

**Summary of Parliamentarians' Panel Discussion on
"The Political Economy of Regulation in India —
What do we need to do"
March 31, 2008, New Delhi**

Background

A Panel Discussion on "The Political Economy of Regulation in India--What do we need to do" was organized by CUTS Institute of Regulation & Competition (CIRC) with four parliamentarians from both the ruling party and the opposition. The objective of the event was a step forward in evolving a consensus on implementation of an effective regulatory regime in India.

The panel discussion comprised of distinguished parliamentarians: Santosh Bagrodia (Cong), Sharad A Joshi (Ind), Suresh Prabhu (Shiv Sena), and Vallabhbbhai Kathiriya (BJP). Pradeep S Mehta, Secretary General of CUTS International welcomed the guests and initiated the discussion. Creon Butler, Deputy High Commissioner of UK, delivered the opening address. Nitin Desai, Chairman Managing Committee, CIRC moderated the discussions. The said discussion was also the follow up of the report under a project done by CUTS International titled "Competition & Regulation in India, 2007". The report takes stock of how competition and regulation prevails across sectors in the country and comes out with recommendations as to what still needs to be done.

On the basis of the discussions which were not always focused, the Moderator, Nitin Desai summarized the key messages coming out of the event.

Key messages

1. Our regulatory system has evolved differently from the way it has evolved in other parts of the world. So comparisons may be misleading. In our case the independent regulator is really somebody who has come in to takeover functions, which were earlier, exercised within the political system at the ministerial level. It is a shift of responsibility from a ministry towards independent regulators. But what has happened, in developed countries, was not quite that. The regulator in US was set up because particular sectors were not regulated by anyone at all and that had led to problems. That is how the financial regulations system evolved in US. This was unlike the SEBI, which basically took over functions, which were earlier exercised by the Finance Ministry. Thus, political origins of regulation in India are a little different.

Does that pose an issue? Is this something that has still not developed to a genuine arm's length relationship between the political process and the regulator?

2. We have regulatory institutions who seem to combine legislative, executive and judicial functions in one. This came across very sharply in the discussion, and as to which functionary the regulators are responsible. This is something that we should certainly address. The whole area of administrative law is now well developed and there are certain basic criteria, which are asked in any administrative law procedure:

- Who is represented in the decision-making?
- Who participates in the process?
- The degree of transparency of the decision-making in terms of public knowledge
- Due process, what type of information we need to supply the regulators
- Accountability, in terms of having to give reasons for decisions and reporting on performance
- The mechanism for redress

These are sort of six principles of representation, participation, transparency, due process, accountability and redressal, which are now reasonably well established in the theory of administrative law.

3. Another important issue, which has been raised, is about the independence of regulators. The extent to which the procedures of appointment, remuneration, and budgets are controlled by ministries makes the whole idea of independent regulator a myth. In practice the hand that really controls the regulator still remains the government. In mirth, a comment came from the floor that the regulator is somewhat like the Joint Secretary (Regulation) in the department, because all regulators are subservient to the Departmental Secretaries.

4. The issue was also raised that of regulator as a potential barrier to the free operation of market forces (free contact between the buyer and seller). Is that something that we ought to be worrying about?

5. The issue which is going to come up again and again is the idea of the independent regulators to be at an arm's length not just vis-à-vis the government but also vis-à-vis the market players. This is going to become increasingly difficult, given the scale at which individual players operate. What we are seeing now is a gradual erosion of the idea of the independent regulator. There is a great difficulty in allowing the logic of the independent regulator to work through completely. Independence is going to be doubtful in India also. A new term, which is coming into the regulatory jargon now is entanglement. The electricity regulator is weak because of the fact that electricity is entangled with various other things over which we have no control. This is the challenge that we will face as we go down the line as to how do we operate a system of independent

regulators so that it really does fulfill the basic purpose of systemic management or systemic stability. The issue is can we handle this simply through the procedures, standards etc that we have laid down?

6. There is a dire need to strengthen the ability of Parliamentarians to exercise their powers. Parliamentarians cannot be blamed for ignorance on issues, as they do not offer have any research assistance. In various other countries Parliamentarians do have a government-funded research staff, which help them to understand and articulate their views more cogently. If we want Parliamentarians to function properly, then they are to be assisted with research staff and the Parliament should discuss the matter and to do something.
7. One dimension that was not spoken about is that the exercise of political power in the economy is not necessarily oriented towards substantive ends and that is where the rub lies. Part of the interface problem between the regulator and the ministry is the reality of corruption. Unless we address that and start reducing the discretionary power for government whether through an independent regulator or through any other devise to create benefits. This is something, which needs to be addressed and something which CIRC hopes to undertake more regularly. Under the project on India Competition and Regulation Report – CIRC will start addressing some of these issues also. We would be failing in our duty to the public if we do not do that.

April 5, 2008