

Regulatory Reforms Needed for Ease of Doing Business in India

*Learning from the recommendations
of various Committees*

Sidharth Narayan, Senior Research Associate, CUTS International

Contents

Executive Summary	1
Background	3
Previous Committee's Reports Referred	4
Key Findings	5
Details of Previous Committees Recommendations	8
<i>Policy and Legislative Framework for Business Development and Regulation</i>	8
<i>Institutional Architecture/Structure for Business Regulatory Governance</i>	9
<i>Systemisation/Process of Business Regulatory Governance</i>	12
<i>Regulatory Impact Assessment</i>	15
<i>Optimal Business Regulatory Governance</i>	17
<i>Capacity Building Framework</i>	19
<i>Follow-up over Previous Administrative and Regulatory</i>	
<i>Reform Endeavours</i>	19
<i>Legal Reforms</i>	19
<i>Ministry of Environment, Forest and Climate Change Clearances</i>	20
<i>Regulatory Overlaps</i>	20
The Way Forward	21

Executive Summary

Despite India's recent leap frogging from the 130th to 100th position in the World Bank's Doing Business Rankings, the country's present business regulatory environment has significant potential to improve. Many committees have undertaken various studies at the instance of the Government to aid the 'Ease of Doing Business (EoDB)' in the country.

This View Point Paper aims to provide an insight into the findings of some of these committees by compiling their relevant recommendations aimed to promote 'better regulation'. The five committee reports that are referred in this paper are:

1. Report of the Working Group on Business Regulatory Framework, 2011
2. Task Force on Transaction Cost in Exports, 2011
3. Report of the Committee for Reforming the Regulatory Environment for Doing Business in India, 2013
4. Report of the Financial Sector Legislative Reforms Commission, 2013
5. Report of the Expert Committee on Prior Permissions and Regulatory Mechanism, 2016

These reports were exhaustive in giving appropriate recommendations for undertaking regulatory reforms in the country. However, this paper focusses on areas which have been commonly flagged by most of these reports. The important recommendations of these reports pertain to:

1. Developing a Policy and Legislative Framework for Business Development and Regulation

Recommendations under this category are related to developing a National Policy on Business Development and Regulation; Drafting and Enacting a National Business Development and Regulation Bill; Recommending an appropriate Approach to Drafting Regulation; and Enacting a National (Infrastructure) Regulatory Reforms Bill.

2. Building an Institutional Architecture for Business Regulatory Governance

The relevant recommendations under this category comprised: Carving out a Clear Mandate for a New Regulatory Authority; Establishing a National Business Development and Regulation Commission, along with State Business Development and Regulation Commissions; Ensuring Autonomy of Regulatory Authorities; Enabling Self-evaluation by Regulatory Organisations; Capacity Building for Reducing Systemic Risk; and Defining the Functions and Powers of the Regulator.

3. Adoption of Regulatory Impact Assessment

The reports called for Developing an Appropriate Methodology for undertaking Regulatory Impact Assessments (RIA) to be employed in the Indian Context; Adoption of RIA by both Union and State Governments; Ensuring Effective Consultation through a Two-Stage Process.

4. Optimal Business Regulatory Governance

The reports highlighted the need for a Paradigm Shift towards 'Optimal' Business Regulatory Governance; Time-bound decision making; and Adoption of a Benchmarked Model on Optimal Business Regulatory Governance.

5. Other Important Recommendations Extracted from these Reports

Some of the important recommendations are; Undertaking Legal Reforms; Removing Regulatory Overlaps; Easing the Clearance Process from the Ministry of Forests and Climate Change, etc.

Though there have been certain forward movements in adopting some of the recommendations, their implementation in true spirit remains to be checked. It, therefore, becomes important to not 're-invent the wheel' by forming new committees to draw similar regulatory architectural plans. Rather, focus and resources should be spent on implementing the already laid out roadmap in a prioritised manner.

There is a need for policymakers, regulators, academicians and other relevant stakeholders to closely look at the recommendations discussed in this paper, and take appropriate measures to ensure their adoption.

Background

When Prime Minister Modi made the clarion call of 'minimum government, maximum governance' along with a push on 'State Competitiveness' and 'Cooperative Federalism', investors were assured of simplified procedures along with weeding out obsolete and archaic laws prevalent in India. The simplification and rationalisation of existing rules with the introduction of Information Technology (IT) was envisaged to make governance transparent and effective. While several positive factors, such as large and growing domestic market, availability of large pool of skilled manpower along with a promise of cutting red tape have brought global investors to India, the country still has a long way to go in bringing about regulatory and policy reforms to EoDB.

Despite India's recent leap frogging from the 130th to 100th position during 2016-2017 in the World Bank's Doing Business Rankings,¹ the current status of the country's business environment has significant potential to improve. Accordingly, many committees have undertaken various studies at the instance of the government to aid EoDB in the country. Some of these studies were sector-specific, and some suggested broader recommendations which were cross-cutting among various sectors.

¹ World Bank, India Jumps Doing Business Rankings with Sustained Reform Focus, dated 31.10.2017, accessible at <http://www.worldbank.org/en/news/press-release/2017/10/31/india-jumps-doing-business-rankings-with-sustained-reform-focus>

This View Point Paper² aims to provide an insight into the findings of these committees by compiling their relevant recommendations aimed to promote 'better regulation'. Briefs of reports of committees referred for preparing this paper have been mentioned below.

Previous Committees' Reports Referred

The following reports were studied for the purpose of preparing this View Point Paper:

Table 1: Referred Reports of Previous Committees'

Year	Previous Committees' Reports Referred	Commissioned by	Chaired by	Code
2011	Report of the Working Group on Business Regulatory Framework ³	Planning Commission	Arun Maira	A
2011	Task Force on Transaction Cost in Exports – A Report ⁴	Department of Commerce, Ministry of Commerce and Industry	Headed by Jyotiraditya M Scindia, led by the Director General of Foreign Trade	B
2013	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India ⁵	Ministry of Corporate Affairs	M Damodaran	C
2013	Report of the Financial Sector Legislative Reforms Commission ⁶	Ministry of Finance	BN Srikrishna	D
2016	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism ⁷	DIPP, Ministry of Commerce and Industry	Ajay Shankar	E

² The view point was also submitted to the Better Regulatory Advisory Group (BRAG) constituted by the Department of Industrial Planning and Promotion (DIPP), in the form of a Composite Report.

³ WG BRF (2011). Towards Optimal Business Regulatory Governance in India. Report of the Working Group on Business Regulatory Framework, Steering Committee on Industry, Planning Commission, Government of India. New Delhi, accessible at http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_brf2103.pdf

⁴ Report of Director General for Foreign Trade's Task Force on Transaction Cost in Exports, accessible at <http://dgft.gov.in/exim/2000/tcostrep2011/tcostenglish.pdf>

⁵ Report of the Committee for Reforming the Regulatory Environment for Doing Business in India, accessible at http://www.mca.gov.in/Ministry/annual_reports/DamodaranCommitteeReport.pdf

⁶ Report of the Financial Sector Legislative Reforms Commission, accessible at https://dea.gov.in/sites/default/files/fslrc_report_vol1_1.pdf

⁷ Government of India's Ajay Shankar Committee's Report, accessible at http://dipp.nic.in/English/Investor/Ease_DoingBusiness/expertCommitteeReport_RegulatoryApprovals_26February2016.pdf

- **Report of the Working Group on Business Regulatory Framework (Chaired by Arun Maira)**

The report dealt with the proceedings and findings of the Working Group on Business Regulatory Framework (WG BRF) – a cross-cutting Working Group that was constituted under the Steering Committee on Industry by the Planning Commission of India. The mandate of the WG BRF was to inquire into the current status of the business regulatory regime in the country and suggest actions thereof for enhancing business performance, in general, and manufacturing sector competitiveness, in particular. The inputs of the WG BRF, along with those of the other working groups, were envisaged to be utilised towards the formulation of the National Manufacturing Plan (NMP) as well as the Twelfth Five Year Plan (12th FYP) for the country.

- **Task Force on Transaction Cost in Exports – A Report (Headed by Jyotiraditya M Scindia, led by the Director General of Foreign Trade)**

On the initiative of Minister of State for Commerce & Industry (MoS-C&I), the Task Force on Transaction Cost was constituted by the Department of Commerce under the orders of Commerce & Industry Minister in October 2009. The Task Force had a mandate to identify and suggest ways to achieve significant improvement in efficiency of the country's export processes in order to reduce money and time spent in exports by the exporters and to improve the ease of business and ultimately the competitiveness of Indian exports.

- **Report of the Committee for Reforming the Regulatory Environment for Doing Business in India (Chaired by M Damodaran)**

In August 2012, the Ministry of Corporate Affairs set up the Committee for Reforming the Regulatory Environment for Doing Business in India. The proximate cause of the establishment of the Committee was the World Bank's Doing Business Report which ranked India amongst the countries ranked at the bottom of various sub-indices. The Committee was subsequently expanded to bring in representation from state governments, public sector enterprises and regulatory bodies. The Committee was tasked to look into various parameters which affect the regulatory environment for doing business in India and make appropriate recommendations.

- **Report of the Financial Sector Legislative Reforms Commission (Chaired by B N Srikrishna)**

The Financial Sector Legislative Reforms Commission (FSLRC) was constituted by the Government of India, Ministry of Finance, in March, 2011. The setting up of the Commission was the result of a felt need that the legal and institutional structures of the financial sector in India need to be reviewed and recast in tune with the contemporary requirements of the sector. The remit of the Commission was to comprehensively review and redraft legislations governing India's financial system, in order to evolve a common set of principles for governance of financial sector regulatory institutions.

- **Report of the Expert Committee on Prior Permissions and Regulatory Mechanism (Chaired by Ajay Shankar)**

The expert committee was constituted by Department of Industrial Policy & Promotion (DIPP) to examine the possibility of replacing multiple prior permissions with a pre-existing regulatory mechanism with adequate safeguards. The committee took into consideration the suggestions given by industry associations, prominent industry leaders and key stakeholders.

Key Findings

These reports were exhaustive in giving appropriate recommendations for undertaking regulatory reforms in the country. However, adequate attention must be given to areas which have been commonly flagged by most of these reports. The important recommendations⁸ of the selected reports have been summarised in Table 2 followed by brief 'extracts'⁹ of the same.

Table 2: Indicative Summarised Chart

S. No.	Recommendations	Earlier Committees
<i>I. Policy and Legislative Framework for Business Development and Regulation</i>		
1	Developing National Policy on Business Development and Regulation	A
2	Drafting and Enacting National Business Development and Regulation Bill	A
3	Drafting Regulation/Approach to drafting	A + D
4	Enacting National (Infrastructure) Regulatory Reforms Bill	A
<i>II. Institutional Architecture/Structure for Business Regulatory Governance</i>		
5	Building Institutional Architecture for Business Regulatory Governance/Larger and Stronger Organisation required/Carving out Clear Mandate for a New Regulatory Authority/Financial Regulatory Architecture	A + B + C + D
6	Establishing National Business Development and Regulation Commission	A
7	Establishing State Business Development and Regulation Commission/Incentivising Regulatory Reforms amongst States	A + C
8	Appointments in and Supervision of Regulatory Authorities/Empowered Board	C + D

⁸ This report contains many relevant recommendations of the said committees. However, this report is not exhaustive, and may have excluded certain recommendations.

⁹ Extracts: Relevant sections of the reports have been adapted in the paper.

S. No.	Recommendations	Earlier Committees
9	Autonomy of Regulatory Authorities/Independence of Regulators	C + D
10	Self-evaluation by Regulatory Organisations	C + D
11	Allocating Priority to Systemic Issues/Capacity Building for Reducing Systemic Risk	C + D
12	Functions and Powers of the Regulator	D
III. Systemisation/Process of Business Regulatory Governance		
13	Systematisation of Business Regulatory Governance	A
14	Mapping and Classification of Business Regulations and Procedures/System of Advance Ruling	A + C
15	Developing National Business Facilitation Grid (NBFG)/Export Related IT System/Information Gathering/Inventory of Clearances	A + B + D + E
16	Developing a Business Regulatory Governance Catalogue to Choose Appropriate Regulatory Alternative among Self-Regulation, Co-Regulation and Public Regulation	A
17	Promoting Standardisation with Operationalisation of Single Window Systems/Single Online Interface/Single Window Mechanism	A + B + C
IV. Regulatory Impact Assessment		
18	Adoption of Regulatory Impact Analysis (RIA)	A + C + D + E
19	Developing Appropriate Methodology for RIA to be employed in the Indian Context	A + D
20	Adoption of RIA by Union and State Governments	A + D
21	Ensuring Effective Consultation through a Two-Stage Process	C + D
V. Optimal Business Regulatory Governance		
22	Paradigm Shift towards 'Optimal' Business Regulatory Governance	A
23	Benchmarking for Optimal Business Regulatory Governance/Time bound decision making/Processing of Declarations	A + B + D + E
24	Adoption of Benchmarked Model on Optimal Business Regulatory Governance	A
VI. Capacity Building Framework		
25	Capacity Building Framework for Business Regulatory Governance	A

S. No.	Recommendations	Earlier Committees
VII. Follow-up over Previous Administrative and Regulatory Reform Endeavours		
26	Follow up over Previous Administrative and Regulatory Reform Endeavours	A + C
VIII. Legal Reforms		
27	Review of Laws and Regulations	C + D
28	Encouraging Arbitration to Resolve Contractual Disputes	C
29	Judicial Review of Regulations	D
30	Appellate Tribunal	D
IX. MoEFCC Clearances		
31	Environmental and Forest Clearances	E
X. Regulatory Overlaps		
32	System Wide Database	D
33	Inter-regulatory Coordination	D
34	Regulatory Overlaps	D

Details of the Previous Committees Recommendations

I. Policy and Legislative Framework for Business Development and Regulation

The following measures were suggested for designing an appropriate Policy and Legislative Framework for Business Development and Regulation.

The Report of the Working Group on Business Regulatory Framework had suggested **Developing National Policy on Business Development and Regulation**. The report noted that India was lacking any forward looking Policy, which can serve as a guiding framework for business regulatory governance. The release of a Policy Statement by the Union government, and followed by a full-fledged Policy, elaborating the need for concerted actions on the part of Union and state government(s) was recommended. Also, the proposed policy was envisaged to prescribe a set of Principles for optimal business regulatory governance that should be adhered to by the Union, State and Local governments before enacting certain regulation. However, the actual adoption of the policy was noted to be entirely dependent on the political leadership.

The same report also called for **Drafting and Enacting a National Business Development and Regulation Bill**. The Committee recommended that a National Business Development and Regulation Bill should be drafted and enacted by the Parliament of India. The proposed legislation was to enable the employment of a robust methodology to measure and reduce burdens associated with policies,

regulations and praxis that (adversely) affect business performance. The proposed legislation was touted to enable the employment of innovative regulatory governance tools, such as RIA and facilitate amendments in the light of the gathered evidence. It would also fill the void that has been existent for all along the journey of business regulatory governance in India, and serve as a vehicle for collective action on the part of Union and state governments, very much in letter and spirit of the Constitution of India.

The views of two Committees on the issue of approaches to drafting regulations have been given in Table 3:

Table 3: Viewpoints of Committees' on Approaches to Formulate Regulations

Report of the Working Group on Business Regulatory Framework	Report of the Financial Sector Legislative Reforms Commission
<u>Drafting regulation</u> : It was considered necessary to ensure that simplicity and clarity should form the content of regulation, leaving no part of it open to different interpretations by different persons.	<u>Approach to drafting</u> : The committee recommended adopting a drafting technique which is consistent with the objective that the draft intends to convey. Sometimes, vague phrases may indeed convey the requisite meaning, but on other occasions, a precise formulation is necessary.

Drafting a **National (Infrastructure) Regulatory Reforms Bill**: The Union government had published a paper entitled 'Approach to Regulation of Infrastructure', which analysed the current state of economic regulation and suggested an overarching framework with a view to addressing the divergent mandates and practices prevailing in different sectors, and accordingly suggested an overarching law for giving effect to the agreed principles of regulation and for guiding the next stage of regulatory development. To facilitate an informed debate, a draft Bill entitled as '*Draft Regulatory Reforms Bill*' had been prepared to give effect to the recommendations contained in the Approach Paper and for promoting consistent approach to regulation across sectors. The committee recommended it to be implemented with a new name: 'National Infrastructure Regulatory Reforms Bill' for reasons detailed in the report.

II. Institutional Architecture/Structure for Business Regulatory Governance

The views of various committees on the issue of building an Institutional Architecture/Structure for Business Regulatory Governance have been given in the following Table:

**Table 4: Committees’ Views on Building Institutional Structure
for Business Regulatory Governance**

Report of the Working Group on Business Regulatory Framework	Task Force on Transaction Cost in Exports – A Report	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission
<p><u>Building Institutional Architecture for Business Regulatory Governance:</u> Acknowledging the complexity of business regulatory governance, interplays among multiple-stakeholders and its implications on the growth and development trajectory of the country, the committee strongly felt that new institutions need to be established for spearheading the business regulatory reforms agenda.</p>	<p><u>Larger and Stronger Organisation required:</u> For successful implementation of eTrade and future related initiatives, the need of a much stronger and larger organisation was felt. It was to be headed by a full-time senior official. This was envisaged to provide a much-needed effective inter-ministerial management and maintenance of automated systems.</p>	<p><u>Carving out a clear mandate for a new regulatory authority:</u> Before setting up a new regulatory organisation, the committee prescribed – adequate thought should go into the need for such an organisation, the ability to man that organisation appropriately and to invest it with functional autonomy. It was further stated that setting up a new regulatory organisation should not be a knee-jerk response to a specific situation or context, but a well-thought-out disengagement plan of the Ministry or Department concerned to move away from writing out and implementing regulations.</p> <p><u>Setting up an overarching body to enable policy and process coordination:</u> To address the problem of lack of coordination in terms of policy formulation and statutory enforcements among various Central and state governments, the committee suggested the setting up of an overarching body at the highest level to identify and address key issues impeding business facilitation and to act as an interface with relevant Ministries and Departments in order to address the identified key impediments in a time-bound manner.</p>	<p><u>Financial Regulatory Architecture:</u> The committee observed India to be having a legacy financial regulatory architecture, which had evolved over the years, with a sequence of piecemeal decisions responding to immediate pressures from time to time. The committee also highlighted certain gaps where no regulator was in charge – such as for diverse kinds of ponzi schemes etc., which were not being regulated by any of the existing agencies. The regulatory framework was also considered to be containing overlaps where conflicts between laws had consumed the energy of top economic policy makers.</p> <p>It was recommended that the financial regulatory architecture should be conducive to greater economies of scale and scope in the financial system, based on the principles of – accountability, avoiding conflict of interest, comprehensive view and understanding of risks etc. Accordingly a financial regulatory architecture comprising of seven agencies was suggested.</p>

The Report of the Working Group on Business Regulatory Framework had further recommended Establishing a National Business Development and Regulation Commission at a National level for framing the Business Development and Regulation Policy, in order to impact different policies, regulations and praxis in a continuous and duly authorised manner, while leveraging upon strengths and jurisdictions of existing institutions. Though working independently, the administrative responsibility of resourcing the Commission was recommended to remain with the Ministry of Finance at the Union level.

Also, a need for states to also contribute towards the goal of simplification of regulations and expediting relevant approvals was felt, and steps recommended towards the same have been mentioned below in the Table:

Table 5: Recommended Measures for Simplifications of Regulations and Expediting Relevant Approvals

Report of the Working Group on Business Regulatory Framework	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India
<p><u>Establishing State Business Development and Regulation Commissions</u>: To steer the agenda of business regulatory reforms at the State and local levels, State Business Development and Regulation Commissions were suggested to be established in all states. These were to work in consultation with various other institutions operating at State levels and steer the reform agenda in consultation with and under the advice from the National Business Development and Regulation Commission, as discussed above. Though the National and state commissions were envisaged to have different jurisdictions, it was expected that the priority areas for their work will be reflective of the national plan priorities, and would initially target such policies, regulations and praxis that were hampering the envisioned growth of the sector.</p>	<p><u>Incentivising regulatory reforms amongst states</u>: With an urgent need being felt to accelerate the process of simplification of regulations and consequently expediting the necessary approvals, the Committee recommended that state governments making significant progress in this matter should be appropriately incentivised.</p>

Recommendations pertaining to the appointment of persons to head the regulatory organisations have also been laid out previously, as mentioned in Table 5:

Table 6: Recommendations for Appointing Top Officials of Regulatory Organisations

Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission
<p><u>Appointments in and supervision of regulatory authorities:</u> The report suggested more transparency in the appointment of persons to head regulatory organisations, and recommended that there should be a transparent system in which the Head of the regulatory organisation and his Board level colleagues appear before an appropriate Parliamentary Committee once in six months to report on the developments of previous six months and the broad plan of action for the next six months.</p>	<p><u>Empowered Board:</u> It was suggested that all regulators should have an empowered board. The Commission had drafted a precise selection-cum-search process for the appointment of its envisaged members: the chairperson, executive members including an administrative law member, non-executive members and government nominees.</p> <p>The draft code prepared by the Commission had recommended certain elements to be incorporated in the functioning of board meetings to ensure transparency.</p> <p><u>Advisory Councils:</u> A general framework for establishing advisory councils, that will support the board, was also suggested to be created. It further recommended the composition of these councils to include experts in the field for which it has been created; and persons with relevant experience in the area of finance.</p>

Another important finding of the previously formed committees was to ensure the autonomy/independence of various regulators:

Table 7: Assuring Autonomy of Various Regulators by the Previously Formed Committees

Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission
<p><u>Autonomy of regulatory authorities:</u> The Committee called for genuine functional and financial autonomy by putting in place a system where regulatory organisations are not dependent on government departments for financial support by way of handouts.</p>	<p><u>Independence of Regulators:</u> The Committee put forward a strong for independence of regulators. Independent regulators were advocated to yield greater legal certainty, which required two planks of work. On one hand, independence was required to be enshrined in the law, by setting out many processes in great detail in the law. On the other hand, alongside independence there was a need of putting in place various accountability mechanisms.</p> <p><u>Autonomy:</u> The Commission also envisaged that fees charged to the financial system will fund all financial sector regulatory agencies, and should not impose any burden upon the exchequer, giving regulators greater autonomy.</p>

The Report of the Committee for Reforming the Regulatory Environment for Doing Business in India had also highlighted the need for Self-evaluation by regulatory organisations. The Committee had

recommended that each regulatory organisation should undertake a self-evaluation of itself once in three years, and put-out the conclusions in public domain for informed discussion and debate.

The need for reducing systemic risk also requires adequate focus:

Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission
<p><u>Allocating priority to systemic issues:</u> To boost the effectiveness of regulatory apparatus, it was recommended that the enforcement bandwidth of a regulatory body needs to be optimally used to deal with cases of systemic importance on a priority basis.</p>	<p><u>Capacity Building for reducing systemic risk:</u> The Commission noted that systemic risk in India will go down if institutional capacity is built, though it will not be eliminated. It called for a construction and application of system-wide tools for systemic risk regulation.</p>

The Report of the Financial Sector Legislative Reforms Commission has laid down the core Functions and Powers of the Regulator: The Commission noted that the actual functioning of the regulator lies in three areas: regulation-making, executive functions and administrative law functions. It was also noted that in India, a confusing situation existed due to regulators utilising many instruments such as regulations, guidelines, circulars, letters, notices and press releases. Accordingly, all regulators were recommended to operate through a small number of well-defined instruments only. The Commission had consistently sought to define specific objectives and powers and articulate principles that guide the use of powers, so that regulation-making by the regulator would not take place in a vacuum.

III. Systematisation/Process of Business Regulatory Governance

The Report of the Working Group on Business Regulatory Framework had called for Systematisation of Business Regulatory Governance: There is a strong case for systematising the manner in which businesses across the country are governed and regulated. This calls for making a detailed enquiry into the subject. In order to achieve this, the important recommendations have been given in Table 5:

Table 8: Recommendations for Streamlining Governance and Regulation of Businesses

Report of the Working Group on Business Regulatory Framework	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India
<p><u>Mapping and Classification of Business Regulations and Procedures:</u> An urgent need to map business regulations and procedures at pan-India level was realised by the Committee, as a gap was felt -- there was no authoritative account of the type and number of business regulations and procedures that exist in the country. Such mapping was to serve as a baseline for all future attempts at enhancing the quality of the Business Regulatory Framework (BRF). The most important advantage of such exercise was noted to be the creation of a country-wide repository of all</p>	<p><u>System of advance ruling:</u> The Committee noticed that in many instances, different authorities had written different, and often conflicting, rules and regulations governing identical activities, thereby creating avoidable confusion in the regulated space. Therefore, it recommended that</p>

Report of the Working Group on Business Regulatory Framework	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India
<p>business regulations and procedures. Such consolidation was recommended to be followed up by instituting a system of automatic updation with the help of Information and Communication (ICT) as well as conventional communication channels whereby every time an agency undertaking research or enquiry into areas related to BRF, it would be obligatory on its part to share its work (or its abstract details if there are copyright constraints) on the common repository.</p>	<p>every organisation tasked with the writing of regulations should have a provision for an advance authority for rulings.</p>

The importance of use of digital technology in effectuating the above has been widely recognised.

Table 9: Recognising the Significance of Digital Technology

Report of the Working Group on Business Regulatory Framework	Task Force on Transaction Cost in Exports – A Report	Report of the Financial Sector Legislative Reforms Commission	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism
<p><u>Developing National Business Facilitation Grid (NBFG):</u> Development of a NBFG was suggested to serve as an online one-stop-shop for all information related to business regulation and procedures in India. Apart from the detailed listing of all business regulations and procedures, this web portal was suggested to possess interactivity, suiting the requirements of at least three types of target constituencies: existing businesses; emerging entrepreneurs; and potential investors, which was expected to encourage the visitors to suggest improvements in the electronic interface of the web portal on the one hand, and those relating to specific regulations, on the other. The NBFG was also to be linked with other business facilitation portals to make it more effective.</p>	<p><u>Export Related IT System:</u> The Committee suggested for expediting the eTrade project, along with strengthening the institutional mechanism for handling inter-ministerial trade-related automation issues. Forming a dedicated and integrated team from all stakeholder departments on a full-time basis was suggested. Also, the importance of automation required for various processes involved in customs declarations was stressed upon.</p>	<p><u>Information Gathering:</u> Since regulators require a substantial scale of regular information flow from financial firms, the Commission envisaged a single 'Financial Data Management Centre', wherein all financial firms would submit regular information fillings electronically to the single facility. This was touted to reduce the cost of compliance and help improve data management within regulators.</p>	<p><u>Inventory of Clearances:</u> The listing of clearances at the level of the Central and state governments was recommended to be evolved in an open source Wikipedia type of process in which all concerned stakeholders can participate. Next, a Net-based help facility with Q&As and response capability for specific queries was suggested to be created.</p>

The Report of the Working Group on BRF had also recommended Developing a Business Regulatory Governance Catalogue to Choose Appropriate Regulatory Alternative among Self-Regulation, Co-Regulation and Public Regulation: It was recommended that a catalogue should be developed over different ways in which business could be regulated. The recognition at the global level to explore various alternatives to conventional command and control type (public) regulations was acknowledged. It was not that such alternatives are not known or practiced in India, but it was found that there were no structured modalities of exploring various alternatives for achieving regulatory objectives. Considering the wide arena of regulatory governance, it was recommended that a detailed analysis should be undertaken to determine which alternatives to regulations are feasible as well as beneficial in the Indian context. The proposed catalogue was to classify the existing modes of regulations into at least three broad categories: self-regulation (*the issue was touched upon by Report of the Expert Committee on Prior Permissions and Regulatory Mechanism*), co-regulation and public regulation. Such a catalogue was expected to serve as a ready reference or one-stop-shop for policymakers as well as the business community while arriving at the choice of appropriate mode of regulation.

One of the noteworthy highlights of these previous reports was regarding creating a Single Window System as given in Table 9.

Table 10: Creating a Single Window System

Report of the Working Group on Business Regulatory Framework	Task Force on Transaction Cost in Exports – A Report	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism
<p><u>Promoting Standardisation with Operationalisation of Single Window Systems</u>: Despite a number of state governments having established single window system (SWS) or one-stop-shops (OSS) on the lines of the initiatives undertaken in many other countries of the world, a wide variation in the manner of setting up and operationalisation of SWS across the country was observed. Certain common minimum standards were suggested to be established country-wide, wherein the state governments would be free to innovate beyond</p>	<p><u>Single Online Interface/Window</u>: The task force suggested exploring the possibility of a single online interface for exporters/importers to obtain government clearances from different agencies.</p> <p><u>Single Helpdesk</u>: Setting up of a single helpdesk was also suggested, along with establishing an outsourced 'call</p>	<p><u>Single window mechanism</u>: It was considered necessary to have a single window channel of compliance, to help small business entities and also a hassle-free tax payment regime. Facilitation centres were also recommended for new entrants to the business environment, to help deal with the complexities of filling cumbersome forms and dealing with other procedural issues.</p> <p><u>Information facilitation through nodal point</u>: Each State Government was recommended to appoint a nodal person and a office,</p>	<p><u>Single Window System</u>: The Committee had recommended the introduction of a SWS and Single Composite Application Form for various approvals and clearances.</p>

Report of the Working Group on Business Regulatory Framework	Task Force on Transaction Cost in Exports – A Report	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism
<p>them. The political and administrative leadership at the Union and State Government levels were also suggested to consider the extent to which the standards could be adopted. This was expected to bring efficiency since businesses as well as investors would find a minimum assured level of predictability, while considering their options for setting up of their business or investments, respectively in different locations of the country.</p>	<p>centre' which would run on a 24X7 basis.</p>	<p>which would be a single point contact for persons intending to obtain information on the procedural and substantive conditions to be fulfilled for setting up a business. <u>Building in appellate process by design</u>: Further, an inbuilt system of an appellate process, where a person aggrieved by an order of rejection may, as a matter of right, approach a superior authority for reconsideration of the matter on merits, was suggested.</p>	

IV. Regulatory Impact Assessment

The most important recommendation brought forth from the study of these reports is with regards to adopting Regulatory Impact Assessment (RIA) to facilitate better quality of business regulatory governance in the country.

Table 11: Adopting RIA for Enhancing Business Regulatory Governance

Report of the Working Group on Business Regulatory Framework	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism
<p><u>Adoption of RIA</u>: The working group recommended RIA to be adopted for improving the quality of business regulatory governance in India. RIA is known to help with the identification of unreasonable burdens on business and in</p>	<p><u>Regulatory Impact Assessment</u>: RIA of every proposed regulation was recommended to precede any public consultation process on the proposed</p>	<p><u>Costs and Benefits of Regulations</u>: A structured process had been defined in the draft Code, through which</p>	<p><u>RIA as a Continuing Process</u>: The need for a standing institutional mechanism within the government for an Independent RIA on an ongoing basis of</p>

Report of the Working Group on Business Regulatory Framework	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism
<p>devising ways through which such burdens are kept to a minimum, if not eliminated altogether. Because RIA includes consultation with a wide range of stakeholders, it also provides ample opportunity to bring up unforeseen consequences or real life experiences for consideration while weighing and measuring the impact of any regulation or policy. It thus increases the accountability of the whole regulatory governance process.</p> <p><i>Ex-ante</i>, RIA helps to identify any possible side effects or hidden costs associated with regulation and to quantify the likely costs of compliance on the individual citizen or business. It also helps clarify the costs of enforcement for the State. RIAs also identify potentially anti-competitive or protectionist regulations before being enacted.</p> <p><i>Ex-post</i>, RIA could enable regulatory and policy reviews on a periodic basis so as to ensure that regulations and policies are reflective of the changing environment related to business competitiveness, growth and development. Acknowledging the huge volumes of regulations in the country – most of which are from the time of British Raj, it was recommended to develop an action plan for application</p>	<p>regulation.</p> <p><u>Setting up a regulatory review authority:</u> It was considered necessary to address the existing body of regulations (the stock) in terms of contemporary relevance, clarity and continuity. The task was suggested to be best accomplished by creating a Regulation Review Authority in each organisation that is empowered to write rules and regulations. The Regulation Review Authority was suggested to be within the organisation that writes regulations in order to have a better sense of understanding the context.</p> <p><u>Reviewing the proposed regulations:</u> The said Authority could also be tasked with reviewing draft regulations that are in the pipeline in order to ensure that unnecessary regulations are not given effect to. Such a body was expected to be best equipped to undertake the RIA, which should be a condition precedent to the writing of regulations.</p>	<p>regulation making would take place. The regulator was recommended to be required to articulate the objective of the regulation, a statement of the problem or market failure that the regulation seeks to address, and analyse the costs and benefits associated with the proposed regulation. Such a structured regulation-making process was expected to reduce arbitrariness and help improve the quality of regulations.</p>	<p>the existing regulatory requirements and proposed new ones across the entire range of economic activities was felt. The process of conducting RIA should take a fair and balanced view regarding what is good for business and consequently wealth creation and employment generation on the one hand, and public welfare considerations, such as consumer protection, safety, preservation of the environment and interests of labour, on the other.</p> <p><u>Standing Expert Committee on Regulatory Affairs:</u> The advisory function for this was recommended to be performed by constituting a Standing Committee on Regulatory Affairs.</p> <p><u>State Levels:</u> A similar mechanism was also to be created in the state governments with the same objective of ensuring that actual costs of regulation especially for growth of enterprises and</p>

Report of the Working Group on Business Regulatory Framework	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission	Report of the Expert Committee on Prior Permissions and Regulatory Mechanism
of RIA for Union as well as State administered regulatory instruments, in accordance with the mapping of regulations exercise.			consequent job creation do not outweigh the intended benefits.

The Report of the Working Group on BRF has further suggested Developing Appropriate Methodology for RIA to be employed in the Indian Context: The working group found no single generic model of RIA used internationally, and therefore, a tool should be developed for the Indian context through a consultative process and due research reflecting upon global experiences with its adoption and usage. It further recommended following eight elements that should necessarily constitute RIA for Indian context: policy coherence; cost of doing business; competition; innovation; SMEs; consumers; labour; environment and commons.

The above report also goes on suggest the Adoption of RIA by Union and state governments: Considering the large volumes of business regulatory instruments that are in place at the Union, State and Local levels, the need to be selective in applying RIA was felt, and the mapping of regulations exercise was suggested to be used by decision makers to prioritise the specific sets of regulatory instruments. In accordance with the XII FYP priorities, the ones having most impact on manufacturing sector were suggested to be picked in the initial phases, followed with the other having a bearing on some other sector. Three modalities for countrywide adoption of RIA were highlighted: voluntary adoption; incentive-linked adoption; and mandatory adoption. Either or a combination of these could be taken up as per the agreement and feasibility considerations.

The Report of the Committee for Reforming the Regulatory Environment for Doing Business in India had also put stress on the need for Ensuring effective consultation through a two-stage process: It is recommended that each government organisation/department which has the responsibility of writing regulations should undertake a two-stage process of consultation, wherein a revised draft is put up for consultation after the first round of stakeholder consultation. This would ensure that avoidable situations of misinterpretation of the regulations do not exist.

V. Optimal Business Regulatory Governance

The Report of the Working Group on Business Regulatory Framework had called for a Paradigm Shift towards 'Optimal' Business Regulatory Governance: This entailed cultivating an appropriate mind-set of government officials and functionaries while spearheading the BRF. It was considered important to note that government officials and functionaries should be able to differentiate between general

citizens and businesspersons. Unless they were not adequately sensitised over the promising role played by business in growth and development of the country, they would not be in a position to assume the role of facilitators.

Various other committees have also opined in this regard:

Table 12: Other Committees’ Views on Optimal Business Regulatory Governance

Report of the Working Group on Business Regulatory Framework	Task Force on Transaction Cost in Exports – A Report	Report of the Committee for Reforming the Regulatory Environment for Doing Business in India	Report of the Financial Sector Legislative Reforms Commission
<p><u>Benchmarking for Optimal Business Regulatory Governance</u>: Recognising the wide variations with business procedures at the country level, the working group recommended the benchmarking of execution timelines and processes that are undertaken by different government entities to facilitate business requirements. Benchmarking is not a new concept and is already in place in a number of government entities whereby the predictability of public services have been benchmarked, keeping in mind the interests of the citizens. The proposed benchmarking was to be done against clearly defined dimensions, such as time, volume, cost, frequency, jurisdiction, quality of interface, consistency, predictability and so on. For each dimension, a stipulated timeline and procedure was also to be prescribed.</p>	<p><u>Processing of Declarations</u>: The Committee opined that India may learn from Singapore in this regard, which processes 90 percent of the online customs declarations within 10 minutes.</p> <p>India needs to draw inferences from the standards set by other countries, and benchmark its expected level of regulatory efficiency against them.</p>	<p><u>Time bound decision making</u>: The granting of permissions or the decision not to grant permissions was suggested to be taken within a prescribed time period failing which a provision for deemed permission was recommended.</p>	<p><u>Time Bound</u>: The Committee held the view that the time taken for granting an approval and the system of investigation of firms must be carried out in a time bound manner, so as not to burden the entity under investigation.</p>

Further in this regard, the Report of the Working Group on BRF had also called for the Adoption of Benchmarked Model on Optimal Business Regulatory Governance: Three modalities for adoption of the aforementioned Benchmarked Model were suggested: voluntary adoption; incentive-linked adoption; and mandatory adoption. On the lines on Citizen Charters, governments were suggested to

introduce Business Facilitation Charters. Also, on the line of the Public Information Officers (PIOs) that have been designated under the Right to Information Act 2005, each government entity was further suggested to designate Business Facilitation Officers (BFOs) to serve as focal points for the businesses in that particular department.

VI. Capacity Building Framework

The Report of the Working Group on BRF had also suggested for developing a Capacity Building Framework for Business Regulatory Governance: Developing a dedicated capacity building framework for the envisaged business regulatory governance in the country, was considered to be imperative from the point of creating awareness and generating ownership among the implementers as well as target constituencies. A need for developing such resources which could facilitate capacity building of the supply and demand side was felt. A comprehensive programme on capacity building of government, business and stakeholders was recommended to be rolled out, which would also provide a platform for experience sharing and mutual learning.

VII. Follow-up over Previous Administrative and Regulatory Reform Endeavours

A repeated need for following up of previous administrative and regulatory reform endeavours, as well as reviewing the previous regulations by setting up regulatory review authority has been felt. This was highlighted by the Report of the Working Group on Business Regulatory Framework. Follow up over Previous Administrative and Regulatory Reform Endeavours: Since independence, a large number of administrative reform propositions have been given by expert bodies set up for the purpose. These were required to be consolidated and sorted based on those which have been implemented and those which have not been implemented. A dedicated single repository was also suggested to be created for storing all such documents and the consolidated recommendations were then to be classified into such categories that could address specific regulations and procedures. The consolidation and classification exercise was envisaged to require information and knowledge sharing on the part of various government and non-government entities.

VIII. Legal Reforms

Few of these previous reports have also called for the review of laws and regulations, as mentioned below:

Table 13: Urge for Reviewing Laws and Regulations

Report of the Committee for Reforming the Regulatory Environment for Doing Business	Report of the Financial Sector Legislative Reforms Commission
<p><u>Review of laws and regulations</u>: The Government of India as well as state governments were recommended to examine the content of all laws and rules which impact the EoDB and make appropriate changes therein to reflect the requirements of modern day trade and commerce.</p>	<p><u>Parliamentary review of subordinate legislation</u>: In order to strengthen the oversight of regulators who are empowered by Parliament to issue subordinated legislation, the Commission recommended that the subordinate legislations made by regulators should be reviewed by the same Parliamentary Committee which reviews primary legislation for the financial sector.</p>

It was further suggested by Report of the Committee for Reforming the Regulatory Environment for Doing Business, that there was a need for Encouraging arbitration to resolve contractual disputes: It was considered important for judicial authorities to be appreciative of the need for quick resolution of disputes that are brought up before them. Accordingly the Commission recommended that there should be a mechanism to dis-incentivise use of civil courts for resolving contractual disputes, so as to encourage arbitration as a preferred manner of resolution. The report further recommended that appropriate measures may be taken up to create a large pool of persons trained in the process of arbitration who could be approached by contending parties to take up their matter.

The Report of the Financial Sector Legislative Reforms Commission also spoke about the need for Judicial Review of Regulations: The Commission noted that regulations were not subject to judicial review, and accordingly envisaged an important process of judicial review of regulations. It suggested for providing enabling provisions to challenge regulations either on process issues or substantive content. The Commission also believed that these checks and balances will yield considerable improvements in the quality of regulation-making in India.

The report further highlighted the importance of an Appellate Tribunal: Recognising the fact that the working of the regulator ultimately results in regulations and orders, the Commission envisaged provisions enabling a judicial review at a proposed unified Financial Sector Appellate Tribunal (FSAT), which would hear all appeals in financial sector.

IX. Ministry of Environment, Forest and Climate Change Clearances

The Report of the Expert Committee on Prior Permissions and Regulatory Mechanism also spoke about easing the process of obtaining Environment Clearance. The Ministries of environmentally sensitive sectors, such as Power, Petrochemicals, Pharmaceuticals, etc. along with Ministry of Environment, Forest and Climate Change (MoEFCC) were recommended to work out a 20-year perspective geographical plan indicating preferred locations in prioritised categories for their anticipated projects, so that the negative impact on the environment is minimised. It was further recommended that plants in these locations should be able to get speedy environment clearance.

Emphasis was also placed on speedy Forest Clearance. The database of GIS-Digital map-based inventory of the forest cover in the country was recommended to be used for taking decisions regarding approval of proposals for diversion of forest land for a project. MoEFCC, in partnership with state governments, were suggested to create land banks for compensatory afforestation. This was envisaged to considerably reduce the time required for getting forest clearance.

X. Regulatory Overlaps

Another lacuna highlighted by the Report of the Financial Sector Legislative Reforms Commission was regarding the current regulatory overlaps prevalent in the system, which could be overcome by creating a System Wide Database. The need for a construction and analysis of a system-wide database was highlighted, which will analyse the entire financial system and not a subset of it.

Another suggestion proposed by the Committee in this regard was regarding ensuring Inter-regulatory Coordination. Effective coordination across a wide array of policy questions was considered to be an essential tool for systemic risk reduction.

The problem of regulators working in silos was also highlighted as a cause of Overlaps. The Commission saw this as a potential problem of financial firms engaging in forum-shopping, where the most lenient regulator is chosen, and portray their activities as belonging to that favoured jurisdiction. It was also opined, that an approach of multiple sectorial regulators that construct 'silos' induces economic inefficiency.

The Way Forward

Though there have been certain forward movements in these previous recommendations, such as on framing a National Manufacturing Policy, some recommendations of the FSLRC, etc., the on-ground actions and the implementation of these recommendations in their true spirit remain to be checked. It, therefore, becomes important, to not 'reinvent the wheel' by drawing the same architectural plan repeatedly. Rather, focus and resources must be spent on implementing the already laid out roadmap in a prioritised manner.

Hence, it becomes important, to closely look at the recommendations listed above, and take appropriate measures/steps to ensure their adoption.

© CUTS International 2018. This **View Point Paper** is published by CUTS Centre for Competition, Investment & Economic Regulation (CUTS CCIER), D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India. Ph: +91.141.228 2821, Fx: +91.141.228 2485, E-mail: c-cier@cuts.org, Web: www.cuts-ccier.org. Also at Delhi, Calcutta and Chittorgarh (India); Lusaka (Zambia); Nairobi (Kenya); Accra (Ghana); Hanoi (Vietnam); Geneva (Switzerland); and Washington DC (USA).

CUTS View Point Papers are to inform, educate and provoke debate on specific issues. Readers are encouraged to quote or reproduce material from this paper for their own use, but CUTS International requests due acknowledgement and a copy of the publication.
