

**PARLIAMENTARIANS FORUM ON
ECONOMIC POLICY ISSUES (PARFORE)**

**A Discussion on the
Draft Regulatory Reform Bill**

New Delhi, August 03, 2010



Background

For the Indian economy to achieve and sustain an annual growth rate of 10 percent, the creation of quality infrastructure is critically important. It is estimated that India needs more than a trillion dollars of investment in infrastructure over the next decade. Such a large magnitude of investment cannot come from the public sector alone. The private sector, too, will have to be engaged in a massive scale. In order for private sector investment to be meaningful and large, at least two pre-conditions need to be met. First, markets and bankable projects for infrastructure services must be identified and created. Second, these markets must be regulated properly so that non-market risks are minimised through a predictable legal environment.

The regulatory environment in India, which is still developing, is far from uniform and predictable across sectors and/or states. Thus, an important step toward achieving uniformity and predictability is the proposed Draft Regulatory Reform Bill (Bill) that has been prepared by the Planning Commission of India. The Bill has been placed in the public domain for eliciting views and opinions on the nature and extent of necessary legislative action for reforming the regulatory environment in India.

Against this background, CUTS International organised the 9th Parliamentarians' Forum on Economic Policy Issues (PARFORE) meeting at New Delhi, on August 03, 2010, which brought together parliamentarians, regulators, media, etc., on a common platform to provide their views/comments to the Planning Commission on the draft Bill.

PARFORE is an initiative of CUTS to bring Members of Parliament (MPs), cutting across party lines, on a single platform to deliberate over the core economic policy issues that are relevant for reforms.

Opening Session

The meeting was attended by parliamentarians representing both the houses, Lok Sabha as well as Rajya Sabha. Apart from the parliamentarians, few participants from various important organisations such as regulatory bodies, media and private sector were also invited. A list of key participants is given in the Annexure I.

Pradeep S Mehta, Secretary General, CUTS International

At the outset, Mehta welcomed all the distinguished participants on behalf of CUTS. For the benefit of new participants, he also briefed about the objectives of PARFORE and its relevance in today's policy debates. He stated that PARFORE is a non-partisan forum to encourage discussion across the party lines on key economic policy issues with CUTS being the Secretariat.

In his opening remarks, Mehta informed that the bill was conceptualised by the Planning Commission of India to bring about some degree of uniformity to the regulatory regime in India, which was partially based upon the analytical work done by CUTS over several years. The need for such a Bill assumes urgency as the

increasing infrastructure deficit is sought to be remedied by attracting private investment and for which, having a sound and reliable regulatory environment is an important requirement. The bill sets out the objectives of regulating the infrastructure sector by establishing an overarching framework for various economic regulators.

Main presentation

Gajendra Haldea, Adviser to the Deputy Chairman of the Planning Commission

Haldea made the descriptive presentation on the draft bill and laid out issues for discussion as the starter. In his presentation, Haldea shared with the participants, that as part of the Common Minimum Programme of the United Progressive Alliance (UPA) government and as per directions of the Prime Minister's Office, the Planning Commission of India, produced an approach paper (Approach to Regulation of Infrastructure) stating the overall philosophy of regulation, which was shared with a variety of stakeholders, including regulatory commissions. On the basis of recommendations in the approach paper, the Planning Commission prepared the Bill, which was to be discussed in this meeting.

Haldea emphasised that with the entry and demand for more private players in the infrastructure sector in India, there is a need for a credible regulatory approach to ensure competition, level playing field and a balancing of the divergent interests of the different stakeholders (including the consumers). His presentation brought out many other important issues such as divergence in powers and functions, i.e. few regulators enjoy extensive powers while others have been granted limited mandate of only setting tariffs. The Bill makes it clear that the basic functions of the regulators would be to make regulations, issue licenses, enforce regulations and license conditions through punitive measures, set performance standards for quality of service, identify non-competitive services and determine their tariffs, and adjudicate on disputes among licensees and between licensees and the government. He also touched upon the issue of independence and accountability.

Haldea mentioned that a regulator should be independent but accountable. Talking about international experience, he mentioned that in US, regulators are accountable to Congress, whereas in the UK, the regulators are accountable to the government, i.e. they serve at the pleasure of the Queen. In the US, there are overarching laws that set legislative standards and which create multi-sector regulators and there are common laws which set some broad administrative principles and also lay down overarching principles of regulation. Therefore, the suggestion of an overarching regulatory reform bill should not be alien since it is something that has delivered results in some parts of the world and we are trying to follow a similar approach of overarching framework.

To the end of his presentation, Haldea emphasised that the issue of overlap between the competition authority and sector regulators is critical and is important to be debated. It is not clear as to how forum shopping can be avoided and whether the

sectoral regulator could be completely kept out of competition issues or all of these issues must go to Competition Commission of India (CCI) and nor would it be beneficial to leave all competition issues to the sectoral regulator alone. He emphasised that the purpose of the discussion is to garner important recommendations and take the bill forward.

Discussions

Bharuthari Mahtab, MP, Lok Sabha

Mahtab said that if the regulator remains autonomous in nature then the accountability would be more transparent. The regulatory mechanism is still evolving in India and there is a need to maintain certain standards to regulate and evaluate the power of regulators.

Rajeev Chandrashekhar, MP, Rajya Sabha

Chandrasekhar in his remarks said that in India, the approach to regulation is *ad-hoc*. The purpose of the draft regulatory reform bill is to bring uniformity in various approaches to regulatory reforms in India. In order to ensure effective adoption of the regulatory reform bill, few key building bloc issues need to be clarified. They are functional and financial independence of regulators, accountability and clear definition of the role of regulators and line ministries.

Chandrasekhar further mentioned that different sectors require different forms of regulation. For instance, in sectors such as power, highways and airports which are utilities and inherently loss-making economics, the role of the regulator is to drive tariffs and user charges higher and create a viable platform for investments, whereas in sectors like telecom, the role of the regulator is simply to ensure consumer benefit and intervene when competition is not fair or there are any cases of action that is required to benefit the consumer, and its role as far as investors are concerned is to limit itself to ensuring a predictable set of rules. **So we must understand there is not a one shoe that fits all form of regulation that cuts across all sectors.**

Currently, almost all regulators are retired bureaucrats – and regulators are (except for a few exceptions) acting and looking like a second layer of bureaucracy – with all that means – but importantly, diluting considerably the word ‘independent’ that is part of Independent Regulator. Not one sectoral regulator has been filled with a good credible talent that will enhance the capacity and quality of these institutions – since clearly this has never been an objective for the political leadership.

We have a situation where regulators have failed deliberately or through incompetence – openly and obviously – but despite that not being held accountable. There are instances of malafide conduct on part of regulators that are obvious and known, but no action has been possible because of ambiguity of oversight of these regulators. Hundreds and thousands of crores of Taxpayer money has been impacted by regulatory orders and decisions, and there has been unfortunately little or no debate or review of these decisions. We have a recently developed situation where a Ministry is now seeking to curtail independent regulators’ role in matters of licensing

- a key aspect of managing competition - and if successful, will almost completely make the Regulator redundant.

Lastly, and very important - the roles and responsibilities of independent regulators are not defined. Instead of such clear and transparent regulatory objectives like the ones I mentioned above, regulators are being used for advisory/housekeeping activities, for example, regulators are being asked to intervene in issues like determining sectoral FDI - issues that are in the domain of the political and executive, and not for independent regulation.

Ashok Ganguly, MP, Rajya Sabha

Ganguly mentioned that regulation is an evolving role therefore the skills and competencies that each sector needs is very important as it will decide the expertise that individual to be appointed will bring to the sector. The role of appellate tribunal is very crucial as the sectors are opening up and there are bound to be more disputes. Therefore, the appellate process need to be effective and transparent.

Dhanendra Kumar, CCI

Kumar opined that issues such as independence, autonomy and accountability of regulators are talked about but such issues do not get reflected in the Acts itself. He cited the example of the Indian Competition Act, wherein certain section of Act empowers the Central Government to issue directions without consulting regulators, thus undermining the independence of the regulator. Kumar emphasised that autonomy should be provided to regulatory commissions to manage their own budgets independently, and relevant budget approvals should be channelled through a Parliamentary Committee and not the Line Ministry.

One important aspect that needs to be tackled is the identification of specific and delineable roles of the regulatory authorities and competition commission. Interface among these bodies needs to be formalised in legal terms. Ideally, both bodies should come together and participate in the regulatory decision making process.

Referring to section relating to mergers which is included in the Bill (Section 43), he said that competition being a highly specialised and complex subject, CCI should be mandated to handle approval of mergers and the said clause should not be the part of the bill.

Yashwant Bhawe, Chairman, Airports Economic Regulatory Authority (AERA)

Bhawe suggested that 'one-size-does-not-fit-all' approach to reform regulatory regimes in India will not succeed as issues and challenges differ from sector to sector. He emphasised the importance of the Bill, as it would provide a guideline for improvement in the regulatory regime in India.

Dr. E. M. S. Natchiappan, MP, Rajya Sabha

Dr Natchiappan suggested that the bill should be looked as a procedural law that is common for every law, which should specify various parameters on issues such as appointments, independence and accountability in order to bring in harmony across

the regulatory regime in India. He opined that the Bill should be pushed through and enacted and issues pertaining to specific sectors can be taken up at a later stage and improved gradually.

Virat Bhatia, President, External Affairs, AT&T South Asia

Bhatia was of the opinion that since in certain sectors government is also the service provider, having the regulator reporting to the government should be avoided. The regulator should report directly to the Parliament and not the line ministry. Regarding the issue of overlap between CCI and sectoral regulators, Bhatia suggested that it should be made mandatory for sectoral regulators to consult CCI.

Ashish Khanna, The World Bank

Khanna mentioned that objectives of providing guiding principles across infrastructure sector are extremely important. One of the reason why there has not been the entry of private sector professional is not only due to the restriction on recruitment in regulatory authorities but such skills set are scarce in India. He further observed that sectors which are largely controlled by the central sector entity such as telecom and oil & gas, the institutional capacity is much better but wherever state has a critical role in service delivery like electricity, water etc., where regulatory framework is completely different it is very important to consider the distinction while drafting the regulatory guidelines.

In his concluding remarks, Mehta said regulatory institutions are evolving in India and for India it would be good to learn from other countries' experiences and leapfrog rather than experiment. By endorsing the draft bill after few amendments he said we need a framework law which can bind various branches of government to follow it.

Mehta thanked all the participants and the distinguished guests for their active participation. He stressed that the meeting was useful, as there was discussion on important conceptual issues. Haldea requested all the participants to send in their detailed comments and congratulated CUTS for a successful meeting. He clarified that the meeting was a consensus-building exercise and it will take time and effort.

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