

Jurisdictional Clarity in Power Sector Disputes: A Call for Policy Reforms

Through this article, PALLAVI AGRAWALLA, Associate, MRP Advisory, examines jurisdictional conflicts, analyses judicial precedents and highlights the need for a cohesive framework to address jurisdictional ambiguities while maintaining regulatory integrity and contractual freedom.



India's power sector operates within a dual framework of dispute resolution: statutory regulation under the Electricity Act, 2003 ("Electricity Act"), and private arbitration under the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). Each framework serves distinct purposes. While the Electricity Act provides a structure for regulatory oversight to safeguard public policy, address consumer interests and ensure system integrity, the Arbitration Act enables parties to resolve disputes in a flexible, time-bound and private setting, often suited for commercial conflicts.

However, as the power sector becomes more intricate due to technological advancements and market innovations, disputes increasingly involve issues that overlap these frameworks. Determining whether a matter falls within the jurisdiction of statutory regulators or arbitrators is no longer straightforward. This lack of clarity has led to delays, higher litigation costs and inconsistent outcomes. This article examines these jurisdictional conflicts, analyses judicial precedents and highlights the need for a cohesive framework to address jurisdictional ambiguities while maintaining regulatory integrity and contractual freedom.

The Framework: Statutory Regulation vs. Arbitration

The Electricity Act creates a statutory mechanism for dispute resolution through regulatory commissions at the Central and state levels. These commissions act as quasi-judicial bodies responsible for addressing issues such as licensing and tariff regulation and ensuring compliance with policy directives. Regulatory commissions serve as watchdogs of the sector, prioritising public interest and long-term policy objectives.

The Arbitration Act offers a private dispute resolution mechanism based on party autonomy, which is particularly attractive for resolving commercial disputes involving contracts, payment defaults and project delays. Arbitration is efficient and tailored to the needs of commercial entities. However, its focus on individual parties' interests can sometimes conflict with the broader policy concerns overseen by regulatory commissions.

While both frameworks are essential, the coexistence of these parallel mechanisms often creates uncertainty. Disputes arising out of power purchase agreements (PPAs) or transmission service agreements (TSAs) often involve contractual rights and obligations on one hand and regulatory mandates on the other, making the question of jurisdiction difficult to answer.

Jurisdictional Overlaps and Challenges

The overlap between statutory regulators and arbitrators frequently arises when disputes involve elements of both regulatory and contractual obligations. For instance, a dispute over payment defaults under a PPA may seem contractual but could also require regulatory scrutiny if it impacts tariff structures or compliance with sectoral guidelines.

One key challenge is that the Electricity Act does not explicitly prohibit arbitration. This omission leaves room for interpretation and creates situations where the same dispute could arguably fall under either framework. For instance, if a dispute affects tariffs or requires regulatory approval, it often necessitates the involvement of regulatory commissions. However, if the dispute is confined to the parties' contractual obligations, it may be better suited for arbitration.

The absence of clear legislative guidance means stakeholders often rely on courts to determine jurisdiction. This reliance increases costs and delays, undermining the efficiency arbitration is supposed to provide.

Judicial Position in India

Indian courts have consistently engaged with the complexities arising from the overlap between regulatory and arbitral jurisdictions in the power sector. The Electricity Act introduced a regulatory framework for adjudicating disputes and referring them to statutory arbitration under Sections 79 and 86, empowering Regulatory Commissions to resolve conflicts between licensees and generating companies. A key debate emerged around whether these provisions override the Arbitration Act, particularly Section 11, which governs the appointment of arbitrators. This tension has been

addressed in several judicial pronouncements that highlight the primacy of the Electricity Act's dispute resolution mechanism.

In *Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd*¹, the Court clarified that individual consumer grievances must be addressed by the consumer grievance redressal forum established under Sections 42(5) and (6) of the Electricity Act, rather than the State Electricity Regulatory Commission (SERC). This overturned the SERC's assertion of jurisdiction under Section 86(1) (f), affirming that the section's scope is limited to disputes between licensees and generating companies.

One of the foundational judgments in this area is the *Gujarat Urja Vikas Nigam Ltd*² case, where one party invoked arbitration under Section 11 of the Arbitration Act, while the other sought recourse before the SERC under Section 86(1)(f) of the Electricity Act. The Supreme Court emphasised that disputes involving tariff determination or regulatory compliance fall squarely within the purview of the regulatory commissions. Conversely, purely contractual disputes, such as payment defaults under a PPA, were deemed arbitrable.

There is a need to harmonise the Electricity Act and the Arbitration Act to facilitate seamless interaction between regulatory and arbitral mechanisms.

Building on this framework, the Supreme Court in *Energy Watchdog v. CERC*³ tackled disputes involving force majeure claims under PPAs. It reiterated that regulatory commissions must address matters impacting tariff structures or requiring regulatory oversight. Even when disputes arise from contracts, if they have broader implications for public policy or market stability, they remain non-arbitrable. This decision underscored the regulatory commissions' vital role in safeguarding public interest, thereby narrowing the scope of arbitration in such cases.

Subsequent judgments, including *Hindustan Zinc Ltd v. Ajmer Vidyut Vitran Nigam Ltd*⁴, *M.P. Power Trading Co Ltd v. Narmada Equipments (P) Ltd*⁵ and the APTEL ruling in *Southern Power Distribution Co of AP Ltd*⁶ upheld this reasoning. These cases clarified that disputes under Section 86(1)(f) must be addressed by Regulatory Commissions or their appointed arbitrators, underscoring the Electricity Act's primacy over the Arbitration Act.

Similarly, in *BSES Rajdhani Power Ltd v. Delhi Electricity Regulatory Commission*⁷, APTEL ruled that

disputes involving tariff terms and supply conditions of Central Government-controlled generating companies (gencos) fall under the Central Commission's jurisdiction under Section 79, further delineating the boundaries of state and Central authority.

Notably, these judgments collectively underscore the courts' efforts to delineate the boundaries of arbitrable disputes in the power sector. While the judiciary has provided valuable guidance, reliance on case-by-case adjudication introduces uncertainty.

A more robust legislative framework explicitly defining the jurisdiction of regulatory commissions and arbitral tribunals is essential. Such clarity would reduce litigation over jurisdictional conflicts, streamline dispute resolution processes, and bolster confidence in both arbitration and regulatory mechanisms in the power sector.

Policy Gaps and the Need for Reforms

The overlapping jurisdictions of regulatory commissions and arbitral tribunals expose policy gaps in the legislative framework governing power sector disputes. A key issue is the absence of clear statutory boundaries to determine which disputes fall exclusively under the purview of regulators and which can be referred to arbitration.

For example, disputes involving tariff fixation or public interest are often entangled with private contractual matters, leading to confusion about the appropriate forum for resolution. Without explicit legislative guidance, parties frequently resort to prolonged litigation to establish jurisdiction, undermining the efficiency arbitration seeks to provide.

Additionally, the current framework does not adequately address the procedural challenges that arise from this overlap. Regulatory commissions are often tasked with adjudicating disputes that have broader implications for public policy, market access and consumer welfare. However, arbitrators lack the mandate to consider these broader regulatory objectives, creating a risk that arbitral awards may inadvertently conflict with regulatory principles.

The absence of mechanisms to harmonise these processes results in inefficiencies, with decisions in one forum potentially contradicting or undermining those in another. These conflicts often leave stakeholders with inconsistent outcomes.

Legislative and Practical Solutions

To address these issues, a comprehensive policy overhaul is essential.

First, legislative reforms should define the specific categories of disputes that fall exclusively within the domain of regulatory commissions. For instance, matters related to tariff fixation, licensing

and compliance with statutory obligations could be earmarked for regulatory bodies, while purely contractual disputes could be allocated to arbitration.


Second, procedural mechanisms, such as a pre-arbitration referral process, could be introduced to ensure that jurisdictional questions are resolved efficiently. This would minimise the risk of conflicting decisions and promote clarity in the dispute resolution process.

Finally, there is a need to harmonise the Electricity Act and the Arbitration Act to facilitate seamless interaction between regulatory and arbitral mechanisms. A consolidated policy framework could include guidelines for courts, regulatory commissions and arbitrators to navigate overlapping domains, ensuring that decisions are not only legally sound but also aligned with public policy objectives.

By addressing these gaps, policymakers can create a dispute resolution system that supports the growth of the power sector while safeguarding public interest.

Conclusion

The interaction between statutory regulators and arbitrators in India's power sector is a dynamic and evolving issue. While regulators ensure public policy compliance, arbitrators provide an efficient mechanism for resolving private disputes. Balancing these frameworks is crucial to avoid jurisdictional conflicts and ensure effective dispute resolution.

Addressing these challenges requires a combination of legislative reforms, judicial clarity and practical mechanisms to manage overlaps. By adopting a more structured approach, India can create a robust dispute resolution ecosystem that aligns with the power sector's unique demands while fostering confidence among stakeholders. 

¹ (2007) 8 SCC 381.

² (2008) 4 SCC 755.

³ (2017) 14 SCC 80.

⁴ (2019) 17 SCC 82.

⁵ (2021) 14 SCC 548.

⁶ 2022 SCC OnLine APTEL 110.

⁷ 2012 SCC OnLine APTEL 150.

ABOUT THE AUTHOR



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