

INITIATIVES OF GOVERNMENT OF INDIA ON REGULATORY REFORM IN THE CONTEXT OF THE ACTION PLAN FOR EFFECTIVE AND RESPONSIVE GOVERNMENT

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Introduction

To get a realistic account of initiatives in regulatory reform in India it is imperative to have a look at the emergence of regulations and the way it has interfaced with the system of administration of justice.

The Indian democracy has been influenced profoundly by the social welfare concept ingrained in the Constitution which delineates the basic principle of governance in India. The Constitution of India aims at establishing a sovereign socialist secular democratic republic in India so as to secure to all its citizens, *inter alia*, social, economic and political justice. An added feature is that the ideal of social welfare state is sought to be translated into practice through state planning of economic resources with a view to create a socialistic pattern of society which involves improving the economic conditions of the people keeping in view the demands of social justice. All resources of the country are organised and utilized with that end in view. This has led to state activism. The state has taken over a large number of functions, which range from economic and social planning to industrial production, control over infrastructure and involvement in social services like health, education and social welfare leading to an increase in the administrative functions of the state. To enable the administration to discharge its functions effectively, it has been given vast powers of inquiry, control and supervision. For these purposes a plethora of rules, bye-laws, and orders of a general nature have been issued which emanate from diverse legislations. These regulations or subordinate legislations have assumed more importance than the legislations enacted by the legislature because these affect the citizens at the cutting-edge level where they interact with the State.

“The system of administration of justice in England suffers from three defects - delay, cost and glorious uncertainty in the final outcome of any litigation”, was observed by William Godwin, an English political scientist of the eighteenth century. This is the system India inherited from the U.K. The complexity of procedures, multiplicity of laws and the very structure and organisation of the courts increase the total period occupied by the trial of suits and criminal proceedings and by the appeals, revisions or reviews arising out of them. These defects continue to persist after 200 years, not only in India but in most of the other Commonwealth countries too.

The maze of laws and regulations resulting from State activism coupled with legal and administrative procedures of delivery of justice has created a challenge on the one hand for the demands of economic liberalization and on the other for ensuring an effective and responsive Government.

2. Action Plan for Effective and Responsive Government:

To have a re-look at the ideals of social justice accompanied with economic growth, an Action Plan for Effective and Responsive Government was discussed and endorsed at the Conference of Chief Ministers

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convened by the Prime Minister in May, 1997. The issues of reform addressed in the Action Plan included:

1. Making administration accountable and citizen-friendly.
2. Ensuring transparency and right to information.
3. Taking measures to cleanse and motivate the Civil Services.

Several initiatives followed the endorsement of the Action Plan by the Chief Ministers. Formulation of Citizens' Charters, setting up of Information and Facilitation Counters, streamlining of public grievance redressal system, decentralisation and devolution of power, and review of laws, regulations and procedures were among the significant measures taken under the broad agenda of making administration accountable and citizen-friendly. A conscious attempt has been made to change the modality of provision of goods and services through these measures. Citizens have been brought at the Centre of all the government activities, changing the ongoing concept of treating the citizens as passive recipients of government service. A large number of Ministries/Departments of Central Government have formulated Citizens' Charters and also have set up information and facilitation counters. There is plan to further expand this drive to lower levels of administration in the state governments, districts and local administration. Further, concrete steps have been taken through amendments to the Constitution (73rd and 74th amendment) to empower the elected local administration both in rural and urban areas. To improve transparency in the functioning of government, a "Freedom of Information Bill" has been drafted for enactment. At the same time, government has taken concrete measures to promote computerisation in administration. The initiatives on regulatory reform have also been given concrete shape in the context of the Action Plan for Effective and Responsive Government.

3. Initiatives on Regulatory Reform

3.1 Perspective

Initiatives of Government of India on regulatory reform can be best understood in the perspective of the federal polity which incorporates features of unitarism; cluttering of statute books with laws, many of which have become anachronistic and are not in use; lack of documentation of subordinate legislations issued under different Central Acts by individual Ministries/Departments as well as by State Governments by virtue of the authority vested in them by Central laws; and above all, the process of globalization of the economy and tremendous expansion of Information technology which have made many of the laws outdated.

(i)Federal Polity: Legislative powers between the Union and the States are distributed through allocation of subjects in three lists. "Union List" with respect to which Parliament has exclusive power to make laws, has 97 subjects including defence, foreign affairs, finance, banking and insurance, etc., "State list" with respect to which any State has exclusive power to make laws, has 66 subjects including agriculture, police, public order, local government, etc.; and the "Concurrent List" with respect to which both the Parliament and State Governments have powers to make laws, has 47 subjects including forests, electricity, administration of justice, etc. However, residuary powers of legislation vest with Parliament. This has resulted in a large number of laws. There are about 2,500 Central Statutes, of which about 450 deal directly with economic and commercial decision making. In addition, there exist close to 25000 state

laws. These laws generate an enormous number of rules and regulations, and numerous forms and procedures.

(ii)Anachronistic legislations: In India, there is no system of sunset provision in case of statutes which are not in force. Unnecessary statutes continue on the statute books unless they are repealed. Some of these dysfunctional legislations have been repealed on the basis of the reports of the Law Commission which have been accepted by the Government. But many of such statutes including some of the British Statutes are still cluttering the statute books for some reason or other. There are about 700 Appropriation Acts passed by Parliament from time to time since 1950. These have become dysfunctional as these are temporary in nature. Similarly, there are about 315 amendment acts carried on in the Statute Books since 1984. Periodic scavenging of amendment acts needs to be done by the Legislative Department through 'Repealing and Amending Acts'. However, this has not been done since 1984 resulting in their accumulation in the Statute Books. Similarly, there are 17 war-time (2nd World war) permanent ordinances still carried on in the Statute books. Added to these are statutes which are carrying dysfunctional provisions/sections in part and need amendments.

(iii)Absence of documentation of complete set of subordinate legislations: Individual ministries and departments have issued executive instructions, regulations and rules under different Central Acts which have not been compiled. In terms of certain laws like the Essential Commodities Act, as many as 13 Ministries/Departments have issued over 150 orders. Similarly, in various important spheres in the "Concurrent List", such as labour welfare, land acquisition, levy of stamp duty, etc.; state governments have enacted their own legislations, and have provided their own procedures for enforcement. This has resulted in creating a diffused situation where multiplicity of organisations including Ministries/Departments of Union and State Governments are working at different levels, often at cross-purposes leading to parallel proceedings, wastage of time and increased cost to citizens.

(iv)Globalisation and progress in Information Technology: Recent progress in Information Technology, particularly, the advent of Internet and World Wide Web have affected activities as diverse as banking, education, manufacturing, retailing, scientific research, etc. because of their ability to generate, access, store and transmit information. More and more people have started using IT to exchange information, conduct business and for many day-to-day activities. The proliferation of IT has raised a number of legal issues. This has made it necessary to make amendments in the existing laws involving banking transactions, telecommunications, commerce, and criminal procedures, etc. It has also become necessary to create an appropriate legal framework for the usage of information technology.

3.2 Earlier efforts at Regulatory Reform

Although the Central Government has so far constituted fifteen Law Commissions of which fourteen commissions have brought out 157 reports, none of these reports have deliberated on the issue of regulatory reform as examination of any subordinate legislation was never a term of reference for these Commissions. Besides, these commissions were never called upon by any Ministry/Department to examine the Rules or Regulations made by them departmentally. Moreover, these Commissions have never considered it necessary to examine *suo-motu* any subordinate legislation.

Different Ministries/Departments of Central Government had undertaken an exercise at the instance of the Finance Minister in 1993 to simplify rules and procedures to support the process of economic liberalisation. Various steps were taken by different Ministries/Departments for removal of controls with the overall objective of making Government a facilitator instead of a regulator. Some of the important initiatives on regulatory reform pursuant to this exercise have been :

- The list of industries requiring compulsory industrial licensing as well as the industries reserved for the public sector have been substantially reduced.
- Foreign investors have been put on par with domestic investors and private investment – both domestic and foreign – have been permitted in almost all sectors of the economy.
- Tariffs have been cut to liberalise trade and the tax structure streamlined and rationalised.
- Registration procedure has been simplified and forms have been simplified and consolidated in many departments.
- Powers have been delegated by the Ministry of Environment & Forest to the State Governments under different provisions of environmental laws, and steps have been taken to streamline and decentralise examination of proposals under the Forest conservation Act.
- The public grievance redressal system has been strengthened in different Ministries and Central agencies in order to secure prompt remedial action in cases of maladministration, delays or harassment.

While these exercises have brought about some improvement, doubts persisted about the effectiveness and sustainability of these reforms, as also the “delivery system” responsible for clearing proposals, according approvals, giving necessary permissions, etc., both at the central and state government levels. Apart from inhibiting factors like tedious formalities, archaic administrative structures and multifarious mandatory clearances, multiplicity of laws was perceived to pose a serious impediment to reforms.

First serious effort on regulatory reform was made in 1997 within the framework of the Action Plan for effective and responsive Government when different Ministries/Departments of the Central Government were advised to constitute expert groups with the purpose to review all the laws, regulations and procedures administered by the respective Ministries/Departments. The terms of reference of these expert groups were:

- a) Identification of laws which are no longer needed or relevant and can be immediately repealed.
- b) Identification of laws which are in harmony with the existing climate of economic liberalization which need no change;
- c) Identification of laws which require changes or amendments and suggestions for amendment; and
- d) Revision of rules, regulations, orders and notifications, etc.

Along with the constitution of these Expert Groups, the government also set up the fifteenth Law Commission with a mandate to look at proposals emanating from different Ministries/Departments on the basis of these terms of reference, and with particular reference to laws and regulations having an impact on more than one department.

3.3 Commission on Review of Administrative Laws

In the backdrop of these ongoing efforts on procedural/legal reforms, the Commission on Review of Administrative Laws was constituted in May, 1998 at the instance of the Prime Minister who announced at the annual Conference of the Confederation of Indian Industries, the need to undertake regulatory reforms, especially in the sectors of industry, trade and commerce for consolidating liberalization of economy.

The terms of reference of the Commission are given below:

- a) To undertake an overview of steps taken by different Ministries/Departments for the review of administrative laws, regulations and procedures administered by them, and the follow-up steps thereafter, for repeal and amendment.
- b) To identify , in consultation with Ministries/Departments and client groups, proposals for amendments to existing laws, regulations and procedures, where these are in the nature of law common to more than one department, or where they have a bearing on the effective working of more than one Ministry/Department and State Governments, or where a collectivity of laws impact on the performance of an economic or social sector, or where they have a bearing on industry and trade.
- c) To examine, in the case of selected areas like environment, industry, trade and commerce, housing and real estate, specific changes in existing rules and procedures so as to make them objective, transparent and predictable.
- d) To make, on the basis of this exercise, recommendations for repeal/amendments of laws, regulations and procedures, legislative process, etc.

Within a short span of three and half months, the Commission held 43 meetings to interact with the Secretaries and other senior officials of a large number of Ministries/Departments and Central agencies, the representatives of Chambers of Commerce and Industry, and the representatives of consumers and user groups. The report of the Commission has been submitted to government on 30th September, 1998.

While submitting their recommendations, the Commission focused attention on those laws and regulations, which affect the people most, and where alterations and amendments are required in the interest particularly of economic and social areas, keeping in view the requirements specifically in relation to certain areas including industry, commerce, environment, housing and real estate. With this objective, the overall question of legal and regulatory reform was approached by the Commission from the point of view of :

- a) The repeal of old and dysfunctional legislation.
- b) Unification and harmonisation of statutes and regulations.
- c) Procedural law and dispute resolution.
- d) Subordinate legislation and procedures of Government Agencies.
- e) Proposals for necessary new legislation in the present context of economic and social reform, and compliance with international conventions.

- f) The inter-face of State Legislation.

3.4 Recommendations of the Commission

The Commission has emphasized the need of undertaking amendments/repeal/enactment of new laws as identified by the different Ministries/Departments in a definite time-frame. Different Ministries/Departments have initiated action to amend/replace 65 legislations. In addition, the Commission has proposed to focus attention on 109 important laws which include some of the 65 laws already taken up, from the point of view of decision-making and impact on users, that would require significant changes. Important among these acts are:

The Air (Prevention of Pollution) Act, 1981; the Arms Act, 1959; the Arbitration and Conciliation Act, 1996; The Atomic Energy Act, 1962; The Banking Regulation Act, 1949; The Central Excise Act, 1944; The Central Sales Tax Act, 1956; The Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1973; The Contract Act, 1872; The Copyright Act, 1957; The Customs Act, 1962; The Drugs & Cosmetics Act, 1940; The Environment (Protection) Act, 1986; The Essential Commodities Act, 1955; The Factories Act, 1948; The Foreign Exchange Regulation Act, 1973; The Income-Tax Act, 1961; The Indian Evidence Act, 1872; The Industrial Disputes Act, 1947; The Land Acquisition Act, 1894; The Mines Act, 1952; The Motor Vehicles Act, 1988; The Patents Act, 1970; The Petroleum Act, 1934; The Prevention of Food Adulteration Act, 1954; The Protection of Civil Rights Act, 1955; The Railways Act, 1989; The Registration Act, 1908; The Reserve Bank of India Act, 1934; The Transfer of Property Act, 1882; The Wild Life (Protection) Act, 1972.

The Commission has recommended that the Ministries/Departments centrally compile information about all the rules, regulations, procedures and circulars issued by them and State Governments by virtue of the authority vested under Central laws. There is also need to make these informations available through the electronic media.

The Commission has emphasized the need of unification and harmonization of statutes and regulations. In this connection there are two proposals:

- harmonization from the point of view of domestic & foreign investors, trade, industry, consumer protection, builders, exporters and importers, etc. This is as much an issue of unification and harmonization of laws, as of assessing the impact of individual provisions of different Acts with reference to the objectives of specific sectoral policies and the need matrix of the stakeholders. The lack of harmonious approach has a number of facets such as not looking at statutes enacted at different points of time in the same subject area or having impact on other sectors; varying definitions in the statutes; proliferation of orders under one Act by different Ministries, and transactions on different States being subject to different treatments.
- harmonization of laws at centre-state interface. The functioning of the economic and social sector is affected by State Laws like Rent Control Act, parallel laws for acquisition of land and property, land revenue and land reform laws, legislations governing different utilities in the field of health, industry, housing, transport, etc., laws for town planning, municipality, building bye-laws, and regulations, state and local taxation of land and property, etc. They affect the implementation of national policies and the success of economic reform. It is necessary to take a harmonious view of all these statutes and regulations for improving the

functioning of the economic and social sectors, and take up this issue in the Inter-State Council and conferences of State Ministers.

The Commission has formulated specific proposal on regulatory frameworks relating to 13 sectors, including housing and Real Estate, Company Law, Banking, Foreign Direct Investment, Consumer Affairs, Health, Environment, Industry, Labour, Power, Income Tax, Excise and Customs, and Import and Export. In these recommendations, an effort has been made to keep in front the problems and needs of the user groups, apart from the administrative requirements of efficiency, coordination and economy.

Of about 2500 Central Laws in force, the Commission has recommended repeal of over 1300 Central Laws of different categories as listed below:

- i) 166 Central Acts (including 11 Pre-Nationalisation Acts and 20 Validation Acts).
- ii) 315 Amendment Acts.
- iii) 11 British Statues still in force.
- iv) 17 War-time permanent Ordinances.
- v) 114 Central Acts relating to state subjects.
- vi) About 700 Appropriation Acts passed by Parliament.

The Commission has recommended their repeal on the ground that these laws have become either irrelevant or dysfunctional.

In this context, the Commission has recommended review of all the pre-Constitution Laws to bring them in line with present-day requirements as also to introduce sunset provisions similar to the USA wherever possible.

The Commission has emphasised the need to study the entire complex of laws, regulations and procedures affecting the quality of life of the poor and disadvantaged sections of the society in a focused manner.

Administration of Justice

While expressing their concern over the accumulation of vast backlog of cases in courts (estimated to be about 28 million), and inadequate functioning and malfunctioning of subordinate courts, the Commission made the following recommendations to improve administration of justice:

- a) Government should take initiative to expand the system of Alternative Disputes Resolution.
- b) More effective utilization of the Arbitration and Conciliation Act, and greater use of mediation procedures to settle disputes relating to employees, consumers, contractors and weaker sections, etc.
- c) Entrustment of pending cases of subordinate courts to the "Lok Adalats". Despite their shortcomings, the Lok Adalats have proved their utility particularly in cases under the Motor Vehicles Act and Divorce Laws.

- d) Expansion of the concept of establishment of Legal Authorities to all the states and districts.
- e) Encouragement of initiatives like “Samadhan” (which have been used effectively to settle Excise & Income Tax arrears).
- f) Expansion of the concept of appointment of Ombudsmen (as done in Banking Sector).
- g) Use of regulatory mechanism for self-regulation by industry and trade.

Simplicity of language: The Commission has recommended simplification of language used in Acts, Rules, and Orders.

Implementing Machinery: The Commission has endorsed an important administrative step mentioned by a number of ministries/departments about the need for equipping departments requiring constant and up-to-date legal advice for the implementation of domestic and international laws, drafting of agreements and regulations etc., with their own legal cells. These cells could be staffed by competent persons with legal knowledge and skills essential to the work of the department, who could be selected by the law ministry and placed at the disposal of the ministries. The Commission has also emphasised that the law ministry should take a proactive stance not only in implementing the recommendations of the Law Commission, but also in responding to suggestions for legal reform received from different expert bodies, Chambers of Commerce, National Law Schools, etc.

3.5 Following up on the recommendations of the Commission on Review of Administrative Laws

A high powered Standing Committee has been constituted under the Chairmanship of Secretary (personnel) to Government of India to follow up the implementation of recommendations. Secretary (Legislative Department), Secretary (legal Affairs), Secretary (Commerce) , Secretary (Industrial Policy & Promotion) and Secretary (Expenditure) are the members of the Standing Committee and Additional Secretary (Administrative Reforms and Public Grievances) is the member-Secretary.

4. Freedom of Information Bill, 1997

A “Freedom of Information Bill” has been drafted by an expert-group and is under consideration of Government for enactment. The Bill is aimed at providing freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration. The Bill provides for setting up of a National Council for Freedom of Information as well as State Councils for freedom of information to review the operation of the Act and rules made thereunder and also to advise the Central Government on all matters related to freedom of information, including training, development and orientation of its employees to bring about a culture of openness and transparency in the functioning of public authorities . Certain categories of information which have a bearing on national security, diplomatic relations, enforcement of certain laws, privileges of Parliament or the Legislature of a State and privacy of an individual etc.; have been exempted from disclosure. Enactment of the Bill would also entail changes in the relevant provisions of the Official Secrets Act and the Code of Conduct Rules.

5. Cyber Laws and amendments to existing laws for electronic data transfer and transactions

The proliferation of information technology has necessitated enactment of a law governing electronic commerce, data transfer and transactions. As information infrastructure evolves in the country, more and more people will use Information Technology to exchange information, conduct business and for many other activities including education, research and entertainment. It is critical for the citizens to be assured about the legality of documents and transactions generated on the computer. It is in this context that a Standing Committee under the Chairmanship of Secretary, Department of Electronics was constituted at the instance of the Cabinet Secretary to take stock of draft legislation and proposals on the subject of Cyber Laws and to formulate a draft Bill on Electronic Data Transfer and transactions having regard to international practice. The Standing Committee identified the following five areas which would cover the scope of Cyber Laws:

- i) Electronic Data Interchange (EDI)/ Electronic Commerce (EC),
- ii) Land Records,
- iii) Office Management, File tracking, Paperless Office;
- iv) Electronic Fund Transfer (EFT)/Electronic Payment System.
- v) Copy right and Digital Intellectual Property(DIP).

It was envisaged that these five areas have bearing on commerce, trade as well as on the society at large.

The Committee has identified priority areas in terms of existing legislation, namely, all aspects related to company laws, customs and excise, electronic commerce and Electronic Data Interchange; Indian Evidence Act; Indian Penal Code, Civil Procedure Code, General Clauses Act, Telegraph Act, Land Reforms and Land related legislation, Electronic Fund Transfer and Payment. There are a number of issues which are common to these identified areas such as admissibility of electronic documents as evidence; authentication of electronic documents; privacy of data, security standards; cryptography and encryption; and content regulation. As a primary step to facilitate admissibility of electronic document/record/data as evidence, it has been decided to modify core laws such as the Indian Evidence Act, the General Clauses Act, the Indian Penal Code and the Criminal Procedure Code.

In respect of new legislation, the Committee has suggested the need to draft new legislations such as:

- a) Digital Signature Act which will cover aspects like ownership and origin of electronic message and documentation, signature, legal recognition and protection of data messages, primary and secondary evidence , etc.;
- b) Data Protection Act similar in other countries to govern the obligations and responsibilities of database managers, and to protect the interest of individuals and organisations;
- c) Computer Offences Prevention Act.

While drafting these new legislations with the help of sub-committees set up by it, the Standing Committee plans to take into account the concepts and definitions worked out by the United Nations Commission on International Trade Laws (UNCITRAL) so as to conform to international practice.

While these processes are on, it may be mentioned that amendments have already been carried out in the Customs Act, 1962 and in the Central Excise and Salt Act, 1944 for the admissibility of micro films, facsimile copies of documents and computer print-outs as evidence. The Depositories Ordinance, 1996 defines 'Record' to include New records maintained in the form of books or stored in Computer. Similar definition is adopted by Public Record Act, 1993. Moreover, the Department of Telecommunications is separately providing a draft and amendment to the rules and provisions under the Indian Telegraph Act. The Ministry of Commerce is also in the process of identifying the necessary amendments to meet the requirements for the implementation of Electronic Commerce and EDI.

6. Conclusion

Regulatory and legal reforms have been initiated after the realisation that these, along with changes in macroeconomic policies, are not only the necessary components of the economic liberalization, but are also essential for ensuring an effective and responsive government. A beginning has been made, but this needs to be sustained. The initiative of Central Government needs to be supplemented by similar initiatives from all the State Governments in order to make the effort more comprehensive. The Central Government has requested all the State Governments to take similar initiatives. It is important that the regulatory reforms are carried out in a definite time-frame, which is also emphasized by the Commission on Review of Administrative Laws.

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