

CUTS Institute for Regulation & Competition

presents

Round Table Discussion on

“Sanctity of contracts: The debate around the role of the judiciary and the regulator”

Date and Time: | February 20, 2020 from 2.30 PM to 5.00 PM

Venue: | India International Centre, New Delhi

BACKGROUND

While India has improved its ranking on the World Bank’s Ease of Doing Business Index, it fares poorly on the parameter of “Enforcing Contracts”. The enforcing of a contract, in turn, is a function of the sanctity of concluded contracts. Sanctity of contract makes the consequential enforcement of its terms a simple follow-on event. This aspect is considered very crucial for attracting foreign investments. Overall, India currently ranks 63rd out of 190 participating countries. However, on ‘Enforcing Contracts’, India ranks 163rd. This is symptomatic of what may derail the USD 5 trillion-economy dream of Government of India and the target of USD 1 trillion for infrastructure investment in India. Majority of this investment is expected to come from domestic as well as foreign funding agencies.

However, the poor standing on contract enforcement, coupled with recent events in the infrastructure space in some states do not augur well for business. These events show how re-opening of concluded contracts by state instrumentalities can put even well performing investments to distress. India has to do a lot for achieving an image makeover; from a state where non-compliance with the contract conditions adds uncertainty to the business ecosystem, to a state where sanctity of contract is the governing norm and rule.

Respecting a contract agreement is imperative for an economy because investors commit their resources based on the assessment and plan formulated at the time of entering into a contract. Infrastructure investments are generally long term commitments and, therefore, subject to uncertain returns and high risks. Any mid-period change in contract terms or revision of prices can severely dent the viability of the existing investments. It not only harms the investors but also impacts other stakeholders like financial institutions, banks and consumers negatively.

Experience shows that mostly, in such scenarios, project stakeholders end up with cases needing judicial interventions. This pathway has also not worked well, as judicial interventions involve long timelines for resolution; thereby causing economic hardships. In many cases, courts also refer the conflict back to the regulatory bodies (quasi-judicial authorities) for a settlement but the whole process leads to unintended consequences of additional cost and time over runs. Timely completion of the Judicial process, therefore, is another wish-list item as delayed judgements may also be affecting inflow of foreign investment, causing job losses and impacting livelihood of people.

The session would also discuss the current developments in the state of Andhra Pradesh wherein APDISCOMS are petitioning to the regulators for lowering the tariff mid-way and change the contract period to 5 to 10 years for the wind and solar developers in the state and the back and forth movement of the matter; from judiciary to regulators. Meanwhile, the curtailment of power output from such RE projects by the state instrumentality is causing economic hardships to the generating companies. It will also discuss cases such as those of Tata Power and Adani Power which were reopened from the generators’ side for approval of tariff hike due to increased cost of imported coal.

This consultation workshop is being organized by CIRC to deliberate upon the sanctity of contract and the role of judiciary and regulator in defending the contract. The discussion will focus towards finding better alternatives to these types of logjams for a sustainable business environment and collective development.

AGENDA

14:30 PM to 14:45 PM: **Registration**

14:45 PM to 15:00 PM: **Opening Address** By Dr. Arvind Mayaram (Chairman, CIRC)

15:00 PM to 16:30 PM: **Sanctity of contracts: The debate around the role of the judiciary and the regulator**

Moderator:Dr. Arvind Mayaram (Chairman, CIRC)

Panelists:

1. Mr Prasanna Srinivasan, PPP Expert and Senior Advisor, CIRC
2. Mr. Amit Kapoor, Partner, J Sagar Associates
3. Mr Rakesh Kacker, IAS(Retd.), Independent Director, PTC India Ltd.
4. Ms. Sharmila Chavaly, Principal Financial Advisor to Northern Railways

16:30 PM to 16:45 PM: **Q&A**

16:45 PM to 16:55 PM: **Closing address**

16:55 PM Onwards: **High tea and networking**

ABOUT CIRC

CIRC, is a not for profit and independent research and capacity building organisation which has been active in the areas of competition, regulation and sustainable infrastructure including PPPs. We assist multilateral and bilateral government and private agencies in knowledge creation as well as capacity building for achieving better outcomes in policy formulation and also projects that they undertake. CIRC's capabilities and contribution are now internationally acknowledged and this is amply demonstrated by the mandates it has received from international organisations such as the UNCTAD, UNICEF and the ADB.

It's work in the area of the interplay between economics and law, the role of competition in driving open economies, and the need for regulation and its impact on the development and growth of different sectors has been well received. CIRC has also been involved in pioneering research in areas of sustainable infrastructure, with special focus on People first Public Private Partnerships (PfPPP).

Through a very tightly knit and competent research and capacity building faculty and a large network of subject matter specialists and experts, CIRC has been producing very well researched studies, many of which have been published in reputed journals. In a world becoming increasing complex, CIRC would continue to play a very important role in research based knowledge creation and capacity building not only in India, but also in other parts of the world.

