Systematic Erosion of the Constitutional Provision of Power as A Concurrent Subject

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The Seventh Schedule of the Constitution of India (item 38) places Electricity under the concurrent subject. Under the Electricity Supply Act 1948, broadly the service provider was the state with regulatory and supporting role of the Central Electricity Authority.

In recent times the Govt. of India is systematically eroding the powers of the State Governments and taking over the role and responsibilities of the State Government. This is done through

1) Central legislation. The Electricity Act 2003 and now the proposed Bill to separate wire and content.
2) Creating Central Government organization by launching a Joint Venture Company of NTPC and Power Grid to enter distribution.
3) Using Load Dispatch Centers to enforce LCs on DISCOMS
4) Use of superior financial muscle power to enforce compliance by states, by making the availability of funds contingent on meeting certain conditions laid down by the Central Government.
5) Issue of National Tariff Policy unilaterally.
6) Even the appointment of State regulators would be decided by a panel appointed by the Govt. of India.

Reforms enforced after the Electricity Act 2003

Reform No 1: objective - tariffs would reduce.

- In 2003 the average power tariff was Rs. 3. Sixteen years, after the World Bank guided reforms, the average rate is Rs. 7 (plus in many states there are substantial regulatory assets that have to be recovered through tariff increases).This is a direct burden on the pocket of the power consumer. The increase needs to be compared with inflation during these 16 years and the increase in other energy sources like petroleum products and natural gas - LNG and CNG?
- The losses of SEBs before unbundling were totalled to Rs. 26000 Crore. Now the losses of unbundled utilities are Rs. 10 Lac Crores. This is a direct burden on the tax

payer since it is unlikely to be collected from the electricity consumer.

- Despite a 15.5% ROE while interest rates were falling there has not been substantial private investment in the power sector, particularly in distribution.
- The factors responsible for high power tariff in India are not being tackled. Some of these factors are:
- High taxes on power grade coal.
- Fixed cost for almost 3.48 lac MW generation and 3.5-4 lac MW transmission capacity catering to 1.7 lac MW peak demand of India.
- Rate of return on equity of 15.5% is pass through on surplus generation and transmission capacity.
- The rate of ROE is almost double the interest rates of the bank

Reform No 2: objective - reduction in subsidies.

There has been little reduction in inter category subsidies (Domestic, Agriculture, Industry etc) and within a sector (example, various slab rates within domestic.) At the same time open access and power exchanges have caused huge losses to DISCOMS. [This needs further analysis and elaboration]

Agricultural subsidies/tariffs should not be examined only as a matter of power policy/ regulation but in the context of food /water policy. For example, Punjab's export of rice could also be treated as export of water and therefore subsidies given for power to raise water should be a national concern.

Reform No 3: objective - effective regulation

- Regulators have ignored the elephant in the room. They have not taken into account critical items that have direct bearing on tariff setting. Examples of these are Electricity taxes, gold plating of power plants, over invoicing of imported equipment and fuel. [This needs further analysis and elaboration]
- Since private power plant and private players are not subject to statutory or transparent audit even though electricity is a public service and by its very nature a monopoly. Therefore, the regulator has no independent basis to question the cost claimed by private players. CAG Audit for private players in power sector need to be made mandatory for all monopolies whether public or private owned.

Reform No 4: objective - Privatization would bring efficiency 2.4.1 Generation

Starting with Enron promoted Dabhol project, private investment in generation has been a disaster. The recent investment in 34 power stations accounting for over 40,000 MW have in their trail left Sixty five percent of the investment as stressed assets involving a credit of about Rs. 1.74,468 Crores from Indian banks.

Further damage caused to the economy is on account of:

- Import of four years worth indigenous manufacturing capacity, resulting in capacity utilisation of 23 % of the built-up capacity (3,48,950 MW against a demand of 150,000 MW)
- Show Cause notices from the Directorate of Revenue Intelligence (DRI) for over- invoicing
    - Equipment – Rs. 20,000,00,00,000 (Rs. Twenty Thousand Crores)
    - Coal – Rs. 30,000, 00, 00, 000 (Rs. 30 thousand Crores)

Distribution

- There has not been any additional and substantial investment in the distribution network that would results in reduction in technical losses and more reliable service. Investment has not happened either in Delhi, Odisha or under any UDF franchisee model.
- Before unbundling the utilities (SEBs) there has not been unbundling of books of accounts and accounting of the three components (meaning while the SEBs had been unbundled there has not been clear-cut and audited unbundling of accounts where here has been distinct allocation of assets and debts, investments in works in progress, losses etc. between generation, transmission and distribution). Privatization of the various components of the SEBs (or DISCOMS) was an illegitimate exercise without such unbundling of “accounts”.
- There is no explanation on how privatisation and /or introduction of a central entity would reduce or minimise local social and political concerns? Consequently, how would enforcement of rules and law be better done. (Delhi private DISCOMS are seeking police support for enforcement)
- Where ever there has been privatisation or creating of private franchisee there has been no additionality in managerial or engineering inputs. Neither has there been upgradation of human resource development, on the contrary even work on “hot lines” has been contracted to untrained persons endangering lives.
- Since power has not been brought under GST, the consumer does not get the advantage of input costs. These are quite substantial for energy intensive units.

Opposition of the State Government in the Parliamentary Standing Committee to the Electricity (Amendment) Bill 2014 and the experience of various countries with the separation of wire and content as well as privatisation is given in Annexure I.

Reform 5: Objective weakening the Central Electricity Authority and removing statuatory techno- economic clearance for Generation

Techno-economic scrutiny was decried as licence raj, interference by the Government and lack of freedom for the investor. Therefore, the Electricity Act 2003 declared that setting up of a power plant would be a de-licensed activity. The laissez-faire approach to investment decisions has resulted in today's situation where more than sixty-five percent of the investment has becoming stressed assets accounting for over 40,000 megawatts of power generation and Rs. 1,74,468 crores in credit from India's banks. The Parliament Standing Committee on Energy identified Non-availability of Fuel: – Cancellation of coal block. – Projects set up without linkage, and lack of enough PPA's by states as the principal reasons responsible for financial stress in thermal power projects:

Driving state DISCOMS to complete bankruptcy to bail out private Generators

The Government of India has imposed a condition that letter of credit (LC) must be issued by DISCOMS in order for them to get scheduled by the Load Dispatch Centres. This rule has been specifically designed to bail out the private generators, since the Central Pubic Sector Undertakings (CPSUs) already have payment security mechanisms. Since DISCOMS have limited funds, the LCs would be opened by diverting funds earmarked for the CPSUs. The healthy CPSUs would be driven to sickness and privatised.

More reforms – Legislation to separate wire and content.

Legislation on dividing wire and content is premature and should be a consequence of successful reforms, whereas as pointed out above this separation would be the result of failed reforms and is bound to create further distress in the sector.

Other concerns – Renewable Energy

Solar energy by its very characteristic is not a continuous source of energy. Therefore, a) investment made for its evacuation has necessarily to be under-utilised. b) Grid stabilisation would require either spinning or quick response reserves. c) Both in technological and financial terms, large scale storage of power has yet to be established for large scale application. Hydro

power should be given encouragement and support as a renewable energy and included in power purchase obligations. There is a need of systematic integrated study, what is a happening is uncoordinated decision making and there is a likelihood of large solar power systems becoming stressed assets and there being grid failures. Should that happen, then entire blame would belong to the Govt. of India's haphazard policy dictated by vested interests.

Other concerns – Needless investment being forced

Indian Coals have high ash content, but do not have sulphur causing problems like acid rains. Under pressure from importers of coal and equipment, FDGs are being retrofitted where they are not required. The environmental problems caused by high sulphur in coals has not been studied from any of the following perspectives

a) alternative technologies like fluidised bed boilers (that would also solve the problem of high ash besides sulphur fixation)
b) whether de-rating a plant would be a better techno-economic option instead of retrofitting FDGs and
c) payback and techno economics of retrofitting old plants with FDGs when they are likely to be retired

Annexure I

Objections of the State Governments to the Electricity Bill 2014

The Standing Committee report gives the response from most of the States on the idea of segregation of Carriage and Content. A brief extract is given below

Bihar: In our view, it is not workable ...

Karnataka: The carriage and content is good in principle which is futuristic. ……it may not be prudent to have this now...

Gujarat: Unless a level playing field is provided to all the suppliers, the challenge of actual implementation on the ground is very difficult. Then, it is going to be a collapse of system.

Assam: we are more or less in agreement with what the representative of Karnataka has said

Himachal Pradesh: The load density is very low. The geographical area is very sparse. For the present, the unbundling between distribution and generation, has not matured. Further unbundling of distribution sector into supply and distribution segments will, first of all, have an impact on the cost… …because of the multiplicity of units... we are worried about the additional cost of this further unbundling

Kerala: is that it should not be made mandatory…..it can never give a level playing ground especially looking from the perspective of the incumbent operator.

Goa: In regard to carriage and content, whatever Karnataka and Kerala have mentioned, those are also our concern.

Jharkhand: we are of the view that the segregation should not be done. Cherry picking is taking place. As result they are only picking up the HT consumers. The Jharkhand Urja Vikas Nigam Limited has to take care of entire rural consumers throughout the State. So, this is a proposition which is completely adverse

Delhi: distribution companies would be reduced to only earning the wheeling charges. Whether it is going to be a profitable thing for distribution companies to stay in the business of wheeling when they cannot be supply entities… What would be the liabilities that they would carry if they are already in Power Purchase Agreements for 25 years?

Maharashtra: we believe that this is a welcome step…..there are certain riders, one is responsibility of the supply agency to pick up universal service obligation. It should not be cherry picking some customers and not taking the rest of them. ..it is also important that we bring parity in terms of the cost of servicing, essentially the cross subsidy which is currently operating.

Tamilnadu: in one stroke it will make all the State utilities unviable. …we are against this amendment ….separation of carriage and content will be giving unbridled access to private

players to cherry-picked consumers without making any investment into distribution network. … private players would pick up consumers in urban areas or high value consumes in rural areas... we are against it in toto.

Madhya Pradesh: as a matter of principle, content and carriage is a very forward looking step and we welcome this step. There will be some implementation issues….. We have PPAs ranging from Rs. 2 to Rs. 5. How to apportion those PPAs? The Act proposes that one of the Government companies should be in each DISCOM area. That is very fine but we should have a system where consumer has a choice in choosing the supplier than the supplier choosing the consumer.

Odisha: As a concept, is very good but it would call for massive infrastructure upgradation in metering. …..the consumer meter is the point of separation between the distribution licensee and the supply licence. We feel this will be extremely difficult. This would lead to a lot of litigations and a lot of disputes will come which will be overwhelming.

Rajasthan: it is a welcome step but there is this question, of course, of how we avoid the discoms, the State entities which will be having the obligation of the last resort to not be overburdened because of the cherry-picking.

Telangana: we welcome separation. In the first phase, we want the present distribution company to be segregated into the distribution and retail and let this model work for four or five years ….in second phase, we can allow private players to come into the retail.

Uttarakhand: There are vital points which should be clearly specified - cross subsidy; cherry picking; PPA segregation; appointment and apportionment of distribution losses; problems to the consumers.

Andhra Pradesh: Difficult task, so a very cautious approach is required

Chandigarh: What is perhaps correct in Europe or America today, it may not be so applicable today to us.

Annexure II

Experience of various countries to privatisation of Distribution and separation of Carriage and Content.

World Bank blog dated 5th March 2018 - "Private versus public electricity distribution utilities: Are outcomes different for end-users?" states:

Analysis which measures the time, procedures and cost to connect to the grid, as well as service reliability and electricity tariffs shows that there is no significant difference across utility ownership types with regards to the efficiency and quality of services provided to commercial end-users. Overall, we find no major differences between the efficiency and quality of services which commercial end-users receive from private or public utility companies.

Four interesting findings of the World Bank analysis were

- Most distribution utilities are publicly owned but privatization is more likely in higher income economies
- Obtaining electricity connections is equally burdensome from public or private utilities
- Utility ownership has little correlation with power outages
- Commercial end-user tariffs are identical across utility types

United Kingdom: Diving wire and content has caused a huge and avoidable investment in metering. The cost of dividing wire and content has been so large that the benefit if retail competition has not been of any worth for consumers below 75 KW. There is no study to a) determine what would be the cut off level for Indian consumers b) whether investment in modernising distribution would pay better dividends than in investing in metering.

Australia: Power prices have doubled over the last five years

Germany: Mayor of Munich Mr. Dieter Reiter: address to Munich Economic Summit May 2011:

"Today, energy supply is characterized by oligopolies of private energy suppliers. There is practically no competition on price. German cities and towns are currently trying to correct the mistakes made in their privatization policies of the past. There are many examples of newly established or revived municipal utility companies, especially for energy and water supply, or of the repurchase of municipal transport services."

Turkey: A study conducted in Turkey - “The effect of power distribution privatization on electricity prices in Turkey: Has liberalization served the purpose? Establishes that:

- Privatization in electricity distribution has not reduced the retail prices in transition period in Turkey.
- Changes in retail prices do not harmonize with those in wholesale prices in the electricity market.
- The cost reflectiveness of the pricing system in the market is questionable.
- The market does not seem to be ready yet for the automatic pricing mechanism.
- The increase in distribution tariffs is not compatible with the targets of the liberalization program adopted for the Turkish electricity market.