between regulatory jurisdiction and arbitration, and the framework for ADR in electricity sector disputes.

4.1 Arbitration Clauses in Electricity Sector Contracts

Standard electricity sector contracts — including PPAs, EPC contracts for power projects, fuel supply agreements, and O&M contracts — routinely include arbitration clauses providing for the resolution of disputes through arbitration under the Arbitration and Conciliation Act, 1996 (as amended in 2015, 2019, and 2021). The popularity of arbitration in electricity sector commercial contracts reflects: the technical complexity of the disputes (favouring arbitrators with electricity sector expertise over generalist civil courts); the commercial confidentiality concerns of the parties (arbitration proceedings are private, unlike court and Commission proceedings); the speed advantage of arbitration (which can provide a final award within 18-24 months, compared to the potentially longer timeframes for Commission and court proceedings); and the international enforceability of arbitral awards under the New York Convention (important for disputes involving international parties or assets).

The critical legal question for electricity sector arbitration is: which disputes are subject to the exclusive jurisdiction of the regulatory commissions (precluding arbitration) and which can be resolved by arbitration? The Supreme Court and APTEL have addressed this question in a series of decisions, establishing the following framework: disputes about the computation and recovery of regulated tariffs (including all disputes that require the Commission to determine the appropriate tariff under Section 62 or to adopt a competitive tariff under Section 63) fall within the exclusive jurisdiction of the regulatory commissions and cannot be referred to arbitration; disputes about commercial matters that do not require regulatory tariff determination (such as disputes about the performance of EPC contracts, O&M contracts, and fuel supply agreements) can be resolved by arbitration; and disputes that involve both regulatory tariff questions and commercial contract questions may require bifurcation, with the regulatory tariff questions referred to the Commission and the remaining commercial questions determined by arbitration.

4.2 The Section 86(1)(f) Referral to Arbitration

Section 86(1)(f) of the Electricity Act, 2003 expressly empowers SERCs to "refer any dispute for arbitration," providing a statutory mechanism for SERC-directed arbitration of intra-state electricity sector disputes. This provision enables the SERC to direct that a dispute be resolved through arbitration as an alternative to adjudication before the Commission, appointing an arbitrator with the relevant technical and legal expertise. SERC-referred arbitrations are conducted under the Arbitration and Conciliation Act, 1996 and are subject to the same review framework as commercial arbitrations, with the arbitral award subject to challenge under Section 34 of the Act. However, where the arbitral award involves a determination on regulated tariff matters,

it may also be subject to APTEL's review to the extent that it touches on regulatory jurisdiction issues.

4.3 IBC Interface with Electricity Regulation

The intersection of the Insolvency and Bankruptcy Code, 2016 with electricity sector regulation creates a set of jurisdictional and commercial issues that have become increasingly significant as the power sector has experienced financial distress at both the generator and distribution utility levels. The fundamental tension is between: the IBC's framework of collective resolution of the Corporate Debtor's liabilities under the supervision of the NCLT; and the electricity sector's regulatory framework, which vests jurisdiction over regulated tariffs, licence conditions, and PPA terms in the Commissions rather than in courts.

The Supreme Court's decision in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd.* (2023) addressed the intersection of the IBC's moratorium provisions and the distribution licensee's right to disconnect electricity supply to a defaulting consumer who is undergoing CIRP under the IBC. The Court held that the IBC's moratorium under Section 14 does not prevent a distribution licensee from disconnecting the supply of electricity to the Corporate Debtor for non-payment of electricity dues incurred after the commencement of insolvency proceedings, since the supply of electricity is an operational matter that continues during insolvency rather than a pre-insolvency creditor claim that falls within the moratorium's protection. This decision clarified the rights of distribution licensees vis-à-vis Corporate Debtors undergoing insolvency, which had been a source of significant commercial uncertainty in the distribution sector.

4.4 Mediation and Conciliation in Electricity Disputes

The Mediation Act, 2023 and the CERC/SERC initiatives on pre-litigation mediation for electricity disputes provide alternative pathways for consensual resolution of commercial disputes that can reduce the burden on the Commissions' adjudicatory dockets and achieve faster commercial resolution. Mediation is particularly well-suited for ongoing commercial relationships (such as the long-term PPA relationship between a generator and a distribution utility) where a negotiated settlement preserves the relationship and enables the parties to reach commercially pragmatic solutions that a Commission order or arbitral award might not achieve. CERC has encouraged parties to electricity disputes to attempt mediation before or during Commission proceedings, and several significant disputes have been settled through CERC-facilitated mediation without the need for a formal adjudicatory order.

Penalties, Enforcement, and Regulatory Compliance

Sections 142-150, Adjudicating Officers, Penalty Jurisprudence, and Compliance Architecture

The Electricity Act, 2003 provides a comprehensive penalty and enforcement framework to ensure compliance with the Act's provisions, regulatory orders, and licence conditions. This chapter examines the penalty framework, the role of Adjudicating Officers, and the regulatory compliance architecture.

5.1 Penalty Framework: Sections 142-150

Sections 142 through 150 of the Electricity Act, 2003 establish the penalty framework for contraventions of the Act's provisions and of orders issued under the Act. Section 142 provides for civil penalties (up to Rs. 1 lakh per day of contravention, with an overall cap of Rs. 1 crore per violation, though subsequent amendments and specific regulations have enhanced these limits for certain violations) for contravention of any provision of the Act, the conditions of a licence, or any order or direction of the Commission. Section 143 provides for enhanced penalties for specified offences including: theft of electricity; adulteration of fuel or manipulation of electricity meters; and fraudulent connection or reconnection. Sections 135-141 contain the criminal offence provisions, making specified acts (including electricity theft above specified thresholds, tampering with meters, and generating electricity without a licence) punishable with imprisonment and fines.

The Adjudicating Officer appointed under Section 33(1) of the Act is responsible for determining penalties under Sections 142-150. The Adjudicating Officer is typically a senior officer of the Commission, designated to exercise the penalty jurisdiction, and acts as a quasi-judicial authority in the penalty proceedings. The penalty determination process involves: the initiation of penalty proceedings by the Commission or on a complaint by an affected party; notice to the alleged contravener specifying the alleged contravention; opportunity for the alleged contravener to respond and present its defence; consideration of all relevant factors including the nature, gravity, and duration of the contravention, the degree of culpability, the benefit obtained from the contravention, and the steps taken to remedy the contravention after its detection; and the issuance of a reasoned penalty order specifying the penalty amount and the direction to pay within a specified timeframe.

5.2 Licence Suspension and Revocation

CERC and the SERCs have the power to suspend or revoke a licence under Section 19 of the Electricity Act, 2003 where the licensee: makes a statement that is false in a material particular in the licence application; fails to maintain the supply of electricity; fails to discharge any of the obligations imposed on it by the Act, a Commission order, or the licence conditions; or is adjudicated bankrupt or (for a company) is ordered to be wound up. Licence revocation is the most severe regulatory sanction available to the Commission, effectively ending the entity's right to carry on the licensed activity, and is reserved for cases of serious and persistent regulatory non-compliance or for situations where the licensee is unable to continue the licensed activity due to financial or operational failure.

APTEL has addressed licence revocation proceedings in several cases, establishing that: the Commission must follow a fair

procedure before revoking a licence, including adequate notice of the proposed revocation and an opportunity for the licensee to make representations; the Commission must consider less severe remedial measures (such as directions to remedy specific performance failures or the appointment of a special officer to supervise the licensee's operations) before resorting to revocation; and the revocation must be proportionate to the gravity of the non-compliance, taking into account the potential consumer harm from an unexpected licence revocation and the availability of an alternative supply arrangement before revocation becomes effective.

5.3 Enforcement Against Electricity Theft

Electricity theft — including unauthorised connection to the distribution network, tampering with energy meters, and collusion between distribution employees and consumers to under-record energy consumption — represents India's largest single source of technical and commercial losses in the electricity distribution sector. The total annual financial impact of distribution network losses (technical and commercial combined) has been estimated at Rs. 60,000–70,000 crore per year at the national level, with commercial losses from theft constituting a significant fraction of this total. The enforcement of the Anti-Theft provisions of the Electricity Act (Sections 135–141) is accordingly one of the highest-priority operational and regulatory concerns for distribution utilities and their regulators.

Section 135 of the Act enables the distribution licensee's authorised officers and police officers to: enter premises where electricity theft is suspected; seize material evidence; detain persons found committing theft; and take the matter to the Special Court established under Section 153 for trial. The Special Courts for electricity offences are required to be constituted by the state government in each district, with a mandate to ensure speedy trial of electricity theft cases. In practice, the effectiveness of the anti-theft enforcement framework varies considerably across states, with some states achieving significant reductions in AT&C losses through sustained enforcement campaigns (including special enforcement squads, remote meter monitoring through smart metering systems, and large-scale consumer verification drives) while others continue to experience high AT&C losses due to weak enforcement and political constraints on taking action against influential consumers involved in theft.

Forum of Regulators, Inter-Commission Coordination, and Regulatory Outlook

FoR Role, Regulatory Harmonisation, JERC, and the Future of Electricity Governance

The Forum of Regulators (FoR) provides a mechanism for inter-commission coordination and regulatory harmonisation across India's federal electricity governance structure. This chapter examines the FoR's role, the coordination mechanisms for electricity regulation, and the future challenges of India's regulatory governance framework.

6.1 Forum of Regulators: Statutory Basis and Mandate

The Forum of Regulators, constituted under Section 166 of the Electricity Act, 2003, brings together the Chairpersons of CERC and all the SERCs as a consultative and coordination forum for matters affecting electricity regulation across state boundaries and requiring a common regulatory approach. FoR is chaired by the Chairperson of CERC and includes the Chairpersons (or nominated Members) of all state electricity regulatory commissions, providing a national forum for the exchange of regulatory experience, the development of common regulatory standards, and the coordination of regulatory responses to national policy directions from the Ministry of Power and the CEA.

FoR's mandate under Section 166 includes: the coordination of the implementation of national electricity policies and Tariff Policy across states; the development of common regulatory standards and procedures for matters affecting inter-state electricity commerce; the provision of technical assistance to SERCs that require support in developing their regulatory capacity; and the promotion of best regulatory practices through the sharing of experience and the development of model regulations for voluntary adoption by SERCs. FoR does not have regulatory authority over the SERCs — each SERC is an independent statutory authority within its state — but its recommendations and model regulations have significant practical influence on the regulatory practices of states, particularly those with less developed regulatory capacity.

6.2 Joint Electricity Regulatory Commissions

For Union Territories (UTs) without a legislature, the Central Government has the power under Section 83 of the Electricity Act, 2003 to constitute a Joint Electricity Regulatory Commission (JERC) to exercise the functions of the SERC for the UT. Where the Central Government and the government of a state or UT jointly agree, a JERC can also be constituted to exercise regulatory functions for both the state and the UT. The JERC for Goa and Union Territories (excluding Delhi, Jammu & Kashmir, and certain northeastern UTs) exercises SERC functions for these jurisdictions. APTEL's appellate jurisdiction extends to orders of JERCs in the same way as to orders of SERCs, ensuring consistent appellate oversight across all regulatory jurisdictions.

6.3 Regulatory Capacity and Institutional Development

The effectiveness of electricity regulation in India is critically dependent on the institutional capacity of the regulatory commissions: their ability to attract and retain competent technical and legal staff; the efficiency of their internal processes for

managing high volumes of regulatory and adjudicatory filings; the quality of their consultation and engagement with stakeholders; and their analytical capability for evidence-based regulatory decision-making. Capacity constraints are a significant challenge for many SERCs, which operate with smaller budgets, fewer staff, and less technical specialisation than CERC. The FoR's technical assistance programme and the Ministry of Power's capacity building initiatives for SERCs provide some support, but the structural capacity constraints of some state commissions remain a limitation on the quality of state-level electricity regulation.

The development of regulatory capacity requires attention to: the selection and appointment of Commission members (Chairpersons and Members of the Commission), ensuring that individuals with appropriate qualifications and independence are appointed through transparent processes; the staffing and expertise development of the Commission secretariat; the development of institutional processes for consultation, evidence gathering, and transparent decision-making; and the availability of adequate financial resources for the Commission to carry out its functions. The Supreme Court and APTEL have emphasised the importance of qualified and independent Commission members for the effectiveness of electricity regulation, and have in some cases addressed the legality of specific appointments or the consequences of regulatory vacancies on the Commission's ability to discharge its statutory functions.

6.4 Future of Electricity Dispute Resolution

India's electricity dispute resolution framework faces several structural challenges that require attention as the sector continues to evolve. The volume and complexity of disputes before CERC, APTEL, and the SERCs has grown significantly as the electricity market has expanded, new commercial relationships have been created through competitive procurement, and the number of regulatory participants (including renewable energy generators, open access consumers, and trading licensees) has multiplied. Managing this growing caseload while maintaining the quality and timeliness of regulatory and adjudicatory decisions requires investment in: Commission capacity (additional Benches, specialised advisory panels, and improved case management systems); pre-litigation dispute resolution (CGRF strengthening, ombudsman capacity, and CERC/SERC-facilitated mediation); and legislative reforms to streamline the dispute resolution process (including reducing the number of stages in the regulatory-appellate chain for certain categories of routine disputes).

The development of specialised electricity sector arbitration as a complement to regulatory adjudication is a potential avenue for managing the dispute resolution load while providing faster and more flexible resolution for commercial disputes that do not require regulatory tariff determination. BEE, CERC, and the Ministry of Power have expressed support for developing designated arbitration mechanisms for electricity sector commercial disputes, potentially through a sector-specific dispute resolution centre with a panel of arbitrators combining legal and electricity sector technical expertise. The development of such a centre, governed by rules adapted from the domestic and international arbitration experience, could significantly improve the speed and cost-effectiveness of commercial dispute resolution in the electricity sector while preserving the regulatory commissions' jurisdiction over matters that require expert regulatory determination.

Booklet VI Key Takeaways: India's electricity dispute resolution framework spans multiple institutional levels — regulatory commissions (CERC, SERCs, JERCs), APTEL, the Supreme Court, CGRFs, Electricity Ombudsmen, and arbitral tribunals — providing a comprehensive architecture for the resolution of the diverse disputes that arise in a complex, commercial, and rapidly evolving electricity sector. The quasi-judicial functions of CERC under Section 79(1)(f) and SERCs under Section 86(1)(f), APTEL's appellate jurisdiction under Sections 111–121, and the Supreme Court's supervisory jurisdiction under Section 125 form the primary dispute resolution hierarchy.

The CGRF and Ombudsman provide consumer-accessible redressal for distribution service disputes. The interface with arbitration and the IBC creates additional complexity that practitioners must navigate carefully. The Forum of Regulators' coordination role and the future reform agenda for regulatory capacity and dispute resolution efficiency are the institutional dimensions that will shape the quality of electricity governance in India for the decades ahead.