

Status of Legal Obligations for Delivery of Energy Services to All

I. Legal Obligation for Universal Service Obligation for Energy Services:

Constitution of India:

Under the Indian Constitution, electricity is a concurrent subject, which means that both the Union (Central) and State governments have concurrent authority to make laws in the area of energy and electricity services.

However, the law/s made by the Parliament and the Central Government overrides those made by state legislatures.

The Electricity Act 2003 and prior to it:

Prior to the enactment of the Indian Electricity Act of 2003, for the first time in October 1997, the Indian Government brought out a loose definition for “Rural Electrification” and according to it, “ A Village should be classified as electrified if electricity is being used within its revenue area for any purpose whatsoever.”

Given the loose nature of the definition, it was again re-defined to read as, “A village will be deemed to be electrified if the electricity is used in the inhabited locality, within the revenue boundary of the village for any purpose whatsoever.”

The above two definitions were generally used in “Government records” and documents but did not have any legal contours to it.

The first real mention of the term “Rural Electrification” in a legislative and therefore a legal framework was when it found mention in the Indian Electricity Act of 2003, which means that no other act which had governed the sector up till 2003 had ever mentioned Rural Electrification.

Section 4 and 5 of the Electricity Act mandates the government to formulate a “rural electrification policy”, which has been since formulated and adopted in 2006.

Section 5 provides a framework for decentralization of distribution of electricity. It mandates the Central Government to formulate policies for rural electrification, empowering Panchayat Institutions and local communities for purchase of power and management of distribution in rural areas.

Section 6 mandates the Central Government to formulate policies for rural electrification, which in a way also ensures that the Government is mandated to formulate policies which would promote rural electrification, which include exploring all supply options which would ensure the success of rural electrification.

Section 2(63) permits “stand alone system” as a means in the electricity system which allows generation and distribution of electricity in areas that are not connected to the grid.

Section 14. The Appropriate Commission may, on application made to it under section 15, grant any license to any person for -

- (a) to transmit electricity as a transmission licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as an electricity trader

Importantly, under proviso to Section 43 of the Electricity Act 2003 the Appropriate Commission would need to ensure as a part of universal service obligations that the national goal of providing access to households by year 2009 is complied with

The National Rural Electrification Policy:

However the teeth to the implementation of the sections of the electricity act 2003 relevant to rural electrification is contained in the “National Rural Electrification Policy” (NREP) which was formulated in 2004.

The National Rural Electrification Policy gives a new definition to rural electrification.

The new definition states that “a village would be declared as electrified, if

1. Basic infrastructure such as, Distribution Transformer and Distribution lines are provided in the inhabited locality as well as the *Dalit basti* hamlet where it exists.
2. Electricity is provided to public places like Schools, Panchayat Office, Health Centers, Dispensaries, Community centers etc.
3. The number of households electrified should be at least 10% of the total number of households in the village.

Further, the National Rural Electrification Policy also sets a target of

- Provision of access to electricity to all households by year 2009.
- Quality and reliable power supply at reasonable rates.
- Minimum lifeline consumption of 1 unit per household per day as a merit good by year 2012

To ensure the implementation of the policy, it mandates that every state Government should within 6 months of the policy coming into force, prepare a notify a rural electrification plan to achieve the goal of providing access to electricity to all households. It further mandates that the rural electrification plan should map and detail the electrification delivery mechanism, grid or decentralized system, which is appropriate taking into consideration, technology availability, feasibility of grid extension amongst others.

Further, drawing a link to the Section 43 of the Electricity Act 2003, it mandates the Electricity Regulator to give time to the state government in formulating the rural electrification plan, while at the same time ensuring that the national goal under the Universal Service Obligation, which is providing access to electricity for all households by the year 2009 is complied with.

The National Rural Electrification Policy also mandates the involvement of “local communities” in rural electrification and to this effect, recommends the following:

The State Government should set up a committee at the District level pursuant to Section 166(5) of the Act within three months.

It defines the composition of the district committee and states that it would include the Zilla Panchayat Chairperson, the Collector of the District and also the chairperson of the district planning committee. It further states that the committee should also include consumer groups and other key people.

Interestingly and very importantly, the policy recognizes that the maximum burden of the absence of supply of commercial energy, including electrical energy to households falls on women. Therefore, participation of women in meeting rural energy needs, especially electricity, is essential for effective, efficient and sustainable implementation of rural electrification programs. Accordingly, the representation of women in District Committee should be ensured.

It mandates the district committee to coordinate and review the extension of electrification in the district, review the quality of power supply and ensure consumer satisfaction, while promoting energy efficiency and conservation.

The policy further mandates the relevant section of the Electricity Act with regard to distribution licensees for rural electricity supply by ensuring non-discriminatory open access to the transmission systems without the requirement of payment of any surcharge. It further also exempt rural electricity supply provider from paying any “wheeling” or “transmission” charges for rural electricity distribution.

II. Status of the Legal / Policy Provisions:

While the rural electrification policy required states to come up with a “Rural electrification Plan”, only 12 states have formulated the plan, (Chattisgarh, Gujarat, Maharashtra, Himachal Pradesh, Madhya Pradesh, Mizoram, Nagaland, Orissa, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal) but these are all in draft forms.

While almost all the states of India have constituted the District Planning Committee, none of the district planning committees have started to perform the role of monitoring and reviewing electricity and energy access as part of their work. In fact, even the composition of the district planning committee does not reflect the mandate expressed in the National Rural Electrification Policy.

So far none of the State Electricity Regulator has made it mandatory for fulfillment of the electrification goals as envisaged in the National Rural Electrification Policy, though, many a regulatory authorities have looked into the issue.

The Forum of Regulators have also commissioned reports on the status of rural electrification and have looked at various models that can ensure adequate electricity supply for all rural areas, but so far, no regulatory decision has been taken on the issue.

From a community perspective, a few village panchayats have taken up the case of rural electrification, pertaining to their area, but, no comprehensive action has been taken so far.