

FORUM OF REGULATORS



REPORT OF THE WORKING GROUP ON SHARING OF CUSTOMER INFORMATION

JUNE 2016

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1. Introduction

1.1 The Forum of Regulators was constituted as per notification dated 16th February, 2005 in pursuance of the provision under section 166(2) of the Electricity Act, 2003 with the primary objective of harmonization of regulations in the power sector framed by the Central Electricity Regulatory Commission (CERC), State Electricity Regulatory Commissions (SERCs) and Joint Electricity Regulatory Commission (JERCs). The Forum consists of Chairperson of CERC and Chairpersons of SERCs and JERCs. The Chairperson of CERC is the Chairperson of the Forum.

1.2 RBI vide their letter dated 13th August 2014 to CERC referred to the report of Dr. Nachiket Mor submitted in January 2014. The report recommended forming a Committee on ‘Comprehensive Financial Service for Small Businesses and Low Income Households’. The objective of the Working Group was to develop a framework for sharing of data between telecom companies, electrical utilities and credit bureaus, as there is a requirement of ownership of customers pertaining to their own transaction (credits, payments, digital and online). In order to achieve this, the report sought that a robust legal and regulatory framework around customer data generated in various transactions needs to be developed for signalling the credit worthiness of borrowers etc. This framework would be in line with the Financial Sector Legislative Reforms Commission (FSLRC) Draft Indian Financial Code.

1.3 In view of the above recommendation of Dr. Nachiket Mor, RBI constituted a Working Group including members from RBI, Telecom Regulatory Authority of India (TRAI), CERC, Maharashtra Electricity Regulatory Commission (MERC), all four Credit Information Companies (Credit Information Bureau (India) Ltd, Equifax Credit Information Services Pvt. Ltd, Experian Credit Information Co. of India Pvt. Ltd, and Highmark Credit Information Services Pvt. Ltd), a telecom Company and an electric utility company. RBI invited CERC to nominate an official (being an apex regulator) and the same was accepted by CERC.

1.4 The first meeting of the Working Group on ‘Comprehensive Financial Services for Small Businesses and Low Income Households’ was held on 14th October 2014 at RBI HQ, Mumbai. In the meeting, the representatives of various electricity utilities highlighted their concern with respect to sharing of customer information with Credit Information Companies (CIC’s).

1.5 The members deliberated that, Electricity Utilities which maintain consumer data are mostly governed by the regulations framed by concerned SERC. CERC being the Apex regulator dealing only with inter-state matters, no consumer database is maintained or generated. It was suggested that, since there is no hierarchical relationship between CERC and SERCs, Equifax, being one of the CICs, volunteered to make a presentation in a meeting with Forum of Regulators (FOR) on the similar best practices being followed by utilities in USA on utility exchange and their applicability in the Indian context.

1.6 Accordingly, M/s Equifax, one of the CIC’s made a presentation before the FOR on 01st December 2014 at New Delhi. The presentation highlighted the necessity of sharing credit information of consumers, users of such information and the need for the development of framework which will be in line with the draft financial code of RBI.

2. Forum of Regulators (FOR) Working Group

2.1 Consequently the FOR formed a Working Group consisting of the Forum Members along with one representative from RBI and one from a Credit Information Company to further examine the matter with respect to relevant provisions of National Electricity Policy, Tariff Policy & the provisions contained in Electricity Act 2003. The group was mandated to study the implications for the power sector and necessity of sharing of customer information of electricity with CICs.

2.2 The composition of the Working Group is as follows

Chairperson, Central Electricity Regulatory Commission (CERC)

Chairperson, Bihar Electricity Regulatory Commission (BERC)

Chairperson, Rajasthan Electricity Regulatory Commission (RERC)

Chairperson, Uttar Pradesh Electricity Regulatory Commission (UPERC)

Chairperson, Jharkhand State Electricity Regulatory Commission (JSERC)

Shri Rajesh Jai Kanth, Deputy General Manager, RBI

Shri Arun Thakral, CIBIL

3. Deliberations of the FOR Working Group

3.1 The first meeting of the FOR Working Group for assessing the necessity of sharing of customer information of electricity utilities with credit information companies was held on 17th February 2015 at New Delhi. The Working Group deliberated on various issues which included issues related to privacy of data, utility of the data and costs related to collection of such data. Accordingly, it was decided to conduct a sample test which will be coordinated by office of Chairperson, UPERC. Further legal and regulatory issues pertaining to sharing of consumer information would be studied in coordination with office of Chairperson, JSERC and discussed in subsequent meeting of the Working Group.

3.2 The second meeting of the FOR Working Group was held on 06th April 2015 at New Delhi. The Working Group was informed that the data from the distribution companies of Uttar Pradesh (identified for the pilot study) was being arranged for the study to be conducted by CICs. Chairperson JSERC presented his views on the privacy issues pertaining to sharing of information of customers of electricity utilities in light of the Constitutional and legal framework. Subsequently, though UP discoms shared the data with CIBIL, CIBIL requested for identity of the customers in order to complete the pilot study's. This request was however not accepted by FOR in view of decisions taken earlier that identity of consumers would not be disclosed. CIBIL was requested to proceed with their study sans consumer information

4. Deliberations of the RBI Working Group

4.1 Subsequently, RBI sought final inputs from FOR by 15th June, 2015 for preparing the Report for the RBI Working Group. The correspondence from RBI states

“It is proposed to convene the final meeting of the group tentatively on Friday 26 June 2015 at RBI, Mumbai for signing of the report. You may therefore keep yourself in readiness for the same. Should you have any further inputs to contribute, the same should be received at our end latest by 15 June, 2015 vide email to rjkanth@rbi.org.in / alpanatke@rbi.org.in.”

4.2 FOR reply to RBI is stated below

“In this regard, please refer to our letter of even No. dated 14th May, 2015 wherein we have stated that a working Group of FOR was constituted to study the necessity for sharing of consumer data of Electric Utilities with Credit Information Companies.

In this regard, I am directed to state that the recommendations of the FOR, on finalisation would be communicated to you separately.”

4.3 The RBI Working Group submitted the final report on 11th June, 2015. Para 3.10 of the Report, which is related to FOR, states as under

“The Working Group is of the view that FOR may advise to the SERCs to amend the regulations related to electricity supply code and other conditions of supply as as to incorporate suitable clause that the data collected by Distribution Company may be shared with the CICs by entering into a suitable agreements with them”

4.4 RBI in their correspondence to the FOR on 28th August, 2015 informed that requisite information for conducting the study was not provided by the distribution companies of Uttar Pradesh to CIBIL as a result of which the study could not be conducted by CIBIL.

4.5 The information sought by CIBIL included name, address and phone numbers of the consumers which FOR reiterated, could not be shared as it was already decided so in the 1st meeting of the RBI Working Group. However, FOR was agreeable to send data of 50,000 consumers without details of identity.

4.6 The Final meeting of the RBI Working Group was held on 18th September, 2015 and the final report was shared with FOR on 30th September, 2015 (**Enclosed at Annexure-I**). The clauses of the report applicable to FOR/CERC/SERCs are as follows.

- a) Chapter 3 of the report mentions that currently the individual consumer data available with the utilities is not shared.
- b) Para 3.2 has made specific reference to the Electricity Act 2003 which confers power upon SERCs to prepare regulations governing the electricity supply code.
- c) The report further states that further action with respect to preparation of regulation will be reviewed as per the report that will be submitted by FOR Working Group.
- d) The recommendations in Chapter 7, relevant to electricity utilities, have been included in the report. These include
 - Initiating of amendment to regulations related to electric supply code to incorporate suitable clauses that enable collection and sharing of data by distribution companies.
 - Inclusion of electric and telecom data within the meaning of credit information through notification by RBI in terms of Section 2(d)(v) and 2(f)(vii) of CICRA, 2005

- Setting up of expert group comprising of RBI, CERC and SERCs to examine the applicability of relevant provisions of CICRA and accordingly recommend draft regulations and licensing conditions for properly regulating the credit information between utilities and CICs
- Amendment to regulation 3 of Credit Information Companies Regulations, 2006 within the definition of the Specified Users by the exercising the powers conferred on RBI under Section 2(l) of the CICRA, 2005.

4.7 After examining the report of RBI, FOR in its letter dated 26th October, 2015 stated as below

“As already intimated by our letter dated 14th May, 2015, a Working Group has been constituted by the Forum of Regulators (FOR) to study the issue of developing a Framework for sharing of Data between Electric Utilities and Credit Information Companies.

We had also informed that CIBIL was to give a report based on data shared by the utilities in Uttar Pradesh. This report is yet to be submitted to the Working group. Once the report is submitted, the Forum of Regulators would peruse the same to arrive at a decision.

Therefore, any reference to FOR/ State Electricity Regulatory Commissions in the report may be made only after the Forum of Regulators has arrived at a consensus. Reference of a representation of CERC/FOR in the RBI Working Group may also be omitted in view of the fact that FOR is already seized of the matter”

5. Recommendations of FOR Working Group

5.1 In the above backdrop and as decided by the FOR Working group, the analytical view on the sharing of customer information of Electricity Utilities with CICs has been given by the Chairperson of Jharkhand SERC (**Annexure-II**) with specific reference to the Constitutional and legal framework and provisions related to right to privacy. These are as follows

a) Right to Privacy covered under Article 21 of the Constitution of India

The interpretation of the Article 21 in conformity with Article 12 of the Universal Declaration on Human Rights and Article 17 of the International Covenant on Civil and Political Rights, 1966 has widened the dimensions of Article 21 of the Constitution of India. This has been backed by the consideration by the Honourable Supreme Court of India in various decisions. Based on the understanding developed from the judgements of the Honourable Supreme Court of India, it is now a settled position that right to life and liberty under article 21 of the Constitution of India includes right to privacy and any person publishing anything concerning the above matters except with the consent of the person would be liable for action and damages.

b) The Privacy Bill, 2011

The various provisions of The Privacy Bill 2011 have been highlighted. As per the Bill, no person who has a place of business in India but has data using equipment located in India, shall collect or process, or use or disclose any data relating to individual to any person without consent of such individual. The Bill also mandates the establishment of a Data Protection Authority of India, provisions to investigate

data security breach and issue orders to safeguard the security interests of affected individuals.

c) Conflict between Right to Information & Right to Privacy

The importance of striking a balance between Right to Information & Right to Privacy has been stressed at various levels.

d) International Concepts of Privacy

The reference has been made to Article 12 of Universal Declaration of Human Rights (1948), Article 17 of International Covenant of Civil and Political Rights and Article 8 of European Convention on Human Rights. The said articles are concerned with privacy of human beings.

e) Information Technology Act 2000

Section 43A of the Information Technology Act 2000 provides protection of sensitive personal data and information of individuals. The provisions for action in tort in cases of breach of privacy have also been provided.

f) Aadhar Card Case

There have been concerns of biometrics data collected by Unique Identification Authority of India (UIDAI). Accordingly instructions have been given by the Honourable Supreme Court of India to refrain from sharing personal information of Aadhar Card holders with any government agency or any other third party without the consent of the individual concerned.

5.2 Thus, based on the constitutional and legal framework of Rights related to privacy above, the FOR Working Group opines that the proposal of sharing of customer information by Electricity Utilities with CICs may influence and affect the privacy for the following reasons:-

- a) Risk of potential for fraudulent use of data
- b) No provision for appropriate security vetting system of such data
- c) No standard scrutiny system and confidentiality
- d) No provision in the Credit Information Companies (Regulation) Act 2005 and the Rule and regulations 2006 for handling and controlling of complete consumer information by the third party for ensuring security. Further Electricity Utilities have not been included in the scope of this Act.
- e) Need of robust customer redressal system for security against the misuse of shared information and violation of the privacy right to meet the legal requirements. Such redressal system is currently not in place.

6. Conclusion

6.1 In view of the above, the FOR Working Group recommends that before developing the mechanism for sharing of customer information of Electricity Utilities with CICs, security system/ standard has to be evolved with statutory sanction along with the provision for peer review and the system of monitoring and vetting access of customers' database of the electricity utilities.

**Report of the Group to develop a Framework for Sharing of Data between
Telecom Companies, Electrical Utilities and Credit Information Companies**



**RESERVE BANK OF INDIA
DEPARTMENT OF BANKING REGULATION
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ABBREVIATIONS

BCG	Boston Consulting Group
CDR	Call Data Records
CERC	Central Electric Regulatory Commission
CIBIL	Credit Information Bureau of India Limited
CICRA	Credit Information Companies (Regulation) Act, 2005
CRIF HIGH MARK	CRIF High Mark Credit Information Services Private Limited
COCP	Company Owned Company Paid
COIP	Company Owned Individual Paid
DoT	Department of Telecommunications
EQUIFAX	Equifax Credit Information Services Private Limited
EXPERIAN	Experian Credit Information Company of India Limited
FCRA	Fair Credit Reporting Act (USA)
FICCI	Federation of Indian Chambers of Commerce and Industry
FOR	Forum of Regulators
FSLRC	Financial Sector Legislative Reforms Commission
IBA	Indian Banks' Association
MNO	Mobile Network Operator
MNP	Mobile Number Portability
MTNL	Mahanagar Telephone Nigam Limited
SERC	State Electricity Regulatory Commission
TDR	Transaction Detail Record
TRAI	Telecom Regulatory Authority of India
TSP	Telecom Service Provider
UID	Unique Identification Number / Aadhaar

Report of the Group to Develop a Framework for Sharing of Data between Telecom Companies, Electrical Utilities & Credit Information Companies

Executive Summary

1. Chapter 1 briefly discusses the background to the constitution of this Working Group by citing the relevant recommendations of the Nachiket Mor Committee, the Indian Financial Code as also the salient legal and regulatory features of the present credit information system in India. The Terms of Reference of the Working Group are spelt out at the end of the Chapter.
2. Chapter 2 discusses coverage of alternate data and cites evidence to support efficacy of such data for advancing financial inclusion of sections outside the mainstream besides highlighting the importance of alternate data for emerging credit markets. Global practices and case studies build the case for using electric and telecom data for increasing credit eligibility of low ticket borrowers who are largely self-employed or in the unorganised sector.
3. Chapter 3 deals with issues related to sharing of data of electric consumers for the purpose of signalling their credit worthiness. It discusses the views of electric utilities and CERC and postulates that sharing of payment related information of electricity supply consumers would also benefit the utilities by helping to identify defaulters that shift from one location (address) to another and provide incomplete information while obtaining a new connection. Some recommendations related to sharing electricity data have been made in this chapter.
4. Chapter 4 discusses the concerns and issues of TSPs with respect to sharing of subscribers' telecom data and the response of CICs on

how to manage these issues. The chapter contains recommendations with respect to TRAI, DoT and RBI and suggests fields of post-paid data required to be included in the information reported by TSPs to the CICs.

5. Chapter 5 briefly narrates the activities of the four CICs along with their views and experiences in using alternate data in different geographical domains.
6. Chapter 6 suggests legal and regulatory changes that are required in the CIC Act, Rules and Regulations so as to initiate use of alternate data for the purpose of assessing credit worthiness of electric and telecom consumers. Ownership of data and consumer protection issues have also been covered in this chapter.
7. Chapter 7 summarises the recommendations of this Working Group.
8. Annex contains proposed data format for sharing of data by the TSPs with the CICs. Select references and index are included in the report.

Chapter 3

Issues related to sharing of Electric data

Background

3.1 As per current regulation governing working of electric utilities in India, the initial decision of releasing electrical connection to consumers is not an optional one for them under the universal service obligation. Securing an electric supply connection by any bona-fide applicant is an entitlement and thus electric utilities are not authorised to verify the creditworthiness of applicant consumers. At the same time regulations have provided security deposit mechanism to address the issue of recoverable amounts / unpaid dues. It is pertinent to note that the collection efficiency in respect of industries receiving high tension electric supply is close to 100%.

Views of Electric Utilities and CERC

3.2 Some of the provisions of Electricity Act, 2003 confer powers upon the State Electricity Regulatory Commissions to prepare regulations that govern the electricity supply code and other conditions of supply within the state. Under these conditions, an applicant has to provide some information to the distribution licensee while making an application for supply of electricity, viz. (i) applicant's name and, whether or not the applicant is the owner of the premises to which supply of electricity is being applied for; (ii) address of premises for which supply of electricity is being applied for and billing address, if different from such premises for supply; (iii) where applicant is not the owner of the premises, name of owner of premises; (iv) purpose of usage of electricity and load applied for each such usage; (v) whether the application is for a new connection,

shifting of service, additional load, extension of service, change of name or restoration (where the disconnection was for a period of less than six months); etc.

3.3 At present, individual consumer data residing with electric utilities is not shared in any manner and hence the basic issue of the very legality of such sharing for the purpose of our mandate has to be adequately addressed. Members representing electric utilities and Central Electricity Regulatory Commission (CERC) were wary of the proposal on grounds of consumer protection and data security issues and expressed their reservations about data sharing with entities that were new on the scene, such as CICs. Disabusing consumers of unfounded apprehensions by way of a well thought consumer awareness campaign has to necessarily precede any successful implementation by first securing wider consumer acceptance. Once the necessary comfort levels in terms of favourable public perception has been gained, sharing specific aspects of their payment records on electric bills with the CICs could be worked out. The fields/aspects (name, address, contact number, overdue amount, days of arrears, etc.) of bill payment data to be shared with CICs would need to be deliberated in detail before considering the same for sharing.

3.4 Certain special aspects of electric billing and payment that differ from those associated with other services, present issues that require an upfront solution to have relevance in the context of “credit-worthiness”. Since electricity connection is provided to a premise and not to an individual, the person seeking connection to a particular premise could be different from the owner of the premise. The individual occupying a premise may change but the supply remains to the same premise. Therefore, timeliness of payment of bills would not truly reflect on the

credit worthiness of the owner of premise if a renter/lessee is paying the monthly bills. Further, the arrears in payment get accumulated against a particular premise and the regulations provide for an incoming consumer to take on the liability of the earlier consumer.

3.5 The Forum of Regulators (FOR) chaired by the Chairperson of Central Electricity Regulatory Commission (CERC) and having Chairpersons of State Electricity Regulatory Commissions (SERCs) as members is the apex level body in the power sector which harmonises the regulations in power sector and lays down standards of performance of licensees as required under the Electricity Act, 2003. It also evolves measures for protection of interest of consumers and promotion of efficiency, economy and competition in power sector.

3.6 Since sharing of consumers' electricity data with the CICs entails a policy change, the matter was deliberated in a meeting of FOR. The Forum decided that a small Working Group from amongst its members (i.e. few SERCs, CERC, RBI and CIBIL) be constituted for assessing the necessity of sharing of customer information of various electricity utilities with Credit Information Companies and its implications for power sector. The Working Group would inter alia consider the relevant provisions of the National Electricity Policy, Tariff Policy, the provisions contained in the Electricity Act, 2003 and would examine, analyse and give its recommendations on sharing of customer information of electricity utilities with Credit Information Companies.

3.7 The Working Group in its first meeting held on February 17, 2015 discussed the need for integration of electricity bill related details of consumers so as to reflect credit worthiness of customers. The Group

noted that this meant effecting changes in the way bills were raised and recorded so as to pin down the actual consumer rather than the building/premise to which the connection was sanctioned. Privacy related issues in sharing of data of electricity consumers with the CICs were also discussed. The Working Group was informed that there were effective provisions in the CICRA and the rules and regulations framed under it to regulate the business of credit information and that privacy and secrecy of customers' data residing with the CICs were adequately protected. It was suggested that for ensuring the privacy of individual subscribers' data, the utilities had to be brought under the purview of CICRA, rules and regulations.

3.8 In order to establish a use case for electric utilities, the Group was informed that sharing of payment related information of electric consumers would benefit the utilities by helping to identify defaulters of utility companies that shifted from one location (address) to another and gave incomplete information while obtaining a new connection. This reportedly, was a widespread problem in certain areas / states. The CICs could address this problem by identifying such defaulters by deploying their advanced matching logic tool using algorithms that gave weightage to different data fields of customers such as PAN number, address, telephone number, date of birth, etc. Moreover, since CICs held historical records of millions of customers, it was possible that a prospective defaulter of an electric utility could be identified based on his past performance on the banking loans, etc. On the positive side, it would enable inclusion of marginal farmers and wage labourers availing an electric connection to open accounts with banks as positive credit history of electricity bill payments would help banks' provide them credit facilities.

3.9 It was accordingly decided in the meeting of the Working Group that a random sample data of electricity consumers from rural areas of UP would be provided by Uttar Pradesh SERC to build a test case for assessing the use of consumer information of utilities for determining their creditworthiness. The test data with the names suitable masked to protect individual identity would be shared with CIBIL.

3.10 The need for obtaining the consent of consumers before sharing their information with CICs was also discussed. It was noted that although the Electricity Act was silent on this requirement, there was a need to evolve a mechanism to resolve any disputes that might still arise as a result of data sharing. Further the Working Group decided that the legal and regulatory issues pertaining to sharing of consumer information would be studied by one of the SERCs and would be discussed in the next meeting of the FOR for further action.

3.11 The Working Group set up by FOR is yet to submit its report to RBI. However, based on international case studies, this group is of the view that FOR may advise the SERCs to initiate amendment of the regulations related to electric supply code and other conditions of supply so as to incorporate suitable clause(s) that the payment and other related data collected by a distribution company may be shared with the CICs by entering into suitable agreements with them.

3.12 This group is also of the view that an expert group of RBI, CERC, SERC may be set up to examine the applicability of the relevant provisions of CICRA, rules and regulations to which the electric utilities would be subjected and recommend draft regulations and licensing conditions to which CICs may be required to be subjected so that the

business of sharing of credit information between utilities and CICs is properly regulated.

3.13 Customer awareness programs need to be undertaken to inform electricity customers about the sharing of post-paid subscriber data with CICs. Customer Acquisition Form (CAF) and bills should include a disclosure that the customer data will be shared with the CICs.

Chapter 7

Summary of Recommendations

7.1 Several studies internationally and in India have shown that reporting of alternate payment data (electric utilities and telecom companies) to credit bureaus and obtaining reports from them have improved payment behaviour of customers in these sectors and the benefits to these companies have exceeded the costs involved in reporting alternate data to the credit bureaus. We believe that expansion of the scope of credit information sharing to include bill payment histories can be very effective in promoting financial inclusion in terms of access to short and long term credit. Alternate data such as payments and prepayments on electric, telecommunications and other recurring obligations, can serve to evaluate the risk of those potential borrowers that are outside the credit mainstream and enable lenders / credit decision makers to grant credits to the people who truly deserve credit. It has been thus observed that the benefits of such reporting are manifold. For consumers, it leads to social inclusion and access to credit for unbanked population with no credit history or collaterals other than their reputation. It could also help consumers get risk-based pricing from lenders. Increased competition amongst service providers can also help end-users to get lower prices. For lenders, it could be better lending without increasing NPAs; and lower capital requirements. It could also help lenders prevent over-indebtedness by obtaining a comprehensive picture of borrowers' outflows, etc. For Telecom operators & Utilities, data sharing reduces moral hazard and adverse selection; it can also reduce probability of fraud especially when post-paid consumers move from one operator to the other to avoid paying previous bills, etc.

7.2 Alternate data also improves the performance of credit scoring models allowing for better predictions of risk, which results in more people being accepted. Alternate data also improves the performance of analytical models that help lenders better predict “ability to pay,” as a means of guarding against consumer over-indebtedness.

7.3 Based on international case studies, this group is of the view that Forum of Regulators (FOR) may advise the State Electricity Regulatory Commissions (SERCs) to initiate amendment of the regulations related to electric supply code and other conditions of supply so as to incorporate suitable clause(s) that the payment and other related data collected by a distribution company may be shared with the CICs by entering into suitable agreements with them.

7.4 RBI in consultation with Department of Telecommunications (DoT) and TRAI should take further steps like amending CICRA or issuing regulations under the powers conferred upon it so as to specify telecom companies as Credit Institutions for the purpose of furnishing certain fields of post-paid telecom subscription information to the CICs. The proposed data format for sharing of data in respect of individual subscribers by the TSPs with the Credit Information Companies is furnished at Annex.

7.5 RBI may issue a notification in terms of Section 2(d)(v) of the CICRA, 2005 to include electric and telecom data within the meaning of Credit Information. Similarly, RBI may specify the electric utilities and telecom companies as Credit Institutions in terms of Section 2(f)(vii) of the CICRA, 2005.

7.6 TRAI may make recommendation to DoT to consider changing the terms and conditions of licenses criteria to enable the licensees to share

the telecom data of subscribers with the Credit Information Companies by entering into agreement(s) with them. DOT may issue revised licencing criteria for relevant telecom licences by incorporating this condition.

7.7 An expert group of RBI, TRAI and DoT may be set up to examine the applicability of the relevant provisions of CICRA, rules and regulations to which the TSPs would be subjected and recommend draft regulations and licensing conditions to which CICs may be required to be subjected so that the business of credit information between TSPs and CICs is properly regulated.

7.8 An expert group of RBI, CERC, SERC may be set up to examine the applicability of the relevant provisions of CICRA, rules and regulations to which the electric utilities would be subjected and recommend draft regulations and licensing conditions to which CICs may be required to be subjected so that the business of credit information between utilities and CICs is properly regulated.

7.9 Customer awareness programs need to be undertaken to inform telecom and electricity customers about the sharing of post-paid subscriber data with CICs. Customer Acquisition Form (CAF) and bills should include a disclosure that the customer data will be shared with the CICs.

7.10 Regulation 3 of the Credit Information Companies Regulations, 2006 would require to be amended to include TRAI, CERC and the SERCs within the definition of the Specified Users by exercising the powers conferred on RBI under Section 2(l) of the CICRA, 2005. This will enable them to obtain relevant information from CICs to effectively discharge their statutory and regulatory functions.

7.11 The consumers in electric and telecom sector can seek their own credit information report / credit score under Regulation 9(k) of the CIC Regulations, 2006.

7.12 Sections 20 and 21 of the CICRA, 2005 and Regulations 10 and 11 under Chapter VI of the Credit Information Companies Regulations, 2006 may be suitably modified so as to ensure that the customers of electric utilities and telecom companies have access to their data and reports generated thereon. This would provide them facility to view their payment details and seek correction on any data which may have been incorrectly furnished by the data providers or incorrectly populated by the CICs.

7.13 Expert Groups comprising of RBI, TRAI, DoT, CICs, CERC and SERCs may be constituted to study technology related issues impacting sharing of information, including modification in format of data to be collected from electric utilities and telecom companies.

Analytical view on Proposal of sharing of Customer Information of Electricity Utilities with Credit Information Companies.

---- Justice N.N.Tiwari, Chairperson, JSERC

The issues pertaining to sharing of information of customers of the electricity utilities has to be considered in the light of the Constitutional and legal framework and provisions related to right to privacy.

Right to privacy is one such rights which has come in existence after widening up the dimensions of Article 21 of the constitution of India.

The courts have implied the right of privacy from Art.21 by interpreting it in conformity with Art. 12 of the Universal Declaration on Human Rights and Art. 17 of the International Covenant on Civil and Political Rights, 1966. Both of these international documents provide for the right to privacy.

The scope of this right first came up for consideration before the Hon'ble Supreme Court of India in the Case of Kharak Singh's v. State of U.P. The issue was regarding the validity of certain regulations that permitted surveillance of suspects. The Hon'ble Supreme Court held that Regulation 236 of the UP Police Regulation was unconstitutional as it clashed with Article 21 of the Constitution. It was held by the Court that the right to privacy is a part of right to protection of life and personal liberty. Here, the Court had equated right of privacy to personal liberty.

The right to privacy was again considered by the Supreme Court in 1975. In a detailed decision, JEEVAN REDDY J. held that the right to privacy is inherent in Article 21. This right is the right to be let alone. In the context of surveillance, it was held that surveillance, if intrusive, seriously encroaches upon the privacy of citizen, and infringes the freedom of movement, guaranteed by Articles 19(1) (d) and 21. Surveillance must be to prevent crime and on the basis of material provided in the history sheet. In the context of an anti-terrorism enactment, it was held that the right to privacy was subservient to the security of the State and withholding information relevant for the detention of crime can't be nullified on the grounds of right to privacy.

In Govind v. State of Madhya Pradesh, Mathew, J. accepted the right to privacy

emanating from Arts. 19(a), (d) and 21, but not an absolute right. “Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbra zones and that the right to privacy is itself a fundamental right, that right must be subject to restriction on the basis of compelling public interest”. Surveillance by domiciliary visits need not always be an unreasonable encroachment on the privacy of a person owing to the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which the surveillance is made. The right to privacy deals with ‘persons not places’.

It is now a settled position that right to life and liberty under article 21 includes right to privacy. Right to privacy is ‘a right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. Any person publishing anything concerning the above matters except with the consent of the person would be liable for an action and damages.

The Privacy Bill, 2011

The government considered the right to privacy - a very valuable right and intended to bring legislation. A Bill namely the Privacy Bill (2011) has been already prepared. The bill says, “every individual shall have a right to his privacy — confidentiality of communication made to, or, by him — including his personal correspondence, telephone conversations, telegraph messages, postal, electronic mail and other modes of communication; confidentiality of his private or family life; protection of his honour and good name; protection from search, detention or exposure of lawful communication between and among individuals; privacy from surveillance; confidentiality of his banking and financial transactions, medical and legal information and protection of data relating to individual.”

The bill gives protection from a citizen's identity theft, including criminal identity theft (posing as another person when apprehended for a crime), financial identify theft (using another's identity to obtain credit, goods and services), etc.

The bill prohibits interception of communications except in certain cases with approval of Secretary-level officer. It mandates destruction of interception of the material within two months of discontinuance of interception.

The bill provides for constitution of a Central Communication Interception Review Committee to examine and review the interception orders passed and is empowered to render a finding that such interception contravened Section 5 of the Indian Telegraphs Act and that the intercepted material should be destroyed forthwith. It also prohibits surveillance either by following a person or closed circuit television or other electronic or by any other mode, except in certain cases as per the specified procedure.

As per the bill, no person who has a place of business in India but has data using equipment located in India, shall collect or process, or use or disclose any data relating to individual to any person without consent of such individual.

The bill mandates the establishment of a Data Protection Authority of India, whose function is to monitor development in data processing and computer technology; to examine law and to evaluate its effect on data protection and to give recommendations and to receive representations from members of the public on any matter generally affecting data protection.

The Authority can investigate any data security breach and issue orders to safeguard the security interests of affected individuals in the personal data that has or is likely to have been compromised by such breach.

The bill makes contravention of the provisions on interception an offence punishable with imprisonment for a term that may extend up to five years or with fine, which may extend to Rs. 1 lakh or with both for each such interception. Similarly, disclosure of such information is a punishable offence with imprisonment up to three years and a fine of up to Rs. 50,000, or both.

Further, it says any person who obtains any record of information concerning an individual from any officer of the government or agency under false pretext shall be punishable with a fine of up to Rs. 5 Lacs.

Conflict Between: Right to Information & Right to Privacy

Voicing concern over vexatious use of RTI Act, Prime Minister Manmohan Singh said that the citizens' right to know should be necessarily conditioned if it infringes an individual's privacy. He said "there is a fine balance required to be maintained between right to information and the right to privacy, which stems out of

the fundamental right of life and liberty. The citizen's right to know should definitely be circumscribed if disclosure of information encroaches upon someone's personal privacy. But where to draw a line is a complicated question."

Judges of the American Supreme Court have talked about the right to privacy as an aspect of the pursuit of happiness. The pursuit of happiness requires certain liberties that are guaranteed by the state so that one may act in a fashion that may deem fit, as long as it does not encroach upon the rights of others. Liberty is not a limited or quantifiable right. It is visible on the entire gamut of the legal spectrum.

International Concepts of Privacy

Article 12 of Universal Declaration of Human Rights (1948) states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks."

Article 17 of International Covenant of Civil and Political Rights (also signed by India) states "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation"

Article 8 of European Convention on Human Rights states "Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others."

Information Technology Act 2000 (IT Act).

Section 43A of the IT Act provides for protection of sensitive personal data and information of individuals in the terms that a body corporate possessing, dealing with or handling sensitive personal data or information in a computer resource must implement and maintain reasonable security practices and procedures. If the body corporate is negligent in implementing these security practices and procedures and as a result causes wrongful loss or wrongful gain to any person, it may be required to pay

damages to the affected person.

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal data or information) Rules 2011 (IT Rules) framed under section 43 A of the IT Act, set out the reasonable security practices and procedures that must be implemented to protect a sensitive personal data.

Unauthorized collection, processing, storage and disclosure of personal information is treated as infringement of privacy under the Privacy Bill.

In addition, there may also be an action in tort in cases of breach of privacy.

Aadhar Card Case

Hon'ble Supreme Court also instructed the Unique Identification Authority of India (UIDAI) to refrain from sharing Aadhar Card holders' personal info with any governmental agency. The bench comprising Hon'ble Mr. Justice J Chelameswar and Hon'ble Mr. Justice B S Chauhan used stern words to caution the government against making Aadhar a mandatory requirement for any service.

“If there are any instructions that Aadhar is mandatory, it should be withdrawn immediately,” said the bench.

The apex court also stayed a previous order by the Goa bench of the Bombay High Court which directed sharing of information pertaining to Aadhar Card holders with Central Bureau of Investigation(CBI) for solving a rape case.

The CBI was demanding a database that included the biometrics of Aadhar Card holders in Goa. The probe agency argued that the said information was necessary to identify the perpetrators of a rape of a minor inside a school premise in Vasco.

The SC order stated that biometrics data must not be shared with any agency without prior consent of the individual concerned. In fact, the existing policy of UIDAI also makes it mandatory to seek permission from an individual before giving away his or her biometrics to third parties.

“The right to privacy is one of the basic human rights of an individual and UIDAI is committed to protect this aspect,” it added.

Examined and analysed under the said constitutional and legal background, proposal of sharing of customer information of Electricity Utilities with Credit Information Companies seems to fall within a twilight zone for the following reasons:-

- (i) There is risk around privacy of customers' data and the potential for fraudulent use of data.
- (ii) There is no provision for appropriate security vetting systems of such data.
- (iii) There is no full proof and standard data scrutiny system and confidentiality.
- (iv) In relating to data potential and security it is required that consumers whose data sought to be shared must at all times be in control of the third party to whom data is provided but there is no such provision in the **Credit Information Companies (Regulation) Act 2005 and the Rules and the Regulations 2006** framed under the said Act (herein after referred to as 'the Act').
- (v) The said Act deals with the 'credit information companies'.
- (vi) 'Credit information' is defined under section 2(d), as thus:

“Credit information means any information relating to:

- (i) The amounts and the natures of loans or advances, amounts outstanding under credit cards and other credit facilities granted or to be granted, by a credit institution to any borrower;*
- (ii) The nature of security taken or proposed to be taken by a credit institution from any borrower for credit facilities granted or proposed to be granted to him;*
- (iii) The guarantee furnished or any other non-fund based facility granted or proposed to be granted by a credit institution for any of its borrowers;*
- (iv) The creditworthiness of any borrower of a credit institution;*
- (v) Any other matter which the Reserve Bank may, consider necessary for inclusion in the credit information to be collected and maintained by credit information companies, and, specify, by notification, in this behalf;”*

Obviously the said Act does not cover the informations used by Electricity Utilities.

Though certain security measures have been provided in the said Act, Rules and Regulations framed thereunder regarding Credit Information there is no such provisions for regulating and managing other informations, covering the privacy principles in relation to collection, processing, collating, recording, preservation, secrecy, sharing and usage of such information. A robust customer redressal system is also needed for security against the misuse of shared information and violation of privacy rights in order to meet the legal requirements - which is not in the place for the present.

In view of the above before giving a thought on necessity of sharing of customer information of the Electricity Utilities with credit information companies a full proof security system/ standard has to be evolved with statutory sanction along with the provision for peer-review and the system for monitoring and vetting access of customers' database of the electricity utilities, by the third party or the credit information companies.