



**FACILITATING ADOPTION OF REGULATORY IMPACT
ASSESSMENT FRAMEWORK IN INDIA**

Report of the National Level Advocacy Seminar on

**Regulatory Impact Assessment in
India: Need and Importance**

New Delhi

March 27, 2015

Overview

Following the two day training workshop on Regulatory Impact Assessment (RIA), CUTS in association with CUTS Institute for Regulation and Competition (CIRC) and the British High Commission (BHC) organised a half day National Level Advocacy Seminar on March 27, 2015. The inaugural session on ‘Strengthening the Regulatory Framework’ was chaired by Arun Maira, Former Member, Erstwhile Planning Commission of India and President, CUTS International. The other eminent speakers were Udai S Mehta, Director, CUTS International and Pramod Deo, Former Chairperson, Central Electricity Regulatory Commission (CERC).

Opening Session

In the beginning of his address, Udai S Mehta shared with the audience CUTS’ experience of acting as a knowledge partner to a working group of the erstwhile Planning Commission back in 2011 on Business Regulatory Framework. One of the recommendations that the working group emphasised was to lessen the regulatory burden to make business an easier endeavour in Indian economy. Since then, CUTS has played a crucial role in deliberating more in terms of adoption and popularising of RIA in India. Given this backdrop, CUTS initiated the process of undertaking RIA in two sectors – Banking with special attention to debt recovery and Electricity generation in terms of environment and forest clearance. He mentioned that the immediate step towards enabling different government agencies to have the RIA tool embedded within their mandate.

Arun Maira, the Chair of the session emphasised on the architecture of any policy i.e. the process of designing any policy, regulation or plan. According to him, implementation begins at the very stage of drafting of the policy. He mentioned that social and political aspects of designing the policy require an understanding of the stakeholders involved in the process, i.e. who are likely to be affected, and how and by how much. Further, he pointed out that the method of consulting shouldn’t confuse stakeholders. Putting the document on internet and seeking public comments on the same does not solve the objective. Rather, a systematic approach needs to be taken up in order to provide clarity on all the probable issues associated with the policy. He further added that RIA is just one part of the larger process of

good governance that enables good regulations for the wellbeing of the society. Therefore, due importance must be given to the quality of regulations.

Scott Jacobs brought in a new dimension to the discussion. He mentioned that we often tend to focus a lot on superficial phrases embedded in the policy framework and it is important to avoid such mistakes. We must also take into consideration the evolving nature of the complex system that comprise of fast changing technologies, different civil society groups and multiple concerns to address the present circumstances. The government needs to provide enough space for innovations to sustain such rapid changes. He stressed on three indicators for ensuring a better regulatory framework - Authorities, Capacities and Incentives.

Malathy Knight John mentioned that RIA is not a very technically challenging exercise. Rather, the key challenge lies in ensuring buy-in and effective implementation of the process. A good RIA process is an outcome of a strong political will. However, she emphasized on designing the process from within the country instead of inviting external expertise. She suggested that one should first select the low hanging fruits and demonstrate RIA on such non-controversial policies. However, she agreed with the fact that a coalition government may create a not so congenial atmosphere for RIA as it involves multiple interests of different groups.

Pramod Deo further enriched the discussion by adding his inputs from the point of view of electricity regulatory commission. He mentioned that electricity is a state subject; still it is governed by the Regulatory Commission which is a central body. He spoke about two important regulations – state tariff determination should be done by an independent authority and electricity should be supplied at least at 50% of the average cost of supply. The decision to create a market for electricity to provide the consumers with ample choices as who should they buy electricity from – is a welcome step. Among the suggestions he prescribed, most important were – cross subsidy should be minimized in order to make open access a reality and financial health of the distribution companies should be taken care off by the government.

Panel Discussion

The panel discussion on ‘Institutionalising RIA in Regulatory / Policy Decision Making in India’ was chaired by TCA Raghavan, Senior Associate Director, the Hindu Business Line. The other eminent panellists were Somasekhar Sundareshan, Partner, J. Sagar Associates; Malathy Knight John, Research Associate, Verite Research, Srilanka; Geeta Gouri, Former Member, Competition Commission of India; Rahul Garg, Direct Tax Leader, PwC India; Scott Jacobs, Managing Director, Jacobs, Cordova and Associates, US; Muzammil Patel, Senior Director, Deloitte; and V.S. Ailawadi, Chief Mentor, Tata Teleservices Limited.

TCA Raghavan, the Chair of the Panel Discussion, started by saying that India follows a totally opposite approach to what is being followed in the UK. In other words, while UK follows ‘Do what is not expressly mentioned in the law’ approach, in India ‘Do what is expressly mentioned in the law’ approach is being followed. With this, he requested each of the panellists to briefly put forward their opinion regarding the adoption of RIA framework in India.

1. Somasekhar Sundareshan

Somasekhar Sundareshan concurred with TCA Raghavan’s aforesaid view. He further mentioned that in India there are three branches of government: the Legislative, Executive and Judiciary. Interestingly, there are instances where conflicts arise among these wings / branches of the government itself. One reason could be the supremacy of parliament over judiciary as sought to be established by means of amendments (say retrospective amendments in tax laws). Further, conflict also arises over issues of nature and extent of fundamental rights. In addition, the law making power of legislature is not absolute, as the judiciary has the power to adjudicate upon the constitutional validity of laws. These all have the potential to create the regulatory mess.

On impact assessment of regulations, Somasekhar Sundareshan highlighted that it is important to take stock of the intent of regulations / laws, and assess whether the objective sought to be achieved, is actually achieved. This can be ensured by undertaking cost-benefit analysis (C/B analysis) of regulations / laws in line with the

recommendations of the FSLRC. However, he also pointed out that in a developing country like India, capacity constraints of the policy makers needs to be considered before undertaking impact assessment (C/B analysis) of regulations / laws.

2. Malathy Knight John

At the outset, Malathy K. John mentioned that RIA is one of the important tools to ensure good regulatory quality and regulatory process. She further pointed out that a country needs smart regulations, not plethora of regulations. In view of this, RIA is about changing mind sets of the policy makers and that would certainly affect policy making. Thus, one can say that RIA is not a standalone process or tool, but it is embedded in a broad political and economic framework.

Providing examples from Srilanka, where RIA was not implemented due to lack of conceptual / technical knowhow, she mentioned that there was no cohesive regulatory policy in Sri lanka, to begin with. The concept of RIA was actually conceptualised by a small group of people which was later on adopted by the few relevant ministries. Therefore, at the end, she reiterated that a good RIA process is an outcome of strong political will.

3. Geeta Gouri

Geeta Gouri started by stating that in India right questions in policy / law making are never asked. The problem starts from the 'problem definition' itself. She further highlighted that there is a difference between regulatory capture and regulatory failure. Similarly, outputs and outcomes are also different. Therefore, there is a need to understand such differences so as to avoid any regulatory uncertainty.

Further, she mentioned that regulators need to identify the rationale and intent before formulating new regulations. In addition, these regulations are needed only for a small period of time. In other words, these should be subject to review after a particular point of time. In this regard, RIA could be useful as it encompasses the objective / intent of regulation, pre-assesses the outcome of such regulation, identifies the consumer, measure the impact on consumer and identifies whether the impact would be for short term or long term.

Geeta Gouri concurred with Malathy's view of need to change the mindset. She further mentioned that there is a need to build institutional framework. Therefore, this is the correct time to think through on these lines, and consequently, regulators and decision makers must think about evaluation techniques.

4. Rahul Garg

Rahul Garg started by mentioning that in order to ensure quality output, maturity of processes is a pre-requisite and it can be achieved by following two ways – (1) Stakeholders' consultation, and (2) Data capturing. In stakeholders' consultation, education of relevant stakeholders to make them understand what they are dealing with is utmost important. In addition, it is important to understand whether the process of stakeholders' consultation is only consultative process to get information or to get innovative / constructive responses from stakeholders. Further, there should be an effective system in place to collect relevant and adequate data in order to visualise the impact of proposed action well in advance.

He added that the hypothesis on which evaluation is based, needs to be as realistic as possible. Also, while estimating the potential impact of proposed measure, important uncertainties connected with the same should be analysed and taken into account.

At the end, he mentioned that a trade-off is required between regulations and the affected people. However, care must be taken so that the process relating to trade-off should not be at a risk of being hijacked by a particular class of people. Therefore, RIA could be a tool as it ensures a trade-off between the regulation and concerned stakeholders. Further, in order to make India an easy place to do business, it is important to remove regulatory barriers hampering the investment inflows into India. In this context as well, RIA is one of the measures as it considers the micro-economic impact of a particular regulation / policy.

5. Scott Jacobs

Scott Jacobs mentioned that RIA ensures new standard of quality for law. Accordingly, it is important to establish what sort of regulatory quality is required for India. In addition, the need of the society is to be taken into account before enacting any new regulations. However, legacy of old regulations is very heavy, which results

in regulatory burden on the society. RIA could address this problem and map old laws on the basis of cost-benefit analysis of regulations. Giving example of South Korea, he pointed out that around 6000 rules and laws were repealed in a period of one month when RIA was done on old laws and regulations.

On stakeholders' consultation, he mentioned that the one of the key problem is that the comments are currently sought on legal text of the regulations, which is very difficult for lot of stakeholders to comprehend. It actually defeats the very purpose of stakeholders' consultation. Therefore, stakeholders should be asked right questions and they should be apprised of the potential impact of the proposed action. He finally mentioned that high degree of cooperation is required among ministries, as issues affecting India pass through various ministries simultaneously.

6. Muzammil Patel

Muzammil Patel started by mentioning that regulatory events in India are mostly reactive. In other words, regulations come into picture only after occurrence of a particular event and not before that so that it could be avoided. Further, regulations have unintended consequences, often over-regulate, and at times results in thwarting their own objectives. He mentioned that regulations must be clear about their objectives and stakeholders must be involved in development of laws.

He added that a particular regulation works for a limited period of time, and after that it loses its shine. Therefore, there is a need to review the regulations after a point of time. He then highlighted the need to build capacity and provide training to policy makers and regulators to adopt and inculcate the practice of impact assessment in regulatory and policy making bodies. At last, he also emphasised the need of political support for adoption of RIA in policy framework in India.

7. V.S. Ailawadi

V.S. Ailawadi mentioned that regulators were originally constituted independent of the government. However, the government continuous to hold a major share in functioning of the regulators. This makes difficult for the regulators to adopt transparent and participatory regulatory processes. Also, there are instances where

the regulator's domain is encroached upon by the government. This makes the regulator ineffective and consequently, it fails to achieve pre-determined objectives.

On stakeholders' consultation, he concurred with Scott Jacob's view and mentioned that media has a big role to play in dissemination of understanding of regulatory objective to the concerned stakeholders. This will help stakeholders understanding potential impact the proposed regulation will have on them.

Floor Discussion

On a question regarding effectiveness of RIA in the federal country like India, Scott Jacobs pointed out that various advanced countries such as USA, Australia and Canada which have adopted RIA framework, actually follow a federal structure. Further, experience suggests that RIA has been quite effective in most of these countries.

One of the participants enquired about parameters of quality of law. Scott Jacobs responding to his question highlighted that OECD has prescribed 10 quality standards for regulations. Similarly, Singapore has prescribed 5 parameters for quality of law. Therefore, procedures should be designed to protect the principles of quality of law.

Another participant enquired about the design of consultative process, Scott Jacobs mentioned that seeking public comments on the legal text is the wrong approach. The correct approach is asking public comments on the potential impact of the regulations on various stakeholders. Adding to this, he mentioned most of the countries have central consultation forum where regulatory bodies and citizens could discuss various issues related to the regulation.

Somasekhar Sundareshan adding to the consultative process mentioned that there should be a structured format of public consultation process. On the question of quality of law, Somasekhar Sundareshan pointed out that regulations should be struck down even on small ground, if it is against the law. Further, regulators should be made accountable to the parliament and not their line ministers.

On the process of undertaking RIA, Geeta Gouri pointed out that RIA should be done layer wise, i.e., at each stage, only relevant stakeholders should be consulted.

Conclusion

TCA Raghavan concluded the discussion by stating that there is a need to ask right questions at the right time. In addition, the issue of independence of the regulators must also be ensured. In this backdrop, CUTS' initiative of adoption of RIA framework in India is an important initiative in this direction.