



**MEMORANDUM TO HON'BLE FINANCE MINISTER FOR
PRE BUDGET CONSULTATIONS WITH SOCIAL SECTOR RELATED GROUP**

SATURDAY 26TH NOVEMBER, NEW DELHI

Background

Regulatory instruments for instance policies, regulations, legislations and rules etc. are intended to improve the welfare of society and can have widespread and varying impacts on different stakeholder groups. While having positive impacts, regulations could also impose costs, both qualitative and quantitative, on society. A sub-optimal regulation can lead to higher costs of compliance, raise complexity and uncertainty associated with regulatory obligations and most importantly can limit the likelihood of achievement of intended objectives. Hence, it becomes prudent to estimate these positive and negative impacts while developing any regulation in order to achieve optimal results.

The mantra of the current Indian government is to create an open, transparent and accountable government for the purpose of Ease of Doing Business. It intends to eliminate obsolete laws, regulations, administrative structures, avoid overregulation and restructure regulatory governance with the aim to ease doing business in India. The government has already begun the process of repealing redundant laws and proposed that most such laws will be scrapped within two years¹.

Unfortunately, at present the law-making and regulation making process in India has various shortcomings as sometimes the objectives are not clearly defined, its effects are not known and stakeholders are not consulted which leads to sub-optimal regulations. There is often absence of any proper analysis or evaluation which results in poorly developed regulations which then do not yield the desired outcomes.

Accordingly, CUTS International, an independent think and action tank involved in public policy research and advocacy recommends the need for adoption of Regulatory Impact Assessment (RIA) and the same must be addressed through the forthcoming budget falling directly under the Finance Ministry.

**ADOPTION AND IMPLEMENTATION OF REGULATORY IMPACT
ASSESSMENT FRAMEWORK**

Regulations have widespread impacts and affect multiple stakeholder groups in different ways. A sub-optimal regulation has the potential to increase the cost of administration and compliance, raise complexity and uncertainty associated with obligations, and most importantly, limits the likelihood of achievement of its objectives. Therefore, it is of paramount importance to understand the impacts of any regulation, proposed or in operation, to achieve favourable outcomes. Indian regulatory architecture is replete with examples of archaic, costly and avoidable regulations, which only breed corruption and delays. Government itself is in the process of repealing and modifying outdated laws and simplifying complex ones. To ensure that the momentum is not lost, it should be institutionalised. RIA framework enables systematic assessment of costs and benefits of proposed and existing laws, policies, regulations, guidelines

¹ <http://www.deccanherald.com/content/466401/all-archaic-laws-scrapped-two.html>

etc. and aids in selection of efficient regulatory options, through transparent stakeholder consultation mechanism.

With the current resolve of the new government in India to simplify systems as well as regulations and many aspects of its 'Make in India' campaign focusing on reducing red tape, such a tool would be useful as well as effective for India to meet these objectives. The Prime Minister has set an ambitious target for India to be in the top 50 countries in terms of Doing Business in the coming few years indicating his intent to improve the business climate both, in perception and spirit.

Several expert committees² and independent studies³ (Planning Commission's Working Group on Business Regulatory Framework to which CUTS acted as a Knowledge Partner, 2011; Financial Sector Legislative Reforms Commission, 2013; Committee for Reforming the Regulatory Environment for Doing Business in India, 2013; Tax Administration and Reforms Commission, 2015, Draft Regulatory Reform Bill, NITI Aayog, 2015; have highlighted the benefits and recommended adoption of regulatory impact assessment (RIA) in drafting and review of regulations⁴ in the India. The Government of India has also issued a pre-legislative consultation policy which mandates limited public consultation and impact analysis of proposed legislations.⁵

RIA has demonstrated several benefits in other jurisdictions. The One-in, Two-out Policy in UK resulted in net reduction of £836 million in costs to the business between 2010-2013. The Red Tape Challenge in UK resulted in £300 million in annual saving to 100,000 small businesses from increased flexibility and audit requirements. Several expert committees have recommended adoption of RIA in India. These include Planning Commission Working Group on Business Regulatory Framework, the Financial Sector Legislative Reforms Commission, and the Damodaran Committee on Reforming the Regulatory Environment for doing Business in India. The Pre-Legislative Consultation Policy of the Government also envisages conduct of partial RIA.

RIA complements the central government programmes aimed at stimulating manufacturing, encouraging private investments and facilitating start-ups and innovations by removing artificial barriers to entry, operation and growth. Consequently, the Government should adopt and implement RIA Framework for design and review of laws, policies and regulations. A RIA cell could be set up in the Ministry of Finance to provide legitimacy and ensure effective coordination with different ministries. NITI Aayog could provide capacity building services and aid states in adoption of RIA framework.

***Action desired:* Decision to adopt and implement RIA Framework, by setting up of a RIA cell in Ministry of Finance, for coordination amongst different ministries, and providing assistance to states to conduct RIA, through NITI Aayog.**

² These include erstwhile Planning Commission's Working Group on Business Regulatory Framework (WGBRF) (to which CUTS acted as a Knowledge Partner) (2011), Financial Sector Legislative Reforms Commission (2013), Committee for Reforming the Regulatory Environment for Doing Business in India (2013), Tax Administration and Reforms Commission (2015). The WGBRF noted, '*RIA will help with the identification of unreasonable burdens on business and in devising ways through which such burdens are kept to a minimum, if not eliminated altogether. Because RIA includes consultation with a wide range of stakeholders, it also provides ample opportunity to bring up unforeseen consequences or real life experiences for consideration while weighing and measuring the impact of any regulation or policy. It thus increases the accountability of the whole regulatory governance process.*' In addition, Korea, Netherlands and Moldova witnessed substantial reduction in regulatory proposals after adoption of RIA.

³ CUTS projects on Regulatory Impact Assessments in Energy Sector (2015) and Financial Sector (2015)

⁴ For the purpose of this note, regulations include policies, guidelines, legislations, rules, regulations, circulars etc.

⁵ The Pre-Legislative Consultation Policy was issued in 2014. Available at <http://lawmin.nic.in/ld/plcp.pdf>