FACILITATING ADOPTION OF REGULATORY IMPACT ASSESSMENT FRAMEWORK IN INDIA

Report of the Training Programme on

Regulatory Impact Assessment in India

New Delhi

March 25-26, 2015

Introduction

Consumer Unity & Trust Society (CUTS) is implementing a project entitled 'Facilitating Adoption of Regulatory Impact Assessment (RIA) Framework in India' with support of the British High Commission (BHC). The project comprise two cycles spread over two years' period (from 2014 to 2016). Based on the study and research to be undertaken in both cycles, a detailed research report along with policy brief and briefing paper will be prepared. In addition, a customised toolkit for undertaking RIA will be developed.

The activities under the project include capacity building and training programmes for government officials, representatives from regulatory agencies, research institutions and civil society organisations. Interaction with government officials and regulatory agencies revealed that there is limited awareness about the RIA and its benefits in India. Therefore, the objective of the training programme was to familiarise the concept of RIA, apprehend its benefits and process, and motivate the participants to adopt and undertake RIA on existing and proposed regulations. Given this background, the capacity building and training workshop was organised in New Delhi on March 25-26, 2015.

The participants comprise of representatives from government departments / agencies (such as Department of Industrial Policy and Promotion (DIPP), Invest India, etc.), regulatory bodies (such as RBI, SEBI, CCI, Energy regulatory agencies, etc.), international experts and representatives from research institutions, in addition to representative from BHC.

Opening Session

Pradeep S Mehta, Secretary General, CUTS International, shared CUTS' experience of acting a knowledge partner to the erstwhile Planning Commission's Working Group on Business Regulatory Framework (WGBRF). He mentioned that one of the observations of WGBRF was the absence of RIA framework in policy making in India, which has resulted in plethora of laws and regulations. Giving example of getting construction permits from city authorities, he mentioned that the process of obtaining fire clearance almost takes around 6 months. This is a classic example of sorry state of affairs prevailing in today.

Towards the end, he emphasized on institutionalisation of RIA framework in policy making in India. In this regard, he mentioned that CUTS has taken up the initiative of facilitating adoption of RIA framework in India. As a result, CUTS is currently implementing two projects, first, on RIA in the energy sector with support from the Asian Development Bank (ADB), and second on RIA in financial sector with support of the British High Commission (BHC), and both the projects aim to undertake ex-post RIA of select existing legislations.

Amitabh Kant, Secretary, Department of Industrial Policy and Promotion (DIPP), started by saying that in order for India to grow at 9-10% over the next three decades, the manufacturing sector would have to grow by around 14% over the same period. This can be achieved by increasing competitiveness and productivity by making India an easy place to do business.

He then highlighted two regulatory challenges in India – first, the plethora of laws and regulations developed over past so many years have failed to keep pace with time, and second, the government departments and regulatory agencies work in total isolation. Therefore, this plethora of rules and laws need to be dismantled. Further, there is a need for greater coordination and communication among various government departments and regulatory bodies.

He further pointed out that there is a need to streamline regulations in India. Therefore, he emphasized the need to undertake rigorous cost-benefit analysis of regulations to help remove the impediments to national growth.

At last, he highlighted various positive initiatives taken by the present government in last few months. However, he also mentioned that the legacy of old laws / regulations is a big challenge, but the government is committed to improving the regulatory environment on ease of doing business in India.

Aurodeep Nandi, Senior Economist, British High Commission (BHC), shared UK's experience of undertaking regulatory reforms. Referring to the practice in UK, he said that in order to reduce the number of new regulations for businesses, the government run a '*one-in, two-out*' rule. He emphasised the need to adopt RIA is long overdue in India and it is the need of the hour, as the tool would help the policy makers undertake impact assessment of regulations before their enactment. Towards the end, he highlighted that there should be a sun-set clause in every regulation and consequently, such regulation should be subject to review after the expiry of such sun-set clause.

Session I - Presentation on Introduction to RIA

In the first session, background to the concept of RIA was provided. The presentation was delivered by **Amol Kulkarni, Senior Policy Analyst, CUTS International**. He started his presentation by stating that there is a need for regulatory and policy reforms in India.

He stated that RIA is a tool which examines and assesses the impact of existing as well as new policies, regulations and statutes. The tool aims to achieve net public benefit by analysing the costs, benefits, and risks of regulations. RIA uses tools like cost-benefit (C/B) analysis, time value of money, etc. He further mentioned that when the impact assessment exercise pertains to an existing law / regulation, it is termed as an ex-post analysis; however if it pertains to a new law / regulation, it is known as an ex-ante RIA.

He provided the example of UK and pointed out that the net reduction of £836 million in cost to business was estimated from the year 2010 to 2013 in UK. Further, he spoke about the benefits RIA has generated in other countries.

As regards the CUTS' initiative on facilitating adoption of RIA framework in India, he mentioned that CUTS is currently implementing two projects – one in energy sector and other in financial sector (banking domain). Under the latter, the project team in order to understand the impact of select legislations in relation to debt recovery, on key stakeholders in financial sector, is undertaking RIA of DRT Act and SARFAESI

Act. He added that second cycle of the project will comprise undertaking RIA in insurance sector.

He eventually highlighted the key findings under both the above mentioned projects. In electricity sector, it was found that due to delay in commissioning of the projects, notional revenue losses worth INR 186.73 crore per company is estimated. Further, cost over-run up to INR 816 crore per company was incurred, owing to delay in project.

Similarly, in the financial sector, it was found that due to delay in debt recovery, annual opportunity cost worth INR 25,000 crore was incurred. At last, he pointed out that opportunity cost of amount of loans written off by commercial banks in last five years is as huge as it would have allowed 1.5 million of poorest children to get a full university degree from top private universities of the country.

Session II – Putting RIA into practice: choosing the analytical methods

The second session focussed on putting RIA into practice. The key aspects included the need for RIA in the regulatory environment, the process of conducting RIA and the analytical tools available. The session was taken by **Scott Jacobs, Managing Director, Jacobs, Cordova & Associates, US**.

He started by mentioning that any regulation or law created is designed to protect people, and the government has a responsibility to meet the needs of the people. This not only has to be done in an efficient manner but has to be done considering the available resources of the country.

Some of reasons which make regulatory decisions difficult are failure to predict changes in human behaviour, lack of understanding of incentives acting on the problem, not seeing the full consequences of actions, inability to predict changing needs and technologies, failure to combat regulatory capture, inability to see limits of our own understanding among others.

As regards RIA, he pointed out that it is about maximising the net benefits which could be done in two ways - (i) reducing costs and (ii) increasing benefits. Thereupon, he emphasised that both these parameters were equally important. Though some RIA are conducted by evaluating only costs which could be a good starting step but a full-fledged RIA is conducted by analysing both costs as well as benefits.

In order to emphasize the impact of ineffective laws, he cited an example of Armenia where the government amended 40 laws which helped in saving 2.7 million hours of people, enabled businesses to operate for an additional 19,000 days just by reducing delays, reduced the number of trips to government offices by 72,000 through online procedures and saved businesses approximately $10 million which was spent on fees of accountants, notaries, etc.

He then briefed the steps of undertaking RIA one-by-one. Further, he stated that often there are multiple options to choose from and it is beneficial to carefully consider all alternatives as our first instinct may not always give the best answer. It is helpful to consider as many alternatives as possible. In this regard, he provided an example, wherein the government had decided to ban plastic bags without conducting a RIA. Post evaluating 18 options emerged of which banning was not considered a suitable option. Thus, the process of RIA helps to make the invisible, visible and access consequences not analysed earlier.

Problem Definition

He stated that the primary function of every law is to change human behaviour. However, there is always inertia to change and people require incentives to modify their behaviour. The most common system adopted by most law-makers is the fear of punishment which often does not work well. Thus, alternative mechanisms are needed. The problem definition is a cause and effect statement and the task then is to find the underlying human behaviour which can remedy the problem. No amount of analysis can compensate for a poor problem definition and all RIA guides put emphasis on this step.

In this context, he gave an example of incorrect problem definition. He mentioned that several studies had indicated that usage of hand held phones while driving increased crash risk, and based on these the state of California banned hand held phone usage while driving. However, no change in numbers were witnessed post the ban even though the enforcement was not lacking. The reason was people changed their behaviour and shifted to wireless devices instead of using the hand held phone. Thus, in this case the problem definition was inaccurately identified as holding the phone was assumed to be the main issue rather than the act of talking on the phone.

Regulatory failures due to incentive problems

Subsequently, he stated that prior to forming any regulations it is important to understand human behaviour and how they would react to certain incentives. Some examples / instances to highlight the regulatory failure due to lack of such understanding were illustrated by him during the presentation.

The crux emerged out of cited instances is that a problem definition has to be multi-disciplinary taking into account all aspects such as economic, social etc. A narrow problem definition would end up with narrow solutions which eventually could fail. In addition, one problem can also have multiple solutions. Thus, while drafting problem definitions, it is suggested that all causes (primary and / or secondary) be stated to understand which of these can be regulated.

Including Impacts in RIA

He mentioned that the costs are all the negative impacts of the regulation, while the benefits are all the positive impacts. The costs and benefits can be stated in monetary, metric or qualitative terms and can be subdivided into Economic, Environmental and Social. In addition, he mentioned that while quantification of costs and benefits is important, qualitative assessment also has a role to play in RIA.

RIA Methods

Scott Jacobs highlighted the methods of undertaking RIA. He further mentioned that costs and benefits can be measured using the following tools –

- *Cost-Benefit Analysis (CBA)*

This is a purely mathematical model and both figures need to be in the same metrics. It compares overall negative and positive impacts and asks 'if' an action should be taken (do the benefits exceed the costs). However, the most common issue with this method is the difficulty to establish monetary values to some non-marketed impacts. Also, the relevant data may not be available or be expensive to collect and it may not be possible to present some impacts in terms where people are able to make reliable trade-offs against money.

Further, CBA does not always need monetisation, as Scott Jacobs illustrated with an example of cost per statistical life saved and beyond a certain cost the options were rejected as the resulting benefits were not considered significant with respect to their costs. These resources could be better spent on other issues.

- *Cost-Effectiveness Analysis (CEA)*

This tool does not address the 'if' question but asks 'what kind' of action maximises the results for any given expenditure. It compares alternative ways to produce similar outputs, thus, is useful to compare programmes with similar goals. It is tough to implement the programmes with multiple categories of benefits as the cost-effectiveness calculation is based on the quantity of a single benefit category. The benefits need to be reduced to a single number.

- *Multi-criteria Analysis (MCA)*

This tool addresses 'what kind' of action would produce the largest expected utility combining several consequences. This can also develop quantified, non-monetised metrics through a technique of weighting and scoring. It involves assigning weights to criteria and scoring options in terms of their performance against those weighted criteria. These weighted scores are then summed which can be used to rank options.

However, he cautioned by saying that these weightings are subjective and it is important to obtain inputs from a variety of professionals (as a single person can bias the results), have the implementation methodology monitored and reviewed. The weighting methodology should also be published to maintain transparency.

- *Standard Cost Model (SCM)*

This is one of the most important tools of RIA as it calculates 'how much' the red tape requirement costs businesses in the country each year. However, some of the shortcomings of this tool are that the benefits are not considered, costs to citizens or government is also missing and only costs of information obligations are accounted for. It also does not consider other costs created by reducing administrative burdens and assumes 100 percent compliance.

He, however, mentioned that none of the methods can provide answers to all the governments' questions such as the distributional issues to specific groups, uncertain future effects (such as technical changes etc.) and political concerns.

Towards the end, he presented few cases using different types of data and presentation formats. Causal Mapping, a tool which can be used effectively to understand cause and effects can help make informed decisions. Options are also compared and presented using smiley faces or positive and negative signs to signify the extent and impact of the option. These can help policy makers easily identify the more suitable options. A pure numerical representation can also help calculate the total net value and arrive at the most optimal solutions. Thus, the method of communication should be such that it is clear, concise and easy to understand as decision makers often do not have the time or the technical knowledge to go through the complete document.

Floor Discussions

On a question regarding the delays faced in various procedures and whether it would be correct to first deal with this issue before proceeding to reducing the waiting time, Scott Jacobs pointed out that both should be tackled simultaneously to save opportunity costs.

Another participant enquired about the issue of subjectivity in the RIA process to select an option apart from the mathematical models. Scott Jacobs acknowledged that it is not a purely mathematical model and there is an element of subjectivity involved. The parameters to be measured, selection of options and even filtering out relevant information from stakeholders are often subjective decisions. The easiest method to reduce smog in Delhi would be to ban cars but this is not a politically sensible option and thus, should not be an alternative.

One of the participants enquired about the effectiveness of this tool in a federal country like India. Scott Jacobs pointed out that various advanced RIA countries follow a federal structure such as USA, Australia and Canada among others.

On the question regarding comparison of qualitative ranked data and quantitative data, Scott Jacobs mentioned that it is a subjective decision and described the 'reasonable person rule' used in the USA. Thus, it is analysed with the question of whether a reasonable person would proceed with the option or not.

Session III – RIA in action: the rationale and results of RIA in other countries

The speakers - **Malathy K. John, Research Associate, Verite Associate, Srilanka** followed by **Scott Jacobs** in this session examined why RIA was adopted in developed and developing countries, and what it has accomplished, taking into account the difficulties and challenges of implementing a RIA program.

Malathy K. John

Malathy began the session by sharing the international outlook on RIA. She pointed out some caveats and emphasizing on why RIA is important, unpacking the international narrative on RIA - highlighting issues and challenges in developing countries and how a workable solution could be derived.

She further stated that outcomes of RIA should not just be a document, but it should enable people to think. It should be about changing mind sets and that would certainly affect the policy making. Thus, we can infer that RIA is not a standalone process or a tool, in fact, it is embedded in a broad political and economic framework. So, RIA is specifically a subset of regulatory policy. Further, she elucidated on how RIA can work into a broader and cyclical policy process fitting into the policy cycle.

Taking the example of Australia and USA, she mentioned that they have mainstreamed RIA in many OECD countries but it is pretty much absent in developing countries. She also pointed out absence of RIA in South Asia, however also deliberating on the fact that there are other policy action for regulatory issues in many countries of South - Asia, RIA may not be captured formally, but is informally embedded in their policy framework. She provided one example from Srilanka and mentioned the case of Sri Lankan Telecom Regulatory Commission, which captures a 'RIA like language', but there is no RIA on paper.

Mentioning of major issues and challenges in the process of RIA, she suggested that there is a need for cohesive system of regulatory policies, in the absence of which, RIA would not be effective. Further, in order to address the challenges within the RIA process, institutional arrangements should be made such that there is an apex organization overseeing the different stages (and sectors) of RIA; coordinating roles / responsibilities of the various technical and administrative actors in the process, quality-control, training, advocacy, and problem-shooting.

Scott Jacobs

Emphasizing the importance of RIA, he stated that RIA has emerged as a major policy tool as it has been adopted by close to 70 countries in past 30 years. With respect to India, he suggested that with a vision of good governance in place, and the governments desiring high standards of transparency, RIA must be bought in the picture. He also mentioned the experience of USA, where the financial sector and deep sea drilling are highly regulated sectors but they miserably failed on these regulations. Mentioning the Indian case, he said that high degree of cooperation is needed among ministries, as major issues affecting India pass through various ministries simultaneously. RIA could be a channel of coordination amongst ministries. Thereafter, discussing the various hurdles identified by OECD to mainstream the RIA and OECD criteria for good RIA process, he suggested that there is no standard procedure of implementing an RIA. He further cautioned not to re-invent the wheel, but to follow good design principles that are well established.

He further made a striking observation by saying that RIA is just a floating bubble if we do not have any quality standards. Taking an example of Singapore, one of the business friendly countries, he mentioned that it has five principles, against which every law / regulation is tested. Behind these five principles, there is a set of assessment - a form of RIA, and thus RIA becomes a way of achieving high quality standards.

Further, he added that RIA can also be corrupted or biased, for example in South Africa, a RIA was hidden away and not published just because it did not come out with an objective that suited the relevant ministry. Therefore, it is to be ensured that RIA does not become just a justification statement. Accordingly, there is a need for building a process that protects the legitimacy of the RIA process.

On the question of who should do the RIA, he suggested to delve on two options: (1) RIA should be taken up by experienced committees outside the ministry, or (2) It should be conducted within the ministry. In this context, OECD found out that outsourcing could not be successful because the ministry has the expertise to make decisions and also, if RIA is outsourced, ministries see it as a threat. More than that, it is an intuitive process, and during the course of the process, it enables the ministries to learn as to how to solve the problem and this is what is required.

According to OECD RIA should be decentralized, and the process should be embedded in the process of the ministry, like in UK and Australia. Another argument supporting this was that if RIA has to work, it should have political support.

On the question of when RIA should be done, Scott Jacobs suggested it should be done in the very early stages, and in all cases RIA should start before a draft is written and never after a solution is chosen. Many problems of RIA quality stem from not starting early enough. Early planning and annual reports on all rules, regulations and procedures should be prepared.

Session IV – Case Study & Presentations (Group Exercises)

This was the last session of the two day training programme. The session was conducted by Malathy K. John and Scott Jacobs judged the exercise.

The objective of the group exercise was to let the participants better understand the process of RIA. At the starting, Malathy provided a quick review of the RIA process. She mentioned that the process of RIA essentially has two interlinked components: the process itself and the documentation. The whole process of documenting the steps of RIA is as essential as the final results. It is an effective a consultative process that can fit in the policy cycle and has a buy-in from the relevant stakeholders. Further, it ensures consistency, effectiveness, accountability and transparency in the process of regulatory decision making.

Case Study

The case study was given to the participants on need for regulatory impact assessment (RIA) in India. Participants were being told that they had to put themselves in the shoes of the policymakers and then undertake the various discussions. Subsequently, participants were put in two groups to undertake the exercise. The groups had to focus on the existing regulatory environment in the financial sector in India and clearly state out the policy objective for RIA to be undertaken in the financial sector. An intra-group discussion had to be then undertaken to estimate the sustainability and relevance of the decisions being proposed. A template of the process was therefore expected to be constructed by each group considering the political, socio-economic and governance culture of the financial sector in India. The groups were given 45 minutes to undertake an intra-group discussion and 15 minutes for an inter-group debate.

Both the groups essentially agreed to the need for having RIA mandated in India. However, the approach to the problem was different. One group looked at the need for RIA in the Indian financial sector as a whole, while the other chose to undertake RIA on debt recovery laws in India on a case study basis. The speakers from each group then went ahead to state out the various processes that they had envisaged in their respective activities. At the end, the group that evaluated the debt recovery laws was declared the winner of the group exercise.

To conclude, the following are some of the key learnings:

- RIA is a process that offers policymakers alternatives to a particular regulatory decision that has to be undertaken.

- RIA should be mandated in the policy framework, so that policymakers would be obligated to undertake this process.
- RIA focuses on defining the problem correctly. The problem definition should be precisely stated, giving clear evidence of its nature and magnitude.
- It would help in undertaking a stepwise cost- benefit analysis that would help in estimating the costs /benefits of regulations.
- RIA systems require active stakeholder participation from the beginning of the process. At the same time, identification of meaningful stakeholders for seeking their suggestions is of utmost important.
- It always focuses on changing the mind-set of the policy makers and regulators. A system which is capable of producing a bad result in the past is fully capable of making another mistake, unless the processes to arrive at such ends are audited, reviewed and reformed.
- The decisions must be backed with reasoned data.

Closing Session

Arun Talwar, Chief Operating Officer, CIRC, concluded the event and thanked all the participants for their active participation in the training workshop. He further acknowledged Scott Jacobs and Malathy K. John for sharing their vast experience in the area of regulatory reforms and impact analysis of proposed and existing laws. He concluded by mentioning that adoption of RIA tool in policy making framework can make huge difference in developing countries like India.

Udai S Mehta, Director, CUTS International, thanked all the participants for their energetic participation in the two day training programme. He also appreciated the work done by the CUTS' and CIRC team in putting this event together. Further, he stressed on the institutionalisation of RIA framework in India and mentioned that while some elements of RIA are there in Indian set-up, but in order to make it effective, it should be mandated in the policy making process. He finally mentioned that RIA is not a panacea for all problems, but it aids in law making process credible and transparent.