



सत्यमेव जयते

**GOVERNMENT OF INDIA  
LAW COMMISSION OF INDIA**

**COMPENSATION FOR DAMAGE DUE TO INSTALLATION  
OF TOWERS AND TRANSMISSION LINES UNDER THE  
INDIAN TELEGRAPH ACT, 1885 AND THE ELECTRICITY  
ACT, 2003**

**Report No. 281**

**August, 2023**

The 22<sup>nd</sup> Law Commission was constituted by Gazette Notification for a period of three years vide Order No. F No. 45021/1/2018-Admn-III(LA) dated 21<sup>st</sup> February, 2020 issued by the Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi. The term of the 22<sup>nd</sup> Law Commission was extended vide Order No. FA No. 60011/225/2022-Admn.III(LA) dated 22<sup>nd</sup> February, 2023.

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Law Commission of India

**Justice Ritu Raj Awasthi**  
(Former Chief Justice of High Court of Karnataka)  
**Chairperson**  
**22<sup>nd</sup> Law Commission of India**



सत्यमेव जयते



**न्यायमूर्ति ऋतु राज अवस्थी**  
(सेवानिवृत्त मुख्य न्यायाधीश, कर्नाटक उच्च न्यायालय)  
**अध्यक्ष**  
**भारत के 22<sup>वें</sup> विधि आयोग**

**DO No. 6(3) 331/2022-LC(LS)**

**Date:** 8<sup>th</sup> August, 2023

Dear Hon'ble Sri Arjun Ram Meghwal ji:

Namaste

I am pleased to forward you **Report No. 281** of the Law Commission of India on **“Compensation for Damage Due to Installation of Towers and Transmission Lines under the Indian Telegraph Act, 1885 and the Electricity Act, 2003.”** The Law Commission received a reference from the Hon'ble High Court of Karnataka, *vide* letter dated 07<sup>th</sup> July, 2022, asking the Commission to suggest modes and methodologies of arriving at and determining compensation on account of erection of towers as well as drawing of power lines under the Indian Telegraph Act, 1885.

Having examined the judgment passed by the Hon'ble High Court in this regard, the Commission considered it necessary that methodologies concerning compensation for the electricity as well as the telecommunication sector be discussed separately in order to enable a common person to understand the intricacies present in both.

In pursuance of the same, the Commission held extensive consultations with entities involved in both the sectors. With regard to the electricity sector, the Commission held discussions with the Ministry of Power, Government of India, the Central Electricity Authority, the Central Electricity Regulatory Commission, the Power Grid Corporation of India Limited, and the Central Transmission Utility of India Limited. With reference to the telecommunication sector, the Commission held deliberations with the Department of Telecommunications, Government of India.

After perusing the schemes of compensation existing within both the sectors, the Commission is of the considered view that bearing in mind the advancements made in the telecommunication sector, it is imperative that a new legislation, more suited to the times and milieu be enacted at the earliest. Further, with regard to the position of private land owners vis-à-vis private licensees under the Indian Telegraph Right of Way Rules, 2016, the Government should prescribe some methodology to regulate this hitherto unregulated relationship. This could be in the form of a minimum consolidated value/rental value or a percentage of the consolidated/rental value of the property.

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Chairperson  
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**न्यायमूर्ति रितु राज अवस्थी**  
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अध्यक्ष  
**भारत के 22<sup>वें</sup> विधि आयोग**



Moreover, with regard to the electricity sector, the Commission is of the measured view that provisions dealing with Right of Way be incorporated in the Electricity Act, 2003 itself. Additionally, even though the Ministry of Power, Government of India has issued guidelines for determining compensation in 2015, and subsequently for Right of Way on urban land in 2020, multiple States have come out with their policies for determining the quantum of compensation on account of 'land' being a state subject under List II, Schedule 7 of the Constitution of India. The Commission recommends that State Governments should consider aligning their policies with the guidelines issued in 2015 and 2020 to lend uniformity to project costs and the compensation that a land owner may seek. Accordingly, this Report is being submitted for your kind perusal.

With warmest regards,

Yours sincerely,

**(Justice Ritu Raj Awasthi)**

**Shri Arjun Ram Meghwal**  
Hon'ble Minister of State (Independent Charge)  
Ministry of Law & Justice  
Government of India  
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## ACKNOWLEDGEMENT

Upon receiving the reference for the subject-matter of this Report from the Hon'ble High Court of Karnataka, Dharwad Bench, through a copy of its final order in *W.P. No. 113268/2019 (GM-RES)*, dated 11<sup>th</sup> April, 2022, the Law Commission held deliberations with all the relevant stakeholders, primarily the concerned Government Departments and Undertakings, in order to grasp the legal and technical nuances of the subject. The Commission held consultations with authorities involved in the electricity sector, namely, the Ministry of Power, Government of India, the Power Grid Corporation of India Limited, the Central Electricity Authority, the Central Electricity Regulatory Commission, and the Central Transmission Utility of India Limited. With regard to the telecommunication sector, the Commission held consultations with the Department of Telecommunication, Government of India. We are much thankful to the following Government officials who took out their valuable time to furnish their comments and submissions on the instant subject:

1. Shri Mohammad Afzal, Joint Secretary, Ministry of Power
2. Shri Anand Singh, Joint Secretary, Department of Telecommunication
3. Shri Ashish Gundal, Joint Secretary and Director (Policy), Department of Telecommunication
4. Shri Deepak Rao, Director (Trans.), Ministry of Power
5. Shri Abhay Choudhary, Director (Projects), PGCIL
6. Shri B. Sreekumar, Joint Chief (Legal), CERC
7. Shri Rajesh Kumar, Deputy Director, Central Electricity Authority
8. Shri Sourov Chakraborty, Chief General Manager, CTUIL
9. Shri Ram Chandra, Chief Engineer, Legal Division, Central Electricity Authority
10. Shri Awdhesh Kumar Yadav, Chief Engineer, CERC

The Commission gratefully acknowledges the commendable assistance rendered in the preparation of this Report by **Mr. Rishi Mishra, Mr. Gaurav Yadav, Mr. Shubhang Chaturvedi, Mr. Davinder Singh, Ms. Priya Rathi and Ms. Ruchika Yadav**, who worked as Consultants. We place on record our heartfelt appreciation for their assiduous efforts in conducting research and aid in drafting of this Report.



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### List of Abbreviations

1885 Act	The Indian Telegraph Act, 1885
2003 Act	The Electricity Act, 2003
2006 Rules	Works of Licensee Rules, 2006
2013 Act	Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
2016 Rules	Indian Telegraph Right of Way Rules, 2016
2015 Guidelines	Guidelines issued by Ministry Power in relation to Right of Way (RoW) Compensation
2020 Guidelines	Guidelines issued by Ministry of Power in relation to Right of Way (RoW) Compensation for Urban Areas
AIR	All India Reporter
BLJR	Bihar Law Journal Reports
Cal	Calcutta
CEA	Central Electricity Authority
CERC	Central Electricity Regulatory Commission
CTUIL	Central Transmission Utility of India Limited
DoT	Department of Telecommunications
FB	Full Bench
GM	General Miscellaneous Matters
HVDC	High Voltage Direct Current
Kant R	Karnataka High Court Reports
Kar	Karnataka
KLT	Kerala Law Times
KSEB	Kerala State Electricity Board Limited
KV	Kilovolt
kWh	Kilo-Watt Hour

Mts.	Metres
MW	Mega-Watt
NLDC	National Load Despatch Centre
PGCIL	Power Grid Corporation of India Limited
Pat	Patna
PLJR	Patna Law Journal Reports
PLR	Punjab Law Reporter
RES	Residuary
RLDC	Regional Load Despatch Centre
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SLDC	State Load Despatch Centre
Supp	Supplementary
TDR	Transfer Development Right
Vol	Volume
W.P.	Writ Petition



## 1. INTRODUCTION

- 1.1 After attaining independence, India has managed to develop in leaps and bounds, having become one of the fastest growing economies in the contemporary world. This progress has come on the back of advancements in critical infrastructure, most notably relating to transport and communication. However, any enhancement in infrastructure requires electricity to power it. India has made rapid strides in enhancing its electricity generation capacity. Today, India is an electricity surplus country, with an installed capacity of over 4 lakh MW<sup>1</sup>, yet the ever-growing energy needs of a galloping economy and electricity consumption of 1.4 billion people remains as challenging as ever.
- 1.2 The development of an efficient, coordinated, economical and robust electricity system is essential for the smooth flow of electricity from generating stations to load centres in order to provide reliable, affordable, uninterrupted, and quality power for all. However, for a well-functioning transmission system, it is imperative that land be provided for the erection of towers and laying of transmission lines.
- 1.3 Transmission planning is a continuous process of identification of transmission system addition requirements, their timing and need. The transmission requirements could arise from:
- a) new generation additions in the system
  - b) increase in demand

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<sup>1</sup> News Services Division, All India Radio, 'India becomes power surplus nation with electricity capacity of over four lakh Mega Watt', available at: <https://newsonair.gov.in/News?title=India-becomes-power-surplus-nation-with-electricity-capacity-of-over-four-lakh-Mega-Watt&id=447586>.

c) System strengthening that may become necessary to achieve reliability as per the planning criteria under changed load-generation scenarios.

1.4 In this backdrop, the powers concerning the Right of Way (RoW) provided under the Electricity Act, 2003 ('2003 Act') read with the Indian Telegraph Act, 1885 ('1885 Act') are specifically relevant. Both the Acts read together empower Power Transmission Utilities to erect towers and lay down transmission lines over both public as well as private property. However, they also make provisions for the payment of compensation to interested parties for the damage sustained by them in the course of these Utilities exercising their powers of RoW.

**(A) REFERENCE TO THE COMMISSION**

1.5 The Hon'ble High Court of Karnataka, Dharwad Bench, through a copy of its final order in *W.P. No. 113268/2019 (GM-RES)*, dated 11<sup>th</sup> April, 2022, requested the Law Commission of India to advise modes and methodologies of arriving at and determining compensation for installation of towers and setting up of transmission lines under the Indian Telegraph Act, 1885. The reference was received by the Commission on 07<sup>th</sup> July, 2022.

**(i) Judgment of the Karnataka High Court**

1.6 With regard to the interpretation of 'damage' under Section 10 of the 1885 Act, the Karnataka High Court, in *The Chief Engineer, Electricity Transmission Zone v. Gangappa*,<sup>2</sup> observed that damage caused to the land as a result of installation of towers and transmission lines needs to be

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<sup>2</sup> Writ Petition No. 113268/2019 (GM-RES).

given full and wide affect as the damage could be immediate/present or in the future. It further held that:

*“Admittedly, there are warning signs put up that nobody can cultivate anything under the tower or near abouts. This court can also take judicial notice of the fact that whenever there are petitions which are filed seeking for compensation on account of destruction of the crop due to the transmission line falling into the agricultural fields, many a times the defence taken is that the farmer ought not to have cultivated under the power lines. Such being the case, the authorities cannot be allowed to take advantage in both these situations.”*

- 1.7 On enquiry as to whether the authorities had carried out any such study and come up with the formula to be adopted for determination of compensation for damages with regard to the erection of towers and laying down of transmission lines, the Court noted the submission of the petitioners that:

*“...there was no such formula which the authorities had arrived at nor any study caused or conducted ... as regards diminution on account of a tower or drawing up of the power lines.*

- 1.8 Whenever there is a tower sought to be established and transmission lines drawn, the concerned officers visit the land, negotiate with the land owner and fix an amount as compensation for damages. The Karnataka High Court noted that:

*“14 .... in so far as the land of the petitioner in the present village is concerned an amount of Rs. 1,50,000/ has been considered towards the installation of the tower and depending on the extent of land, loss of diminution has been fixed... In respect of other lands, higher amounts have been fixed for the same extent of land. For example, in Chitradurga district and Tumkur district a sum of Rs 3,00,000/- has been fixed for "C" type tower and in the Ramanagar district a sum of Rs 3,600/ per square meter has been fixed and in Hassan district, a sum of Rs. 5,50,000/- has been fixed.”*

1.9 Now, as per the judgment of the Hon'ble Karnataka High Court, it appears as if the case dealt with compensation in the context of laying of electricity transmission lines. However, the provisions of the Electricity Act, 2003 and the corresponding rules have not been brought to the attention of the Court and the entire case has been argued around only the provisions of the Telegraph Act.

1.10 In order to remove any ambiguities and for the sake of clarity and convenience, the Commission decided that methodologies, if any, existing within both the sectors, electricity and telecommunication, be discussed separately so as to enable the common reader an opportunity to understand the intricacies of both.

#### **(B) CONSULTATIONS**

1.11 Pursuant to the same, the Commission held consultations with entities involved in the electricity sector, namely, the Ministry of Power, Government of India, the Power Grid Corporation of India Limited, the Central Electricity Authority, the Central Electricity Regulatory Commission, and the Central Transmission Utility of India Limited. Likewise, with regard to the telecommunication sector, the Commission held consultations with the Department of Telecommunication, Government of India.

#### **(C) THE STRUCTURE OF THIS REPORT**

1.12 The Report proceeds as follows: *firstly*, a background relating to the issue of compensation under both the 2003 Act and the 1885 Act is provided. *Secondly*, the relevant provisions of the 1885 Act are discussed since they are common to both the sectors (Part III of the 1885 Act applies to the electricity sector). *Thirdly*, the relevant rules pertaining to compensation

with regard to telecommunication are discussed. *Fourthly*, the relevant provisions of the 2003 Act and the corresponding rules and guidelines are discussed in the context of compensation to be paid in the power sector. *Fifthly*, certain principles of compensation are laid out. And *lastly*, the recommendations of the Commission are placed.



## 2. BACKGROUND

- 2.1 The Indian Telegraph Act, 1885 was enacted when the role of the State was very different than it is now. The State, which today espouses notions of welfare of its people at the centre of its policy making, was at that time merely interested in advancing its own colonial interests. Given India's size and the difficulties that arose in its administration, the British realised that an efficient telegraph network was a *sine qua non* for the able administration of the country. To give effect to the same, the 1885 Act was enacted which empowered the Telegraph Authority to set up infrastructure relating to telegraphs on both public as well as private property.
- 2.2 Over time, the 1885 Act has undergone several amendments to accommodate advancements in communication technologies. This is evident in the current definition of 'telegraph' as stated in the 1885 Act, which reads:

*"any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means.*

*Explanation - "Radio waves" or "Hertzian waves" means electro-magnetic waves of frequencies lower than 3,000 giga-cycles per second propagated in space without artificial guide."*

- 2.3 The 1885 Act grants the Central Government the exclusive privilege for the purpose of setting up telegraphic infrastructure.<sup>3</sup> It also provides that the Central Government may grant licences for doing so. Further, it also empowers the Central Government to delegate to the Telegraph

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<sup>3</sup> Indian Telegraph Act, 1885, Section 4(1).

Authority, all or any of its powers, through a notification in the official gazette.<sup>4</sup>

- 2.4 The Telegraph Authority may enter into public and private premises causing as little damage as possible.<sup>5</sup> The 1885 Act envisages that in the context of properties vested in or under the control of a local authority, the powers will not be exercised without the permission of the authority.<sup>6</sup> Further, in the case of private properties, the 1885 Act stipulates that full compensation will be paid to all persons interested for any damage sustained by them.<sup>7</sup> The amount of compensation has to be paid by the Telegraph Authority and in case there is any dispute regarding its sufficiency or the proportion in which it may be divided amongst interested persons, the decision of the District Judge shall be final.<sup>8</sup>
- 2.5 In the domain of electricity, the Electricity Act, 2003 holds the field. The Act was enacted in 2003 and repealed three laws, the Indian Electricity Act, 1910, the Electricity Supply Act, 1948, and the Electricity Regulatory Commission Act, 1998. The 2003 Act governs the activities relating to generation, transmission, distribution, trading and use of electricity in India. Before the 2003 Act entered into force, the activities of generation and distribution were state-owned. One of the key objectives of the 2003 Act was promoting competition within its framework allowing private sector participation in power generation, supply and distribution of electricity in India.
- 2.6 Part VIII of the 2003 Act deals with the subject of 'Works.' Under Part VIII, Section 67 relates to 'works of licensees' which, *inter alia*, deals

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<sup>4</sup> *Id*, Section 4(2).

<sup>5</sup> *Id*, Section 10 proviso (d).

<sup>6</sup> *Id*, Section 10 proviso (c).

<sup>7</sup> *Id*, Section 10 proviso (d).

<sup>8</sup> *Id*, Section 16(3) and 16(4).

with issues relating to the determination and compensation to persons affected by the carrying out of 'Works'. Section 68 which deals with overhead lines, provides, *inter alia*, that in case of any tree or any other structure that has to be removed for the purpose of laying down a line, compensation will have to be paid to the affected person(s).

2.7 Further, Section 164 of the 2003 Act empowers the 'Appropriate Government' to confer upon any public officer, licensee or any other person engaged in the supplying of electricity, any of the powers which the Telegraph Authority possesses under the 1885 Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

2.8 Both the Acts therefore have provisions dealing with the aspect of compensation. However, neither of them has laid down any clear-cut methodology of determining compensation and in the absence of a clearly spelt out mechanism, there may arise a possibility where there is variance in compensation.





3. **RELEVANT PROVISIONS OF THE INDIAN TELEGRAPH ACT,  
1885**

3.1 Section 4 states that:

*“Exclusive privilege in respect of telegraphs, and power to grant licenses. — 1) Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs:*

*Provided that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India:*

*[Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working—*

*(a) of wireless telegraphs on ships within Indian territorial waters [and on aircraft within or above India, or Indian territorial waters], and*

*(b) of telegraphs other than wireless telegraphs within any part of India.] ...*

*(2) The Central Government may, by notification in the Official Gazette, delegate to the telegraph authority all or any of its powers under the first proviso to sub-section (1). The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the Central Government may, by the notification, think fit to impose.”*

3.2 Section 10 states that:

*“Power for telegraph authority to place and maintain telegraph lines and posts - The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property:*

*Provided that*

*a...*

*b. the (Central Government) shall not acquire any right other than that of user only in the property under, over, along, across in or*

upon which the telegraph authority places any telegraph line or post; and

c. except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the context or management of any local authority, without the permission of that authority; and

d. in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that referred to in clause (c), **shall pay full compensation to all persons** interested for any damage sustained by them by reason of the exercise of those powers." (Emphasis added)

### 3.3 Section 16 states that:

***“Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a land authority -***

(1) ....

(2) ....

(3) *If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall on application for the purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.*

(4) *If any dispute arises as to the persons entitled to receive compensation, or as to the proportion in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, **shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it,***

(5) *Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:*

*Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.*” (Emphasis added)

3.4 Section 17 reads as:

**“Removal or alteration of telegraph line or post on property other than that of a local authority. —**

(1) ...

*Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.*

(2) *If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.*

(3) *A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.”*

3.5 Section 18 states that:

**“Removal of trees interrupting telegraphic communication -**

(1) *if any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.*

(2) *When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.”* (Emphasis added)

3.6 Section 19B reads as:

**“Power to confer upon licensee powers of telegraph authority under this Part. —**

*The Central Government may, by notification in the Official Gazette, confer upon any licensee under section 4, in - respect of the extent of his license and subject to any conditions and restrictions which the Central Government may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained...”*



#### 4. SCHEME OF COMPENSATION UNDER THE TELECOMMUNICATION SECTOR

- 4.1 The Indian Telegraph Act, 1885 was originally enacted for the purpose of laying telegraphic communication lines. Over time, all sorts of telecommunication have been included within the ambit of the 1885 Act.
- 4.2 The issue of compensation with regard to telecommunication is jointly addressed by the 1885 Act and the Indian Telegraph Right of Way Rules, 2016. The relevant provisions of the Telegraph Act have been stated before and need not be reiterated here.
- 4.3 If there is any damage to the owner's property because of the exercise of authority by the licensee or its employees, the land owner can demand or ask for compensation in accordance with law. The 1885 Act makes arrangement for the way in which the quantum of compensation is to be considered. Section 10 of the Act permits the authority to place and maintain a telegraph line under, over, along or across, or posts in or upon any immovable property. Clause (b) of the *proviso* to Section 10 of the 1885 Act makes it very much clear that at the time of laying down telegraph lines, the Central Government does not get any right over the land other than that of user in the property. In addition, clause (d) of the *proviso* to Section 10 of the 1885 Act requires the telegraph authority to bring about minimum damage to the property and that the telegraph authority shall pay full compensation to all persons for damage suffered because of the exercise of those powers.<sup>9</sup>

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<sup>9</sup>*Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and Others*, (2017) 5 SCC 143.

4.4 An aspect that needs to be taken into account is that telecommunication authorities themselves are not involved directly in infrastructure development. Post the emergence of private players in the field, infrastructure development has steadily become a private exercise. However, at the same time, all the powers of a Telegraph Authority have not been given to these private entities. This is discussed in greater detail in the following section.

**(A) THE INDIAN TELEGRAPH RIGHT OF WAY RULES, 2016**

4.5 The 2016 Rules have been enacted in pursuance of the rule making power given under Section 7 of the 1885 Act. The Rules have been amended from time to time with the latest amendments coming in 2022.

4.6 Within the 2016 Rules, Chapter I provides definitions for key terms used throughout the Rules and the applicability of the 2016 Rules. Chapter II pertains to establishment and maintenance of underground telegraph infrastructure, while Chapter III deals with the establishment of overground telegraph infrastructure. Chapter IV lays down the right of the appropriate authority to seek removal of underground or overground telegraph infrastructure. Chapter V stipulates the procedure to be followed for resolving disputes between the licensee and the appropriate authority. Further, the Schedule appended at the end specifies the quantum of compensation that will have to be paid in accordance with the 2016 Rules.

**a) *Underground Infrastructure***

4.7 The 2016 Rules defines underground infrastructure as:

*“underground telegraph infrastructure means a telegraph line laid under the ground and includes manholes, marker stones,*

*appliances and apparatus for the purposes of establishment or maintenance of the telegraph line.”<sup>10</sup>*

4.8 With regard to underground infrastructure, the 2016 Rules envisage the usage of property vested in or under the control or management of any appropriate authority only and **not under the control or management of any private person/entity/body.**

4.9 Appropriate authority has been defined as:

*“appropriate authority means the Central Government, respective State Governments, local authority or such authority, body, company or institution incorporated or established by the Central Government or the State Government, in respect of property, under, over, along, across, in or upon which underground or overground telegraph infrastructure, is to be established or maintained, vested in, or under, the control or management of such appropriate authority;”<sup>11</sup>*

4.10 Rule 6(1B) provides:

*“The appropriate authority shall be entitled to receive such compensation from the licensee, not exceeding the amount specified in Part-III of the Schedule, for the use of the property under which the underground telegraph infrastructure is proposed to be established, as may be determined by the appropriate authority”*

4.11 Rule 6(4) reads as:

*“The appropriate authority shall not charge any fee and compensation other than those prescribed under sub-rule (3) of rule 5, sub-rule (1B) and clause (a) of sub-rule (2) from the licensee for establishing, maintaining, working, repairing, transferring or shifting underground telegraph infrastructure.”*

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<sup>10</sup> Rule 2, The Indian Telegraph Right of Way Rules, 2016.

<sup>11</sup> *Ibid.*

**b) Overground Infrastructure**

4.12 Overground infrastructure has been defined as follows in the 2016 Rules:

*“overground telegraph infrastructure means a telegraph or a telegraph line established over the ground and includes posts or other above ground contrivances, appliances and apparatus for the purpose of establishment or maintenance of the telegraph or the telegraph line.”<sup>12</sup>*

4.13 With regard to overground infrastructure, the 2016 Rules envisage the usage of property vested in or under the control or management of any appropriate authority and **also under the control or management of any private person/entity/body.**

4.14 **However, there are differences in the relationship between a licensee and the Appropriate Authority and a licensee and private persons/bodies/entities.**

4.15 The conditions of the license are such that while with respect to the former, a licensee is deemed to be a Telegraph Authority, with respect to the latter, a licensee is simply a private entity and as such, within the framework of the 2016 Rules, does not enjoy the powers endowed on a Telegraph Authority. **Any issue concerning compensation payable to a private person/body/entity is simply a transaction between two private persons/bodies/entities.**

4.16 The various rules dealing with the issue of compensation payable to the various persons/bodies with regard to Overground Infrastructure are reproduced below.

4.17 Rule 10(2):

*“Where the establishment of the overground telegraph infrastructure renders the immovable property, vested in the*

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<sup>12</sup> Ibid.



*control or management of any appropriate authority over which such overground telegraph infrastructure is established, unlikely to be used for any other purpose, the appropriate authority shall be entitled to compensation for the value of the immovable property, either once or annually, assessed on such rates as that appropriate authority may, by general order, specify.*

*Provided that the compensation payable for the immovable property for the establishment of poles for installation of small cells and telegraph line shall not exceed the amount specified in Part-III of the Schedule.”*

4.18 Rule 10(4):

*“The appropriate authority shall be entitled to receive such compensation from the licensee, not exceeding the amount specified in Part-III of the Schedule, for use of street furniture for installation of small cells and telegraph line, as may be determined by the appropriate authority.”*

4.19 Rule 10B:

***“Establishment of telegraph infrastructure over private property.***  
*– Where the licensee proposes the establishment of overground telegraph infrastructure over any private property, the licensee shall not require any permission from the appropriate authority: Provided that in case of establishment of mobile tower or pole over a private building or structure, the licensee shall submit an intimation, in writing, to the appropriate authority, prior to commencement of such establishment.*

*Provided further that along with the intimation, he shall also submit the details of the building or structure, where the establishment of mobile tower or pole is proposed, and a copy of certification by a structural engineer, authorised by the appropriate authority, attesting to the structural safety of the building or structure, where the mobile tower or pole is proposed to be established.”*

4.20 Rule 10A states that:

**“Usage of street furniture for installation of small cells and telegraph line -**

(1) ....

(2) ....

(3) ....

(4) *the appropriate authority shall be entitled to receive such compensation from the licensee, not exceeding the amount specified in Part-III of the Schedule, for use of street furniture for installation of small cells and telegraph line, as may be determined by the appropriate authority.*” (Emphasis added)

4.21 Further, it is to be noted that the 2016 Rules provides the following table in its Schedule<sup>13</sup> with regard to compensation:

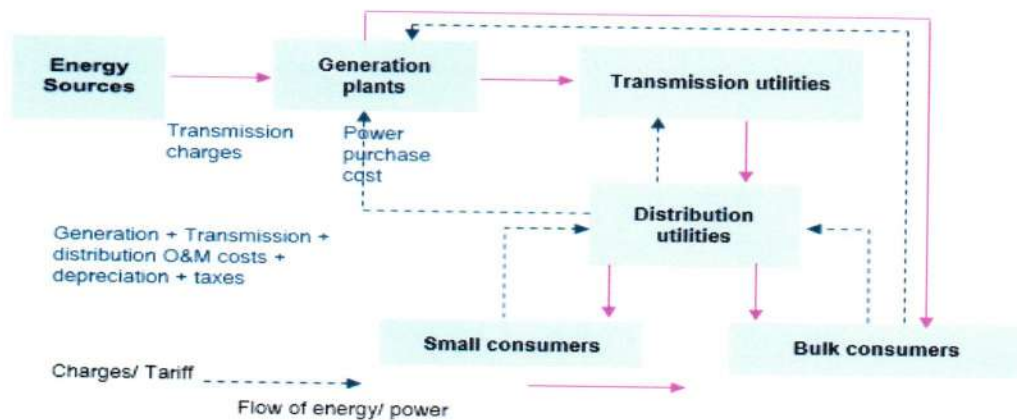
<b>Part-III Compensation</b>		
6(1B)	Establishment of underground telegraph infrastructure	Nil
10(2)	Establishment of poles for installation of small cells and telegraph line	Nil
10A(4)	Usage of street furniture for installation of small cells and telegraph line	(i) For installation of small cells: Three hundred rupees per annum for urban area and one hundred and fifty rupees per annum for rural area per street furniture (ii) For installation of telegraph line: One hundred rupees per annum per street furniture

<sup>13</sup>The Indian Telegraph Right of Way Rules, 2016 as amended by (Amendment Rules) 2022, Schedule, Part III Compensation.

## 5. COMPENSATION UNDER THE ELECTRICITY SECTOR

- 5.1 There are three primary segments in the electricity sector: generation, transmission and distribution. Generation is the process of producing power using different fuels and is carried out in generating stations (generation plants). Transmission utilities carry bulk power at high voltages from the generation plants to the distribution substations through a grid. Distribution utilities supply electricity from the substations to individual consumers through a distribution network. Distribution is the retail stage and operates at lower voltages.
- 5.2 The issue of compensation with regard to the installation of towers and transmission lines primarily deals with the transmission aspect of electricity. Transmission is carried out primarily by Central and State companies and largely remains a government-controlled activity. The transmission segment was separated from the central generation agency in 1989 and Power Grid Corporation of India Limited was set up. PGCIL is responsible for the planning, implementation, operation and maintenance of inter-state transmission system, and the operation of national and regional power grids. The National Load Despatch Centre (NLDC) manages the scheduling and dispatch of electricity over inter-regional links in accordance with grid standards, and monitors the national transmission grid. It is also the nodal agency providing transmission access to the power exchanges. The Regional Load Despatch Centres (RLDCs) manage the operation of the power system grid in the respective regions.
- 5.3 Figure 1 shows the overall structure of the power sector.





5.4 Electricity towers are usually installed at the intervals of about 400 mts. and conductors are strung on these towers maintaining a safe height depending on the voltage and other geographical parameters. There are two kinds of areas i.e.:

- (i) *Tower base area* (tower footing) i.e., land underneath tower base permanently fixed to earth. This area between the four legs of the tower is normally lost or loses its productivity due to severe restrictions on access and it may not be fully utilized for intended purpose by the landowner. A payment of full value of land of the tower base area may be justified against the background of severe restrictions put in by placing tower which heavily impair the productivity and the use of land area falling below tower base. Damages are payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV.
- (ii) *Right of Way* (Line Corridor) i.e., corridor of land underneath the conductor strung on the two towers. The maximum width of the Right of Way is calculated on the

basis of tower design, span, wind speed, maximum sag of conductor and its swing plus other requirements. This area of the land in a Right of Way Corridor depends on the type of land viz. agriculture, residential and industrial etc. In case of agricultural land, it would be possible to utilize the land for agriculture, however, it may have restriction for placing tall trees, pump house and future prospects. In case of residential and commercial lands, there may be severe restrictions to meet the safety guidelines. Once a transmission line is drawn across the land, there are number of restrictions in the corridor and additionally the land around would lose its value.

- 5.5 There are two aspects which need to be considered on account of the erection of towers and setting up of power lines. *First*, such activities, particularly because of constraints on lands with transmission wires running through it, may have detrimental result on cultivation and effective use of land to the extent that land would not be able to be cultivated. *Second*, the telegraph authority may at any time enter into the land of any individual and erect towers and set up transmission lines on the property of that individual. By virtue of Section 12 of the 1885 Act, an approval is to be obtained in case of land belonging to local authorities, while no such permission, on the other hand, is needed in the case of a property belonging to a private person. In such an event, a land owner cannot be deprived of compensation on the ground that the authority is entitled to install towers and transmission lines for the supply of the service in the public interest.

**(A) THE ELECTRICITY ACT, 2003 (36 OF 2003)**



5.6 Section 164 states that:

***“Exercise of powers of Telegraph Authority in certain cases:***  
*The Appropriate Government, may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communication, necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions, and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”*

5.7 Section 38 states that:

***“Central Transmission Utility and functions: ---- (1) The Central Government may notify any Government company as the Central Transmission Utility:***  
*Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity:*  
*Provided further that the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act. ...”*

5.8 In pursuance of the power vested on it by Section 38, through notification dated 24<sup>th</sup> December 2003, Power Grid Corporation of India Limited was notified as the Central Transmission Utility. Ministry of Power, Government of India, vide Gazette Notification dated 09<sup>th</sup> March, 2021, notified Central Transmission Utility of India Limited, a wholly owned subsidiary of PGCIL as the Central Transmission Utility. Under Section

14 of the Electricity Act, 2003, a Central Transmission Utility is a deemed licensee under the Indian Telegraph Act, 1885 and is therefore, vested with all the powers of a Telegraph authority as per Section 164.

5.9 Section 67, under Part VIII of the Act, lays down provisions dealing with 'Works'. Section 67, *inter alia*, stipulates that a licensee may lay down and place electric lines, electrical plant and other works,<sup>14</sup> cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.<sup>15</sup> It further provides that the Appropriate Government may, by rules made by it in this behalf, specify the determination and payment of compensation or rent to the persons affected by works,<sup>16</sup> and where any difference or dispute [including amount of compensation under sub-section (3)] arises, the matter shall be determined by the Appropriate Commission.<sup>17</sup> The Appropriate Commission is also empowered to impose a penalty not exceeding the amount of compensation payable while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3).<sup>18</sup>

5.10 Section 68 lays down provisions relating to overhead lines, and it says that, *inter alia*, where any tree or structure standing or lying near an overhead line, interrupts or interferes with or is likely to interrupt or interfere with the conveyance or transmission of electricity or accessibility of any works, the same may be ordered to be removed by an authority appointed in this regard by the Appropriate Government.<sup>19</sup> It

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<sup>14</sup> Electricity Act, 2003, Section 67(1)(d).

<sup>15</sup> *Id.* Section 67(3).

<sup>16</sup> *Id.* Section 67(2)(e).

<sup>17</sup> *Id.* Section 67(4).

<sup>18</sup> *Id.* Section 67(5).

<sup>19</sup> *Id.* Section 68(5).

further provides that compensation will be paid by the licensee where such tree or structure is ordered to be removed.

**(B) THE WORKS OF LICENSEE RULES, 2006<sup>20</sup>**

5.11 The 2006 Rules were enacted through the power given to the Central Government under Section 176(2)(e) read with Section 67(2)(e) of the Electricity Act, 2003.

5.12 Rule 3 states that:

***“Licensee to carry out works: ...***

6. *While making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representation of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.”*  
*(Emphasis added)*

7. *Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.*

8. *Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”*

5.13 If a licensee is vested with powers under Section 164 of the Electricity Act, 2003, Rule 3 of the Works of Licensees rules shall not apply and the licensee will be governed by the provisions of the Telegraph Act, 1885.

5.14 Rule 13 states that:

***“Determination and payment of compensation to affected persons. -***

*(1) Where the licensee makes default in complying with any of these rules, they shall make full compensation for any loss or*

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<sup>20</sup> Ministry of Power, Government of India, Notification G.S.R. 217(E), dated the 18<sup>th</sup> April 2006.



*damage to incurred reason thereof to the person affected, as may be determined by the District Magistrate by any other officer authorised by the State Government in this behalf, if not agreed mutually between the parties concerned.*

*(2) Where any difference and dispute arise as to the amount of compensation determined under sub-rule (1), the matter shall be determined by the Appropriate commission.” (Emphasis added)*

5.15 Rule 14 states that:

*“Procedure for deposit of compensation payable by the licensee and furnishing of security–*

*(1) The amount of compensation payable by the licensee under those rules shall be deposited by means of demand draft.”*

**(C) 2015 GUIDELINES**

5.16 In the absence of a clear definition of the term “damage” and any guideline in this regard, the Ministry of Power, the Government of India, considered the question of compensation toward damage during installation of tower base and laying down of transmission lines under Sections 67 and 68 of The Electricity Act, 2003 read with Sections 10 and 16 of the Indian Telegraph Act, 1885. A Committee was constituted by the Ministry, to analyse issues related to the Right of Way for laying transmission line in the country and to suggest uniform methodology for payment of compensation.

5.17 The Ministry of Power Notification of 2015 recommended the following guidelines for determining compensation toward damages:<sup>21</sup>

- (i) Compensation @ 85% of land value as determined by District Magistrate, or any other authority based on Circle rate/Guideline

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<sup>21</sup> Ministry of Power, Government of India, *Guidelines for Payment of Compensation towards Damages in regards to Right of Way for Transmission Lines*, No. 3/7/2015 – Trans, 15 October 2015.

- value/Stamp Act rates for *tower base area (between four legs)* impacted severely due to installation of tower/pylon structure;
- (ii) Compensation towards diminution of land value in the width of RoW corridor due to laying of transmission line and imposing certain restriction would be decided by states as per categorization of land in different places of states, *subject to a maximum of 15% of land value* as determined based on Circle rate/Guideline value/Stamp Act rates;
  - (iii) In areas where landowner/owners have been offered/accepted alternate mode of compensation by concerned corporation/Municipality under Transfer Development Right (TDR) policy of State, the licensee/utility shall deposit compensation amount as per (i) & (ii) above with the concerned corporation/Municipality/Local Body or the State Government;
  - (iv) For this purpose, the width of RoW Corridor shall not be more than that prescribed in para. 1.3 (of the Report of the Committee for Payment of Compensation in Regard to the Right of Way for Transmission Lines) and shall not be less than the width directly below the conductors.

The above compensation was proposed by the Committee in addition to damage towards normal crop and tree damage.

5.18 Since land remains a state subject, a number of states have come out with notifications/circulars where the methodology proposed is at a variance with the guidelines issued by the Ministry of Power. For example, the Maharashtra Electric Work of Licensee Rules, 2012 provides that collector has to settle amount of compensation to be paid by licensees to the land owner. An authority has been given to the State Electricity

Regulatory Commission to revise the order of the Collector in case of representation made to it by an aggrieved party. But the landowners/farmers demand exorbitant compensation than fixed through the Government orders in Maharashtra.

5.19 On the question of payment of land compensation in respect of transmission line work in various districts in the State of Karnataka, a corporate circular of the Karnataka Power Transmission Corporation Limited has approved compensation with respect to tower foot area and line corridor Area as per the guidelines of the Ministry of Power, Government of India, to be followed for estimation of land compensation as under:

1.	Compensation for Tower Foot Area	At 85% of the average guidance value of land required for various towers in its selected route.
2.	Compensation for Line Corridor Area	At 15% of the average guidance value of the corridor land required (excluding tower foot area in the selected routes)

In this regard, the surveying agency shall be directed to submit an estimation of land compensation based on the above guidelines, duly preparing cadastral mapping of the selected route, for assessment of and, tree and crop compensation. The survey response shall clearly indicate the extent of the corridor, land, survey numbers, the village through

which the corridor is passing through and the corresponding average guidance value of the land as notified by the Government of Karnataka.<sup>22</sup>

5.20 While the states of Arunachal Pradesh, Assam, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh and Manipur have followed the guidelines issued by the Central Government, the land compensation and the Right of Way Corridor compensation largely differ in other states like Andhra Pradesh, Haryana, Meghalaya, Mizoram, Odisha, Tamil Nadu, Uttarakhand, and Uttar Pradesh, where the rate of compensation has been determined either as higher or lower than that of the Central Government guidelines as under:

Uttarakhand, Uttar Pradesh	Tower base @ 85% and Line Corridor Area – Nil
Sikkim	Tower base @ 85% and Line Corridor Area @ 15% applicable only to comprehensive schemes and allied centrally funded projects implemented by the state department of Energy & Power
Haryana, Mizoram	Tower base @ 100% and Line Corridor Area – Nil
Andhra Pradesh	Tower base @ 100% and Line Corridor Area @ 10%

<sup>22</sup> Karnataka Power Transmission Corporation Limited, *Circular KPTCL/SAB/B7/19105/15-16*, dated the 23rd of January 2019; Karnataka Power Transmission Corporation Limited, *Order No. KPTCL/SAB/B7/19/05/15-16, Bengaluru*, dated the 25th May 2018.

Odisha, Meghalaya	Tower base - (maximum Rs. 50,000/-) and  Line Corridor Area @15%
Tamil Nadu	Tower base @85% and  Line Corridor Area @ 20%

5.21 In Maharashtra, the compensation for the tower base is @ two times (200%); for Line Corridor tip to tip @ 30% (15% +15%) of the ready reckoner or the average rate of land sell purchase in the last three years. It also includes additional compensation for urban areas for the entire state of Maharashtra. In Goa, the compensation for tower base is two times (200%) of the ready reckoner rate. In Kerala, the provision for land compensation is similar to the Central Government guidelines for Egmore-Kochi line. But the provision is different in Kerala for 320 KV Pugalur - Thrissur HVDC line. There is special compensation package for the Pugalur - Thrissur HVDC line for tower base @ 100% of five times of the fair value as determined by the District Collector (85% to be paid by PGCIL and rest by the KSEB), while the Right of Way Corridor (tip to tip) provision for *ex gratia* payment @ 40% of fair value has been made in addition to displacement allowance. Its displacement amount and *ex gratia* shall not exceed five times of the fair value of land as determined by the Collector.

5.22 The classification of land in Maharashtra used by the transmission tower (by not acquiring the land in Maharashtra) on the basis of the prevailing market rate of the land is as follows:

- (a) Non – cultivable agricultural land – 25%
- (b) Cultivable agricultural land – 50%

(c) Fruit bearing agricultural land – 60%

(d) Non-agricultural bend – 65%

Additional compensation to landowner for damages to land during stringing may be considered along with different rates for trees with 10% *ex gratia*.

#### **(D) 2020 URBAN ROW GUIDELINES**

5.23 Subsequently, another Committee was constituted by the Ministry of Power, the Government of India, vide Office Memorandum No. 3/4/2016 - Trans, dated the 11th August 2016, to review and analyse the existing procedure for compensation and suggest possible modifications. Having noted that the 2015 Guidelines of the Ministry of Power, Government of India, were yet to be adopted by most of the states, the compensation in regard to the Right of Way for transmission lines in urban areas were recommended in 2020 as under:

“ ....

*b) Additional compensation in form of Non-Usability allowance up to 15% of the land value for the width of RoW Corridor would be applicable in the notified urban areas. No construction activity of any kind would be permitted under the RoW of the transmission lines.*

*c) For the purpose of this guidelines, the definition of Urban areas is as below:*

*All places in a municipality, corporation, cantonment board or notified area committee etc.*

*d) the payment towards compensation for RoW in urban areas would be one time / upfront. In case of any other arrangement for payment of compensation, the, same needs to be notified it by individual states.”<sup>23</sup>*

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<sup>23</sup> Ministry of Power, Government of India, *Report of the Committee for Finalization of Compensation in regard to Right of Way (RoW) for Transmission Lines in Urban Areas*, p.1197, 308134/2019/Office of Bihari Lal.

## 6. DIFFERENT APPROACHES UNDER DIFFERENT STATUTES

- 6.1 The Power Grid Corporation of India Limited and thereafter, the Central Transmission Utility of India Limited, were notified as the Central Transmission Utility under the Electricity Act, 2003 *vide* the notifications issued by the Ministry of Power, Government of India, dated 24<sup>th</sup> December, 2003 and 09<sup>th</sup> March, 2021, respectively. As a consequence of the Central Transmission Utility being a deemed licensee under the 2003 Act,<sup>24</sup> PGCIL and CTUIL have been vested with powers of the telegraph authority under the Indian Telegraph Act, 1885. What needs to be noted therefore is that while provisions exist in the Electricity Act, 2003 concerning compensation, the provisions of the Indian Telegraph Act, 1885 also need to be taken into consideration while determining the quantum of compensation.
- 6.2 On the other hand, in case of telecommunication infrastructure and apparatus, it is solely the provisions of the Telegraph Act that come into play.
- 6.3 As per the Electricity Act, the quantum of compensation for damages on account of high electrical voltage/extra high voltage transmission lines may be much higher than that of damages in a telegraph transmission towers and for laying down the telegraph transmission lines in the Right of Way Corridor. Other licensees like the private developers engaged in power transmission have also been vested with such powers and are to comply with the guidelines.
- 6.4 With regard to the payment of compensation for damages, the procedures are different under the Electricity Act, 2003 and the Indian Telegraph

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<sup>24</sup> The Electricity Act, 2003, Section 14.

Act, 1885. The District Magistrate or the Commissioner of Police or the officer so authorized, have been empowered under the Works of Licenses Rules, 2006 of the Electricity Act, 2003 *to determine the amount of compensation to be paid by the licensee to the land owner*, subject to revision by the Appropriate Commission.

- 6.5 Conversely, it is the telegraph authority under the Indian Telegraph Act, 1885, which is stipulated to pay compensation to the land owner and if there is any dispute regarding the adequacy of compensation, it is to be decided by the District Judge.
- 6.6 Further, taking into account the Indian Telegraph Right of Way Rules, 2016, it is clear that a licensee cannot exercise powers vested with a Telegraph Authority with regard to private properties. The privatisation of the domain of telecommunication has meant that it is majorly private entities which are operating. In such a scenario, the Government has deemed it fit that all matters pertaining to private properties be settled between the private entities in the telecommunication sector and the owners of the properties themselves, without any intervention from the government.





## 7. RELEVANT JUDICIAL DECISIONS

7.1 It was stated by the Hon'ble Karnataka High Court in *Powergrid Corporation of India Ltd. v. Devendrappa*<sup>25</sup> that:

"15 .... A presumption has to be drawn that the lands of all farmers... where the towers and high-tension wires were erected would be of non-agricultural potential values i.e., commercial value and once the towers and high-tension wires were fixed on the lands..., forever the value of the lands... will be diminished, thereby the right to life, which is guaranteed by Article 21 of the Constitution of India, includes right to livelihood, will be affected, since, they will be deprived of their livelihood in view of the erection of towers and high-tension wires over the lands... and without paying any compensation for diminishing value of the land.... such deprivation would not only denude the life of its effective content and meaningfulness but, it would make life impossible to live."

7.2 In *Kerala State Electricity Board v. Livisha and Others*,<sup>26</sup> the Hon'ble Supreme Court of India had observed that:

"9. Both telegraph lines and electric lines are required to be drawn over the agricultural land and other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such lines is drawn."

7.3 The Hon'ble Supreme Court held in *Kerala State Electricity Board v. Livisha and Others*<sup>27</sup> that:

"The amount of compensation is required to be determined keeping in view the purpose and object of the statute. There cannot be any fixed formula therefor or the other. Although undoubtedly one formula laid down may assist the Board and/or the Reference Court to apply the same, but there cannot be a hard-and-fast rule in this behalf. A fixed formula for determining the amount of

<sup>25</sup> 2015 SCC Online Kar 9537; 2 (2016) 2 AIR Kant R 161.

<sup>26</sup> (2007) 6 SCC 792.

<sup>27</sup> *Ibid.*

*compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but in our opinion each case is required to be taken on its own merit. We may hasten to add that the purpose and object of the Act and the methodology laid down therein for the purpose thereof should be the guiding factor.”*

- 7.4 The Hon’ble Supreme Court laid down certain factors to be observed for determination of compensation under the 2003 Act, opining in *Kerala State Electricity Board v. Livisha and Others*<sup>28</sup> that:

*“The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.”*

- 7.5 The Hon’ble Supreme Court held in *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras*<sup>29</sup> that:

*"The adoption of one principle may give a higher value and adoption of another principle may give a lesser value. But nonetheless, they are principles on which and the manner in which compensation is determined. The court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy."*

- 7.6 On compensation in relation to fruit-bearing trees, the Hon’ble Supreme Court had observed in *State of Haryana v. Gurcharan Singh*<sup>30</sup> that the compensation be determined *“on the basis of the yield from the trees by applying 8 years’ multiplier.”*

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<sup>28</sup> *Ibid.*

<sup>29</sup> AIR 1965 SC 1017.

<sup>30</sup> 1995 Supp (2) SCC 637.

- 7.7 *In Kerala State Electricity Board v. Varghese Thomas*<sup>31</sup>, it was held that the principle which should be resorted to for the said purpose is annuity method. A return of 5% interest per annum was held to be reasonable for calculating the amount of compensation. However, a 5-judge Bench of the Kerala High Court had opined in *Kumbha Amma v. Kerala State Electricity Board*<sup>32</sup> that inflation was a relevant factor which should be taken into consideration while computing the amount of compensation for destruction of trees.
- 7.8 In *Krishan Pal & Another v. Union of India* (2018),<sup>33</sup> the Delhi High Court relied on the decision in *Smt. Kalawati and Others v. Union of India* (2004),<sup>34</sup> where it was held that a co-owner “would be entitled to same benefit of the enhanced compensation given in respect of other owners of the land acquired, which belonged to all of the jointly”. Justice necessitates that co-owners of the property be considered similar and much the same by paying equal compensation to meet out fair and equal treatment to them. Owners and co-owners cannot be discriminated in payment of compensation with regard to the same land acquired under the same notification and same award. When the land belongs jointly to co-owners, all co-owners should be given the same amount of compensation without any discrimination.<sup>35</sup>

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<sup>31</sup> 1961 KLT 238.

<sup>32</sup> (2008) 1 KLT 542 (FB)

<sup>33</sup> W.P.(C) No. 7184/2015.

<sup>34</sup> LA.A. No. 650/2008 & CM No. 9226/2008.

<sup>35</sup> *A. Vishwanatha Pillai and Ors. v. Special Tahsildar for Land Acquisition*, 1991 SCR (3) 465.

## 8. JURISPRUDENCE OF STATUTORY COMPENSATION

### (A) CONCEPT OF COMPENSATION

8.1 If a person is dispossessed of his property for some reason, either a property which is similar in nature to the one acquired or compensation for the same should be paid. A person has acquired vested interest in his property under the legal system. If he were to lose it at the pleasure of the state, people will lose confidence in the legal system. It brings an inference that provision for compensation is an integral part of the law. The term “just compensation” has a fluid and changing content; it is not as absolute one. It cannot be decided *a priori* but it is determined in connection with the genuineness of the demand and significance given to the requirement and rights of the society as a whole.

8.2 According to the Apex Court in *State of Gujarat v. Shanti Lal Mangaldas & Ors.*<sup>36</sup>:

*“... in ordinary parlance the expression “compensation” means anything given to make things equivalent; a thing given to or to make amends for loss, recompose, remuneration or pay.”*

A literal interpretation of the term “compensation” is that the owner whose property is taken for public use and benefit, the loss suffered by him must be made good.

8.3 In *Madan Mohan Sharma & Ors. v. State of Bihar & Ors.*<sup>37</sup> the High Court of Judicature at Patna had held that:

*“13. But “deprivation” of property is different from “restriction” on the rights of the owner. The restriction on the right of the*

<sup>36</sup> AIR 1969 SC 634.

<sup>37</sup> 1998 SCC Online Pat 435; (1998) 3 PLJR 715; (1998) 46 (3) BLJR 2206.



owner to use and enjoy the property may necessarily result in deprivation of it unless it is deprived wholly or partly of substantial bulk of his rights consisting of property. It is a question which is to be decided in each case on its own facts.

14. If in the fact situation of a case, by restitution imposed by law, a person has been deprived of substantial bulk of his rights as owner of property, he will be entitled to compensation. The Apex Court in *Jilubhai Nanbhai Khachar v. State of Gujarat*, [1995 Supp (1) SCC 596; AIR 1995 SC 142] has held that Article 300A of the Constitution does not contemplate payment of compensation in the sense of "just equivalent or indemnification to the owner of the property appropriated" and what it contemplates is that law under which a person is deprived of his property should fix an amount or lay down the principle in accordance with which such amount can be determined.... In this connection, the relevant extract from said decision are reproduced below:

"... the law may fix an amount or which may be determined in accordance with such principles. as may be laid therein and given in such manner as may be specified in such law. However, such law shall not be questioned on the grounds that the amount so fixed or amount determined is not adequate. The amount fixed must not be illusory. The principles laid to determine the amount must be relevant to the determination of the amount..."

8.4 According to the opinion of the Attorney General for India on 'Compensation payable under the Electricity Act, 2003 and the Indian Telegraph Act 1885', given on 26 November 2014:

"...damage can be temporary in nature where after completion of work the original state can be restored back and other damage could be such where it cannot be restored to original state. However, area involved in installation of transmission line i.e., tower footing as well as the line corridor cannot be restored back to original state due to certain restriction. Thus, this variance in damage, must be factored in while deciding compensation.

it is logical to hold that the land underneath the legs of the tower (permanently fixed to the earth) is permanently lost by the owner. Even though those pieces of land are not required for acquisition and the ownership remains with the owner yet all incidence of the ownership, enjoyment, and free use of those pieces of land becomes

*severely restricted. In such case, compensation ought to be as near as the present value of the land.*

*The compensation of such land (as) under the corridor is entirely different. Such land is conveniently usable for agriculture. However, there would be of course diminution of land value due to placing of line over it with certain restrictions on land use also any future prospects for usage other than agriculture. The compensation for such diminution in land value for the line corridor is also payable to landowner, the quantum of which should be commensurate to the damage depending upon the type/location of land and its intended/recorded land use.”*

## **(B) JUST, FAIR AND EQUITABLE COMPENSATION**

8.5 Compensation must be so assessed that social interest may be put into effect without any difficulty. The evaluation of the property appropriated should be based on proportionate concept of fairness to the person and advancement of the social interest without turning blind eye to the fundamental rights of the individual.<sup>38</sup> Theories of compensation will have to be developed on the foundation of social condition and resources available in this country. The 19th century *laissez-faire* idea of favouring individual right to property over social good is no more in harmony with the necessary development of modern India. The individual interest should be balanced with greater social interest, and an individual may have to lose his property only when it is essential to serve the larger interest of the society. It is no denying a fact that the interest of a large number of people should be given preference over that of few individuals in situation of a disagreement between the two. At the same time, the owner whose property was used or acquired for larger interest of the society should be given just compensation.

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<sup>38</sup> *Gobinda Chandra Dakka v. Dinesh Chandra Moitra*, AIR 1952 Cal 100.

8.6 The adequacy of compensation is the most vital thing. Whenever land is taken or used for public purpose, fair and adequate compensation is to be paid. Pandit Jawaharlal Nehru had stated before the Constituent Assembly that:

*“First of all, let us be quite clear that there is no question of any expropriation without compensation. If property is required for public use, it is a well-established law that it should be acquired by the state, by compulsion if necessary and compensation is paid.... If we have to take the property, if the state so wish, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it, we have always to remember that the equity does not apply only to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be, for the most urgent and important reasons.”<sup>39</sup>*

8.7 The Hon’ble Supreme Court of India observed in *State of West Bengal v. Mrs. Bela Banerjee and Others* <sup>40</sup> that:

*“...laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined, as payable must be compensation i.e. just equivalent of what the owner has been deprived of.”*

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<sup>39</sup> *Constituent Assembly Debates, Book 4, Vol. IX (30 July 1949 to 18 September 1949)*, at 1194 (Sixth Reprint Lok Sabha Secretariat, New Delhi (2014)); The Constituent Assembly debate on the on the question of compensation had centered around the constitution provision of Article 31(2), which has now been repealed by the Constitution (Forty-fourth Amendment) Act, 1978. However, there were three schools of views expressed in the Constituent Assembly: (1) requiring full justiciability on the question of the quantum of compensation; (2) excluding justiciability fully and making the legislative verdict on compensation final and unimpeachable; and (3) permitting justiciability in all cases of acquisition other than those of Zamindari and other holdings; T. S. Rama Rao, “The Problem of Compensation and its Justiciability in Indian Law”, *Journal of Indian Law Institute*, Vol. 4, 481-503 (1962).

<sup>40</sup> AIR 1954 SC 170.

**(C) VALUATION CONSIDERATION**

- 8.8 If transmission line passes through a plot, no construction is permitted up to certain distance on either side of such a line and also no development is permitted for prescribed safety distance. This affects land value. It is understood that construction of building on the land is an improvement providing means of access, drainage etc. Land has productive capacity, but not without the application of labour and capital on it. In the case of agrarian land, labour for cultivating it and the working capital in the form of seeds, fertilizers and water are provided to make the land productive.
- 8.9 It appears that the courts have acknowledged that the conception of value is more perplexing than any other idea on determining the amount of compensation. The term "value" has several connotations in the area of land acquisition. It is difficult to evaluate the value stemming from such ideas as "true compensation" or "real compensation" or "true value" or "real value". The challenging factors engrossed in the value options of a society make it difficult for the court to determine the amount of compensation.
- 8.10 Value in land in certain areas is found to be much higher. In the less populated and deserted places where the paying capacity of people in the region is very low, value fetched in market is much lower than its actual cost. The social forces affecting value include all the characteristics and customs of the people that make up the community. In certain parts of the country, lands on "T" junction have very limited marketability as hardly anybody comes forward to buy such plots. In other parts of India, such lands are sold like hot cakes. This is indicative of the effect of the social forces, having effect on valuation consideration.



8.11 Value is dependent on the degree of satisfaction derived, which varies from person to person and here it is subjective. The main criterion in the valuation of any land is its utility. The method used in the valuation exercise must have the main objective of qualifying usefulness of the property valued. Utility is not an absolute condition but a relative term. The value of land is dependent on the quality and quantity of produce, and the utility of an agricultural land is conditioned by its productivity. The valuation of land needs to be viewed in the light of all factors, internal and external, having a bearing on its operating performance. In valuation, the following questions should be taken into consideration such as the utility of the land, existing and anticipated benefits due to the ownership, possession and use of land, its source availability or its abundance, and its demand in the market.

8.12 Property right is not only related to material thing but it is also an abstract relationship defined as right to future benefit arising from ownerships. One can see in a land a physical thing limited by boundaries, a pile of bricks, mortar, steel, cement, and timber. But the fact is that a land has not only physical features, but it has also legal and economic characteristics. In valuation, it is required to estimate value of “interest” in a land. i.e., a person’s “legal right to derive benefit by putting a property to legally permissible use.” It is thus to estimate value of a “legal-economic entity” and not of a “physical” entity. This leads to the following:

- (1) in valuation of a land what is being valued is not the tangible thing land or building, but the right of individuals in land and building;
- (2) the value of the entire unit, consisting of land and the building, must be determined with all its advantage and its potentialities; and,
- (3) no right no value.

8.13 As per the International Valuation Standard (IVS), income approach, market approach and cost approach are applied to valuation depending on the nature of the land. In India, the cost approach is generally used for valuation of land. In the cost approach, value of a physical entity is estimated and value of the “interest”, which is in fact is the subject matter of valuation, is not estimated.<sup>41</sup>

8.14 The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (2013 Act) provides principles for consideration in assessing market value. Principles for determination of market value aim that compensation be awarded to the owner the value of the property acquired. Under this Act, an authority has been given to decide quantum of the compensation and make an award. An owner may refuse the said determination and seek reference of the judicial authority which is given the task of determining the market value. Even when the compensation is determined, the Act gives a right to the aggrieved owner to file an appeal. The purpose is to determine, by judicial process, fair market value of the land acquired by the government and compensate the owner with an equal value.

8.15 Section 28 of the 2013 Act provides parameters to be considered in determination of award as follows:

*"firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;*

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<sup>41</sup>Kirit P. Budhbhatti, *Valuation of Real Estate for Bank Finance and Liquidation*. Anand: Anand Press (2022); P.T. Hardikar, *Basic in Real Estate Valuation*. Pune: Mudra (2020).

*secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;*

*thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from the other land;*

*fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;*

*fifthly, in consequence of the acquisition of the land by the Collector, person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;*

*sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and*

*seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.*



## 9. DETERMINING PRINCIPLES FOR STATUTORY COMPENSATION

- 9.1 It is not the value of the land alone but there are many considerations which should be taken into account in determining the amount of compensation. These factors may be the capacity of the state to pay the compensation, the profit already derived by the owner of the land, and the purpose for which the land is to be taken for use, and any part of the land which is unused or neglected for a number of years.<sup>42</sup> All these questions have to be decided when a particular case arises according to the circumstances of each case.
- 9.2 Sometimes a demand is made that there should be uniformity in compensation for the erection of transmission tower base and laying down of transmission lines in the Right of Way Corridor in rural and urban areas, irrigated, non-irrigated and barren land, non-cultivable, cultivable, and fruit-bearing agricultural land and non-agricultural land to avoid any dispute.
- 9.3 However, it may not be viable to provide a uniform scheme of compensation. Each case before the court of law is required to be taken on its own merit. In case the transmission lines are drawn in forest land, the transmission utility is required to pay the cost of afforestation, the cost for environmental protection work in the Right of Way Corridor and also to provide the Forest Department with land for compensatory

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<sup>42</sup> *Constituent Assembly Debates*, *supra* note 39, at 1221. In making statement in the Constituents Assembly, Prof. K.T. Shah had opined that: "... No compensation should be due or be payable, and that I contend, is inherent both in the economics and ethics of the case I am trying to advance.... The land has remained utterly unutilized... and ... for that act of negligence, or for that incompetence or indifference the community is not bound to compensate the owner. I, therefore suggest that in the case of any property which is capable of adding to the growth and wealth of the community, which on account of the indifference, incompetence, negligence or otherwise of the owner is not so utilized, the owner does not deserve to be compensated and the community would be wrong if it gives any compensation in respect of such items of property."

afforestation equal to the land used for the setting up of the transmission corridor. Further, the Hon'ble Supreme Court in its own judgments in *Kerala State Electricity Board v. Livisha*,<sup>43</sup> *Kerala State Electricity Board v. B. Sreekumari*<sup>44</sup> and *Kerala State Electricity Board v. Chinamma Antony*<sup>45</sup> has also observed that there can be no uniform formula or policy to arrive at the rate of compensation and is of the view that each case is required to be taken on its own merit. Similarly, the practices of the Central Government and various State Governments in determining the quantum of compensation (one in case of transmission tower, and the other in case of transmission lines) have shown that there cannot be uniform formula for calculating the quantum of compensation.

- 9.4 In laying down general principles for calculation of compensation, it may not be advisable to specify the exact amount of compensation for each case; instead, broad principles governing the quantification of compensation should be preferred. The impact of placing of tower and transmission lines will depend on the placement of towers, the height of the tower and the land of the corridor. If the towers are placed in the middle of the agricultural land, the position will be distinct as compared to towers at the edge of the property. In case of residential and industrial area there is severe restriction on usage for safety of human life and electrical clearance. Further, compensation for a particular piece of land also needs to take into account the valuation of similar land or an adjacent parcel of land. This will ensure confidence in the system and land owners would not be compelled to think that compensation will be determined according to whims and fancies of those in positions of authority.

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<sup>43</sup> *Supra* note 25.

<sup>44</sup> (2008) 5 SCC 398.

<sup>45</sup> (2008) 11 SCC 476.

9.5 The mandate of the Indian Telegraph Act, 1885 is “full compensation” for all damage. With respect to the utilisation of any land for the purposes of the Telegraph Act, it is to be noted that such a land remains in the ownership of the landowner and there are no proceedings to acquire the same. In case of acquisition, full market value is to be payable since the land does not remain with the owner and in fact becomes vested in the government after its compulsory acquisition. Hence, in the case of non-acquisition, the authority only gets the right of a user and need only pay compensation that is commensurate with the damage caused to the land in the exercise of this right.



## 10. CONCLUSION AND RECOMMENDATIONS

- 10.1 A study into the working of the compensation schemes under the Indian Telegraph Act, 1885 and the Electricity Act, 2003, suggests that the issue of compensation is not a straightforward one and involves multiple aspects that stakeholders need to take into account. For example, in the Electricity Sector, a conjoint reading of the Electricity Act and the Indian Telegraph Act is necessitated. The Commission is of the opinion that the provisions concerning right of way (RoW) with regard to laying down of electricity towers and transmission lines be incorporated in the Electricity Act, 2003 itself.
- 10.2 The Commission is satisfied with the Guidelines issued in 2015 and subsequently in 2020 for Urban RoW. However, since land remains a state subject under List II of Schedule 7 of the Constitution of India, a number of State Governments have come out with different policies on the quantum of compensation to be paid. The Commission recommends that the State Governments align their policies in accordance with the 2015 RoW Guidelines and the 2020 Urban RoW Guidelines as this will lend certainty to project costs and also the compensation that a land owner will be entitled to seek.
- 10.3 Further, the Indian Telegraph Act, 1885 has been in operation for almost a century and a half now. While amendments have been affected time and again, the Commission believes that a new legislation, more suited to the times and milieu, be enacted by the Parliament to further the progress and advancement made in the field of telecommunication and to plug the gaps left by the present Act. The Commission is also of the opinion that the issue pertaining to compensation be fully and clearly spelt out in the new legislation, with separate provisions for public and non-public properties.

- 10.4 With regard to non-public properties, keeping in mind the power imbalance that is present between private players operating in the telecommunication sector and the owners of private properties, the Commission proposes that some methodology be prescribed by the Central Government to regulate this arrangement. This could be in the form of a minimum rental/consolidated value or a percentage of the property's total rental/consolidated value.
- 10.5 As a parting note, the Commission is of the view that certain principles should guide the determination of just and equitable compensation, some of which are enumerated as follows (Chapter 9 may also be referred to):
- (a) the situs of the land (i.e., rural land, semi-urban or semi-rural land, urban land);
  - (b) the quality and nature of land (i.e., agricultural land, non-agricultural land, irrigated land, non-irrigated land, barren land, fruit - bearing agricultural land, residential land, commercial land, industrial land, forest land);
  - (c) earlier determined valuation rate of similar adjacent land; and;
  - (d) any other relevant factor.

The Commission recommends accordingly.



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8.8.2023


[Justice Ritu Raj Awasthi]

Chairperson



[Justice K.T. Sankaran]

Member



8/8/23

[Prof. (Dr.) Anand Paliwal]

Member



[Prof. D.P. Verma]

Member



[Mr. K. Biswal]

Member Secretary



[Dr. Niten Chandra]

Member (Ex-Officio)



[Dr. Reeta Vasishtha]

Member (Ex-Officio)