

# A TRAIL GUIDE TO LEGAL ASPECTS IN POWER AND ENERGY INDUSTRY IN INDIA

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## **Introduction to Power & Energy Industry**

India can very proudly boast about being one of the most variegated or diversified nations in the world to generate power through both conventional as well as non conventional sources. The conventional sources in India include natural gas, hydro power, nuclear power, lignite, petroleum, coal etc while the non conventional sources include tidal energy, geo thermal energy, solar energy, wind energy, agricultural and domestic waste etc. India has shown a tremendous progress in this industry and also kept in mind the growing need and demand for energy in each sector.



As on October 2015, total thermal installed capacity stood at 195.6 GW, while hydro and renewable energy installed capacity totalled 42.5 GW and 36.5 GW, respectively. At 5.8 GW, nuclear energy capacity had increased considerably which

otherwise remained the same from 2010 to 2015.<sup>1</sup>

## **The Government of India Initiatives**

The government of our country has recognised the importance of this sector in India and considers it as a key factor to promote sustained industrial growth. The various initiatives taken by the government regarding the power and energy industry are as follows:

- The Minister of State (Independent Charge) for Power, Coal, New and Renewable Energy, Mr Piyush Goyal, has ensured that each and every village in India will light a bulb and have complete enjoyment of electricity by the end of 2016.
- The government has provided electricity to over 258 villages all across the nation from 15<sup>th</sup> of February 2016 to 21<sup>st</sup> of February 2016 and has also promised to electrify over 18,452 villages with no access to electricity under its Deen Dayal Upadhyaya Gram Jyoti Yojna (DDUGJY)
- The government of India is taking steps towards establishing over 10,000 solar, wind and biomass

power projects in coming five years, with an average capacity of 50 kilowatt per project, which in turn will add 500 megawatt to the total installed capacity.

- The government is making plans to sell around 5% share in the National Thermal Power Corporation (NTPC), which is known to be the nation's largest power producer. They plan to sell it at a price of 122 (US\$ 1.78) per share by which we can earn Rupees 5000 crore (US\$733.6 million) which will help in raising funds as a part of the divestment plan.
- The Ministry of New and Renewable Energy (MNRE) has laid down certain improvised guidelines that will let the state governments to use its unproductive and non-agricultural land for solar parks. This will in turn minimise the use of private land and will lead to reduction in the problems faced and costs incurred for land acquisition for solar park projects.

The power and energy sector has not only gained the government's support, but due to its innovative techniques, has expanded its scope to various other sectors as well.

<sup>1</sup> <http://www.ibef.org/industry/power-sector-india.aspx>

## The Governing Law

The Central Electricity Regulatory Commission governs and overlooks the need and issues of this industry and also formulates certain rules as well as suggestions for effective and efficient functioning of this industry. Importantly, it is the Electricity Act, 2003 that ultimately presides and governs laws regarding electricity in India. This is, *“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”*<sup>2</sup>

Furthermore, the Union Cabinet has approved the proposals for amendment in Electricity Act, 2003 on 10th December, 2014 as contained in the Electricity (Amendment) Bill 2014. It seeks to end

the monopoly of power distribution companies by segregating the carriage (distribution sector/network) from the content (electricity supply business) in the power sector by introducing multiple supply licensees so as to bring in further competition and efficiency in the distribution sector by giving choice to the consumers, the Minister added.

## Issues & Legalities crabbled into the Power Sector

But like every other industry, this sector also faces hindrances that call for legal help. Companies like TATA Power Compay Ltd, Adani Power, Reliance Power Ltd etc face problems during the incorporation stage and thus are also governed by the Companies Act of 2013 like every other company. Apart from this the major issue faced by the power and energy sector is regarding contracts. Companies enter to contracts with other companies as well as other various government agencies and thus contracts play a major role. One of the noteworthy contracts is the Power Purchase Agreement (PPA). This agreement secures the payment stream for a Build-Own Transfer (BOT) or concession project for an independent power plant (IPP). It is between the purchaser "off taker" (often a

<sup>2</sup> The Electricity Act, 2003, New Delhi, the 2nd June, 2003. Jyaistha 12, 1925 (Saka)

state-owned electricity utility) and a privately owned power producer.<sup>3</sup> Contracts also include concession agreements, operations and maintenance agreement, financing and security documents and environmental and regulatory compliances, EPC contracts etc. In such cases, the lawyers advice their clients to opt for negotiation and alternate dispute resolution methods instead of taking the matter directly to the court of law.

Thus to conclude, India has a long history with nuclear power and has ambitious future plans for this energy source. With the recent developments in the nuclear sector and India's adoption of the Civil Liability for Nuclear Damage Act allowing the country to take part in international nuclear trade has triggered many opportunities in the nuclear sector. This significant development requires lawyers with specific knowledge and experience in the nuclear industry. With development of the country, the developing needs for able lawyers has also gone up to for documentation or arbitration or final pleading before the court in accordance with the principles of equity, justice and good conscience.

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<sup>3</sup> <http://ppp.worldbank.org/public-private-partnership/sector/energy/energy-power-agreements/power-purchase-agreements>