

REGULATORY REFORMS REQUIRED IN THE INDIAN OIL AND GAS INDUSTRY FOR AN EFFECTIVE DISPUTE RESOLUTION MECHANISM: A WAY FORWARD

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ABSTRACT

The Oil and gas sector being so vast and diverse in its activities gives rise to unprecedented natures of disputes which are needed to be resolved by an effective dispute resolution mechanism given the technical and complex nature of the disputes. Disputes in the oil and gas sector could arise because of the sector being divided in different sectors; it deals with different types of disputes. Disputes in the oil and gas sector can range from quantity and quality disputes, jurisdiction disputes, disputes involving equipment, gas contracts, oil trading contracts, subcontracting and a host of them. Like shareholder value related issues, regulatory issues, trade restriction among others.

However, there are dispute resolution mechanisms provided in individual regimes, absence of independent regulators in the upstream sector and issues dealing with various aspects like integrating regulators in the Oil and gas sector and construction of better dispute resolution mechanism is the need of the hour.³

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³ Sanjay Kumar Kar, "India's Upstream Needs Independent Regulator", Oil And Gas Journal, Vol 115, Issue II, February 6, 2017.
<http://www.ogj.com/articles/print/volume-115/issue-2/exploration-development/india-s-upstream-needs-independent-regulator.html>.
(Visited March 4th 2018).

I. INTRODUCTION

Internal governance mechanisms are more critical value creation than the ownership structure. Particularly in the petroleum sector where prices, technology, competition, and management techniques are continuously changing, effective dispute and budgetary and financial autonomy are crucial to value creation, Government interference in decision-making processes seems to be more closely related to the degree of economic or strategic relevance of the petroleum sector to the country. Some policies, such as sector participation, licensing and petroleum contracts, taxation, depletion of reserves, and policies designed to increase the economic and developmental impact of the petroleum sector, affect value creation more directly than other.⁴Dispute prevention is as important as dispute resolution. Transitions involving complex structures can make stability more precarious and disputes more likely. Though lacunae free dispute resolution is a utopian idea because the issues are so complex but sector-wide consensus-building measures might also be particularly useful as a dispute prevention measure.⁵

How disputes are defined – and who has responsibility for resolving them – determines the effectiveness of their resolution. Compartmentalizing issues rather than viewing them as inter-related can raise the costs for parties and the sector as a whole.

Presently, India's regulatory system is complex, involving multiple regulators (Central & State) with limited coordination as has been reported by various Government of India constituted committees.⁶ Exploration and Production project owners in the current regulatory regime are required to submit separate applications to multiple regulatory bodies.⁷ This process is inefficient because it often involves duplication of information, increased costs, and uncertainty in the authorization process. Delays from any one regulator compound the length and complexity of the

⁴ Brandon S. Tracy And Noora Arfaa, *National Oil Companies And Value Creation*, National Oil Companies And Value Creation, Volume I, March 2011.

[Http://Siteresources.Worldbank.Org/INTOGMC/Resources/3360991300396479288/Noc_Volume_I.Pdf](http://Siteresources.Worldbank.Org/INTOGMC/Resources/3360991300396479288/Noc_Volume_I.Pdf).

I. ⁵ Erica Mcconnell & Laura Beaton, *Bringing It All Together: The Importance of Dispute Resolution in the Interconnection Process*, GTM. JAN 15, 2018.

II. ⁶ Jyoti Mukul, *a Case against Merging Appellate Tribunals*, REDIFF.COM, April 03, 2017. <Http://Www.Rediff.Com/Business/Column/Column-A-Case-Against-Merging-Appellate-Tribunals/20170403.Html>.

⁷ Cuts C-Cier, *Capacity Building On Infrastructure Regulatory Issues*, Discussion Paper, CUTS INTERNATIONAL 2004.

approvals, creating a complicated and repetitive process.⁸ Because of the existence of major companies, the sector possesses a wide dispersion of vertical and horizontal integration.⁹ .Currently the Indian oil and gas sector is regulating by more than 10 statutes, two principle bodies along with Ministry of Petroleum and Natural Gas and Contractual Regimes and ancillary regulations.¹⁰

The major challenge is to provide a synergy of interests of different stakeholders and improve the efficacy of dispute resolution mechanism to meet the objective of growth of Oil and Gas sector. The Indian Oil and Gas sector is growing rapidly which is not disputed at all but to enable this growth further it is necessary to realize that for a lesser strained sector in an already complex structure, a sound regulatory and policy framework is crucial. As we gather from the above chapters that some of the disputes are inevitable, there are certain disputes that can be prevented by eliminating causes of such disputes. The Present regulatory structure is one of the causes. Out the many causes of disputes that exist in the oil and gas sector a majority of the dispute is between the companies and the regulatory bodies and there are also disputes that are caused due the existing regulatory mechanism as discussed above in the third chapter.¹¹ The Indian Oil and Gas structure is in dire need to invest efforts in reforming the regulatory framework to bridge the gaps in the regulations that allow discrepancy in the sector leading to the above stated disputes. Similar views are held by the sector which can be asserted through the survey conducted by Petrotech “Hydrocarbon and Beyond: Changing Landscape¹²

The Indian Oil and Gas structure is in dire need to invest efforts in reforming the regulatory framework to bridge the gaps in the regulations that allow discrepancy in the sector leading to the above stated disputes. Similar views are held by the sector which can be asserted through the survey conducted by Petrotech¹³ the views were obtained in the line of discussion on the whether the Indian energy policies aligned to meet the Challenges. 88% of the respondents strongly

⁸ Delloitte “Enhancing Recovery in the Indian E&P Sector”, Background Note, June 20 2017.

⁹ Special Correspondent ‘PMO Meet on Exploration Delays in NELP Blocks’, THE HINDU. February 20, 2012. [Http://Www.Thehindu.Com/Todays-Paper/Tpbusiness/Article2914351.Ece](http://www.thehindu.com/Todays-Paper/Tpbusiness/Article2914351.Ece).

¹⁰ “Profile Of The Indian Oil & Gas Sector”, Oil & Gas, INDIA BRAND EQUITY FOUNDATION, October 2007.

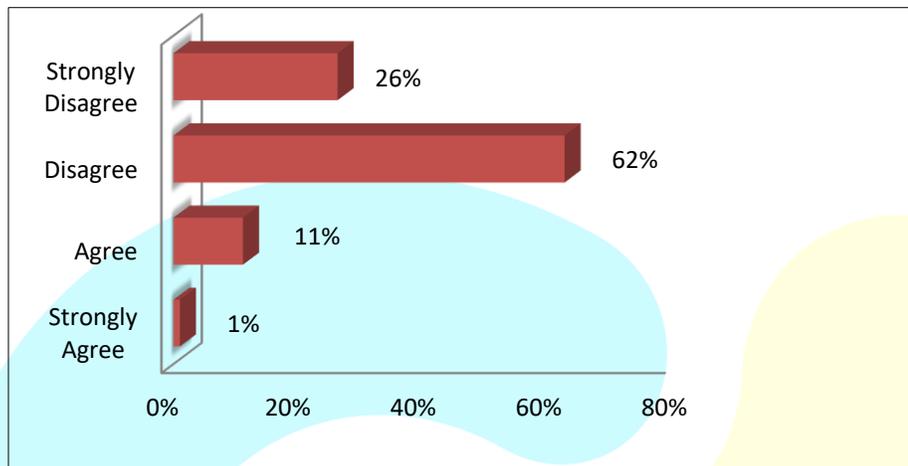
¹¹ Anupama Sen, Policy Considerations around India’s Upstream Reforms, OXFORD INSTITUTE FOR ENERGY STUDIES, March 2018. ISBN 978-1-78467-105-1.

¹² Senior Management Survey, PETROTECH SOCIETY, October 2012

¹³ PriceWaterhouse Cooper, “Fuel for Thoughts” PETROTECH SOCIETY, October 2012.

<https://www.pwc.in/Assets/Pdfs/Industries/Oil-And-Gas/Publications/Petrotech-Survey-V3.Pdf>.

disagreed to the point that the current energy policies of India are adequate to meet its requirements.¹⁴



SOURCE: FUEL FOR THOUGHTS PETROTECH 2012

The discussion in the above chapters and analysis of the various sector conducted reports, establishes there are certain reforms that can be adopted in sector to strengthen the regulatory structure and develop an effective dispute resolution mechanism.¹⁵

1.2 Issues in the Indian Oil and Gas Sector

The Indian Oil and Gas sector is growing rapidly which is not disputed at all but to enable this growth further it is necessary to realize that for a lesser strained sector in an already complex structure, a sound regulatory and policy framework is crucial. As we gather from the above chapters that some of the disputes are inevitable, there are certain disputes that can be prevented by eliminating causes of such disputes. The Present regulatory structure is one of the causes. Out the many causes of disputes that exist in the oil and gas sector a majority of the dispute is between

¹⁴ The Questionnaire Was Circulated To CEO, Directors On The Board, And Executive Directors In The Line Of Succession In Oil And Gas And Associated Companies. The Companies Included Those in Upstream, Refining and Marketing, Gas, LNG, Engineering And Construction, Services And Pipelines. Responses Were Received From The Executives Of Public, Private And International Oil And Gas Companies Of Varying Size, Portfolios And Geographies. Care Was Taken To Ensure No Bias Is Introduced During The Analysis Of Survey Responses By Not Categorizing Responses Under The Size Of The Company, Its Geography Of Operations (Onshore/ Offshore), Whether It Is A National Or International Company, Or Its (Operations Upstream/Downstream/Midstream).
<https://www.pwc.in/assets/pdfs/industries/oil-and-gas/publications/petrotech-survey-v3.pdf>.

¹⁵ *Ibid.*

the companies and the regulatory bodies and there are also disputes that are caused due the existing regulatory mechanism as discussed above in the third chapter.¹⁶

1.3 Structural Changes Required In the Sector

The institutional framework that has emerged in telecom and electricity sectors broadly conforms the doctrine of separation of powers with the regulators functioning as quasi-judicial bodies while appeals against their orders are heard by Appellate Tribunals that resemble judicial bodies in form and character¹⁷ The issue of independence of regulators is important in almost all these sectors as the government holds a major share in operations leading to the problem of competitive neutrality.

Independence and accountability are properties that are required for good regulatory governance. Independence ensures that interests of various stakeholders are accorded due importance in formulating and implementing regulation and prevents regulatory capture by vested interests.¹⁸ Accountability ensures that regulation is based on careful weighing of pros and cons; arbitrary decisions are not taken as consumers have access to facilities for redressal and appellate authorities and courts for remedial action against incorrect regulatory decisions.¹⁹

Effective, unbiased, and stable regulation in the natural resources sector is necessary for ensuring equitable and efficient development of the sector. The petroleum and natural gas sector in India has, for the past several years, suffered from a regulatory deficit, which has been reflected in various issues in the sector that have been widely debated and discussed. In addition to the issues discussed here, there have been various other cases where regulatory deficit was observed but these have been resolved over time.²⁰ In the initial design of the regulatory body, structure should matter more than process. The role of the regulator is to achieve predetermined policy objectives and

¹⁶ Anupama Sen, "Policy Considerations around India's Upstream Reforms", OXFORD INSTITUTE FOR ENERGY STUDIES, March 2018.

¹⁷ Navroz K Dubash, *Independent Regulatory Agencies: A Theoretical Review With Reference To Electricity and Water in India*, ECONOMIC & POLITICAL WEEKLY, Oct 4, 2008.
[Http://Environmentportal.In/Files/Independent%20Regulatory%20Agencies.Pdf](http://Environmentportal.In/Files/Independent%20Regulatory%20Agencies.Pdf).

¹⁸ Planning Commission, Approach to Regulation: Issues and Option, Consultation Paper, SECRETARIAT FOR COMMITTEE ON INFRASTRUCTURE, Government of India. Aug 18, 2006.
[Http://Planningcommission.Nic.In/Reports/Genrep/Infra_Reglawl.Pdf](http://Planningcommission.Nic.In/Reports/Genrep/Infra_Reglawl.Pdf).

¹⁹ Cuts C-Cier *Regulatory Framework For Infrastructure Sector In India*, CUTS INTERNATIONAL, 2004

²⁰ The Conflict Of Jurisdiction Between MoPNG And PNGRB On The Notification Of Section 16 Of PNGRB Act And The Issue Of Differential Pricing Of Gas By RIL For RNRL And NTPC.

maintain competitive conditions in the market by ensuring that everyone follows the basic rules of the game. On the other hand, the role of policy makers is to provide long term objectives and vision to the development of a country.

Policy makers issue policy guidelines which set out national priorities for sustainable development of sectors and measures for servicing disadvantaged areas of the country or sections of consumers. However, while in theory policy makers and regulators have distinctly different roles, in reality the regulator and policy makers share common responsibilities – ensuring orderly and sustained growth of the sector, attracting private investment, enhancing consumer protection. It is equally important to ensure that the regulator’s domain is not encroached upon by the government in the name of achieving policy objectives.

The government has not made a policy decision to clearly specify the role of sector regulatory bodies, the degree of independence these should have, their accountability. The resulting insecurity implies that regulators often work as an extension to the office of the ministry.²¹

Lack of interaction of the regulator with the policy maker resulting in confusion regarding respective domains coupled with inadequate empowerment has made regulators ineffective. This calls for creating a clear distinction between policy and regulation, which is often missing in India.²² The focus areas should be institutional framework for regulatory bodies, their role and functions, their relationships with the executive and legislature, and their interface with the markets and the people. The processes and methods of regulation, including rule-making and dispute resolution, should also be standardized and streamlined.

1.3.1 Need of an Independent Single Regulatory Body for the Oil and Gas Sector.

Presently the Indian Oil and Gas regulatory system is very complex. There are multiple regulators involved horizontally in the sector and also both at Central and State Level all with limited coordination. The Oil and Gas companies in the present regulatory structure have to submit separate applications at different bodies and require approvals from different bodies at different levels. This happens to be a major cause of disputes arising at different levels given that there is

²¹ Pradeep S Mehta, Ed, Competition And Regulation In India, CUTS INTERNATIONAL, 2009

²² CUTS International, , “Creating Regulators Is Not The End, The Key Is The Regulatory Process” A Research Report, October 2006

duplication of information, increased costs and inconsistency. This creates uncertainty in the project lifecycle. There are many disputes that arise due to uncertainty in the authorization process. A delay from one regulator causes a domino effect.²³

To deliver on the Government of India's (GoI) vision to increase domestic exploration and production activities, it is important that India has a competitive climate for investment. A recent review of India's attractiveness in upstream oil and gas has highlighted the opportunity to improve functioning of India's current regulatory system for upstream oil & gas sector.²⁴ Over the years, regulations around exploration & production (E&P) of Oil & Gas have been built up incrementally in response to increasing activity on the landscape. India's Oil sector's history suggests that the government's varying roles of policy maker, regulator, and operator has led to conflicts of interest and eroded investor confidence. India could better develop competitive, transparent, and efficient oil and gas operations by forming an independent regulator.²⁵

Operating companies are complaining of long delays (in clearances and operational decision making), and the resultant cost and time overruns. The regulatory system for upstream oil and gas in India should be modern, efficient, performance-based and competitive, while maintaining India's strong commitment to environmental management, public safety and responsible resource development in the public interest.²⁶

85% of the survey respondents were of the view that the regulator needs more powers to motivate investors who are keen to engage in the gas infrastructure business (both transmission and distribution) in India.²⁷

²³ CUTS INTERNATIONAL, "Regulatory Management and Reform in India" Background Paper for OECD, 2009.

III. ²⁴ Manish Vaid, India's Upstream Oil Ache, DNA, Jan 19, 2016.

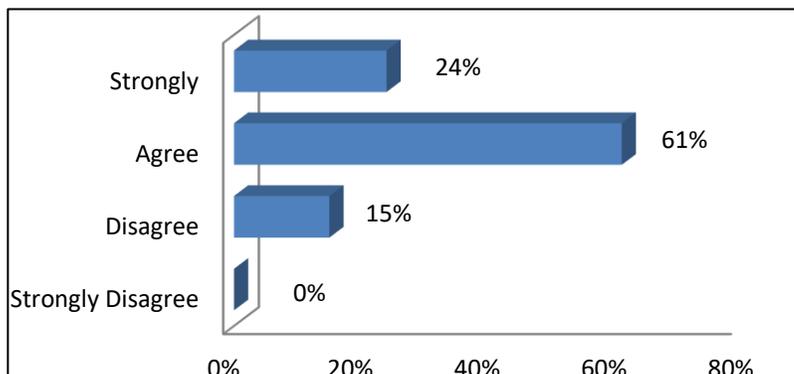
IV. [Http://Www.Dnaindia.Com/Analysis/Column-India-S-Upstream-Oil-Ache-2167337](http://Www.Dnaindia.Com/Analysis/Column-India-S-Upstream-Oil-Ache-2167337).

V.

²⁵ Samir Ranjan Pradhan, India, The Global Energy Regime Exploring Interdependence And Outlook For Collaboration,150(Academic Foundation New Delhi, 2008)

²⁶ Petrofed, "Review Of Role of Upstream Regulator in India" Petroleum Federation of India. March 2014.

²⁷ PriceWaterhouse Cooper, "Fuel for Thoughts" PETROTECH SOCIETY, October 2012.



SOURCE: FUEL FOR THOUGHTS PETROTECH 2012

1.3.1.1 Role of Regulator

In the best practices of petroleum there are distinctions amongst the roles of the resource owner (Sovereign), the policy maker, the regulator, besides the NOC's engaged in E&P activities. Typically, the world over, policy makers and policy implementers (Regulators) operate at arm's length and mostly the policy implementing body (the Regulator) is created due to the need to maintain such arm's length relationship. Regulator should possess the attributes of the good governance practices viz. effective, efficient, adaptable, predictable, fair and transparent. While the roles of the resource owner (Sovereign) and the policy maker are played effectively by the Government, the policy implementation role should be played by the regulator. The leading drivers of using a single regulator are to reduce the duplication, complexity, overlap, and unnecessary delays of the current regulatory regime reducing the possibility of disputes. The responsibilities of the regulator are broadly threefold namely.²⁸

Firstly implement the National Oil and Gas policy for prudent resource management of the Oil and gas resources of the country including setting up hydrocarbon regulations for broadening and accelerating the exploration efforts, facilitate transfer of appropriate technology and "best practices" in this sector, with due attention to environment and also bring about competition by development and encouragement of private sector participation. In other words, the regulator should ensure responsible and suitable exploitation of the resources

²⁸ Paiman Ramazan Ahmad, *Good Governance in the "Oil Sector" and its Effect on Economic Development: a Case Study of the Kurdistan Region*, NATIONAL UNIVERSITY OF PUBLIC SERVICE, Budapest, Hungary. August, 2017.
http://archiv.akk.uni-nke.hu/uploads/media_items/thesis-paiman-ramazan.original.pdf.

Secondly, while the Government should be the policy maker, the Regulator should effectively play the role of a policy seeker/enabler and play the role of an influencer in bringing out new policies i.e. effectively playing the role of bridging the gap between the sector and the Government by identifying and addressing their needs for the smooth implementation of all activities related to upstream development in the country.

Thirdly, facilitate regulatory approvals by being the single point of contact to obtain all clearances related to environment, forest, defence, etc. for the smooth implementation of the E&P projects.

Necessary Act should be brought about to ensure that the Regulator is separate and distinct from the Government, vesting with it some of the powers and authorities mentioned above, with commensurate accountability and also defining responsibilities related to other regulators/departments, towards working together for implementation of the national policies, in a responsible and sustainable manner. The act itself should clearly mention the powers and appointment procedures for the Regulatory body. The Directorate General of Hydro-carbons lacks any such statutory force. While the downstream sector is regulated by the Petroleum and Natural Gas Regulatory Board which is empowered by the provisions of Petroleum and Natural Gas Regulatory board Act 2006. Where powers and functions have been clearly defined and its scope and limitation on exercise of its powers has been subjected to review through right to appeal over its decisions. The two streams of the sector are exclusive of each other and there is no nexus between the regulations of the two and there is no uniformity in regulations of the sector.

Recommendations for creating an independent upstream regulator have been made by various expert groups and committees over time among them being the Chawla Committee.²⁹ The MoPNG has however dissented to this suggestion stating that the government, as the owner of the natural resources has a major role to play in their management and development and therefore, establishing an independent regulator may not be tenable. Time not ripe for upgrading DGH into

²⁹ ACCR Ashok Chawla Committee Report On Natural Resource Allocation, Cabinet Secretariat, Government Of India, 31 May 2011.
Www.Cutscier.Org/Pdf/Report_Of_The_Committee_On_Allocation_Of_Natural_Resources.Pdf].

an independent statutory body, Focus is on increasing gas production, efficiency & development of alternative fuels³⁰

Although the DGH has been entrusted with the task of overseeing the holistic development of the upstream oil and gas sector and is envisaged to evolve as the technical regulatory body for the same it falls under the administrative control of MoPNG. The government's efforts to improve the investment climate in the sector include setting up of regulatory environment and license terms that support the exploration process and reduce risks. Currently, multiple ministries and agencies have regulatory responsibilities for various aspects of upstream oil and gas development and at various points in the project lifecycle. Each ministry or agency operates independently with different requirements for information. This introduces complication, repetition and duplication of effort to the system. It can, at times, result in different parts of the system working toward different goals. There are also multiple points of contact and interface processes in the current system. Existing regulatory agencies vary considerably in how they interact with project owners, including their application requirements, the provision and management of data and information and their capability to manage contact with project owners throughout the project lifecycle.

The Directorate General of Hydrocarbons is the technical arm. The stated objective of the body is to promote exploration and sound management of the petroleum and natural gas resources as also non-conventional hydrocarbon energy resources having balanced regard for the environment, safety, technological and economic aspects Moreover, the absence of a statutory status limits its powers, which reduces the effectiveness of the functioning of the DGH. There have been several cases of disputes arising out of the execution of production sharing contracts between DGH and companies and certain disputes had also led to court/arbitration proceedings in Indian and foreign courts. The companies had no choice but to approach courts for appeal against decisions of DGH since there was no appellate authority or mechanism to challenge decisions of DGH. Further, these litigations had resulted in time and cost overruns and also led to delays in exploration activities.³¹ It is suggested that the Ministry should consult all stakeholders for setting

³⁰ Press Release, Dharmendra Pradhan, Petroleum & Natural Gas Minister, Unleashing India , Federation Of Indian Chambers Of Commerce And Industry.

³¹ PETROWATCH, Angry Operators Upset At DGH Time-Wasting" Vol 21, PW 15.
EXPLORATION AND PRODUCTION. MAY 13, 2018.
[Http://Www.Petrowatch.Com/Synopsis.Php?Artid=16828&W=1](http://Www.Petrowatch.Com/Synopsis.Php?Artid=16828&W=1).

up of an authority to adjudicate review orders of DGH and also desired the Ministry to streamline the existing PSC regime without any ambiguity for realizing the stated objective of the Government i.e. "Ease of Doing Business".³² The Committee also stated that the Ministry must review the existing production sharing contract system and evolve simplified forms of contracts which includes clear definitions and contains less scope for misinterpretation³³

The Ministry in its reply to the standing advisory committee on Petroleum and Natural Gas has stated that certain powers have been delegated to DGH under production sharing contracts on behalf of the Government. However, the powers to address issues are lying with the Ministry as the role of DGH was just advisory in nature.³⁴ Further, it has been stated that in many cases, where powers have been delegated to DGH, it acts on the advice of Management Committee. In addition, for blocks having discoveries or where production has started, the decisions are taken by the Management Committee taking technical inputs from DGH. Various committees, including the Dasgupta Committee (1990) and Kaul Committee (1992), have recommended that an independent body regulate oil and gas developments in India, but the government continues to oversee the country's exploration and production.

The Justice A.P. Shah committee, appointed by MoPNG, recommended stronger regulations for India's upstream sector, pointing out that DGH needed technical, commercial, and functional efficiency improvements.³⁵ The Shah committee's report suggested the need for a diligent independent regulator to prevent legal entanglements diverting DGH from promoting and managing India's petroleum and natural gas resources

1.3.1.2 ISSUES IN DUE ABSENCE OF REGULATORY BODY

First of all, there is no clarity on the part i.e. appellate authority for adjudicating review decisions of DGH. Secondly, as technical wing of the Ministry, the functions of DGH have remained mere advisory in nature and are not mandatorily binding on the Government and as such

³² DGH (2016) 'India's Hydrocarbon Outlook 2016-17', Directorate General of Hydrocarbons.

³³ *Ibid*

³⁴ PETROWATCH, Angry MP'S Point Fingers at Inefficient DGH" Vol 19, PW 7. EXPLORATION AND PRODUCTION. People & Policy. Dec 03, 2015. [Http://Www.Petrowatch.Com/Synopsis.Php?Artid=14882&W=1](http://Www.Petrowatch.Com/Synopsis.Php?Artid=14882&W=1).

³⁵ Justice A.P. Shah Committee, "Report Of The Committee On Dispute Regarding Oil And Gas Blocks In KG Basin," Aug. 29, 2016.

the Ministry of P&NG is the sole and final arbiter in all issues related to upstream activities of the oil sector. As long as DGH remains without any independent regulatory status, the exploration and production sector in hydrocarbon sector of the country would find it difficult to attract desired levels of investments in the field. Currently, multiple ministries and agencies have regulatory responsibilities for various aspects of upstream oil and gas development and at various points in the project lifecycle.³⁶ Each ministry or agency operates independently with different requirements for information. This introduces complication, repetition and duplication of effort to the system.³⁷ It can, at times, result in different parts of the system working toward different goals.³⁸ There are also multiple points of contact and interface processes in the current system. Existing regulatory agencies vary considerably in how they interact with project owners, including their application requirements, the provision and management of data and information and their capability to manage contact with project owners throughout the project lifecycle.³⁹ The lack of consistency between the processes used by existing regulatory agencies contributes to the complexity of the current system. It results in reduced predictability and increased compliance costs for both sector and government. The lack of alignment and consistency among the numerous agencies has been resulting in inconsistent decisions and conditions for upstream oil and gas development activities. Even when common approaches are applied, there are often varying degrees of interpretation and discretion applied by the regulatory agencies in making decisions.⁴⁰

³⁶ India Needs Single Regulator To Govern Energy Sector: NITI AYOJ. BUSINESS TODAY, Press Trust Of India, June 29, 2017.

³⁷ PETROWATCH, "Angry ONGC Fights DGH Claim to CB –ONN-2004/2" Vol 21, PW 9, Exploration and Production... Feb 08, 2018
[Http://Www.Petrowatch.Com/Synopsis.php?Artid=16637&W=1](http://www.petrowatch.com/Synopsis.php?Artid=16637&W=1).

³⁸ NITI AYOJ-Coal And Upstream Petroleum Sectors Have Lacked Independent, Statutory Regulators. Due To Several Reasons, Including Strong Presence Of PSs And Limited Number Of Private Operators, It Was So Far Not Found Useful To Place The Latter In Position. [Https://Indianexpress.Com/Article/India/India-Needs-Single-Regulator-To-Govern-Energy-Sector-Niti-Aayog-4726364/](https://indianexpress.com/Article/India/India-Needs-Single-Regulator-To-Govern-Energy-Sector-Niti-Aayog-4726364/).

³⁹ The PMT Arbitration Case Is One of the Many Disputes Reliance Is Fighting With the Government. Reliance and Partner BP Just Last Month Withdrew the Gas Price-Related Arbitration against the Government. Reliance Also Withdrew Arbitration Last Year Related To A Government Order To Relinquish 80% Of KG-D6 Block That The Company Operates.

Four Arbitration Cases Are Underway And These Relate To Recovery Of Cost Of Developing Fields, Penalty For Unfinished Committed Minimum Work Programme In KG-D6 And The Government Demand For Compensation For Producing Gas From ONGC's Fields.

While Unveiling An Rs 40,000 Crore Plan To Develop New Fields In The KG Basin Last Month, RIL Chairman Mukesh Ambani Said He Expected A Fair Outcome In Arbitration Cases.

[Http://Epaperbeta.Timesofindia.Com/Article.aspx?Eid=31816&Articlexml=PANNA-MUKTA TAPTI-OIL-FIELD-DISPUTE-RIL-Shell-18072017001014](http://epaperbeta.timesofindia.com/Article.aspx?Eid=31816&Articlexml=PANNA-MUKTA_TAPTI-OIL-FIELD-DISPUTE-RIL-Shell-18072017001014).

⁴⁰ Pricewaterhousecooper, *India Rising: Resilience and Reform*, Petrotech 2016.

1.3.1.3 LACUNAE IN FUNCTIONING OF DGH

It is felt that current regulatory system for upstream oil & gas sector must facilitate a higher degree of coordination, integration, planning and management than in past and must be organized to meet today's complex needs. Presently, one of the primary roles of DGH is to advise the Government on technical and technological aspects. In order to fulfill its objective of reviewing the various technical proposals as well as appraisal/development plans, it often gets involved in the ambivalence of technical inputs. This not only creates enormous delays in decision making, many a times, there are inconsistencies in decision making between different operators.⁴¹ This is necessitated because of cost recovery mechanism in the contracts and many of the recent PSC disputes with operators are testimony to that.⁴² The Committee notes that the Government had assigned the work relating to implementation of Revenue sharing contracts (PSCs) under HELP to DGH and it has discharged the powers of Central Government where a contract or an agreement for exploration and production of hydro carbons has been signed by the Central Government.⁴³ The ministry has been ensnared in a rash of arbitrations, most notably the ones initiated by Reliance Industries, BP and BG as well as Cairn. The high-profile cases involving MNCs and claims running into several billions of dollars remain a bump in the government's efforts to improve the investment climate in exploration.

I. Administrative Inefficiency - To execute the role and responsibilities Directorate General of Hydrocarbon needs to coordinate with multiple government agencies. DGH is thus functioning as chief technical adviser to the government and not as a regulator for the upstream sector. As of now, the government is discharging the regulatory functions.⁴⁴ There have been several litigations and arbitration proceedings involving DGH and operators.⁴⁵ As a result, it has not only dampened investment scenario in the country but also withheld investments in production and exploration

⁴¹ [Http://Petrotech.In/Uploadfiles/Speakerprofiles/PS%.Pdf](http://Petrotech.In/Uploadfiles/Speakerprofiles/PS%.Pdf)
Petro watch, *Angry Sintex Blames DGH for Shut down Decision*, Vol 19, PW 24 Exploration and Production, Exploration and Production. Aug 13, 2016.

⁴² [Http://Www.Petrowatch.Com/Synopsis.Php?Artid=14882&W=1](http://Www.Petrowatch.Com/Synopsis.Php?Artid=14882&W=1).
Petrofed, *Review of Role of Upstream Regulator in India* March 2014.

⁴³ [Http://Www.Fipi.Org.In/Reports/Role%20of%20Upstream%20Regulator%20in%20India.Pdf](http://Www.Fipi.Org.In/Reports/Role%20of%20Upstream%20Regulator%20in%20India.Pdf).
CAG. 'Performance Audit Of Hydrocarbon Production Sharing Contracts', Ministry Of Petroleum And Natural Gas, Comptroller And Auditor General Of India, Report No. 19 Of 2011-12 For The Period Ended March 2011.

⁴⁴ *Ibid*

⁴⁵ Tanya Thomas, *KG- D6 : RIL may not back off in 2 cases*. THE HINDU. June 25, 2017.
<https://www.thehindubusinessline.com/companies/kgd6-ril-may-not-back-off-in-2-cases/article9736891.ece>.

activities.⁴⁶ This situation perhaps has been created because the functions of DGH do not refer to 'regulation' in the name of DGH. Further, it has been stated that in many cases, where powers have been delegated to DGH, it acts on the advice of Management Committee. In addition, for blocks having discoveries or where production has started, the decisions are taken by the Management Committee taking technical inputs from DGH. And decisions of the DGH do not lie in any appellate body or court which is the hallmark of an independent regulator.⁴⁷

- 1) **Manpower Challenges**– DGH has no permanent cadre of its own; all working employees are being drawn on deputation from various PSUs. Every PSU has a repatriation policy which requires its employees to be repatriated back to them after certain duration. As in the case of the DGH, the Board continues to draw in players from the oil and gas sector for meeting its staffing requirements. Issues of legacy of the members of the board to their parent organizations have also affected the independence of functioning of the members. As a result of this system, DGH is facing the problem of lack of experienced officers due to their repatriation and comparatively less experienced officers available majorly for the work related to roles and responsibilities of DGH".
- 2) **Financial Dependence**- DGH is funded through OIIB⁴⁸ grants and every year DGH presents its estimate for fund requirement and obtain necessary approval from OIIB.⁴⁹
- 3) **Composition of the Board**- Further, concerns have been raised regarding the composition and independence of the members of the DGH, since they are mostly appointed on deputation from oil companies whose activities fall under the regulatory purview of the DGH.

II. Adjudicatory Inefficiency

⁴⁶ *Ibid.*

⁴⁷ Standing Committee on Petroleum & Natural Gas (2016-17), Functioning Of Directorate General of Hydrocarbons, Sixteenth Lok Sabha, Seventeenth Report, MINISTRY OF PETROLEUM & NATURAL GAS December, 2016.
[Http://164.100.47.193/Lsscommittee/Petroleum%20&%20Natural%20Gas/16_Petroleum_And_Natural_Gas_17.Pdf](http://164.100.47.193/Lsscommittee/Petroleum%20&%20Natural%20Gas/16_Petroleum_And_Natural_Gas_17.Pdf).

⁴⁸ Oil Industry Development Board.

⁴⁹ Supporting MoPNG and Other Government Bodies, Directorate General of Hydro-Carbons, Ministry Of Petroleum and Natural Gas.
[Http://Www.Dghindia.Org/Index.Php/Page?Pageid=54&Name=DGH%E2%80%99S%20ACTIVITIES](http://Www.Dghindia.Org/Index.Php/Page?Pageid=54&Name=DGH%E2%80%99S%20ACTIVITIES).

It is observed that there have been multiple disputes with regard execution of production sharing contracts. In the absence of an appellate authority, the disputes against the DGH have to be appealed before Courts. This leads to delay in exploration activities.

- 1) **Absence of Adjudicatory Bodies-** An adjudicatory authority must be set up through consultation to hear the review orders passed by the DGH. . Further, concerns have been raised regarding the composition and independence of the members of the DGH, since they are mostly appointed on deputation from oil companies whose activities fall under the regulatory purview of the DGH. This could lead to a conflict of interest between the DGH's objectives and the oil companies operating in the sector.⁵⁰
- 2) **Representation In Arbitration Process-**"DGH is represented in the arbitration proceedings through Attorney General (AG), Solicitor General (SG), Additional Solicitor General Govt. Standing Counsels, reputed Sr. Advocates, Advocates and Law Firms".
- 3) **Failure to Resolve Dispute-**When asked about by the cases that have been referred to courts due to failure of arbitration.⁵¹ The Ministry submitted as under: "There are 8 cases wherein party to the arbitration being not satisfied with award passed by arbitral tribunal approached to court against award.⁵² "When asked about the steps taken by DGH to find a conciliatory way out to avoid resorting to foreign arbitral tribunals by operators, which are inclined towards rewriting the provision of contract affecting adversely the Government shares.⁵³

1.3.1.4 -Establishment of Independent regulator

The presence of independent regulators in sectors like telecom, power, financial services, etc. vested with statutory powers further supports the views of the Committee. The upstream sector

VI. ⁵⁰ Sanjay Gupta, *DGH For Fresh Approach To Solve Oilfield Disputes*, TIMES OF INDIA, FEBRUARY 4, 2015.

<https://timesofindia.indiatimes.com/Business/India-Business/DGH-For-Fresh-Approach-To-Solve-Oilfield-Disputes/ArticleShow/46114145.cms>

⁵¹ Sanjeev Choudhary, *Panna Mukta Tapti Oil Field Dispute - Ril, Shell, and Ongc Asked To Pay \$3 B In Penalty*. THE ECONOMIC TIMES, Jul 18 2017.

<http://epaperbeta.timesofindia.com/Article.aspx?Eid=31816&Articlexml=PANNA-MUKTA-TAPTI-OIL-FIELD-DISPUTE-RIL-Shell-18072017001014>.

⁵² Kelkar committee Report, Roadmap for Reduction in Import Dependency in Hydrocarbon Sector by 2030– Part I. The Ministry of Petroleum & Natural Gas, Government of India. Dec 2014.

<http://petroleum.nic.in/sites/default/files/kelkar.pdf>.

⁵³ *Ibid*

does not have any regulator at all. Basically, the DGH carry out contract management and some of regulatory functions on behalf of Ministry of Petroleum and Natural Gas⁵⁴

Defining clear roles, responsibilities and power for each upstream institution and objectives of each institutional entity, both Ministry of Petroleum and Natural Gas is very important. The administration of these rules would require the regulator to function in a quasi-judicial manner in conformity with the principles of administrative law. 8 key factors of an Independent Regulatory Body are:⁵⁵

1. Independence and accountability of the regulator.
2. Relationship between the regulator and policymaker
3. Autonomy of the regulator
4. Processes – formal and informal – by which decisions are made.
5. Transparency of decision-making by the regulator or other entities making regulatory decisions.
6. Predictability of regulatory decision-making.
7. Accessibility of regulatory decision-making.
8. Organizational structure and resources available to the regulator.

Downstream petroleum regulatory developments have been noteworthy in India. Within a very short period, the regulator developed some critical regulations relevant to developing natural gas pipelines, developing City Gas Distribution network, and ensuring safe operations. Largely the regulator achieved its objectives as defined in the Petroleum and Natural Gas Regulatory Board Act. During the short span of its existence, the regulator faced a fair amount of challenges to remain relevant and meaningful. On few occasions, the regulator acted beyond its regulatory authority leading to legal conflict with the entity.⁵⁶ This could be easily resolved as clear roles and Jurisdiction of the board has been defined in the statutory provisions of the board.

⁵⁴ *Ibid*

⁵⁵ Jon Stern & Bernard Tenenbaum, *Handbook For Evaluating Infrastructure Regulatory Systems*, The International Bank For Reconstruction And Development, THE WORLD BANK. 2006.
<http://siteresources.worldbank.org/EXTENERGY/Resources/336805-1156971270190/HandbookForEvaluatingInfrastructureRegulation062706.pdf>

⁵⁶ *Ibid*

Compared to other successful regulators like CERC and TRAI.⁵⁷ Inference can also be taken from the Indian Telecom Sector has an independent regulator — the Telecom Regulatory Authority of India (TRAI) was established to regulate the Indian telecommunication sector which is also a technically complex and variant sector, which is a complex structure of different services.⁵⁸ TRAI was entrusted with multifarious functions and responsibilities, as well as powers enabling it to play the role of an effective and independent regulator.⁵⁹

Therefore, it is suggested that MoPNG should vest the regulatory functions being performed by DGH with PNGRB so that it can be the regulator for both upstream sector as well as for the downstream. This can be said as to be effective, all regulatory institutions should normally be empowered to make regulations, issue licenses, set performance standards and determine tariffs. They should also have the powers to enforce their regulations, license, conditions and orders by imposing punitive measures including suspension or cancellation of licenses. They may also adjudicate on disputes among licensees and between the licensees and the government, subject to review in appeal before an Appellate Tribunal that is headed by a judicial person. The PNGRB possesses all these qualities and has been trying to discharge all its functions, through the provisions of the act.

1.3.2 Need of a Sector Exclusive Appellate Tribunal

Reform and updating of laws have to be a continuing exercise, which will prepare the sector to cope with the emerging situation as also help in resolving various types of disputes that may arise. Such initiatives should not merely take into account telecommunications issues alone but also look at the structure of regulatory body and dispute settlement mechanism and their ability to address new issues and resolve disputes in a transparent, speedy and effective manner. In due course of time, a need for a system of adjudication has arisen which is more suited to give response to the emerging requirements of the society which may not be as elaborate and costly as provided by the Courts of law. The primary reason for the creation of Tribunals was to overcome the crisis

⁵⁷ *Ibid*

⁵⁸ Vikram Raghavan, *Communications Law in India: Legal Aspects of Telecom, Broadcasting and Cable Services*. (Lexis Nexis Butterworths, 2009) .

⁵⁹ The Telecom Regulatory Authority of India Act, 1997.

of delays and backlogs in the administration of justice and for reason of expertise.⁶⁰ The need of expert opinion in specialized sector can be derived from various other jurisdiction like company law. Therefore, the Administrative Tribunals have been established to overcome the major lacuna present in the Justice delivery system.⁶¹

The definition of a tribunal can split up into six criteria, which collectively are necessary and sufficient to designate a body as a tribunal. These are:⁶²

- (1) Permanency;
- (2) Independence from the Executive;
- (3) set up by or under law made by Parliament;
- (4) To solely decide a lis between parties;
- (5) Specific jurisdiction vested by statute; (6) not part of the regular judiciary.

1.3.2.1 Need of Appellate Tribunal

There should be a distinct separation in policy-making, regulatory and service provision functions of an authority. Administrative Tribunals are independent and specialized Governmental agencies established under the federal or provincial legislation to implement the legislative policy.⁶³ Appointment to such agencies is usually by Order-in-Council. Members are ordinarily chosen for their expertise and their experience in the particular sector which is regulated by the legislation. Regulatory body - “without prejudice” basis, may amount to or imply a determination of the parties’ rights, liabilities, or wrongdoings.⁶⁴ The principle of separation of power. However, the adjudicating tribunal, on the other hand, must be headed by a judicial member whose appointment and conditions of service are comparable to those holding similar positions in the judiciary. This adjudication tribunal must be insulated from the rest of the regulatory system and must adopt a process of the highest judicial standards, to resolve the disputes before it.⁶⁵

⁶⁰ *Ibid.*

⁶¹ K. I. Vibhute, *Administrative Tribunals and the High Courts: A Plea for Judicial Review*, 29 JILI 524 (1987).

⁶² *Ibid.*

⁶³ Wade, H.W.R & Forsyth, C.F., *Administrative Law*, OXFORD UNIVERSITY PRESS, United Kingdom, 10th Edn. 2009.

⁶⁴ *Ibid.*

⁶⁵ Approach to regulation- *Issues and Options*, Consultation Paper, PLANNING COMMISSION, GOVERNMENT OF INDIA.2006

The separation of powers principle is complied with when the rule-making and administration of rules are vested in the regulatory institution without combining judicial functions which are reserved for a differently constituted body. The benefits of establishing an Appellate Tribunal are:⁶⁶

- i. **Expertise**-The biggest strength of a specialized mechanism in the telecom sector is the assurance that the issues will receive a focused treatment by a panel, which is well versed with the issues in the sector. A specialized tribunal model to give focused attention to disputes in the sector.⁶⁷ By doing away with certain appellate tribunals and merging or giving their work to others, there is a very high risk of further pendency with the tribunal that has been given the work, as not only the matters to be adjudicated upon increase but also for the members to re-learn and understand the practical aspects of relevant laws, which is bound to lead to inordinate delays in resolving disputes.⁶⁸
- ii. **Impartial** A second advantage is the character of the body which is impartial and follows a transparent procedure affording opportunities to the litigants to present their respective viewpoints.
- iii. **Expeditious** third advantage is its decision making process which is comparatively faster than the judicial process.
- iv. **Consistency and Uniformity**-A fourth advantage is in terms of greater consistency and uniformity in interpretation of rules and laws as compared to civil courts. Finally, its decisions are legally enforceable.

Due to growing commercial ventures and activities by the Government in different sectors, along with the expansion of Governmental activities in the social and other similar fields, a need has arisen for availing the services of persons having knowledge in specialized fields for effective and speedier dispensation of justice as the traditional mode of administration of justice by the Courts of law was felt to be unequipped with such expertise to deal with the complex issues arising

Noor Mohammad Bilal, *Dynamism Of Judicial Control And Administrative Action* (Deep And Deep Publications, New Delhi 2004

⁶⁷ *Ibid.*

⁶⁸ Amity Vyas, *A Case Against Merging Of Appellate Tribunal*, REDIFF.COM, April 03 2017.
[Http://Www.Rediff.Com/Business/Column/Column-A-Case-Against-Merging-Appellate-Tribunals/20170403.Html](http://Www.Rediff.Com/Business/Column/Column-A-Case-Against-Merging-Appellate-Tribunals/20170403.Html).

in the changing scenario.⁶⁹ The Tribunals emerged not with the sole promise of speedy, effective, decentralized dispensation of justice but also the expertise and knowledge in specialized areas that was felt to be lacking in the judges of traditional Courts.⁷⁰

In 1969, Justice J.C. Shah Committee, popularly known as The High Courts' Arrears Committee, was set up by the Union Government which pointed out that there was an urgent need to set up independent Tribunals to exclusively deal with service matters of Government employees in view of the pendency of large number of writ petitions filed by Government servants pending in the Supreme Court and various High Courts.⁷¹

The Law Commission was of view that if at least one appeal is to be provided against the orders of tribunals before they reach the Supreme Court an intra-tribunal appeal could be provided under the Act of 1985. In this context the Law Commission recommends the Government to make necessary and appropriate amendments in the administrative tribunal Act, 1985 and to request the Honorable Supreme Court to reconsider L. Chandra Kumar's case by a larger Bench of the Supreme Court in the interest of the government servants and to achieve the speedy and less expensive justice.⁷²

Tribunals basically deal with the cases under special laws and therefore they provide special adjudication, outside Courts. *In State of Gujarat v. Gujarat Revenue Tribunal Bar Association*⁷³

'.....a particular Act/set of Rules will determine whether the functions of a particular Tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority, i.e., a situation where, (a) a statutory authority is empowered under a statute to do any act (b) the order of such authority would adversely affect the subject and (c) although there is no lis or two contending parties, and the contest is between the

⁶⁹ Kagzi, M.C.J, *The Indian Administrative Law*, Metropolitan Book Co. Pvt. Ltd., Delhi, 3 Rd Edn., 1973

⁷⁰ Jain, M.P., Jain, S.N., *Principles of Administrative Law 1987*, Lexis Nexis, India, 7 ed., 2011.

⁷¹ *Ibid.*

⁷² L. Chandra Kumar V. Union of India (1997) 3 SCC 261.

⁷³ (2012) 10 SCC 353.

authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court.'

The adjudication of disputes pertaining to service matters requires specialized bodies because of the delay in Court room procedures. In *Kamal Kanti Dutta v. Union of India*,⁷⁴ 59 it was observed that:

“There are few other areas of litigation than disputes between members of various services inter se, where the principle that public policy requires that all litigation must have an end can apply with greater force. Public servants ought not to be driven or required to dissipate their time and energy in court-room battles. Thereby their attention is diverted from public to private affairs and their inter se disputes affect their sense of oneness without which no institution can function effectively. The constitution of Service Tribunals by State Governments with an apex Tribunal at the Centre, which, in the generality of cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matter. The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many and displease only a few.’

1.3.2.2 Establishment of Petroleum Dispute Settlement and Appellate Tribunal

Initially, dispute settlement fell within TRAI's purview. But at the same time, there was the realization that regulation and dispute settlement need not necessarily be handled by the same entity; the two being different sets of activities. Coupled with this was the feeling that regulation

⁷⁴ AIR 1980 S.C. 2056.

alone was not enough to further the mission of competition and protection of consumer interest. Moreover, there was the perceived need to infuse the dispute settlement mechanism with more credibility and transparency⁷⁵ Officials of the Department of Telecom (DoT) were members of TRAI as well.⁷⁶ While TRAI as an institution retained a regulatory and dispute resolution function, policy making and operations continued to remain with DoT. This situation inevitably led to a conflict of interest between the authority and the ministry, as well as concerns about TRAI's ability to be an independent and impartial adjudicating body.⁷⁷30 In this background, the need for a separate body to adjudicate disputes in the telecommunications sector was felt. Instead of strengthening the independence of TRAI, the Government amended the TRAI Act in 2000 to establish the Telecom Disputes Settlement and Appellate Tribunal (TDSAT)⁷⁸, which was vested with the TRAI's powers to adjudicate disputes between licensors, licensees, service providers and consumers.⁷⁹ The Policy makers perhaps saw merit in distancing regulatory function from an adjudicatory role for a speedy resolution of disputes and enhancing the credibility of the adjudicatory body by providing for a retired judge of the Supreme Court to chair this body.⁸⁰ This body has been entrusted with the responsibility for resolution of disputes between licensor and licensees, between two or more service providers and between a service provider and a group of consumers. Appeal against the order of this body lies only before the Supreme Court of India and that too when a point of law is involved.⁸¹

These considerations may have been behind the amendment, in the year 2000, of the Telecom Regulatory Authority of India Act, 1997. The amendment led to the setting up of the Telecom Dispute Settlement and Appellate Tribunal (TDSAT). This appellate body has strengthened the

⁷⁵ 59 AIR 1980 S.C. 2056. 29

⁷⁶ Competition Regime As A Determinant Of Consumer Welfare: Focus On Indian Telecom "Monograph Published By CUTS International.

⁷⁷ Noor Mohammad Bilal, *Dynamism of Judicial Control and Administrative Action* (Deep and Deep Publications, New Delhi 2004).

⁷⁸ Section 14 of Telecomm Regulatory Authority of India 1997- Establishment of Appellate Tribunal. —The Central Government shall, by notification, establish an Appellate Tribunal to be known as the Telecom Disputes Settlement and Appellate Tribunal to—

(a) adjudicate any dispute—

(i) between a licensor and a licensee;

(ii) between two or more service providers;

(iii) between a service provider and a group of consumers;

⁷⁹ Medha Srivastava, *THE TDSAT REVISITED*, Vidhi Centre for Legal Policy, June 2016.

⁸⁰ *Ibid.*

⁸¹ Alok Prasanna Kumar, *State Of The Nation's Tribunals*, Vidhi Centre for Legal Policy, June 2016.

regulatory framework, provided an avenue for expeditious dispute resolution, boosted investor confidence and contributed towards the smooth functioning of the telecommunication sector in India.

TDSAT has, within a very short period of its functioning, become a credible entity inspiring confidence among stakeholders. The experience to date shows that there is now more consistency in dealing with telecommunication issues. This is because TDSAT does not only give service providers the opportunity to seek a final settlement in disputes that concern them, make it possible for consumers to get a fair deal, but the body also sanctifies some of the decisions taken by the regulator; which sets the tone and pace of corporate governance in the telecommunication sector and brings stability to the marketplace.

In the context of an oil and gas, the distinguishing principles of dispute resolution should be efficiency and speed. Regulatory and appellate bodies can become strong and credible institutions and play an effective role in dispute resolution only if the attributes of a truly independent body with requisite enforcement powers are embedded in the legislation responsible for their creation.⁸²

To strengthen the dispute settlement creating a tribunal in addition to present dispute settlement mechanism dedicated to the Petroleum sector is must. Currently, the electricity sector has state-level regulatory commissions; at the apex is the Central Electricity Regulatory Commission. Appeals against CERC order go to the Appellate Tribunal for Electricity, also appellate regulator for the downstream petroleum sector.⁸³ Merging tribunals may lead to administrative convenience, but pendency of cases is likely to increase.⁸⁴

The Petroleum and Natural Gas Regulatory Board (PNGRB) is the first level of appeal for regulatory disputes; currently, it has no chairman and only one member. Further, concerns have been raised regarding the composition and independence of the members of the DGH, since they are mostly appointed on deputation from oil companies whose activities fall under the regulatory purview of the DGH. This could lead to a conflict of interest between the DGH's objectives and the oil companies operating in the sector. In order to reduce arbitration arising out of disputes, it is important to have a clear, sound, fair and transparent decision making process which will clarify

⁸² *Review of Upstream Commercial Structures and Insights from Global Practices*, the Boston Consulting Group, September 2012.

⁸³ *Ibid.*

⁸⁴ *Id.*

who decides what, as well as the extent of their authority and discretion. In most of the cases arbitrators have considered contractor's views more on technical merits vis-à-vis contractual merits. There is a need to relook in the process for dealing a dispute at the initial stage itself. Several of these arbitrations, numbering over have been festering for years. The government has taken several policy steps to attract investors by making it easier for companies to do business and wants to ensure these and future efforts are not wasted by unnecessary legal disputes in future.

The government should consider creating an independent Appellate Tribunal for the Oil and Gas sector –Petroleum Dispute Settlement and Appellate Tribunal (PDSAT)–comprising a panel of dedicated senior officials that would adjudicate between the state and oil company to resolve disputes which cannot be settled through sole expert. This tribunal, if constituted, should be given appropriate legal powers with its judgment being binding, and subject to appeal only in the Supreme Court. Appeals from against the orders and decree of the Regulatory bodies namely- should be preferred so as to create a Uniform system of appeals in the sector rather than multiple nodal points.⁸⁵

II. CONCLUSION

Dispute settlement and adjudication through the Civil Courts has been complex, lengthy and unaffordable process for many. There is a need to put in place an alternative legal mechanism harnessing the requisite judicial and technical expertise in the fast growing Oil and Gas sector. In view of the explosive growth and complex emerging scenario, an integrated and comprehensive dispute settlement mechanism to protect the interest of consumers and sector is need of the hour. An effective dispute settlement mechanism is necessary for promoting growth in Oil and Gas sector. If disputes/ grievances are not resolved expeditiously, the result will be uncertainty in the sector, which in turn, may affect investment environment. It is submitted that the study attempts to look at a model dispute resolution mechanism similar to the Electricity sector and the Telecommunication sector.

India being a net importer of crude oil and natural gas is subject to the vagaries of the global oil & gas markets. The developments in the hydrocarbon space have increased the challenges faced

⁸⁵ E.E.Smith, John &. Dzienkowski, *International Petroleum Transactions*, Rocky Mountain Mineral Law Foundation, 2nd Ed, 2000.

by the players in this sector. The political unrest and economic sanctions in some countries that were major exporters of crude to India have furthered the problems for Indian oil & gas companies. The fluctuation of oil prices in the global markets has been a cause of concern for the country. Planning for long-term growth has thus become crucial for companies operating in the sector. The regulatory regime has faced many challenges in India's current context. These include the huge administrative burden for MoPNG and DGH, cost and time overrun for projects due to delays in clearances and operational decisions, and disputes and impasse in decision making. It is thus clear, that in order to have a successful and competitive sector environment in India, changes need to be made in the current contractual structure. The chronic problem lies in the increasing pendency of disputes and lack of clarity in law,⁸⁶ Any investor would get torn among these separate laws when it comes to the brass-tacks, only to be running from pillar to post in complying with the diverse set of an enlarging legislative maze.

Policies adopted by the government, shapes the energy landscape of a country. The government usually looks at the energy sector on a holistic basis and plans integrated energy policies that factor in the pull-and-push of each source of primary energy. India, unfortunately, has a legacy of different ministries working towards development of different sources of primary energy. There are still some lacunae in governance of the sector, which need to be addressed for it to perform better. This paper has identified certain issues that need to be addressed for sustaining development in the sector and to foster competitive practices. A careful analysis of the existing legal, policy and institutional framework in India reveals a somewhat haphazard and uneven approach to regulation across and within different sectors of the economy resulting in inadequate and expensive reform. The regulatory framework in the oil and gas sector has developed mutually exclusive of each other with very little co-ordination or cross fertilization of ideas across sectors. *Firstly*, the absence of an autonomous regulator in the upstream segment affects the level of clarity and therefore the development of exploration and production activities and regulatory uncertainty discourages competition and entry of new players. Investment uncertainties are likely to remain without an independent upstream regulator. New policy measures, supported by an independent agency with statutory power, would boost confidence in India's upstream sector,

⁸⁶ Jiger Saiya, Tax Partner, BDO India. The Tax tangle, Business today, January 3 2016- Page -21, Business today <https://view.joomag.com/business-today-3rd-january.../0513941001450266826?...21>

Secondly Establishing of Appellate Tribunal for the Oil and Gas sector exclusively. The separation of powers principle is complied with when the rule-making and administration of rules are vested in the regulatory institution without combining judicial functions which are reserved for a differently constituted body. Such a regulatory institution would essentially perform the erstwhile role of the government in making rules and enforcing them through licensing and other mechanisms. To sum up, regulatory reforms are important for attracting investment to creation of infrastructure and promoting consumer satisfaction to the extent possible. These are the principles of separation of powers. However, the adjudicating tribunal, on the other hand, must be headed by a judicial member whose appointment and conditions of service are comparable to those holding similar positions in the judiciary. This adjudication tribunal must be insulated from the rest of the regulatory system and must adopt a process of the highest judicial standards, to resolve the disputes before it.

Regulatory and appellate bodies can become strong and credible institutions and play an effective role in dispute resolution only if the attributes of a truly independent body with requisite enforcement powers are embedded in the legislation responsible for their creation. Regulators can set up sector forums and encourage sector participation in such bodies to develop common practices that will reduce the occurrence of disputes.