

Regulatory Framework for Infrastructure Sector in India

Introduction

In collaboration with the Planning Commission of India, CUTS had organised a seminar at New Delhi, India, on January 14, 2005. The aim of the seminar was to facilitate brainstorming amongst stakeholders and contribute to the Planning Commission's ongoing work on developing an appropriate regulatory framework for the infrastructure sector in India.

More than 100 participants from across the country representing different groups of stakeholders including the Planning Commission, regulators, policy makers, civil society organisations (CSOs), diplomats, academia and media participated in the seminar.

Summary of the Proceedings

Outlining the broader regulatory objective of facilitating competitiveness, Montek Singh Ahluwalia, Deputy Chairperson, Planning Commission, in his opening remarks, emphasised upon the need to have independent regulation, even in the case of government monopolies.

Scott Jacobs, a US-based expert on regulatory issues, shared his experiences from several developing countries in Asia. The problems identified by him applied to India as well.

Independent Economic Regulation

- An independent and accountable regulatory framework is a specific response to the general mantra of promoting economic growth.
- A regulators' role is vital in establishing transparent systems, especially in matters such as cross-subsidy and taxes.
- In addition to tariff setting, the independent regulator has to look at achieving other important objectives, such as promoting competitiveness and efficiency; protecting consumer interests; maintaining quality of services; safety and so on.

Regulatory Deficiencies in India

- Appointment and removal of regulators is practically left to the discretion of the executive and these 'independent' bodies are not empowered to even determine the nature and number of their staff or to appoint consultants without the approval of the ministry concerned.
- The policy objectives that the government wishes to achieve out of independent regulatory regimes are not spelt out clearly in the legislation.

Essential Attributes of Independent Regulation

- Spelling out a regulator's role in an unambiguous manner is the precondition for effective regulation.
- It is necessary for the government to spell out its policy objectives in a concrete manner and adequately empower the regulator through legislation, to accomplish the stated policy objectives.



Montek S. Ahluwalia, Deputy Chairman, Planning Commission speaking at the seminar, with Scott Jacobs sitting on his left.

- Imparting financial autonomy can substantially enhance functional independence of regulators.
- All independent regulatory agencies should be empowered to frame the requisite regulations and notify the same in consistency with the regulatory objectives.
- To the extent possible, the regulatory framework should aim at minimising the chances of judicial intervention.

Capacity Building on Regulatory Issues

- Capacity building on regulatory aspects is highly desirable not just for regulators and their staff but for other stakeholders as well. Given that regulatory decisions are essentially the outcome of stakeholder consultations, capacity building of other stakeholders is equally crucial to attain regulatory efficacy.

Independent Regulation and USOs

- The Parliament should decide the extent to which additional charges should be imposed on certain consumer classes/sectors, to support the poorer sections.
- It is desirable to incorporate the broader policy objectives, such as universal access to services, within the legislation.

Regulatory Efficacy and Accountability

- In addition to the existing provision, empowered CSOs and consumer groups working as watchdogs can potentially hold the independent regulators accountable.
- Regulatory efficacy should be measured against the policy objectives that are spelt out in the regulatory mandate.
- Arranging for independent/peer reviews on periodic basis is another way to further strengthen the regulatory accountability mechanism.

Consumer Interests vis-à-vis Regulation

- The regulatory framework should ensure enabling provisions to support consumer groups to facilitate their genuine concerns.
- Government should offer performance linked resources to consumer groups and facilitate the process of addressing

their capacity building requirements. These are some of the measures that need to be taken up immediately.

- It is the responsibility of the regulator to ensure that a functional and effective redressal mechanism to address such individual complaints is in place at all levels.

Interface and Overlaps with other Institutions

- This can only be addressed through enabling and coordinating legislation for regulatory bodies.
- An attempt should be made to restrict the number of sectoral regulatory bodies without compromising the quality of regulation.

Recommendations Submitted to the Planning Commission of India

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| <ul style="list-style-type: none"> • Clarity and coherence in legislation and policy is the key determinant of regulatory efficacy, therefore, a 'model' legislation for the infrastructure regulatory regime in India be developed and recommended to the Government. The essential attributes of independent regulation referred in this report elsewhere should be considered while framing such model legislation. Incumbent regulation should get a specific mention in that, up front. • Identify and compile good practices provided in different existing regulatory regimes in India, and elsewhere as well, so that a good template could emerge for adoption across the board. • Sector specific apex regulatory bodies are required at the centre, given the volume of work most Indian regulators have to deal with, which should be complimented by a well-endowed and supported economy-wide regulatory and competition authority in the states. • An omnibus Regulatory Appellate Tribunal for all appeals against sectoral infrastructure regulators needs to be established, which will include subject experts and judicial persons. If the workload increases in any one sector, it can be hived off. | <ul style="list-style-type: none"> • Interface between regulators and the competition authority needs to be formalised, so that there is no conflict between them, and impugned parties do not take advantage of the same. • Capacity building efforts on regulatory issues need to be scaled up immediately. Such training programmes should cater to the specific needs of different stakeholders, which should incorporate the local context. • Multi-stakeholder participation should be the way forward, which can effectively take care of several concerns with regard to regulatory efficacy and accountability. • Consumer organisations need to be strengthened with resources, as they can be effective advocates. Financial resources can be raised through a consumer cess on billing. • Benchmarking followed by an independent review over the years, and resourcing CSOs to perform a watchdog role. These are highly recommended to hold independent regulators accountable. • Compliance with regulatory directives in the electricity sector needs to be investigated to assess the extent of their efficacy. That will help in understanding the practical challenges regulators are facing presently. |
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Resource Persons

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