British High Commission New Delhi

FACILITATING ADOPTION OF REGULATORY IMPACT ASSESSMENT FRAMEWORK IN INDIA

REPORT OF THE SEMINAR ON "ADOPTION OF REGULATORY IMPACT ASSESSMENT IN INDIA: POLITICAL ECONOMY CHALLENGES – HOW TO OVERCOME"

FRIDAY, 30TH OCTOBER, 2015; JAIPUR

OPENING SESSION

Mr. Bipul Chatterjee, Executive Director, CUTS International initiated the proceedings by thanking the panellists and participants for attending the event. He then provided a brief overview about the Regulatory Impact Assessment (RIA) and it importance in development of countries. He talked about "Ease of doing business" ranking, where India has moved up 12 ranks from 142 last year to 130 this year. He further stated that if India has to compete with China, it would require India growing at a rate of 10-10.5 percent every year and then it would be called as Asian Age where the Asian countries would have a prominent hold over the global economy. He said regulation play a vital role in the growth of any country and the regulations are sometimes business or market friendly, but there should be a balance between the two.

He claimed India to be an over regulated economy. He emphasised on the critical role RIA can play in regulatory reforms across sectors in India, stating example of current issue of call drops. Further, he said that regulations should consider producer, consumer and social interests equally and it shouldn't undermine any of these. He suggested ex-ante approach for RIA in building regulations and said that market forces, in India are not mature enough for self-regulation. He ended with saying that for sound regulations, there is a need of political will and implementation of RIA in the process. He acknowledged the support of the US Embassy and The British High Commission for their support. With this, he invited Prof. Singh to deliver his opening remarks.

Charan Singh, Professor, IIM Bangalore, RBI Chair Professor of Economics, thanked CUTS for organising the RIA program and highlighted the importance of regulations and the high expectations from the regulator. He said that India has too many regulations and thus the need of RIA becomes more important. He said that in India it is easy to point out regulator for every issue but then apprised the audience about the high heterogeneity that exist in India. He said because of this heterogeneity the regulator cannot have one stop solutions for anything for the entire country. Giving example of non-regulated traffic entities such as Camel carts, he said this heterogeneity becomes a major problem for the regulator to deal with. He suggested that the regulations should be able to cope up with the changes and evolutions over time. He said that there are only 600 officers in RBI who can propose regulatory clauses, which is too less for a country as big and diverse as India having different financial institutions like cooperative banks, public and private banks etc.

He differentiated between the Nordic countries and India claiming that the fear of law in Nordic countries in far higher than in India and Nordic countries also have highly sensitive consumers who would fight against any malpractice by producers. He said that there should be a fine balance between regulations and freedom. He added that he has always been against the Basel Norms for banking sector. He added that the country should give less importance to past and should rather focus on the coming future situation. He suggested that each of the Centre/State government department should have one evaluation office which shall do the impact assessment. Claiming RIA to be a better tool than Cost-Benefit Analysis (CBA), he said that in CBA it is very difficult to assess costs like compliance cost, structural costs, etc. He further added that the government and regulators need to be sensitised that RIA works in favour of them rather the other way round and they should also be informed about the advantages of RIA. Giving the example of GST, he said that the regulations should see who would be benefited from the regulations and who would lose out.

Mr. Chatterjee then invited **Mr. Douglas Fowler, Economic Affairs Officer, Embassy of the United States of America** to speak to the participants. Mr. Fowler thanked CUTS for hosting the event and inviting him. He emphasised that regulatory reforms are a part of US agenda stating the bilateral relations between India and the United States of America. He also talked about the ease of doing business rankings. He praised the rate of economic reforms in India and the importance of impact assessment and CBA of regulations for a healthy business environment.

Ms. Iravati Damle, Legal Consultant, National Institute of Public Finance and Policy was invited by Mr. Chatterjee to provide a brief on the RIA training workshop, organised by CUTS. She described the topics covered under the training program briefly and ended up with key understanding of the training as:

- Knowing Transition plan for implementation of RIA
- Focus on filling up the gaps in regulations through RIA
- Need of Capacity building of Government departments
- The government should change from pre-meditated solution approach to choosing best alternative from possible solutions
- Decentralising RIA offices in every government department

PANEL DISCUSSION, "ADOPTION OF REGULATORY IMPACT ASSESSMENT: POLITICAL ECONOMY CHALLENGES – HOW TO OVERCOME?"

1. **Atindra Sen, Advisor-Corporate Affairs, Shapoorji Pallonji Group (Chair)**
2. **Siddhartha Mitra, Professor, Department of Economics Jadavpur University, Kolkata**
3. **Rohit R Brandon, Former Additional Chief Secretary, Government of Rajasthan and Director, HCM RIPA, The State Training Institute**
4. **Aarati Krishnan, Head, Research Bureau, Business Line**
5. **Keya Sengupta, Professor, IIM Shillong**
6. **Nirupama Soundararajan, Senior Fellow, Pahle India Foundation**

The discussion was chaired by **Mr. Sen** who invited Mr. Mitra to give a presentation on RIA. **Mr. Mitra** gave insights on RIA definition and the process. He talked about the essence of RIA as to what should determine the purpose of doing RIA. His presentation focussed on two points. 1) Work and Roadblocks, and; 2) Recovering from roadblocks. He differentiated between the populist regulations and effective regulations and cost benefits and political benefits. He claimed that bureaucrats promote over regulations because of their personal benefits. He then talked about the high cost of regulations and cost of keeping the market in reasonable bounds. He highlighted the importance of regulatory independence and emphasised the country's movement for regulatory independence to make regulations effective and eliminating the roadblocks.

Next, **Mr. Brandon** delivered a presentation on overcoming roadblocks and challenges in doing RIA. He started with providing two good news i.e. rise of India in Ease of Doing Business rankings; and TRAI deciding to impose penalties on call drops. He referred "still existing humongous bureaucracy in India" as one bad news. He said that there is a change required in the existing framework. He said that nobody in the country talks about the lesser governance or more governance but everybody talks about the right government. He said that RIA can act as an effective management tool. He claimed that India's regulation were effective than many other countries and it protected India from the crash of 2008. He said the heterogeneity in India doesn't allow one law for the entire country as it would not suit all stakeholders.

He claimed that market level interventions are required in the country. He stated that the regulators across sectors are struggling with some or the other issue such as Power Sector regulator are "captive regulator", TRAI, governed by 1997 Act is struggling with issue of net neutrality, FSSAI is toothless regulator and non-existence of regulator for waste management. He said that the government and regulators should be convinced in embracing RIA as it would benefit every stakeholder. He ended this presentation with some final remarks, which were:

- Only independent regulator can undertake RIA
- RIA should be mainstreamed and made mandatory
- RIA can reduce the cost of doing business and enhance the ease of doing business as well.

Mr. Sen then invited Ms. Krishnan to share her opinions. **Mr. Krishnan** said that, India is seeing an increased practice of regulators releasing draft regulations in public domain and inviting comments from the stakeholders. Stating the examples of Insurance and telecommunication regulations, she highlighted the loopholes in the existing norms. She started by questioning on why the Foreign Direct Investment (FDI) norms are different across sectors. While in Banking it is capped at 74 percent, in some 100 percent FDI is allowed while in insurance only 49 percent is permitted. She claimed that there exist low awareness levels among stakeholders on the draft papers release. Giving the example of Gold Monetisation scheme, she said that the public opinion was not gathered correctly and a survey would have been much appropriate way of knowing the public's opinion on whether they wanted to liquidate their gold or let that be melt to be brought into banking channel.

She further added that the feedback mechanism of these consultations is very week. The regulators do not share comments of stakeholders and if the comments are not incorporated in the regulations, there exists no provision of regulators providing the stakeholders reasons of not doing so. She suggested that the regulations, before being notified, should be shared with particular group of stakeholders such as industry, associations, etc. who can have their final say on the issues. Lastly she commented on the formation of various large committees for regulatory reforms, such as for Indian Financial Code (IFC), that the committees should be told by the government if their recommendations would be incorporated or implemented or not.

Ms. Soundararajan was invited next to speak. She said that currently there exist no parameters to gauge effectiveness of regulations and RIA is a good tool to assess the effectiveness. She said that the regulations should consider the worst case scenarios and should have provisions to protect the stakeholders from it. She further added that just like the Greece Crisis impacting other countries or Basel Norms, it is very difficult to assess the ripple effect of regulations. She said that India borrows a lot of regulation from other countries, presuming one size fits all which leads to adoption of wrong policies in India. Also talking on Gold Monetising Scheme, she said that she was a part of the committee which recommended the government to introduce a gold scheme to bring out the gold stashed in bank lockers to the banking system.

She said that the problem with the scheme is related to the feedback mechanism which is completely absent in this case. She said that the government should respond to the responses and comments from the stakeholders and explain them the reasons for not imbibing the comments in the final regulations. On the stakeholders, who are negatively impacted by regulations, she left an open question for the audience as to who should be deciding on who can be allowed to be negatively impacted and who cannot be.

Ms. Sengupta was then asked for her opinion on the topic. She strongly said that regulatory framework is highly necessary and needs to exist at any cost but said that the problem is more associated with bureaucracy which impacts the regulatory framework adversely. She claimed that the bureaucrats influence the regulations too much and may have vested interests. She added that the regulations are also required because of existing high level of corruption in the country. According to her the more the freedom the more is the corruption. She then compared India to the Nordic countries and said the difference lies in the level of corruption which is far too low in Nordic countries as compared to India. She said that there is one question that needs to be answered is the extent to which there should be regulations imposed and managing the regulations correctly is highly important.

Lastly, **Mr. Sen** shared his viewpoints. Highlighting the available measures to "mimic" a regulator, he said that social audits and Right to Information (RTI) can be used for this. He said that there exist certain attributed for good regulations. The key parameter is questioning on which authority should be entitled to make regulations. He said it would be a government agency which would obviously act as a regulator, but it is more important to understand the clauses and the principles laid. He gave example of eligibility criteria for various posts in government setup as "secretary or equivalent". He said that the stakeholders never ask what this "equivalent" here means. He said that it means that anybody who is of the same or more pay-scale is "equivalent" and eligible for the post. He said this is the reason why it's only bureaucrats who hold positions in regulatory agencies.

He said that the regulations shouldn't be drafted to consider unprecedented extreme events he referred as "black swans", as it may have consequences on the effectiveness of the regulations. On a lighter note he gave example of illicit liquor where common consumer may act as an inspector by reporting illicit liquor sales and is incentivised on providing successful mis-conducts. Through this he suggested how regulations can bring self-regulations. Lastly he said that the regulations should be able to anticipate possible changes in the market situations over time.

During the floor interventions, **Ms. Saumya Vaishnava, Prayas, Pune**, said that though RIA is a very important tool but there are also some concerns associated with it. She highlighted that in current scenario, it would be the regulators who would be evaluating their own regulation which might not be a fruitful exercise.

Mr. Sachin Warghade, Assistant Professor, School of Habitat Studies, Tata Institute of Social Sciences, said that RIA should not be related to CBA as CBA is merely cost analysis while RIA is option assessment gauging their possible impacts and selecting the most appropriate option. He said that it should be identified if the hurdles to RIA should be removed or RIA should be facilitated in the existing framework. Lastly, he mentioned that RIA is not a tool to increase or decrease the number of regulations but it is a tool for reforming regulations.

Mr. Rijit Sengupta, Director CUTS, suggested the movement from public regulations to market regulation. He suggested the concept of co-regulation to be introduced in India where some organisations or committees may work on behalf of the regulator and shall be empowered to work on regulations and bringing in reforms. Mr. Sen on this commented that rather being called co-regulation it should be called peer-regulation.

Mr. B.M Sanadhay, Samta Power, said that the public participation in regulatory activities is highly lagging behind. India despite having 1 NGO for a population of 600, on an average, it still doesn't promote enough public participation in consultations or hearings. He also pointed out on the electricity related accidents go unnoticed or unreported which should be seen by the regulator and highlighted the fact that there exists threats by the power sector to not only material but lives as well.

Mr. Hari Prasad Yogi, President, Consumer Legal Help Society said that even though the regulators may conduct consultation meets or events to gather public opinion, but even before the consultations take place, the minister declares their verdicts which come out to be true. Giving the example of tariff rise, he said that the ministers had already declared no rise in tariffs even before the public consultation was conducted. This shows the submissiveness of the regulators to ministry.

****