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# circular

Covering developments in the area of research, training and education on public policy issues



## Better Regulation – A Catalyst to Growth

The recent financial meltdown and the global recession have highlighted the inability of markets to function on their own. Important lessons are: have fair competition, not totally free competition; and appropriate market correcting regulation, not over or under regulation.

Given that the regulatory apparatus is a necessary component of economic governance in any country, it is important to evaluate its features: adequacy as provided by law; effectiveness after being set up; and awareness among consumers and other stakeholder groups about its availability and usefulness and their perception about regulatory effectiveness.

The series on *Competition and Regulation in India* (prepared by CUTS International with support from British High Commission in India and in association with CIRC) serves the above-mentioned purpose for the Indian economy. The first report, released on October 16, 2007, lay down the rationale for a holistic competition policy and law regime in India. The second report, released on March 28, 2009, focuses on the evaluation of quality of regulation in five sectors: power, ports, civil aviation, agricultural markets and higher education.

### Perception on Competition

As was the case for the 2007 report, the results of a perception survey were included in the 2009 report. The results of perception and awareness relating to the state of

competition, when compared across two reports, show a significant improvement over time.

In general, there is a consensus among the findings/recommendations made by the sector studies and those expressed through the perception survey. The quality of regulation is seen as widely varying across sectors. Though, the so-called 'independent regulators' have been established in most of these sectors, in reality their functional and financial autonomy is lacking.

### Panel Discussion

Releasing the 2009 report, Montek Singh Ahluwalia, Deputy Chairman of the Planning Commission of India recalled how due to public-private partnership (PPP) projects, the Planning Commission took greater interest in regulatory affairs. He pointed out that whether or not there is competition in a sector, such as railways, an independent regulator is needed. There are many well-meaning laws that point in the right direction but their implementation is weak.

Dhanendra Kumar, Chairman of the Competition Commission of India (CCI) stated that the report released would be an important milestone in the debate. He said that there is a need for a larger space for competition and regulation should be implemented in a measured fashion.

Nitin Desai, Former Under-secretary General of the United Nations and Chairman of CIRC Managing Committee stated that regulators in India were functionally independent but their financial independence and policy directives are issues under discussion.



### Cover Story

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– A Catalyst to Growth

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# A Constitutional Imperative

Vinayak Chatterjee\*



**Any change in a nation's Constitution is a significant event. The 74<sup>th</sup> Amendment to the Constitution in 1992 sought to bring about a major change in the functioning of urban local governments. The Preamble of the Amendment reads: "In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, Urban Local Bodies are not able to perform effectively as vibrant democratic units of self-government".**

A 15-year-old constitutional Amendment enjoins Indian cities to take charge of their own destinies. This needs to be acted upon. Our founding fathers created the federal list, the state list and the concurrent lists in the Constitution to demarcate areas of responsibility as well as devolution of power. The importance of our towns and cities as important pillars of self-government was not envisaged at that time.

As a result, most Indians do not vote in civic elections or even remember their mayor, whilst they are fully aware of the mayor of New York, London or Chicago. But crumbling urban infrastructure and shoddy public-utility services are the cornerstones of any discussion on our towns and cities.

India, which is still predominantly rural, has a larger urban population than the entire population of the US. India's urban population of 300 million people lives in 3,700 urban areas, including 27 'million-plus' cities. While urban local bodies have been in existence for a long time, the Constitution allocates primary responsibility for urban infrastructure in India to the states. The generally precarious fiscal situation of states, combined with the inability of urban bodies to have effective structures has led to the rapid decay in most of urban India.

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However, it is still entirely up to the state governments to empower their municipalities. States continue to follow different models. The Ministry of Urban Development has developed a model municipal law. This model law also provides for establishing a State Municipal Regulatory Commission to determine user charges and standards for services as well as suggest avenues for private sector participation. The model law has thus, far not been acted upon by any state.

The implementation of the 74<sup>th</sup> Amendment to the Constitution was intended to change the urban landscape in the following ways:

- Cities and towns would have democratic governance. They would be able to elect representatives regularly, similar to their powers for electing state and Central governments.
- The elected bodies at the towns and cities would be devolved municipal functions and would have taxation powers. In addition, towns and cities would be able to share in the revenue of the state government, which would also provide grants additionally. The fiscal relation between the state government and the local bodies would be guided by State Finance Commissions (SFCs), similar to the guidance for fiscal relations between Central and state governments.
- Institutional mechanisms for planning and governance would be set up in the form of Ward Committees, District Planning Committees, Metropolitan Planning Committees and SFCs, and regular auditing of accounts by the Comptroller and Auditor General.

Unfortunately, very little additional empowerment of municipal bodies has happened after the 74<sup>th</sup> Amendment was made.

\* Chairman, Feedback Ventures (P) Ltd.; The article appeared in the Business Standard, on February 16, 2009

# Need for Better Regulatory Governance

***“Both over-regulation and under-regulation are associated with serious adverse consequences”.***



**C**IRC organised a Roundtable on *Developing Infrastructure through an Ideal Regulatory Framework* in New Delhi on January 16, 2009. C Rangarajan, Member of Parliament and President of the Governing Council of CIRC presided over the Roundtable.

Speaking on this occasion, Pradeep S Mehta, Secretary General of CUTS International emphasised on the positive contribution that this Institute could make to the regulatory climate in the country, thereby helping to attract much needed resources in the infrastructure sectors which form the backbone of the economy. He added that the financial meltdown had made such resources scarce and increased the urgency of developing appropriate regulatory systems.

Elaborating on the need for regulation, Rangarajan stressed the growing importance of competition law and its enforcement in light of the transformation of the Indian economy from a highly regulated one in the 1970s to one in which productivity and performance are of prime importance. According to him, both over-regulation (regulation in the absence of any market failures) and under-regulation (failure to correct market failures) are associated with serious adverse consequences. He expressed his support for multi-sector regulators as too many regulators could add to problems of friction and overlap. He identified three major objectives of infrastructure regulation:

- investment generation;
- consumer protection; and
- efficient production of services.

## Panel Discussion

Moderating the discussion, Vinayak Chatterjee cited various steps taken by the Indian government in developing general and sector-specific regulatory norms.

NK Singh, Member of Parliament said the major barrier to change the regulatory climate of the country was the antiquated political mindset which continued to lag far behind the literature on regulatory issues. The cultivation of an arm's length relationship between a line ministry and the concerned regulator through norms and laws emphasised by him as political capture of regulation was one of the primary reasons for regulatory failure. Echoing Rangarajan's view, he stressed on human capital formation for regulatory purposes as a key factor for improving regulatory governance in the country.

Nandan Nilekani, Co-chairperson of Infosys Technologies said that regulatory design in each sector should be determined by the specifics of both market demand structure and the network structure of supply. He was also of the opinion that regulatory systems all

over the country had to evolve from being providers of indirect subsidies to that of direct benefits. A system of direct benefits would be consistent with profitability of investment and yet serve redistributive goals.

Nripendra Misra, Chairman of the Telecom Regulatory Authority of India (TRAI) said that regulatory powers allocated to regulators by the government are a key determinant of economic outcomes. Mentioning a number of technologically progressive steps recommended by the TRAI, he said there is the presence of powerful vested interest groups which lobby for their own narrow interest at the expense of broader national interest.

Vikram S Mehta, Chairman of the Shell Group of Companies in India focused on the issue of regulatory mandate and said that a regulator is a law keeper rather than a policy maker. He felt that there is a strong need to delineate policy making and law framing from the task of interpreting laws and ensuring law abiding behaviour.

Arvind Mayaram, Additional Secretary, Government of India said that sectors such as roads, water and sanitation should be regulated differently from other infrastructure sectors so that they become a sustainable driver of development. The most essential regulatory function here is to ensure competitive outcomes without open competition – regulation by contract using PPP is the tool to be used here.

Pramod Deo, Chairman of the Central Electricity Regulatory Commission (CERC) drew attention to the limitations faced by the regulators in preventing the flouting of regulatory laws. He urged for provision of punitive powers to regulators for them to deal with illegal behaviour.

## Recommendations

In sum, the following recommendations were made for improving the regulatory system in India:

- Increase political awareness on regulation and economic development so as to counter vested interests;
- Develop a class of well-trained, skilled and specialised regulators;
- Ensure that the regulators stick to their assigned role of being guardians of regulatory laws and do not dabble with law making and policy making;
- Simulate competition through regulation in case of specific infrastructure sectors having significant social development dimension;
- Provide power to the regulators to punish flouting of regulatory laws; and
- Encourage independent regulation through advocacy as well as legislation.

## Training Programme on Consumer Protection

CIRC with support from the Forum of Regulators, CERC organised a Training Programme on Consumer Protection in New Delhi during February 16-20, 2009. About 25 participants from various State Electricity Regulatory Commissions (SERCs) took part in it.

Dipak Chatterjee, Director General, CIRC welcomed all the participants and highlighted the background, aims and objectives of the programme. He also spoke about few international experiences on electricity consumers.



In his remarks, Pramod Deo, Chairperson, CERC stressed that consumer representation is one of the most important criteria for protection of consumer interests. While citing examples from Maharashtra, he said that consumers of rural areas are often under-represented and there is a great need to create consumer organisations in rural areas. He also

felt that having a consumer cell is not good enough.

Pradeep S Mehta, Secretary General, CUTS International elaborated the significance of such trainings. He opined that consumers are the *raison de'etre* of all economic activities, and the electricity sector is no exception. Electricity on one hand, is perhaps the most important input for industries and on the other hand, it is one of the most critical basic needs for consumers. He also mentioned that according to the Electricity Act 2003, consumers' interests are important if not supreme.

### Participants' Feedback

After successful completion of all the sessions, including a visit to the Consumer Care Centre of North Delhi Power Limited, the participants were asked to share their feedbacks. The following points were made:

- SERCs should act as a bridge. Consumers are not even aware of their rights and not many complaints reach SERC. Only cases referred by Consumer Grievances Redressal Forum (CGRF) or Ombudsman come to SERC.
- The Electricity Act is more or less silent about the guidelines for consumer protection. Since CERC is a nodal body, it can look into the constitution and working of the CGRFs because every SERC has its own guidelines. CERC can come out with a model for better functioning of CGRFs.
- There should be enough publicity so that people all over India know about CGRF and Ombudsman.
- In Rajasthan, the CGRF is managed by a delegate of the licensee. Compliance is quick because an officer of the CGRF actually redresses grievances. CUTS could do a study of the Rajasthan system *vis-à-vis* that in Delhi and Uttar Pradesh to show that the former is working better.
- There should be a national level meeting of Ombudsmen to streamline consumer grievances redressal procedures.

The overall quality of the programme including effectiveness of addressing the issues discussed and the participants' level of satisfaction was more than 75 percent.

### Participation

- Pallavi Kishore, Fellow, CIRC participated in the Sixth International Conference on International Law in the Contemporary World organised by the Indian Society of International Law (as part of its Golden Jubilee celebrations) in New Delhi during February 01-04, 2009. The Vice-President of India and eminent international and national legal luminaries inaugurated the Conference.

The objective of the Conference was to disseminate knowledge of and thus promote the study of international law. Pallavi presented a paper in the session on World Trade Organisation (WTO) Law, critically analysing the interpretation of the law by the WTO Dispute Settlement Mechanism in some of the cases in which India was a party.

- Arpan De Sarkar, Junior Fellow, CIRC participated in the India Infrastructure Summit 2009 jointly organised by the Federation of Indian Chambers of Commerce & Industry (FICCI), Ministry of Shipping, Road Transport & Highways, Ministry of Railways, Ministry of Civil Aviation in New Delhi on March 20-21, 2009.

The event was organised with an objective that regardless of current investment in the country the infrastructure spending is short of what is required for achieving higher economic growth in the coming years.



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