



# LEGAL REGULATIONS ON PUBLIC UTILITY SERVICES IN INDIA: ISSUES AND CONTEMPORARY CHALLENGES

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**Abstract--** The Public Utility Service refers to a set of services, provided by the Public or the Private organizations, consumed by the public at large. The public utility service agencies provides services such as water, electricity, natural gas, transport services, telephone service and other essential services to the public. The Utility function is an important concept that measures preferences over a set of goods and services. But, any deficiency in products and quality of service manufactured by public utility agencies would have far reaching negative impact on the society. In this background the researchers in the present paper focus on the current state of regulatory reforms and the policies in India. A careful analysis have been made on the existing legal policy and institutional framework in India, which reveals to some extent a chaotic and uneven approach to regulation across and within different sectors of the economy, resulting in inadequate and expensive reforms. The paper also discusses on the role and scope of regulatory institutions, and their relationship with the legislative and executive wings of government, as well as the people i.e., consumers at large.

**Keywords:** Public Utility Services, Consumers, Agencies, Regulations, Quality, Accountability, Efficiency.

## INTRODUCTION

A public utility agency is an organisation which maintains infrastructure for a public service. Public utilities are subject to various forms of public control and regulations, ranging from local community based groups to State wide government monopolies. Public utilities are those business undertakings which provide necessary services to the society at large. Public Utility Services are a set of services provided for large numbers of citizens in which there are potentially significant market failures (broadly interpreted to include equity as well as efficiency) that justify government involvement, whether in production, finance or regulation.<sup>1</sup> Among the core areas for which there is a consensus in favour of government responsibility are: law and order, infrastructure i.e., major irrigation works, transport services, water resources, road construction and maintenance, education, health (promotive, preventive and curative), tax collection, sanitation and social safety nets.<sup>2</sup> Business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequences and need based public utility services.

Public utilities are subject to high degree of social control. They are setup with public money. Any deficiency in quality or service would immediately result in a problem. For example in matter concerning electricity, where the electricity wires are in an exposed manner unattended by the concerned authority or if the railway tracks are not properly laid, there would be a considerable loss or danger to human life. Especially utility service like water, if the water is contaminated or is in scarcity, it would lead to social turbulence which invites social criticisms.

Public Utilities always serve as monopolies which can exploit customers by charging high prices, producing sub-standard products, providing poor quality service etc. Therefore, to avoid such undesirable practices, the government maintains a constant observation over the operations of public utility services. Further, any deficiency in products and quality of service manufactured by public utility agencies would have far reaching negative impact on the society. Therefore strict rules and regulations have been laid down with regard to their accountability, transparency, performance and functioning.

<sup>1</sup> Paul A.Grout, "Private Delivery of Public Services", The report based on Professor Grout's keynote address at the European Commission's Eurosociat Taxation Conference, Mexico, 24th – 28th November 2008.

<sup>2</sup> World Bank, "India Inclusive Growth and Service Delivery: Building on India's Success, Development Policy Review," (Report No.34580-IN, Washington, DC: World Bank, 2006), pg. 31-32,



In this milieu, the researchers in the present paper basically focus on the current state of regulatory reforms and the policies in India. A careful analysis have been made on the existing legal policy and institutional framework in India, which reveals to some extent a chaotic and uneven approach to regulation across and within different sectors of the economy, resulting in inadequate and expensive reforms. The paper focuses on the transparency of the service provider, avoiding corruption in the way of providing essential utility services to the customers and provides information as to how far the service provider satisfy the customer in terms of cost, quality and timeliness of the delivered products or services, minimize administrative operating cost, conduct business with integrity, and adds on to the apprehensions pertaining to accountability and quality by fulfilling public policy objectives. Further, this paper suggests a coherent legal regulation that outlines the role and scope of regulatory institutions, and their relationship with the legislative and executive wings of government, as well as the people at large.

#### MEANING AND DEFINITION OF PUBLIC UTILITY SERVICES

The term public utility implies a public use of an article, product or service carrying with it the duty of the producer or manufacturer or one attempting to furnish the service to serve the public and treat all persons alike, without any discrimination. Public utilities production (including in some cases the exclusive right to import), transmission and distribution to the final customers<sup>3</sup>.

Public Utility Services are those business undertakings which provide necessary services to the society. The undertakings dealing with the supply of electricity, gas, power, water and transport etc. are all covered under public utility services. All these things are needed in the day-to-day life of the common people<sup>4</sup>. By “Public Utilities”, it refers to network infrastructures, which provide a range of essential goods and services to households and firms. They supply their product/service through a fixed network of pipes, wires or other facilities. In most of the cases, these monopolistic firms are vertically integrated: they provide goods and services using a physical or virtual network infrastructure under a legal monopoly status. Public utilities can be privately owned, government-owned and customer-owned.<sup>5</sup>

The Public Utility Services are also been defined as (i) any railway services [ or any transport services for carriage of passengers or goods by air]<sup>6</sup>, (is) any service in, or in connection with the working of any major port or dock.<sup>7</sup> (ii) any section of an industrial establishment on the working of which the safety of the establishment or the workman employed therein depends. (iii) any postal, telegraph or telephone services. (iv) any industry which supplies power, light or water to the public. (v) any system of public conservancy or sanitation. (vi) any industry specified in the [First Schedule]<sup>8</sup> which the Appropriate Government may, if satisfied in public emergency or public interest so requires by notification in the official gazette declared to be a public utility service of the Act, for such period as may be specified in the notification. The “public utility service”<sup>9</sup> also include services in hospital or dispensary and insurance services.

According to W. L. Prosser,<sup>10</sup> the term public utility refers to the concerns supplying services essential to the home, industry and government; particularly electricity, gas, water, telephones and transportation, under circumstances that preclude the establishment of competitive market conditions. These industries are also described as natural monopolies, i.e., industries in which the efficient scale of slant is so large, relative to the size of the market, as to permit the operation of only one plant of efficient scale.

<sup>3</sup>Stilpon Nestor and Ladan Mahboobi-“ Privatisation of Public Utilities: The Oecd Experience”. Apr 23, 1999.

<sup>4</sup><http://www.yourarticlelibrary.com/business/public-utilities-meaning-characteristics-forms-privileges-and-obligations/42066/>

<sup>5</sup> Steven N. Durlauf and Lawrence E. “Public Utility Pricing and Finance” Frank A. Wolak from The New Palgrave Dictionary of Economics, Second Edition, 2008.

<sup>6</sup> The Industrial Disputes Act, 1947 ( Inserted by Act No.36 of 1964 Sec 2(n) , w.e.f. 19-12-1964)

<sup>7</sup> The Industrial Disputes Act, 1947 (Inserted by Act No.45 of 1971, Sec.2(n), w.e.f. 15-12-1971)

<sup>8</sup> Ibid, (Subs. By Act No 36 of 1964, Sec 2(n) for“Schedule” w.e.f. (19-12-1964)

<sup>9</sup> The Legal Services Authorities Act, 1987 (Act No. 39 OF 1987)

<sup>10</sup>W. L. Prosser, Associate Professor, Department of Economics, University of New Mexico, Albuquerque, New Mexico. 1. Lighthouse No Good, I.J. Legal Ed. 257.



#### IMPORTANCE OF PUBLIC UTILITY SERVICES

Man being a social animal cannot live in isolation, likewise for his survival he cannot live without basic needs such as food, water, shelter, clothing etc. which are of dire necessities for his survival. Therefore, here comes the importance of public utilities which are provided by the government to the general public and are termed as public utility services. Public utilities are the business undertaking that provides some of the vital necessary services to the society. The undertakings dealing with the supply of power, gas, water and transport etc. comes under public utility services which are needed in the day-to-day life of the people. These Undertakings which deals with public utility requires large scale capital investment and at the same time it is expected that the services should be provided at reasonable rates. The access of other entrepreneurs in these fields are generally excluded by the government.

The main purpose of making public utilities as monopoly concern is to serve the consumers in better way with qualitative services and make available services at cheap rates. Public enterprises produce goods and services which are indispensable for human life. Water supply, sewage boards, electricity boards, transport, gas companies etc., are run by public enterprises. They comprises of all industries which are run with public welfare as the primary objective. Certain special privileges are also given to these concerns with a view to improve their working conditions.

#### CHARACTERISTICS OF PUBLIC UTILITY SERVICES

Public utilities are a unique form of business undertakings which are engaged in the supply of essential public services in limited market area on a monopolistic basis. It possesses certain essential features which make it quite distinct from other types of business concerns. Certain characteristic features of public utilities are mentioned below:

- i. Supply of essential services and protection of consumers : the regularity, adequacy and efficiency in the supply of services play a very important role. Public utilities are concerned with the supply of essential products and services. In the absence of these services the normal life of the individual will be disturbed. Public utilities are mainly meant for supply of services to the consumers, these services should be provided with reasonable rate. These services being necessities, consumer exploitation is possible. In order to be aware of the exploitation, reasonable and constant price should be maintained by public utility service agencies.
- ii. Large investment on PUSs : Management of Public Utility services require huge investment. For example : In case of Railways, huge amount is spent on providing railway line, purchase of materials such as engines, wagons and other electricity concerned materials which require large investment. The expansion of supply of these services reduce cost per unit as no additional investment is required.
- iii. Local area operation: A public utility agency operates within a specified and limited market area. For instance, a water supply concern provides services to a specified area or particular town and the supply of water service will be limited only to the particular area which provides little scope for the expansion of market.
- iv. Monopoly Position: Monopoly position is necessary to avoid duplication in providing utility services. A public utility enjoys a natural monopoly due to the essential nature of its service. As competition is not desirable in the supply of essential public utility services, only one concern is allowed to operate in a particular field.
- v. Public Regulation and control of PUSs: Public utility concerns are subject to strict regulation and control by the State. As these services enjoy a monopoly power and are of an essential nature, the Government regulates the policies and nature of working in public interest.
- vi. Special franchise to PUSs: As the public utilities are recognised as a natural monopoly, a franchise is generally granted to protect them from competition. A franchise is a charter containing special powers, privileges and immunities. Beneath the franchise, a public utility concern is permitted to make use of public property like roads, streets, etc., if necessary the powers are given in good faith and these



concerns should not make misuse of these powers. Franchise belongs to the public and do not become the absolute property of persons or corporation.

#### ORGANISATION OF PUBLIC UTILITY UNDERTAKING

The organisation of public utility undertakings depends upon the nature and kind of services provided by them. The ownership of these undertaking always rests in government hands. These undertaking ensures regular supply of services without any discrimination to the consumers, in the sense it protects the interest of consumers.

Public utilities under State Ownership are generally organised in one of the following forms :

- i. Departmental Undertakings<sup>11</sup>, i.e., run by a Departments of Central, State or Local Governments.
- ii. Public Corporation created under a Special Act passed by the legislature.<sup>12</sup>
- iii. Government Company registered under The Companies Act.<sup>13</sup>

#### OBLIGATIONS ON PUBLIC UTILITY SERVICE AGENCIES

The special franchise granted to the public utility undertakings confers certain rights such as to collect a reasonable price, to withdraw services under prescribed conditions after giving notice to the customers, to render service subject to reasonable rules and regulations which ensure prompt payment such as meter readings and investigations, acceptance of service deposits etc., and also they are given the power to use the streets and buildings for fixing appliances. They are also duty bound to supply reasonable and adequate services to all customers. The services are to be such that they have to serve up to the capacity and limitation without any profit motive, they should not let the customers go unsatisfied, there should not be any discrimination to the customers in any circumstances and more than ordinary, care should be taken in the course of supplying the required services in order to maintain public safety.

#### PUBLIC UTILITY SERVICES UNDER THE CONSTITUTION OF INDIA

The Indian Constitution is characterized as 'quasi federal' or 'a federal structure with unitary bias'. As such, the enactment of the legislation or the proposed law and its effective implementation must be consistent with and shall avail of the Constitutional Scheme of allocation of legislative and executive competence between the Parliament and the State legislature. An authority acting as an instrumentality or agency of the Government is a 'State' within the purpose of Article 12 of the Constitution of India.<sup>14</sup>

Article 298 of the Constitution of India<sup>15</sup> extends the executive power of the union and each state to "the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose," with the stipulation that if the trade, business or purpose is not one with respect to

<sup>11</sup> A.R.C., Study Team on Public Sector Undertakings, 1966, Report p.342. Virendra Kumar, 7 committees and commissions in India, 1947-73 p.128 (concept Delhi).

<sup>12</sup> Sundarapandian Vaidyanathan and Vidya Sundar "The Role of Public Sector Enterprises in Rural Development and Social Welfare", International Journal of Managing Public Sector Information and Communication Technologies (IJMP ICT) Vol. 2, No. 1, September 2011.

<sup>13</sup> The Companies Act, 2013, Sec.2(45) reads: : Government company means any company in which not less than fifty one percent of the paid-up share capital is held by the Central Government and partly by one or more state Government, and includes a company which is a subsidiary company of such a Government company".

<sup>14</sup> *Chairman, Prathama Bank, Moradabad v. Vivay Kumar*. AIR 1989 SC 1977 (1982)

<sup>15</sup> The Constitution of India, Art.298 reads: "the executive power of the Union and of each state shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose : provided that-

- (a) The said executive power of the Union shall, in so far as such trade or business or such purpose is not with respect to which Parliament may make laws, be subject in each state to legislation by the State; and
- (b) The said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.



which Parliament may make laws, the said executive power of Parliament shall be subject, in each state, to legislation by the state and if the trade, business or purpose is not one with respect to which the state legislature may make laws, the said executive power of the state shall be subject to legislation by Parliament.<sup>16</sup> The purpose of extending the executive powers of the Union and the State government to the fields of trade or business was to accord sanction for the public investment in the sectors of strategic importance and also in the field of public services and public utility. This is in compliance with the objectives manifested in the preamble and part IV of the Constitution of India.

The preamble of the Constitution envisages the establishment of a 'socialist republic'<sup>17</sup> and Article 38 enjoins the State to promote the welfare of the people by securing and protecting effectively a social order in which justice - social, economic and political, shall inform all the institutions of national life. The economic planning and industrial policies of the country, in this sense add the constitutional sanction, which were put into practice by public sector undertakings (PSUs) in manufacturing sector and utility services<sup>18</sup>. In furtherance of the industrial policy of the Union government, a number of PSUs were constituted.<sup>19</sup>

The Constitution of India has distributed the legislative subject matters, relating to sector and service regulations between the Centre and the States, for their better quality service efficiency. The allocation of legislative competence between Centre and States is enshrined from Article 245 to 254<sup>20</sup> read with Schedule VII<sup>21</sup> of the Constitution of India, which empowers both the Parliament and State Legislatures of respective States to legislate on subject matters of public Utility Services and Allocation of powers in the legislative field in the concerned Public Utility Service Sector. The Union List is the longest among the three lists. It consists of 100 subjects on which the Indian Parliament can pass laws<sup>22</sup> pertaining to public utility services such as Telecom and Broadcasting<sup>23</sup> including Oil<sup>24</sup>, Civil Aviation<sup>25</sup>, Airways, Ports<sup>26</sup>, National Highways<sup>27</sup>, Railways<sup>28</sup>, taxes on railway fare and freights<sup>29</sup> and Urban Transport<sup>30</sup>.

The State List<sup>31</sup> enumerates the subjects on which each State legislature can legislate and such law operates within the territory of each State. The main subject matter of the State List pertaining to public utility services are Gas and gas works,<sup>32</sup> Electricity<sup>33</sup> including National Highways<sup>34</sup>, Tolls<sup>35</sup>, Urban Transport<sup>36</sup>, Taxes on

<sup>16</sup> *H.Anraj v. State of Maharashtra*, AIR 1984 SC 782

<sup>17</sup> *D.S.Nakara v. Union of India*, AIR 1983 SC 130

<sup>18</sup> The Industrial Policy Resolution of 1948 and 1956 have categorically stated these objectives. The Industrial Policy Resolution of 196 clearly stated that for the adoption of the socialistic pattern of society as a national objective, and also for planned and rapid development, it was required that all sectors which were of basic and strategic importance, or which were in the nature of public utility services, should be in the public sector.

<sup>19</sup> Law Commission of India, 126<sup>th</sup> Report on 'Government and Public Sector Undertaking Litigation Policy and Strategies' (1988), ch.1.

<sup>20</sup> These Articles set out the governing principles for vesting legislative competence.

<sup>21</sup> The VII<sup>th</sup> Schedule in the three lists set out various fields of legislative competence, where List I – Union List, List II- State List and List III- Concurrent List.

<sup>22</sup> Seventh Schedule r/w Article 246(1) List I – Union List of the Constitution of India

<sup>23</sup> *Ibid*, entry 31

<sup>24</sup> *Ibid*, entry 53

<sup>25</sup> *Ibid*, entry 29

<sup>26</sup> *Ibid*, entry 27

<sup>27</sup> *Ibid*, entry 23

<sup>28</sup> *Ibid*, entry 22

<sup>29</sup> *Ibid*, entry 89

<sup>30</sup> *Ibid*, entry 30

<sup>31</sup> Seventh Schedule r/w Article 246(1) List II – Union List of the Constitution of India

<sup>32</sup> *Ibid*, entry 25

<sup>33</sup> *Ibid*, entry 53

<sup>34</sup> *Ibid*, entry 13

<sup>35</sup> *Ibid*, entry 59

<sup>36</sup> *Ibid*, entry 31



vehicles<sup>37</sup>, Water and Sanitation<sup>38</sup>, and Water<sup>39</sup>. The Union as well as the State legislature have the power to legislate over the subject scheduled in List III – Concurrent List<sup>40</sup>. The main subjects incorporated in the concurrent list pertaining to public utility services are Electricity<sup>41</sup>, Ports<sup>42</sup>, Ports other than Major ports, Urban Transport<sup>43</sup> – Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. Therefore, it is pertinent to note that the Constitution of India allocates a clear-cut division of legislative powers between the Union and the States.

#### LEGAL REGULATIONS ON PUBLIC UTILITY SERVICES IN INDIA.

Legal Regulations in the Public Utility Service Sector has developed autonomously within each infrastructure sector with little co-ordination of ideas across the sectors. The list of broad legislative, institutional and major regulations prevailing on public utilities in the public interest enforced in India along with their specified purposes have been explained below:

*Transport Sector* : India has an extensive transportation network and provides amenity to millions of people every day, thus transportation is one of the important ingredient for the social and economic growth of our country. The transport system in India comprises distinct modes such as rail, road transport, coastal shipping, civil aviation, inland water transport and pipelines etc. In order to enhance efficiency in the transportation sector, the central government has decentralized its roles for maintenance of transport infrastructure. It has placed certain legal and regulatory framework for efficient and effective sustainable transport operations in the country. This acts as the regulator as well as the operator.<sup>44</sup> States have floated their own corporations or agencies. However, investors have no recourse to an independent regulator.

The Indian Railways (IR) is one of the world's largest rail network under single management.<sup>45</sup> The Indian Railways is launching big-bang reforms in governance and infrastructure to give world-class services to passengers. To implement the reforms, it is imperative to have the right policy in place and to ensure utilization of technology.<sup>46</sup> It is proposed by the Ministry of Railways<sup>47</sup> that the Rail Development Authority may be established through a legislation by amending the relevant sections of the Railway Act. A new chapter called 'Rail Development authority of India to be added vesting the authority with powers necessary to discharge the requisite functions. The Rail Development Authority being independent housed outside the Ministry of Railways but to be funded through the annual railway budget sanctioned by the Parliament. The approved Budget to be placed at the disposal of the regulatory authority. It would also be permitted to arrange funds through adjudication fees, penalties levied and any other source as specified in the proposed Act. However Indian Railways needs to expedite implementation of bio-toilets in coaches to prevent open defecation and maintenance of hygienic surroundings. It needs to regularly review and monitor the fulfilment of the various commitments made in the Citizen's Charter as a Service Provider, ensure discharge of its responsibility by the appropriate design and implementation of norms, benchmarks, Quality Assurance and Quality Control.

The Ministry of Civil Aviation is responsible for formulation of National Policies and Programs for the development and regulation of the Civil Aviation Sector in the country. It is also responsible for the

<sup>37</sup> Ibid, entry 57

<sup>38</sup> Ibid, entry 6

<sup>39</sup> Ibid, entry 17

<sup>40</sup> Seventh Schedule r/w Article 246(1) List III – Concurrent List of the Constitution of India

<sup>41</sup> Ibid, entry 38

<sup>42</sup> Ibid, entry 31

<sup>43</sup> Ibid, entry 35

<sup>44</sup> National Highways Act of India, 1998, the Central Road Fund Act, 2000, The Control of National Highways (Land and Traffic) Act, 2002.

<sup>45</sup> The Railways Act, 1989

<sup>46</sup> The Indian Railway Board Act, 1905,

<sup>47</sup> Excerpts from Shri Suresh Prabhu, Hon'ble Minister for Railway's speech while presenting Rail Budget 2015-16 'Concept Paper on Rail Development Authority of India' Ministry of Railways, Rail Bhawan, New Delhi, January, 1, 2016



administration of Aircraft Act, 1934<sup>48</sup>, Aircraft Rules, 1937 and also for various other principal regulatory legislations pertaining to civil aviation industry functioning under the authority of Ministry of Civil Aviation in India.<sup>49</sup>

The Indian ports are generally administered and regulated by the Central and State Governments. Certain legislations have also been enacted to administer the Major Ports<sup>50</sup> and Tariffs.<sup>51</sup> Investors and users have no recourse to an independent regulator on other matters such as dispute resolution, performance standards, consumer protection and competition. The reform process, initiated during 1990s, as a part of the broader strategy of infrastructure development, called for private sector participation, due to the inadequacy of public resources.<sup>52</sup> The government's neglect of port expansion in 1980s, through control on spending of accruals, led to deteriorating port services, obsolete equipment and infrastructure and hence, there was a decline in the port services. As a result of which, today very few ports are delivering world-class service at a competitive cost.

*Energy Sector:* Regarding energy sector there are no such holistic regulators. Indian Constitution adds electricity in Concurrent list, which comes under both union and state level governments, authorised to frame policies regarding electricity supply industry, except for nuclear power which is under the control of Union Government. The industrial structure remained monopolistic till the reforms were undertaken in 1991. After 1991, the regulation of the industry was delegated to regulatory commission and also in some cases assets of public enterprises were privatised. There is a recent legislation that has guided the creation of reform, restructuring and regulation of electricity industry in India.<sup>53</sup>

The Ministry of Petroleum and Natural Gas manages and oversees upstream oil and natural gas exploration and production. The Directorate General of Hydrocarbons is the agency vested with the responsibility of promoting sound management of Indian petroleum and natural gas resources with utmost regards to environment safety, technological and economic aspects of petroleum activities. Under the Constitution of India, only the Union government is empowered to make laws relating to regulation and development of oil fields and mineral oil resources, petroleum and petroleum products. Exercising these Constitutional powers, the government has passed many legislations<sup>54</sup> to regulate the grant of petroleum mining leases and provide the provisions for regulating petroleum operations and granting licences and leases for exploration, development and production of petroleum in India. The Petroleum and Natural Gas Regulatory Board will regulate the refining, processing, storage, transportation, distribution and marketing of petroleum products

Coal is a pre-dominant source of energy in India and it has contributed significantly to the rapid industrialization of the country. The Ministry of Mines is responsible for the administration of mining laws in India. The importance of coal in the energy basket of India stems from the belief of its relative abundance and currently non-availability of large scale implementation of several alternate sources of energy. There are certain laws and regulations that govern various aspects of coal sector<sup>55</sup>

*Communication Sector:* The Communication sector facilitates the development of national infrastructure for an information based society<sup>56</sup> and provide a choice of services to the people with a view to promote plurality of

<sup>48</sup> Act XXII of 1934

<sup>49</sup> Director General of Civil Aviation (DGCA), Airports Authority of India (AAI), Airport Economic Regulatory Authority (AERA), Bureau of Civil Aviation Security (BCAS).

<sup>50</sup> Tariff Authority for Major Ports (TAMP)

<sup>51</sup> The Major Port Trusts, governed under the Major Ports Trust Act, 1963, The Indian Ports Act, 1908, Tariff Authority for Major Ports (TAMP)

<sup>52</sup> 'Port Management Services', by TM Logistics International accessed at website [http://www.tmilltd.com/port\\_management\\_knowledge.htm](http://www.tmilltd.com/port_management_knowledge.htm)

<sup>53</sup> Electricity Act, 2003

<sup>54</sup> Petroleum and Natural Gas Regulatory Board Act, 2006, Petroleum Act, 1934, Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962-

<sup>55</sup> Coal Mines Nationalisation Act, 1973 & Coal Mines Conservation and Development Act, 1974.

<sup>56</sup> Bagus Enrico & Partners, 'The International Legal Guide to: Telecoms, Media and Internet Laws and Regulations, 2017, 10<sup>th</sup> Edition, Published by Global Legal Group.



news, views and information.<sup>57</sup>The communication sector is predicted to emerge as the single largest sector of India's economy with a 15 percent share of GDP by 2014-15. The communication sector provides services such as the Postal Service, Broadcasting service, cable T.V service and telephone and internet services.

**Postal Services :** India has the largest postal network in the world. Today the Country has 1,55,015 post office out of which 1,39,144 are in rural areas and 23,344 in urban areas. The postal Department has about 2.18 lakh departmental employees and about 2.76 lakhs Gramin Dak Sevaks. India has been divided into 22 postal circles, each circle headed by a Chief Postmaster General. The Postal Staff College, India (PSCD) meets the training and development needs of the Indian Postal Officers and the Gazetted Officers. There are many kind of Public Utility Services provided by the Indian Postal Services<sup>58</sup> in India.<sup>59</sup> The relevant Statute governing the Postal Services is the Indian Post Office Act, 1898

There is no such regulatory authority governing Postal services. A proposal to create a new regulatory body i.e., a draft amendment bill is open for consultation.

**Broadcasting Services:** It means a content application service for providing television programme or radio programme, to persons having equipment appropriate for receiving that service regardless of the means of delivery of that service. Private participation is allowed in broadcasting sector, such as the licensing of FM radio sector. No regulatory authority exists for radio and TV broadcasts. A draft bill is currently being subjected to consultations with stakeholders.

**Cable TV:** Before the introduction of cable television in India, broadcasting was solely under the control of the State. The Government of India was caught unprepared with the emergence of cable networks and broadcasting through satellites in the early 1990s. The Government was not able to put a check on transmission and broadcast of television through foreign satellites.

The necessity of procuring licence for operating cable networks was first mentioned by the Rajasthan High Court in the case of *Shiv Cable TV System v. State of Rajasthan*.<sup>60</sup> In this case, the District Magistrate ordered a ban on cable networks as they were being operated without licence. Subsequently, the order of the District Magistrate was challenged in the Rajasthan High Court on the ground that the order was in violation of fundamental right to freedom trade and profession. The High Court held that there was no violation of the right to freedom of trade because cable networks fall within the definition of "wireless telegraph apparatus" under the Indian Wireless Telegraphy Act and therefore, it necessary to have licence to operate such network. This highlighted the need for having a framework for the regulation of cable networks in India which led to the enactment.<sup>61</sup>

□ **Telecom and Internet:** The Indian telecom industry started as a monopoly and has slowly liberalised and private sector participation was permitted through a gradual process. Today the market is open for competition, though it is a heavily regulated sector. Foreign investment has also been gradually liberalised and is permitted up to 100% albeit government approval is required for investment beyond 49%. TRAI<sup>62</sup> is a statutory body formed under the Telecom Regulatory Authority of India Act, 1997 and it is the regulator for the telecoms,

<sup>57</sup> Communication Convergence Bill 2001

<sup>58</sup> Thirty Eighth Law Commission Report on Indian Post Office Act, 1898, Government of India, Ministry of Law, February 1968.

<sup>59</sup> e-bill and e-bill post, Business Post, Logistics Post, Express Parcel Post, Media Post, Retail Post, Greetings Post, Speed Post, International Mails, International EMS. With reference to financial services it is Money Order, International Money Transfer Service, Post Office Savings Bank, Electronic Fund Transfer (EFT), Instant Money Transfer (IMO), Postal Life Insurance etc.

<sup>60</sup> AIR 1993 Raj. 1997

<sup>61</sup> Cable Television Networks Regulation Act, 1995

<sup>62</sup> The Telephone Regulatory Authority of India has (i) the power to make recommendations to the DoT on various issues, such as telecom licence terms, (ii) the obligation to discharge certain functions, such as laying down quality of service standards, and (iii) set out the commercial rates at which telecom services shall be provided by telecom operators in India. In carrying out the rate fixing function, the TRAI has set out rates and related terms and conditions for the provision of certain telecom services and at the same time has followed a policy of forbearance for certain telecom services (such as internet) and has let market forces determine the rates.





broadcasting and cable television industries. The IT Act and rules, which are specific to intermediaries, provides a safe harbour for 'intermediaries'<sup>63</sup> and shall not be liable for any third party information, data, or communication link. There is no separate and specific sector- regulator for competition law issues in this sector.

#### MAJOR REGULATIONS TO GOVERN PUBLIC UTILITY SERVICES IN INDIA

There are many regulations which cover areas where industries are failing to meet a standard or uphold something of public importance. This is different from market failure. A classic case is of health and safety, where firms can fall short in protecting employees or the general public from harm. Although market competition can make firms more willing to address such issues, the standards adopted may not be adequate or uniform across the industry. In India, there is very little evidence to suggest that competition in its existing form has had a positive impact on quality. There are certain major regulations in the economic and public interest enforced in India to prevent undesirable transactions in securities by regulating the business.<sup>64</sup> Such as to facilitate external trade and payments and to promote the orderly development and maintenance of the foreign exchange market.<sup>65</sup> To provide for development and regulation of foreign trade by facilitating imports into and augmenting exports from India and for matters connected herewith.<sup>66</sup> To empower the Government to take necessary steps for the development of industries; to regulate the pattern and direction of industrial development; and to control the activities, performance and results of industrial undertakings in the public interest.<sup>67</sup> To govern the legislation for contracts, which lays down the general principles relating to formation, performance and enforceability of contracts and the rules relating to certain special types of contracts like Indemnity and Guarantee; Bailment and Pledge; as well as Agency.<sup>68</sup> There are many more legislations which governs the Public Utility Services in India to protect the interest of consumers as well as service providers.<sup>69</sup>

#### JUDICIAL RESPONSE TO PUBLIC UTILITY SERVICES IN INDIA

Indian Judiciary has directed the public undertaking and public corporation agencies to render the qualitative service to the consumers. Further, it cautioned the government agencies to render service oriented rather than profit oriented one. Court has made some observations about the importance of public utility service in series of cases. The significant role of the PSUs was laid down by the Supreme Court in *Oil and Natural Gas Commission v. Association of Natural Gas Consuming Industries of Gujarat*,<sup>70</sup> as follows:<sup>71</sup>

“The notion that the cost plus basis can be the only criterion for fixation of prices in the case of public enterprises stems basically from a concept that such enterprises should function either on a no profit-no loss basis or on a minimum profit basis. This is not a correct approach. In the case of vital commodities or services, while private concerns must be allowed a minimal return on capital invested, public undertakings or utilities may even have to run at losses, if need be and even a minimal return may not be assured. In the case of less vital, but given a favourable area of operation, ‘commercial profits’ need not be either abhorrence or forbidden fruit even to public sector enterprises”.

<sup>63</sup> Definition under Sec.2 (1) (w) of Information Technology Act, 2005 “any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes”.

<sup>64</sup> Securities Contracts (Regulation) Act, 1956

<sup>65</sup> The Foreign Exchange Management Act, 1999 (FEMA)

<sup>66</sup> The Foreign Trade (Development and Regulation) Act, 1992

<sup>67</sup> The Industries Act, 1951

<sup>68</sup> The Indian Contract Act, 1872

<sup>69</sup> The Sale of Goods Act, 1930, Indian Patents Act, 2005, The Company Act, 1956, Competition Act, 2002, The Trade Marks Act, 1999, The Information Technology Act, 2000, The Consumer Protection Act, 1986, The Industrial Disputes Act, 1947, The Factories Act, 1948, The Indian Trade Unions Act, 1926, The Bureau of Indian Standards Act, 1986, Contract Labour (Regulation and Abolition) Act, 1970, Special Economic Zone Act, 2005.

<sup>70</sup> AIR 1990 SC 181.

<sup>71</sup> Id., para 32.



The same policy was reiterated by the Law Commission of India in the following words:<sup>72</sup>

“No doubt, the primary purpose of public sector undertaking is to promote economic growth by increased production and to secure adequate return which would help the State in providing social, economic, educational and medical facilities to the people. Nonetheless, unlike private undertakings, the public sector undertakings are not required to be profit-oriented only. Since some of the undertakings deal with public utility services, they have to frame and mould their policies to serve the people even though there is no profit”.

In *Karthik Enterprises v. Orissa State Electricity Board*,<sup>73</sup> the Orissa High Court has made some important observations on the fulfilment of statutory obligations by the Public Utility Undertakings. The Scheme of Tariff announced by the Orissa State Electricity Board for different categories of consumers of electricity was challenged as discriminatory. The board on the other hand argued that it was not required to establish that it was functioning in the most efficient and economical manner. Consequently, the court observed that the legislature had conferred wide powers on the board considering that it must function efficiently and economically. Further, in *Akhila Bharatiya Grahak Panchayat v. Andhra Pradesh State Electricity Board*,<sup>74</sup> It was pointed out that, where the law confers monopolistic powers, the statutory obligations of the board should be strictly performed. If the in-built machinery provided in the Act is not able to control and check the functioning of the board, the Court has to interfere and strike down the arbitrary act of the board. Further, the decision in *P. Nalla Thampy Thera v. Union of India*<sup>75</sup>, the Supreme Court highlights the inherent limitations of the judicial process in overseeing the performance of the public utilities.

In case of *Cellular Operation Association of India and others v. Telecom Regulatory of India and others*,<sup>76</sup> the Supreme Court has held that, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the Impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the Impugned Regulation manifestly arbitrary and unreasonable.

In conformity with the Central Industrial and Economic Policies almost all the State Governments in India have started Public Sector Undertakings by drawing powers from Article 298 of the Constitution. When 51 percent or more of the equity share of a company is held by the state government, it is considered as a State Government Undertaking.<sup>77</sup> In some cases the loss making private enterprises were taken over by the state government and converted to public undertakings for protecting the interests of the workers. For example, out of overall 89 operational public undertakings in Kerala, 19 are development and infrastructure agencies, 10 are Welfare Corporations and six are public utilities.<sup>78</sup>

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<sup>72</sup> Law Commission of India, 145<sup>th</sup> Report on Article 12 of the Constitution and Public Sector Undertakings (Nov. 1992)

<sup>73</sup> AIR 1980 Ori.3.

<sup>74</sup> AIR 1983 A.P.283.

<sup>75</sup> The judgment of Supreme Court in *P.NallaThampy Thera v. Union of India*, 1983(2) SCALE 686, wherein the Court refused to give directions under Article 32 a Petition under the Constitution of India to improve the functioning of the largest public utility service run on monopoly basis, namely, the Indian Railways, while observing that the services should be “prompt, efficient and dignified”, it was reluctant to enforce such services by the issue on directions, “Giving directions in matter where availability of resources has a material bearing, policy regarding priorities is involved, expertise is very much in issue, is not prudent....” Id. at 695.

<sup>76</sup>

<sup>77</sup> Supra note.13

<sup>78</sup> Bureau of Public Enterprises, Government of Kerala, A review of Public Enterprises in Kerala (2011-12).

**REGULATORY, ACCOUNTABILITY AND TRANSPARENCY IN PUBLIC UTILITY SERVICES**

Transparency is primarily viewed as an instrument for external stakeholders to monitor the internal working of an organisation, prevention and ensure due process.<sup>79</sup> Transparency is very important for efficiency of regulatory mechanism. It has varied aspects including the obligation on regulators to explain their decisions and processes, which would reduce the likelihood of bias or incompetence. It addresses many causes of regulatory failures, such as regulatory capture and bias towards concentrated benefits, inadequate information in the public sector, rigidity marketing, uncertainty and inability to understand policy risk, and lack of accountability. Accountability<sup>80</sup> is the outcome of transparency, where both are the two faces of the same coin. The accountability of different wings of public sector enterprises are the Departmental Undertakings, Statutory Corporations and the Government Companies. The public sector enterprises involve complete separation between ownership and management which results in the absence of any control or vigilance by the proprietors and the share holders. The management is placed in the hands of those who have hardly any stake in the enterprises they manage. This gives rise to the need for putting such enterprises under some suitable control and for making the management responsible and answerable to some authority. There could be no better authority than the parliament which represents the shareholders and the consumers and is responsible for safeguarding the interest of the nation.

The problem of accountability has become very essential subject matter in recent years due to the two major developments. Firstly, the public enterprises have grown fast in number and as well as in size. Secondly, the organisation of public enterprises has undergone many important changes. The departments managing these enterprises are completely responsible to the respective Minister and he in turn is responsible for the legislature. The emergence of statutory corporation has given rise to the problem of safeguarding the national interest by exercising necessary control and to maintain freedom of Board of the Corporation. These enterprises are controlled and managed by the persons having considerable self-sufficiency and have no personal or financial stake in the enterprises. There is no assurance that they will manage and run the enterprises with due care and attention. Under these circumstances management accountability is the only way to ensure autonomy and professionalism which do not lead to misuse of their freedom and position.

**EFFECTS OF LIBERALISATION, PRIVATISATION AND GLOBALISATION (LPG) ON PUBLIC UTILITY SERVICES IN INDIA.**

With the economy embarking on the process of liberalization<sup>81</sup>, privatization<sup>82</sup> and globalization<sup>83</sup> since the early 1990's, the role of the Indian Public Sector has undergone a rapid change. In 1990's, the budgeting process adopted by Indian government, fiscal deficits, and negative balance of payments boosted the government's yearn and necessity to haul out and release the massive investments made in the State Owned Enterprises and this led to privatization in India. This lined way for Foreign Direct Investments and liberalization of business practices and protocols as well.<sup>84</sup> It has facilitated the flow of foreign capital, technology and managerial experts which in turn reduced the growth of public sector enterprises. Because of financial constraints, lack of advanced technology, production inefficiency and lack of qualitative service in our country, public sector undertakings are lagging behind. Globalization leads to widening income gaps within the country which benefits only to the skilled and upper section of the society. The higher growth rates achieved by

<sup>79</sup> Scott Douglas & Albert Meijer "Transparency and Public Value—Analyzing the Transparency Practices and Value Creation of Public Utilities" International Journal of Public Administration, Volume 39, 2016 -Issue 12, Pages 940-951, Published online: 16 Feb 2016.

<sup>80</sup> [www.forbes.com/sites/.../2015/.../success-in-any-business-is-all-about-accountability/](http://www.forbes.com/sites/.../2015/.../success-in-any-business-is-all-about-accountability/)

<sup>81</sup> Liberalisation refers to the process of making policies less constraining of economic activity and also reduction of tariff or removal of non-tariff barriers.

<sup>82</sup> The term "Privatisation" refers to the transfer of ownership of property or business from a government to a private owned entity.

<sup>83</sup> Globalisation refers to the expansion of economic activities across political boundaries of nation states.

<sup>84</sup> Malik, V., 'Disinvestments in India: Needed Change in Mindset, Interfaces', 2003., 28(3), Pp. 57-63



our economy are such which brings down the incomes of people who may be rendered out of a job. Globalization has widened the gap between the rich and poor which raises inequality.

#### CONCLUSION

After examining all the above mentioned Public Utility Services, the researchers observed that there are good number of Public Utility Legislations which have been passed by the Parliament and the State Legislatures in order to render qualitative services to the general public in the respective fields. But unfortunately, these Acts are not being implemented properly by the authorities constituted under different Public Utility Service Laws. But, in the present scenario, the main issues faced by the public utilities are lack of financial assistance, failure in coverage of service area, quality in service and pricing policy, even though the regulators try to balance the competing aims of economic efficiency and social equity. Economic efficiency generally requires that market be left to work by themselves with little intervention which is usually not equitable or fair. Equity demands that everyone needs to get the service at a just price.

In spite of extensive privatisation across the world, state ownership remains significant. They remain high up in public utilities such as air, rail transport, electricity, gas, water supply, banking and insurance, broadcasting, natural resource extraction and telecommunications. The Companies with at least some state ownership can also be found in a number of other industries such as aerospace, auto manufacturing, shipbuilding, shoes, textiles, steel, tourism and so on.

Government needs to focus more on its role in providing wider range of utility services such as education, healthcare and social security, and as well as for providing proper legal regulations for competitive markets to function efficiently and smoothly. The reason for this is, the first and foremost public utility is not an economic entity at all, but a legal entity, principally, whatever is defined as such by statutory body. It is more beneficial for the economy to have utilities as a monopoly, although they are considered as natural monopoly. Government can nationalise the utilities in order to maximise social welfare rather than maximise profit, which keeps the prices low, increase consumer surplus and consumer choice.

As a bottom line, it can be said that the legal frame work of the country must be adequate with respect to the chosen sector structure and regulatory framework. Because, in many regulatory options, the existence of competition in the market, and some kind of private sector participation can only function effectively within a specific legal systems.

#### SUGGESTIONS

- a. A public enterprises should be economically viable units and every effort should be made to increase their efficiency and they must be able to generate adequate profits and internal resources. In order to realize this objective, the public sector enterprises should try to formulate rational pricing policy for the goods and services it produces. It should be the duty of every state government to develop the pricing policy of respective states enterprises. The pricing policy should be such that it should enable consumers at all levels to buy and make use of goods and services produced by the public enterprises.
- b. Make in India initiatives should be promoted to avoid the doorway for private sector in India due to various reasons. Public Sector Enterprises should focus on industries which include capital and labour intensive industries.
- c. The Public Utility Service Agencies through the use of various management ratios have to adopt effective tools and techniques in interpreting, quantifying and analysing their business inter-firm for the service of their respective field.
- d. The Public Utilities Service Agencies should submit a comprehensive and factually correct report regarding demand and supply position. They should also highlight the time bound scheme that they are undertaking to tackle various problems regarding Public Utility Services.