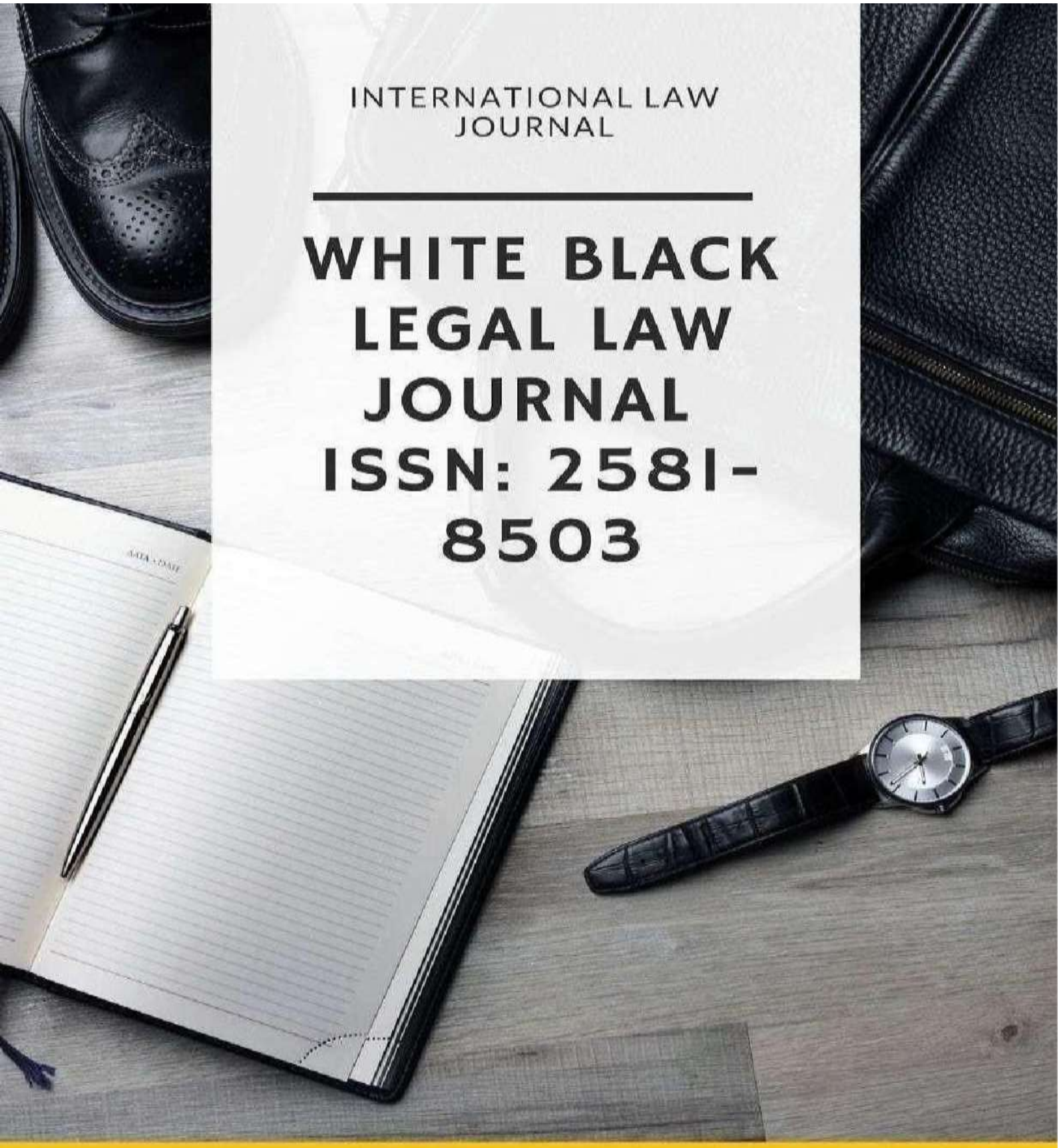

INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

EDITORIAL TEAM

Raju Narayana Swamy (IAS) Indian Administrative Service officer

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB, LLM degrees from Banaras Hindu University & PHD from university of Kota. He has succesfully completed UGC sponsored M.R.P for the work in the Ares of the various prisoners reforms in the state of the Rajasthan.

Senior Editor

Dr. Neha Mishra

Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; PH.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,
Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.

Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM
Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.
More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.

Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DISPUTE RELATING TO POWER PURCHASE AGREEMENT IN INDIAN ELECTRICITY SECTOR: ISSUES AND CHALLENGES

AUTHORED BY- DHARMESH KUMAR YADAV*

Abstract

Significant changes have been made to the Indian electricity industry with the goals of encouraging private sector involvement, promoting renewable energy, and guaranteeing a steady supply. However, disagreements over Power Purchase Agreements (PPAs) have become a significant problem that threatens the industry's stability. Since PPAs are long-term agreements between distribution companies and power producers, they frequently encounter conflicts due to things like tariff determination, legal changes, late payments, termination clauses, and non-fulfillment of contractual obligations. The inflexibility of long-term agreements, which do not adapt to changes in the market, in technology, or in policy, is one of the most urgent issues, particularly as the proportion of renewable energy grows. Investor confidence and project viability have been negatively impacted by these conflicts, which have been made worse by insufficient post-contractual negotiation procedures and delays in dispute resolution. Regulatory agencies such as the Electricity Regulatory Commissions are essential, but their lengthy procedures put a financial burden on all parties involved. Clear risk-allocation clauses, adaptable renegotiation clauses, and efficient compensation procedures are necessary to resolve these conflicts. In order to guarantee equity, sustainability, and long-term sectoral growth, this paper aims to examine potential legal, regulatory, and contractual reforms while analysing the main problems and difficulties pertaining to PPAs in the Indian electricity industry.

Key Words: Power purchase agreement (PPA), Dispute resolution, Electricity sector and Tariff determination.

POWER PURCHASE AGREEMENT IN ELECTRICITY SECTOR

A power purchase agreement (PPA) is a legal contract between a buyer (often a utility company or large commercial entity) and a seller (often a renewable energy developer or independent power producer) for the purchase and sale of electricity. The PPA sets out the terms and

conditions of the power sale, including the price, quantity, and duration of the power purchase.[1] In the electricity sector, a PPA is commonly used by renewable energy companies that produce electricity from sources like solar, wind, or hydro power.

Under a PPA, the electricity generator agrees to sell a certain amount of electricity to the buyer at a predetermined price for a specific period of time, usually several years. The buyer is typically a utility company or a large corporation that needs a reliable and cost-effective source of electricity.[2]

PPAs are commonly used to facilitate the development and financing of renewable energy projects, such as solar or wind farms, by providing a long-term revenue stream to the project developer. The PPA typically guarantees a fixed price for electricity over the term of the contract, which can help reduce the financial risks associated with the project.[3] They can also help buyers meet their sustainability goals by increasing the proportion of renewable energy in their energy mix.[4]

In addition to specifying the price and quantity of electricity to be sold, a PPA may also include provisions for performance guarantees, penalties for non-performance, and termination clauses.

A PPA is a legal contract between an electricity generator and a buyer that sets out the terms and conditions of the sale of electricity. Typically, the electricity generator is a renewable energy company that produces electricity from sources like solar, wind, or hydro power, and the buyer is a utility company or a large corporation.[5]

---

1 Manish Yadav, ENERGY LAWS- REGULATION IN ELECTRICITY SECTOR AND PROTECTION OF CONSUMER RIGHTS-REGULATORY FRAMEWORK. 1 ed. 2016. Ch.,1(Introduction) pp.1-20: Ch 2 (Evolution of Electricity Laws) pp. 24- 51.

2 What is a Power Purchase Agreement and Can it Benefit You?. Available at:- https://renewablesadvice.com/energy/ppa/#:~:text=Understanding%20PPAs%3A%20A%20Power%20Purchase,predetermined%20price%20over%20a%20set.

3 Karen Butterfield, "POWER PURCHASE AGREEMENTS" The Military Engineer, Vol. 103, No. 673 (September-October 2011), pp. 73-74.

4 J.S.S. Rao and Vatsala Sharma, OVERVIEW OF INDIAN POWER SECTOR- ORGANIZATION SET-UP 2013; Ch.1(Power Sector Structure in India) pp.1-18.

5 POWER PURCHASE AGREEMENTS (PPAS) AND ENERGY PURCHASE AGREEMENTS (EPAS). Available at:- https://ppp.worldbank.org/sector/energy/energy-power-agreements/power-purchase-agreements.

The PPA outlines the terms of the agreement, including the quantity of electricity to be sold, the price at which it will be sold, and the duration of the agreement. The contract may also include provisions for performance guarantees, penalties for non-performance, and termination clauses.

One of the key benefits of a PPA is that it provides a long-term revenue stream for the electricity generator, which can help to secure financing from banks and other investors. This is particularly important for renewable energy projects, which often require significant upfront investment.

The buyer, in turn, benefits from a reliable and cost-effective source of electricity, which can help to reduce their overall energy costs and increase their energy security. PPAs can also help buyers to meet their sustainability goals, by increasing the proportion of renewable energy in their energy mix.

There are several different types of PPAs, including fixed price PPAs, which provide a fixed price for electricity over the term of the agreement, and indexed or variable price PPAs, which provide a price that is linked to a specific index or market.

PPAs can also be structured as virtual PPAs, which allow buyers to purchase renewable energy credits (RECs) from renewable energy generators, without actually taking delivery of the electricity. This can be particularly useful for buyers who are located in areas where renewable energy is not yet available.[6]

Overall, PPAs play an important role in the electricity sector, by providing a means for renewable energy generators to secure financing and for buyers to access reliable and cost-effective sources of electricity.

In India, central and state utility power purchase agreement's contractual terms last for 25 years, whereas nascent private power purchase agreements are around 5-10 years. The following is how a purchase agreement starts: -

[6] *Ibid,*

"This Power Purchase Agreement (PPA) is executed on___ (date), ___(month),____ (year) at < location> between _____ Authorized representative of Purchaser < i.e. Government Organization, PSU and Offices > (detail address), (hereinafter referred to as "Purchaser") AND M/s (Name of Power Producer) (CIN No. _____), a company incorporated under the Companies Act, 1956/2013 having its registered office at _____ (detail address) (hereinafter referred to as "Power Producer" which expression shall, unless repugnant to the meaning or context hereof, be deemed to include its successors and assigns). The Purchaser and Power Producer are each individually referred to as a "Party" and collectively as the "Parties"."

REASONS TO ENTER INTO A POWER PURCHASE AGREEMENT

There can be many reasons that urges a business to enter into a Power Purchase Agreement.[7] The most common ones have been listed below:-

- Price certainty: A PPA provides a fixed price for electricity over the term of the agreement, which can provide price certainty for both the generator and the buyer. This can be particularly important for renewable energy generators, which may face volatile energy prices. By entering into a PPA, both parties can lock in a price that provides stability and predictability, allowing them to plan and budget more effectively.
- Revenue stability: For renewable energy generators, a PPA provides a long-term revenue stream, which can help to secure financing from banks and other investors. This stability can be particularly important for financing large-scale projects, which may require significant upfront investment. By having a guaranteed revenue stream over the term of the agreement, renewable energy generators can more easily secure financing and build new projects.
- Meeting sustainability goals: Buyers may enter into a PPA to meet their sustainability goals by increasing the proportion of renewable energy in their energy mix. This can be particularly important for corporations that have made public commitments to reduce their carbon footprint. By entering into a PPA, buyers can support the development of renewable energy projects and demonstrate their commitment to sustainability.

[7] Poudineh, Rahmatallah, et al. "An Overview of the Electricity Market in India." The Rise of Distributed Energy Resources: A Case Study of India's Power Market, Oxford Institute for Energy Studies, 2021, pp. 1–4.

- Energy security: Buyers may enter into a PPA to secure a reliable and cost-effective source of electricity. This can be particularly important for large corporations, which may have high energy demands and need a reliable source of electricity to maintain operations. By entering into a PPA, buyers can secure a stable source of electricity that meets their needs.
- Regulatory compliance: In some regions, utilities may be required by law to purchase a certain percentage of their energy from renewable sources. A PPA can help utilities to meet these regulatory requirements. By entering into a PPA, utilities can ensure that they are in compliance with regulations and support the development of renewable energy projects at the same time.
- Branding and marketing: Corporations may enter into a PPA as part of their branding and marketing efforts, to showcase their commitment to sustainability and renewable energy. By publicly supporting the development of renewable energy projects, corporations can enhance their reputation and differentiate themselves from competitors.

Overall, PPAs provide a mutually beneficial solution for both renewable energy generators and buyers, by providing a stable revenue stream for generators and a reliable and cost-effective source of electricity for buyers. By entering into a PPA, both parties can achieve their goals and support the growth of the renewable energy sector.

TYPES OF POWER PURCHASE AGREEMENTS

There are mainly two types of power purchase agreements. They have been discussed below:-

PHYSICAL POWER PURCHASE AGREEMENT

A physical power purchase agreement (PPA) is a type of agreement where a buyer, typically a utility or industrial consumer, agrees to purchase electricity from a specific power plant for a predetermined period of time. In a physical PPA, the electricity is physically delivered from the generator to the buyer, typically through the transmission and distribution grid.

The physical PPA will typically specify the quantity of electricity to be delivered, the delivery point, and the term of the agreement. The price may be fixed or may be based on a variable market price, depending on the terms of the agreement. The generator is responsible for

ensuring that the specified amount of electricity is delivered to the buyer at the agreed-upon delivery point.[8]

Physical PPAs can be used for any type of electricity generation, including renewable and non-renewable sources. However, physical PPAs are particularly common for renewable energy projects, such as wind or solar, because these projects often require significant upfront investment and may have a long-term revenue stream.

One advantage of physical PPAs is that they provide long-term revenue stability for generators. By securing a long-term contract, generators can more easily obtain financing for their projects and can be assured of a stable revenue stream. This stability can be particularly important for renewable energy projects, which may have higher upfront costs but lower operating costs over the long term.

Physical PPAs can also benefit buyers by providing a reliable source of electricity. By entering into a long-term contract with a specific generator, buyers can be assured of a stable supply of electricity, even during times of high demand or market volatility. This can be particularly important for large industrial consumers, which may have high energy demands and require a reliable source of electricity to maintain operations.

Another advantage of physical PPAs is that they can help to reduce greenhouse gas emissions and support sustainability goals. By purchasing electricity from a renewable energy generator, buyers can reduce their carbon footprint and support the development of renewable energy projects.

However, physical PPAs can also have some disadvantages. For example, if the electricity market price drops significantly during the term of the agreement, the buyer may be paying more for electricity than they would have otherwise. Additionally, physical PPAs may require significant negotiation and legal expertise to ensure that both parties are adequately protected. It is essential to note that physical power purchase agreement can be of two types: –

[8] Supra Note 01.

ON-SITE POWER PURCHASE AGREEMENTS

An on-site power purchase agreement (PPA) is a type of agreement where a third-party energy provider, often a renewable energy developer or service provider, installs and operates a power generation system on the site of a customer, typically a commercial or industrial facility.[9] The energy provider then sells the electricity generated by the system to the customer at a fixed rate over a predetermined period of time.

On-site PPAs are typically used for renewable energy systems, such as solar or wind power, which can be installed on the customer's site and connected to the local electrical grid. The energy provider is responsible for designing, installing, and maintaining the system, and the customer is responsible for providing the site for the installation and paying for the electricity generated by the system.

One advantage of on-site PPAs is that they can provide a reliable source of electricity for the customer, while also reducing their energy costs and carbon footprint. By installing a renewable energy system on their site, customers can reduce their reliance on grid power and lower their energy costs over the long term. Additionally, on-site PPAs can help customers meet sustainability goals and reduce greenhouse gas emissions.

Another advantage of on-site PPAs is that they can provide long-term revenue stability for energy providers. By securing a long-term contract with a customer, energy providers can more easily obtain financing for their projects and can be assured of a stable revenue stream. This stability can be particularly important for renewable energy projects, which may have higher upfront costs but lower operating costs over the long term.

However, on-site PPAs can also have some disadvantages. For example, the customer may be required to sign a long-term contract, which can limit their flexibility to switch energy providers or renegotiate terms. Additionally, on-site PPAs may require significant upfront investment by the customer, such as the cost of land or site preparation, which may not be feasible for some businesses.

[9] Supra Note 04.

OFF-SITE POWER PURCHASE AGREEMENTS

An off-site power purchase agreement (PPA) is a type of agreement where a buyer, typically a utility or large commercial or industrial customer, enters into a contract with a power generator, typically a renewable energy project, to purchase electricity generated off-site from the buyer's location. The electricity is then delivered to the buyer through the transmission and distribution grid.

Off-site PPAs are typically used for renewable energy projects, such as wind or solar farms, which are located away from the buyer's location. The power generator is responsible for designing, building, and operating the renewable energy project, and the buyer is responsible for purchasing the electricity generated by the project at a fixed price over a predetermined period of time.

One advantage of off-site PPAs is that they can provide long-term price stability for the buyer, which can help to reduce energy costs and improve predictability. By entering into a long-term contract, buyers can more easily plan and budget for their energy needs, without being subject to volatile market prices. Additionally, off-site PPAs can help to support the development of renewable energy projects, which can help buyers meet sustainability goals and reduce greenhouse gas emissions.

Another advantage of off-site PPAs is that they can help to reduce the buyer's carbon footprint by supporting the development of renewable energy projects. By purchasing electricity generated from renewable sources, buyers can reduce their reliance on fossil fuels and support the transition to a cleaner, more sustainable energy system.

However, off-site PPAs can also have some disadvantages. For example, buyers may need to make significant upfront investments, such as transmission and distribution infrastructure, to enable the delivery of electricity from the off-site project to their location. Additionally, off-site PPAs may require significant negotiation and legal expertise to ensure that both parties are adequately protected.

VIRTUAL POWER PURCHASE AGREEMENT

A virtual power purchase agreement (VPPA) is a type of agreement where a buyer, typically a large commercial or industrial customer, enters into a contract with a renewable energy project

developer or generator to purchase the environmental attributes associated with the project's electricity output, such as renewable energy credits (RECs) or guarantees of origin (GOs). The electricity itself is typically sold into the local market, while the buyer receives the environmental attributes associated with the renewable energy production.[10]

VPPAs allow buyers to achieve their sustainability goals without physically purchasing the electricity generated by a renewable energy project. By purchasing the environmental attributes, buyers can claim that they are using renewable energy, even if they are not physically receiving the electricity. Additionally, VPPAs can help to support the development of new renewable energy projects by providing developers with a long-term revenue stream that can be used to secure financing for the project.

One advantage of VPPAs is that they can provide long-term price stability for buyers. By entering into a long-term contract, buyers can more easily plan and budget for their energy needs, without being subject to volatile market prices. Additionally, VPPAs can help to support the development of new renewable energy projects, which can help buyers meet sustainability goals and reduce greenhouse gas emissions.

Another advantage of VPPAs is that they can provide flexibility for buyers.[11] Because the buyer is not physically purchasing the electricity generated by the renewable energy project, they are not constrained by location or transmission constraints. This can allow buyers to achieve their sustainability goals even if they are not located near a renewable energy project or if their energy needs fluctuate over time.

However, VPPAs can also have some disadvantages. For example, buyers may need to make significant upfront investments to enter into a VPPA, such as legal and financial due diligence costs or transaction costs associated with the purchase of environmental attributes. Additionally, VPPAs can be complex legal documents that require significant negotiation and legal expertise to ensure that both parties are adequately protected.

[10] Dr. Deborshi Bara, 'Virtual' Power Purchase Agreements: Legal Status And Regulatory Framework in India, JOURNAL ON GOVERNANCE, Vol. 6 No. 1, 2023, pp. 27-71.
[11] *Ibid.*

CHALLENGES FACED BY THE POWER PURCHASE AGREEMENTS

There are various challenges faced by the power purchase agreements.[12] Those are: -

- **Regulatory and policy uncertainties**:

  PPAs can be affected by a range of regulatory and policy factors, including changes in energy market rules, subsidies for renewable energy, and government incentives for energy generation. These factors can create risks for buyers and sellers, including changes in the price of electricity or renewable energy credits (RECs). For example, changes to renewable energy mandates or renewable energy targets can impact the demand for RECs, which can affect the financial viability of the renewable energy project and the PPA. Similarly, changes to energy market rules, such as changes to capacity markets or the introduction of new pricing mechanisms, can impact the price of electricity, which can affect the financial viability of the project and the PPA.

- **Financial risks**:

  PPAs can involve significant financial commitments, including upfront payments and long-term contracts. If the project fails to generate the expected amount of electricity or if electricity prices fall, the financial viability of the project and the PPA can be threatened. In addition, lenders and investors may require a range of financial guarantees, such as letters of credit or performance bonds, which can create additional financial risks for the project.

- **Legal complexities**:

  PPAs can be complex legal documents that require significant negotiation and expertise to ensure that both parties are adequately protected. The negotiation process can be time-consuming and may require input from a range of legal and financial advisors. The agreement must address a range of legal issues, such as intellectual property rights, insurance requirements, and dispute resolution mechanisms, to ensure that both parties are adequately protected.

- **Contractual risks**:

  PPAs involve long-term contractual commitments, which can be subject to a range of risks, such as force majeure events, political risks, and credit risks. For example, a force majeure event, such as a natural disaster or equipment failure, can impact the ability of the project to generate electricity, which can affect the financial viability of the project and the PPA.

[12] Amit K Mishra, OVERVIEW OF INDIAN POWER SECTOR-REGULATORY FRAMEWORK, 1 ed. 2013. Ch.2 (Background of Sectoral Reforms) pp.22-28.

Similarly, political risks, such as changes in government policies or regulations, can impact the financial viability of the project and the PPA. In addition, credit risks, such as the risk of default by the buyer or the seller, can create significant risks for the financial viability of the project and the PPA.

- **Operational risks**:

  PPAs can be affected by a range of operational risks, such as equipment failure or natural disasters, which can impact the generation of electricity and the financial viability of the project. For example, a major equipment failure, such as a turbine failure or a transformer failure, can impact the ability of the project to generate electricity, which can affect the financial viability of the project and the PPA. Similarly, natural disasters, such as hurricanes or earthquakes, can impact the generation of electricity and the financial viability of the project and the PPA.

- **Market risks**:

  PPAs are influenced by a range of market factors, such as fluctuations in electricity prices, changes in the supply and demand of electricity, and competition from other renewable energy projects. These market risks can impact the financial viability of the project and the PPA, and require careful management and mitigation strategies. For example, changes in the supply and demand of electricity can impact the price of electricity, which can affect the financial viability of the project and the PPA. Similarly, competition from other renewable energy projects can impact the demand for RECs, which can affect the financial viability of the renewable energy project and the PPA.

LEGAL FRAMEWORK FOR DISPUTE RESOLUTION

Electricity is classified as a "concurrent" subject under Article 38 List III of the Indian Constitution. Hence, laws pertaining to the power industry may be passed by both the Central and State governments. The State governments concentrate on certain topics while the Central Government generally provides the policy framework. Today, the following Central statutes in India govern the structure, obligations, and accountability of the entities in the power sector:

1. The Electricity Act of 2003,
2. The Electricity (supply) Act of 1948, and
3. The Electricity Regulatory Commission Act of 1998 all govern the use of electricity (Repealed).

The sections of the Electricity Act of 2003 that relate with Power Purchase Agreements are

listed below.

S.49. Agreements with respect to supply or purchase of electricity

Contrary to the restrictions in clause (d) of sub-section (1) of section 62, consumers who have been granted open access by the Appropriate Commission under section 42 may contract with any person for the supply or purchase of electricity on any terms and conditions (including tariff) that they may agree upon.

The state electrical boards and the independent power producers enter into PPAs. In order to make SEBs more effective than vertically integrated utilities, the Electricity Act of 2003 makes it essential for all SEBs to unbundle into separate generating, transmission, and distribution firms. Nonetheless, vertically integrated utilities continue to perform better financially and are better equipped to meet customer expectations in the majority of countries.

By completely repealing Section 5 of the Electricity (Supply) Act, 1948, the Electricity Act, 2003 ends the existence of SEBs as statutory autonomous bodies. To put it another way, by completely repealing Section 5 of the Electricity (Supply) Act, 1948, the Electricity Act, 2003 unmistakably transforms SEBs into Companies under the Company Act, 1956.[13]

S.86. Functions of State Commission

(1) The State Commission is responsible for carrying out the following duties: Regulate the purchase and procurement of electricity by distribution licensees, including the price at which electricity must be purchased from generating companies, licensees, or other sources through agreements for the purchase of power for distribution and supply within the State; Section 49 of the Electricity Act, 2003, addresses such agreements.

S.172. (Transitional provisions):

Notwithstanding anything to the contrary contained in this Act, -

- For a period of one year from the appointed date or such earlier date as the State Government may notify, the State Electricity Board established under the repealed laws shall be deemed to be the State Transmission Utility and a licensee under the provisions of this Act, and shall perform the duties and functions of the State Transmission Utility and a

[13] *Ibid*

licensee in accordance with the provisions of this Act and rules and regulations made thereunder:

As long as the Central Government and the State Government agree to it, the State Government may, by notification, authorise the State Electricity Board to continue acting as the State Transmission Utility or a licensee for a period of time beyond the aforementioned year;

- According to the statute, all state electricity boards (SEBs) had to split up into independent entities for generation, transmission, and distribution. According to the Electricity Act of 2003, the State Electricity Board must be divided into three companies:
  1. Generation
  2. Transmission
  3. Distribution

STEPS TAKEN BY GOVERNMENT FOR POWER PURCHASING AGREEMENT

PORTAL EASING POWER PURCHASE AGREEMENT

PRAAPTI[14] (Payment Ratification And Analysis in Power procurement for bringing Transparency in Invoicing of Generators) is a web-based platform developed by the government of India to improve the financial and operational efficiency of the power sector. It is a part of the Ujwal DISCOM Assurance Yojana (UDAY) scheme, which was launched in November 2015 with the objective of turning around the financially stressed power distribution companies (DISCOMs) in the country.

The PRAAPTI platform provides a single window for DISCOMs to manage their payments and receipts. It enables DISCOMs to monitor their outstanding dues and ensure timely payments to power suppliers, which helps in reducing the liquidity problems faced by the power sector.

The platform is designed to provide real-time information on electricity consumption, availability of power, and other important metrics, which helps in improving the operational efficiency of the DISCOMs. The platform is connected with the billing systems of DISCOMs, power generators, and transmission companies, which enables automatic reconciliation of

[14] Available at:- http://praapti.in/.

payments and receipts.

In addition to payment management, the platform also has several other features. It enables DISCOMs to monitor the performance of power generators and transmission companies and take corrective actions in case of any issues. It also provides a mechanism for resolving disputes between different stakeholders in the power sector.

Another important feature of PRAAPTI is that it enables DISCOMs to access funds from banks and financial institutions, which helps in addressing the financial stress faced by the power sector. The platform provides a transparent mechanism for monitoring the utilization of funds and ensuring that they are used for the intended purposes.[15]

The platform is also used by the Ministry of Power and other government agencies for monitoring the performance of the power sector and taking policy decisions. The platform provides a comprehensive dashboard that enables policymakers to access real-time information on the performance of the power sector and take informed decisions.

Overall, PRAAPTI is an important initiative by the government of India to modernize the power sector and make it more efficient and transparent. The platform has played a significant role in addressing the financial and operational challenges faced by the power sector and has helped in improving the overall performance of the DISCOMs.

PROPOSED ELECTRICITY CONTRACT ENFORCEMENT AUTHORITY (ECEA)

The proposed Electricity Contract Enforcement Authority (ECEA) is a regulatory body that is expected to be set up in India to resolve disputes related to power purchase agreements (PPAs) between power generating companies and distribution companies (DISCOMs). The ECEA is intended to be an independent authority that will have the power to enforce contracts and arbitrate disputes between power generating companies and DISCOMs.

The ECEA is being proposed in the context of ongoing issues in the Indian power sector, where many power generating companies are facing challenges related to non-payment or delayed payments by DISCOMs. Many power generating companies are also facing issues related to

[15] *Ibid*

non-compliance with PPAs by DISCOMs, which has resulted in a significant increase in non-performing assets in the power sector.

The proposed ECEA is expected to address these issues by providing a mechanism for the enforcement of PPAs and resolution of disputes related to non-payment or delayed payments. The ECEA is expected to have the power to issue directives to DISCOMs for the timely payment of dues and to take punitive action against DISCOMs that do not comply with the directives.

The ECEA is also expected to have the power to arbitrate disputes related to PPAs and to issue binding decisions that will be enforceable by law. This is expected to provide a mechanism for resolving disputes between power generating companies and DISCOMs in a timely and efficient manner, which will help in improving the overall performance of the power sector.

The proposed ECEA is part of a larger set of reforms being proposed by the Indian government to improve the efficiency and transparency of the power sector. These reforms include measures such as the Ujwal DISCOM Assurance Yojana (UDAY) scheme, which is aimed at turning around financially stressed DISCOMs, and the Praapti platform, which is aimed at improving the financial and operational efficiency of the power sector.

CASELAWS RELATING TO DISPUTES RELATING TO POWER PURCHASE AGREEMENT

Under given are the case laws that provide insights into the legal framework governing PPAs and the types of disputes that may arise between the parties. They can be useful for legal practitioners, energy companies, and policymakers in understanding the nuances of PPA disputes and the judicial approach towards resolving them.

- **Gujarat Vikas Nigam Limited v. Mr. Amit Gupta & Ors.**[16]

  This Supreme Court decision dated 8th March 2021 analyses the role of adjudicating authorities like the NCLT and the NCLAT in deciding contractual disputes which arise due to the insolvent position of the corporate debtor. Moreover, the judgments deal with the role of such bodies when it comes to either party's right to terminate the PPAs arising from

[16] Civil Appeal No. 9241 of 2019.

the start of insolvency proceedings under the IBC. The SC in the case upheld the order passed by the NCLAT and NCLT, New Delhi Bench.

The bench consisting of Justice DY Chandrachud and Justice MR Shah observed that:

> "*In this case, the PPA has been terminated solely on the ground of insolvency, which gives the NCLT jurisdiction under Section 60(5)(c) to adjudicate this matter and invalidate the termination of the PPA as it is the forum vested with the responsibility of ensuring the continuation of the insolvency resolution process, which requires preservation of the Corporate Debtor as a going concern.*"

- **Indian Wind Power Association vs. Tamil Nadu Generation and Distribution Corporation Limited (2020)[17]**

  In this case, Green Infra Wind Energy challenged the order passed by the Tamil Nadu Electricity Regulatory Commission (TNERC) reducing the tariff rate for the wind power generated by the company. The TNERC had reduced the tariff rate on the ground of lower tariffs in other states. The Madras High Court set aside the order of TNERC and held that the reduction in tariff rate was not based on valid grounds.

- **Reliance Infrastructure Limited vs. Maharashtra State Electricity Distribution Co. Ltd. (2018)[18]**

  In this case, Reliance Infrastructure challenged the order passed by the Maharashtra Electricity Regulatory Commission (MERC) reducing the tariff rate for the power generated by the company. The MERC had reduced the tariff rate on the ground of lower tariffs in other states. The Bombay High Court set aside the order of MERC and held that the reduction in tariff rate was not based on valid ground.

CONCLUSION

In conclusion, PPAs have the potential for long-term success yet are equally susceptible to ambiguity and uncertainty, particularly because of the Change in Law clause. The intention behind the bid submission may eventually be utterly undermined by the unpredictability of the anticipated regulatory and legal developments. However, the way the Change in Law provisions are handled in India varies widely by state, with some failing to even identify the intended hazards and others simply partially addressing them. Hence, a prudent risk distribution can increase the PPA's efficiency and bankability while also maintaining its

[17] Civil Appeal No.22406 of 2017.
[18] Civil Appeal No. 2183 of 2019.

smooth operation.

To guarantee the effective allocation of risk among the parties, the terms of a "Change in Law" must be precise and unambiguous. According to the parties' understanding, this definition should specify the extent of the current applicable law, the scope of the change in law, the relevant authorities that need to be cited, and the precise date on which the "Change in Law" event will occur.

Furthermore, electricity companies frequently sign contracts that last 25 to 30 years; however, these lengthy agreements are risky and impractical unless both parties are protected. Long-term commercial contracts may not be economically viable in the future due to the speed at which technology is developing, so it is crucial to reevaluate how long they last.

Furthermore, businesses find it challenging to adapt to unanticipated changes in the market because Power Purchase Agreements (PPA) do not include a provision for post-contractual negotiation. Therefore, in order to guarantee survival and adaptability, it is essential to include a clause that permits post-contractual negotiation. In addition, a timeline process with precise due dates needs to be established for handling matters pertaining to legal changes. This will guarantee prompt resolution and avoid inconsistencies early on in the procedure. There should be provisions for efficient procedures in the event that the parties are unable to come to a preliminary understanding, such as those supervised by the Electricity Regulatory Commission.

A provision for resolving ongoing legal disputes to address liability concerns is equally crucial. In addition to clearly identifying the culpable party, this clause should outline the compensation process. Last but not least, the Change in Law clause itself needs to set up a compensation system that puts the parties back in the same situation as before the agreement. Furthermore, information about potential extensions of the commercial operation date—especially during the construction phase—must be supplied. Such actions will incentivise the parties to reduce risks at the beginning and aid in averting further minor conflicts.