

Moving to an era of better regulation

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Regulatory impact assessment is necessary but not sufficient to ensure better regulation. Participative democracy envisages participation of citizens in policy-making. The Law Ministry in 2014 advised consultation before any legislative proposal is submitted to the Cabinet for consideration and similar consultation for subordinate legislation.

In 2016, the Supreme Court (*Cellular Operators Association of India Vs. Telecom Regulatory Authority of India*) exhorted Parliament to make a legislation requiring regulations to be made in consultation with stakeholders. A few pieces of legislation, including subordinate ones, mandate such a consultation for making regulations.

Growing importance

Consultation is effective where stakeholders are presented an assessment of likely impact of proposed regulation, the associated costs of compliance and enforcement, and whether it would achieve the desired objectives. The most typical methodology for such an assessment is regulatory impact assessment (RIA). The importance of RIA has been growing over the years. Many matured market economies have institutionalised it. It probably has genesis in the US in an Executive Order in 1981, which requires the executive agencies to carry out RIA for all major regulations (having annual effect exceeding \$100 million).

RIA is required in the UK for any regulatory measure that impacts business above a threshold (having annual net direct cost to business exceeding £5 million). The OECD envisages seven tools for regulatory improvement and considers RIA to be the most important of them. Most jurisdictions have an agency (Better Regulation Executive in the UK, Office of Information and Regulatory Affairs in the US, and Office of Best Practice Regulation in Australia) to monitor the quality of RIA, and accord approval for regulations, wherever required.

An RIA typically carries the rationale for regulation, options — regulatory and others — considered to meet the regulatory objective, justification for the preferred choice, full range of costs, benefits, and impacts — economic, social, and environmental — tangible and intangible associated with the choice in pecuniary terms to the extent possible, availability and effectiveness of mechanism for monitoring compliance and enforcement of the choice and associated costs.

The head of the regulatory agency signs a declaration that it presents a reasonable view of the costs, benefits and impacts of the choice. Take a simplistic example. Say, the regulations presently enable electronic filing of documents. Proposal is to make such filing mandatory. A typical RIA may state that the objective is to address information asymmetry.

Informed decisions

As documents become easily and quickly accessible, stakeholders would benefit substantially by way of informed decisions. This will reduce costs associated with storage, retrieval, and dissemination and facilitate tracking, monitoring, and processing of filings, thereby improving

operational efficiency. This will, however, add to costs in terms of setting up or hiring facilities for such filing for those who are not presently filing electronically.

Such costs may be offset in terms of reduced cost of filing in the long run. The RIA would quantify most of these costs and benefits. Wherever it is difficult to quantify benefits, it will provide a qualitative description. The proposal may not have much impact on society and the economy, or any unintended consequences.

The RIA may state whether the filing platform can handle increased flow of filings and the regulator has capacity to monitor and enforce compliance. It will detail other options considered such as no regulation; regulatory incentives to electronic filers; sharing costs of electronic filing; electronic filing of select documents; promoting a market for electronic filing; etc.

RIA has several benefits. This ensures that the cost of proposed regulation is less than the cost of market failure which it intends to address, and it imposes the least costs on the regulated and the ecosystem. It demonstrates that the regulation is effective and efficient *ex ante*, considering its likely impact over its life cycle.

By facilitating comparison of the outcome *ex post* with *ex ante*, the exercise improves accountability in decision-making. By securing buy-in of the regulations, it avoids rollback and uncertainty. All these ultimately reduce the burden of regulations on business and improves quality of regulations.

No substitute for judgment

RIA, though very powerful, does not substitute the judgment of the regulator. It may not have a clear answer to many regulatory proposals. It may not effectively capture social or invisible impacts or monetise all of them. It may suffer from technical difficulties such as limitations of data or expertise of the assessors.

It is, however, an essential tool to aid decision-making. It improves quality of decision if used in conjunction with professional advice of trusted experts/expert committees, the accumulated experience and expertise of the regulator, and consultation with stakeholders.

The Indian scene

In India, overtime, a few expert bodies have recommended RIA. These include Working Group on Business Regulatory Framework (Erstwhile Planning Commission, 2011), Financial Sector Legislative Reforms Commission (Department of Economic Affairs, 2013), Committee for Reforming the Regulatory Environment for Doing Business in India (Ministry of Corporate Affairs, 2013), Tax Administration and Reforms Commission (Department of Revenue, 2015), and the Expert Committee on Prior Permissions and Regulatory Mechanism (Department of Industrial Policy and Promotion, 2016). A few non-governmental bodies have prepared tool kits and guidance notes to facilitate preparation of RIA.

RIA has not really taken off in India for perhaps three reasons: (a) non-availability of requisite data, (b) limited capacity of regulators to undertake RIA, and (c) hesitance to accountability. These are, however, not insurmountable. It is only a matter of time if there is interest and investment.

For example, it will not take long for regulators to build up a versatile database as a by-product of their operations, minimising the need for fresh data for undertaking an RIA. Making it mandatory for governmental agencies to carry out RIA before making any policy decision, whether in the form of a

legislation, subordinate legislation, notification, circular, or direction, where the net costs to the stakeholders exceeds a certain threshold, will be a big step towards better regulation.

This also presents a compelling business opportunity for the academia to help build capacity in the ecosystem to undertake RIA.

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