

**National Consultation
on
Regulation and the Poor
in Electricity & Water Sectors**

New Delhi, July 12-13, 2007

**Prayas, Pune
and
Centre for the Study of Law and Governance, JNU,
New Delhi**

प्रयास

आरोग्य, ऊर्जा, शिक्षण आणि पालकत्व
या विषयांतील विशेष प्रयत्न



**Proceedings of the
National Consultation on
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**Organised by
Prayas - Pune
and
Centre for the Study of Law and Governance, JNU, New Delhi**

Prayas (Initiatives in Health, Energy, Learning and Parenthood) is a non-governmental, non-profit, public charitable trust based at Pune, India. Members of Prayas are professionals working to protect and promote public interest in general and interests of disadvantaged sections of society in particular.

Prayas Energy Group works on theoretical, conceptual and policy Issues in Energy & Electricity Sectors. Activities cover research and intervention in policy and regulatory areas, as well as training, awareness, and support to civil society groups.

Resources and Livelihoods Group works on Development and Governance Discourse, Policy and Governance Advocacy, Sustainable Cultivation (organic farming) for Poor, Development and Governance Practice, Sustainable Livelihoods, Government Schemes, Water Sector Regulation, National and Maharashtra Rural Employment Guarantee Schemes and Governance in Disaster Management.

The Centre for the Study of Law and Governance, JNU adopts a multidisciplinary approach to framing research and teaching on the vexed relationship between law and governance. Dr. Navroz K Dubash, an Associate Professor with the Centre, has extensive research experience in Infrastructure, Political economy of natural resources and Global governance.

Infrastructure areas include: Electricity reform and restructuring; development of institutions and governance mechanisms for electricity and water infrastructure. Areas in Political Economy of Natural Resources include: Common property resources; local institutions for management of groundwater. Areas in Global Governance include: Innovative mechanisms for global governance; international climate change policy; negotiations on a global investment agreement; reform of international public financial institutions and development aid.

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Report

**Report on the
'National Consultation on Regulation and Poor'
New Delhi, July 12-13, 2007**

Introduction

The Prayas Energy Group, Prayas Resources and Livelihoods Group and the Centre for the Study of Law & Governance, JNU jointly organised a National Consultation on Regulation and the Poor at New Delhi on 12-13, July 2007. The consultation was an effort to bring together various academic and civil society groups to broaden the understanding of the scope, potential and limits of regulation as an institution of governance. One of the objectives was to consolidate ideas on strategies for different actors on the issue of 'regulation and the poor' in the electricity and water sectors.

The consultation was planned as an intense interactive discussion on regulation and policy aspects in the electricity and water sectors. The participants included senior activists, independent analysts, academicians, legal experts and senior government officials working in these sectors. The diverse backgrounds and wide-ranging experiences of the participants ensured discussion and debate reflecting from various perspectives. Contributions by participants aided in sharing information on concerns in the electricity and water sectors with respect to issues that affect the poor – substantive as well as broader institutional issues. There were also two panel sessions in the consultation, in which senior government officials, senior analysts and independent experts contributed.

Preparation and Overview of the Consultation

Invitation letters were sent out to around 60 people from the first week of June. Participants were requested to prepare a 3-4 page Issue note that specifies their own work, concerns in Electricity or Water sector, and understanding of their linkage to regulation. Organisers sent out a 4-page concept note in the third week of June and a 14-page background paper 'A Brief Review of Theory on Independent Regulatory Agencies' in the first week of July. A day before the Consultation, 50 participants had confirmed and 17 had sent Issue notes.

There were 44 registered participants and 6 panelists in the consultation. Participants were from 7 States, with experience either in electricity or water sectors. Most were analysts from Civil Society Organisations (CSOs), but there were a few academic and some working with utilities/regulators.

Panelists on Day -1 (Understanding the Evolution of Regulation) were:

- R.V. Shahi (Former Secretary-Power)
- Ramaswamy Iyer (Former Secretary - Water)
- Prabir Purkayastha (Political Analyst)
- K.J. Joy (SOPPECOM)
- Girish Sant (Prayas Energy Group)

Panelists on Day-2 (Potential & Challenges of Regulation: Looking Forward) were:

- Ajay Shankar (Principal Advisor, Planning Commission)
- Ajit Nimbalkar (Chairman, Maharashtra Water Resources Regulatory Authority)
- M.G. Ramachandran (Advocate)
- Pradeep Purandhare (Water and Land Management Institute).
- Subodh Wagle (Prayas Resources & Livelihoods Group)

The consultation began with two consolidated presentations (one each on electricity and water) of key insights and points raised in the Issue notes. This was followed by a presentation and discussion on the theoretical context of regulation – a world-wide perspective and application to India. The day ended with a panel session on the evolution of regulation in India and a short session on preparing for Day-2. The second day of the consultation began with another panel session on the potential of and challenges faced by regulation. This was followed by break out sessions for water and electricity. The consultation ended with a synthesis of the break out sessions and a discussion on the strategies for the future.

The following paragraphs attempt to capture and consolidate the rich discussion and debate that ensued during the consultation. For the ease of articulation and reading, the discussion has been divided under four broad categories, namely 'Governance', 'Regulation – independent regulation and broader issues', 'Substantive issues in electricity' and 'Substantive issues in water'. The issues raised in each category are discussed below. The report ends with a few Concluding thoughts.

Governance

At the beginning of the consultation, a broad framework for discussion emerged. It was suggested that independent regulation is fast becoming a part of the governance landscape in India and it was necessary to see how best to approach these institutions – Can they be used to improve service delivery to the poor? Can they be improved to facilitate better governance in the sector? Should they be rejected as being part of a larger neo-liberal agenda?

The discussion on the governance aspects of both the electricity and water sectors raised some important points. The issue that was repeatedly discussed was that there is a policy vacuum in both sectors by way of the absence of a larger framework which would guide the regulator to be pro-poor. Different mechanisms of regulation could have then been applied to implement the pro-poor provisions. It was pointed out that regulators are often also asked to play the role of policy makers – a role which they are not supposed to or equipped to play, as policy should be in the legislative domain. Thus the regulators attempt to find techno-economic solutions to problems that are actually socio-political. In the view of this discussion, it was pointed out that it would be highly dangerous to instate a regulator in the water sector with no comprehensive pro-poor policy framework in place.

It was suggested that in India the expectations from the independent regulatory model have not come true - the electricity sector experience shows that the regulatory authority has become too technocratic and has moved away from the public. It was discussed that pro-poor regulation cannot be without political considerations, but in the independent regulatory forum as it is structured now, there is some space for CSOs, but limited space for political movements. Thus, there is a disconnect between political action and regulation of the sector. It was also argued, that on the other hand there is a significant enough domain where the larger regulation structure is becoming more relevant than traditional community based political action for various reasons – how does one reconcile the two phenomena? It was also pointed out that with the fast pace with which regulatory authorities are being set up in the water sector (similar to the experience in the electricity sector), many major issues pertaining to large infrastructure projects might get decided by the regulator in the near future; it is thus necessary to evolve strategies for engagement with the regulatory institutions. Also it was pointed out that this engagement strategy would be crucial from the viewpoint of whether decisions about these large infrastructure projects should remain vested with the executive (as they currently are) or should they be taken by the regulator, or are

there other institutional mechanisms where this decision-making would be pro-poor (substantively), transparent, accountable and participative.

Issues about the accessibility of the independent regulatory institutions to the poor, were also raised – electoral politics is perhaps the most effective tool available to the poor; the process of engagement with the regulator is complex. The issue of whether an elite institution comprising of members un-connected to the grassroots, be democratic, was debated. It was suggested that a bottom up approach to governance is necessary and perhaps is suitable for water, considering the experiences in participatory water management. But it was also pointed out that a bottom up approach may not necessarily be democratic since there could be danger of hijack by strong vested interests even in this approach. Another issue was raised that democracy should not just be restricted to voting, which is the prevalent situation due to weakening of current institutional structures. The scope for regulation as one of the spaces for improving governance should be explored.

It was argued that the regulator should actually play the role of a facilitator – to facilitate dialogue between the Government, utilities and consumers - to solve the problem of all “stakeholders”, since the arena is not a level playing field. It was pointed out that the telecom regulator does play this role, unlike the electricity regulator. This, it was proposed, would in fact increase access to information which is otherwise outside the public domain.

Many concerns about the accountability of regulators were raised. It was suggested that the courts and higher level tribunals are sufficient checks for regulatory decision making. However, it was pointed out that since many decisions that the regulator has to take are political, it is necessary that s/he be accountable to the elected representatives as well. However legislative oversight is not exercised and the orientation of regulation gets too person-dependant. The dangers of answerability to the elected representatives were also pointed out - interference amounting to hijack by short sighted party politics rather than public interest politics. There was also the question whether improvement in accountability while delivering public services necessarily requires a new institution and whether accountability of existing institutions could not be improved to achieve the same end.

Regulation – Independent regulation and broader issues

There was also discussion about the theoretical aspects of regulation. It was argued that there is a public interest view of regulation wherein the regulator is necessary because s/he oversees the interests of the community – decisions that people might not take as consumers, but might take as citizens – regulators facilitate this community based decision making. There is also a private interest view of regulation wherein it is suggested that the state gives power to private players via the regulator. There is also an institutionalist view of regulation which claims that the public-private divide is overstated and the regulator can play the role of a facilitator for discussion between various stakeholders. It was argued that it is possible to use the regulator as a democratic forum for decision making. However, many participants held the view, that in practice (in India) the regulator has little space to manoeuvre. As the Independent Regulatory model (IR model) is promoted by the World Bank (WB), it operates under the specific framework provided by the WB.

It was argued that the regulatory mechanism is a part of a neo-liberal agenda - accordingly, one should not expect radical changes from it. Civil society organisations have tried to press for enhancing the role of independent regulator, but they have not been very successful. In view of

this debate, it was discussed whether engagement of civil society organisations with a World Bank initiated process would mean legitimising the process.

In the panel sessions, there was considerable debate about both the neo-liberal reforms within which regulation is being promoted in India and the concept of independent regulation itself. It was argued that regulation was first introduced to regulate monopolies in infrastructure; however there is no structural difference between a state monopoly and a regulated monopoly. Since effectively there is no market for infrastructure, the regulator builds a quasi market – i.e. the regulator does what the market is supposed to do. However, it was argued out that since the poor lie outside the market, regulation will be unable to address all their issues.

It was brought up that the regulator (in the electricity sector) assumes an adjudicatory role. Instead of basing decision making on a holistic view of the sector, the regulator primarily arbitrates disputes. Thus the whole regulatory process at least in the electricity sector has been taken over by lawyers and there is little space for civil society. It was also pointed out that the commissions usually comprise only of bureaucrats and are thus unable to take an integrated view of the sector from a pro-poor perspective. It was suggested that flexibility of the regulatory process is very important in the independent regulatory model - there is a need to be open to change.

It was mentioned that in “Independent Regulation” there is no clarity about what the regulator is meant to be “independent” from. This was followed by discussion on the regulator as a means to reduce arbitrary administrative decisions. However, it was pointed out that this leads regulation into a political domain – where the regulator has to undertake a political role for supply rationing etc. which is difficult territory for the regulator. The regulator has found it difficult to take political decisions even in the electricity sector regarding cross-subsidisation and open access. In the water sector where the supply curve is severely constrained, this will be an even more difficult job. Thus it was suggested that these limitations should also be taken into consideration while talking about regulation in the water sector.

Substantive issues in Electricity

During the consultation, the issue notes that were sent by participants were discussed. Many important questions emerged from both, the notes and the discussion for the water and electricity sectors. Some points raised, pertaining to the substantive issues in regulation of the electricity sector are discussed in this section.

The issue notes on electricity followed two broad threads – notes that discussed issues related to regulation of centralised, grid supplied electricity and that of decentralised, isolated systems for remote villages. However, during the discussion it was suggested that these two modes of electricity supply should not be looked at in isolation. It was also pointed out that when it comes to non-finite sources of energy, like wind, solar etc. it is unclear how the supply will be regulated.

Various points were raised about the related but multi-scaled aspects of the electricity sector. It was debated that it is problematic to not regulate the related sectors – for example, in the absence of regulation in the fuel sector, achievements of regulation in the electricity sector will be limited. It was suggested during the panel session that it has also been very difficult for the regulator to tie up the end delivery system (distribution system) – measurement, collection etc. are difficult. The result being that the regulator tries to compensate by over-regulating the systems that are higher up (generation and transmission). It was also pointed out that there is too much pre-occupation with the tariff aspect of the regulatory process, by both the regulators as well as civil society.

It was also pointed out that it is not clear whether the resulting social and environmental effects of power plants fall under the jurisdiction of the regulator. Almost always, land for power projects is taken from the poor – questions were raised about whether the regulator can have a say as to who gets the power from these power plants. The ability of the regulator to ration power in times of shortage was also discussed; whether the regulator can do anything about the disparity in consumption.

There was also considerable debate about the tariff subsidies in the power sector. Some state utilities provide free electricity to the agricultural sector against direct subsidy payment received from the government – It was argued that across the board subsidy leads to usurpation of the benefits by the non-poor – the richer farmers can afford larger pumps and can dig deeper wells thus also affecting the water table levels. It was argued that the regulator has so far proved powerless to address this situation.

It was pointed out that significant privatisation in the electricity sector has not happened even post reforms. Thus, the regulators have been regulating government utilities. Questions were raised whether even with government monopolies it was better to have regulators as a step towards democratic governance. Instances of improvement in energy auditing, improvement in transparency of the utilities etc., after the establishment of regulatory commissions, were some examples that were discussed.

During the breakout session for electricity, many interesting points were raised. It was suggested that there should be synergy between the regulator, civil society and activists. CSOs should play the role of sensitising the regulator to the problems of the poor. It was pointed out that there are many pro-poor spaces and opportunities presented by the policies (like franchisee models) - especially by the Rural Electrification Policy which need to be explored.

A wish list was made of steps that have to be taken to make the regulation in the electricity sector pro-poor. These were divided into two broad categories; opportunities to ensure better service delivery to the poor, available within the current framework and changes needed to the framework itself to make regulation pro-poor. These are listed below in the form of a table.

Issues that can be addressed using the available framework	Issues that require structural changes in the framework
<ul style="list-style-type: none"> - Access to electricity for the poor <ul style="list-style-type: none"> - New connections - Access of the poor to Regulatory Commissions - Affordability <ul style="list-style-type: none"> - Better targeting of subsidies - Quality of Supply <ul style="list-style-type: none"> - Improve regulation by removing bias against the poor - Improve monitoring of QoS - Reduce harassment of poor consumers 	<ul style="list-style-type: none"> - Ensure zero conflict of interest while selecting regulators - Improve TAP provisions by making them mandatory - Protection of the poor from harassment by utility officials who can misuse the recent theft legislation as a tool. - Regulator should have a social mandate to protect the interests of the poor - Promote electricity users associations (EUAs) - Democratise Regulation processes (EUA, Panchayats etc.) - Internalise socio-environmental concerns

Substantive Issues in Water

The issues related to water sector discussed in the consultation are classified and presented in the following categories: a) Distinguishing features of water that have implications for regulation in the water sector, b) Model of regulation in the water sector, c) Lessons from the Maharashtra Water Resources Regulatory Authority, and d) Strategies for Action and Action Points

a) Distinguishing Features of Water

Many participants expressed the view that the distinguishing features of water from other infrastructure services especially electricity must be considered while thinking about regulation. It was pointed out that since human existence is dependent on water, it cannot be regarded as a commodity and market oriented reform principles such as full cost recovery cannot be applied. Further, it was stated that, the nature of water resource is highly complex. Water is variable, volatile, decentralised and mobile resource. The biophysical and ecosystem characteristics of water are extremely important and any mechanism for regulation must consider them. It was emphasized that water has an intimate relationship with livelihood needs of people and its nature as public good gives rise to many complex issues. In view of this, the question was posed whether water resource is amenable to institution like independent regulatory mechanism.

The view was expressed that since there is difference between urban and rural water sector, regulation for both needs to be different. Further, surface and ground water also require different kinds of regulation. The need to consider water use and land use pattern while thinking about regulation was also put forward. It was pointed out that since water is amenable to sharing, there are related trade offs, which are important to understand for regulating water. While there was discussion on distinguishing characteristics of water, a question was raised whether water is completely different from other services like electricity or telecom. It was argued that these shouldn't be looked at separately, but should be viewed as a spectrum wherein there are some larger governance issues which could be applicable to all three sectors though each may be substantively different from the other. It was suggested that since the regulatory institution has a decade long history in the electricity sector, it is important to draw lessons from it for the water sector.

The issue was raised that since water is a scarce resource, there are huge constraints at supply side. It makes allocation of water a highly complex, contentious and political issue. The supply of water on volumetric basis across large irrigation network is a challenge. It was pointed out that water depends on rainfall regimes. So there are surpluses and shortages of water. The issue of handling surpluses and gaps of water resource in terms of livelihood requirement is important. Thus, complexity of water sector is said to be a great challenge for regulation in the water sector.

b) Regulation in the Water Sector

Many issues came up in the discussion on regulation in the water sector. Most participants expressed the view that larger policy framework must precede the establishment of regulatory mechanism. The need to formulate National Water policy and Act through a consultative process was also expressed. The concern was expressed over divergent thinking about water resource by different states in India as it creates hurdle in formulating integrated national policy. But at the same time there was a caution raised about the possibility and the resulting ill-effects of greater nationalisation and centralisation of water that may emerge from going ahead with national water act. It was also stated that although right policy framework is important, policies are not enforceable. Further, civil society has little space to influence the process of policy-making. The view was expressed that it is necessary to think about broader governance of water sector without restricting only to IR or to regulation.

c) Lessons from the Maharashtra Water Resources Regulatory Authority Act (MWRRA)

Since Maharashtra is the first state in India to establish independent regulatory authority in the water sector, it was felt that experience of the MWRRA could be important for other states. The view was expressed that the government of Maharashtra disregarded many crucial recommendations submitted by civil society organisations and also neglected rich experience of people while finalising the MWRRA. This puts a question mark on government's claim of participatory process of preparing legislation.

Many points were raised about role of the MWRRA. It was argued that the MWRRA has been entrusted with enormous tasks without considering its competence. The authority, consisting of former bureaucrats, was said to be incapable of handling these issues. The view was expressed that major lacuna in the MWRRA is linking water entitlements with ownership of land and thus restricting access to water by poor. The need to broaden the definition of entitlement was emphasised. The fear was expressed that, many areas, such as, rain fed areas, urban poor, and unorganised sector will remain outside the ambit of the MWRRA, thus hampering the interests of poor people. The overwhelming preponderance with irrigation in the MWRRA was said to relegate drinking water to the background. It was argued that in view of fundamental lacuna in the MWRRA, we should reject this act and caution other states about implications of reforms.

Some participants expressed the view that we should welcome the establishment of the MWRRA and engage with it in order to participate in the process of regulation. It was argued that any measure to improve the governance of the water sector is bound to have some limitations in view of magnitude and scale of the sector. The view was expressed that providing water entitlements to water user associations and other entities for non-irrigation purposes is the single-most historic development in Maharashtra's water sector. It was suggested that IR in the water sector will bring techno-economic analysis and rationality in the decision-making. It was also pointed out that there are many pro-poor provisions in the State Water Policy of Maharashtra. The need to adopt radical policies by the government was also expressed.

There was a fear that a standard regulatory model (e.g. MWRRA) may be promoted and implemented by states having diversity in water systems and management. Hence, there is a need to demand and bring plurality in regulatory framework.

d) Strategies for Action and Action Points

It was discussed that there could be two strategies to deal with reforms in the water sector: a) to articulate alternative model of governance for the water sector and to work to bring this model into reality, and b) to decide how to deal with the IR model – here two responses are possible; first is to reject this model altogether and second is to engage with IR to ensure protection of social and environmental interests. It was stated that these two responses may not be exclusive.

Based on the above strategies, there was discussion on the action points, which is summarised below.

- There is a need to develop comprehensive critique of the MWRRA, including critique of the content and procedure parts. There is a need to document the process of water sector reforms in Maharashtra. There should be national level debate around the issue of regulation in the water sector.
- A letter should be sent to the government with our comments on current water sector reforms and plans for work on alternative model of governance for the water sector.
- There is a need to develop critique and alternative to Guidelines developed for river basin plan by the government of Maharashtra.

- There is a need to create repository of water sector reforms. We can start discussion group on water sector reforms. The compilation of policies of different ministries is necessary. We should articulate generic points in regulation across the sectors.
- There is a need to write articles and research papers on various issues involved in water sector reforms.
- We need to use RTI to collect information on water sector reforms in different states and at national level. There is a need to coordinate efforts of different organisations who are involved in this.
- There is a need to work further on institutions and governance of the water sector.
- We should get in touch with the unions in the water sector, people involved in operations and maintenance work and grassroots organisations and involve them in our process. We should also contact legislators at different levels.
- We should work to build capacities of Water Users' Associations (WUAs) to handle regulatory framework.

Concluding Thoughts

This was an open ended event with minimal guidance by organisers and maximum participation from the audience. Attempt was made to take an institutional view of issues affecting the poor in electricity and water sectors. The consultation threw up many interesting points – larger governance issues as well as sectoral issues in water and electricity. Through various discussions and debates, agreements and disagreements, the consultation served its purpose of broadening and deepening our understanding of regulation, its theory and practice and the scope and limitations it presents for addressing the issues of the poor. The consultation also threw light on the variety of perspectives on regulation (especially on independent regulation) and thus on the strategies adopted and proposed by different CSOs while engaging with this new institution. It was also clear that many critical issues which impact the poor need to be addressed through policy interventions.

Discussions during the consultation were focused more on the water sector and understandably so – water being the more important aspect of people's lives inspires greater intervention and action. Also reforms in the water sector are an emerging issue with the first regulatory authority being set up in Maharashtra only recently; whereas in the electricity sector, regulatory commissions have been functioning for the past decade.

During the early stages of reforms in the electricity sector there were very few analysis oriented CSOs working on relevant issues in the sector and therefore an opportunity for early intervention was lost. It is a welcome sign that today, when water sector re-structuring is being proposed, there are number of CSOs working on both substantive as well as governance issues in the water sector.

The organisers feel that one of the most important outcomes of the consultation has been the exchange of ideas that would definitely lead to better clarity and capacity in approaching the new governance landscape in the electricity and water sectors in India.

Agenda

National Consultation on 'Regulation and the Poor'

IIC- New Delhi, July 12 -13, 2007

Agenda

July 12	
09:30-10:00	Registration
10:00-11:00	Session 1: Agenda Setting About the consultation, Plan for the consultation and Introduction of participants
11:00-11:15	<i>Tea</i>
11:15-01:00.	Session 2: Electricity & Water issues Electricity issue notes & discussion, Water issue notes & discussion
01:00-02:00	<i>Lunch</i>
02:00-03:15	Session 3: Theoretical Context of Regulation Presentation by Navroz Dubash & Discussion
03:15-03:30	<i>Tea</i>
03:30-05:15	Session 4: Understanding the Evolution of Regulation Panel: RV Shahi (Secretary – Power – Retd), Ramaswamy Iyer (Secretary – Water – Retd), Prabir Purkayastha (Senior Analyst), Girish Sant (Coordinator – Prayas Energy Group)
05:15-05:30	<i>Tea</i>
05:30-06:15	Session 5: Preparing for Day 2 Feedback on day's discussion, Consolidate ideas for future action, Discuss goals for day 2
08:00-10:00.	<i>Dinner</i>
July 13	
09:30-11:00	Session 6: Potential & Challenges of Regulation: Looking Forward Panel: Ajay Shankar (Principal Advisor, Planning Commission), Ajit Nimbalkar (Chairman, Maharashtra Water Resources Regulatory Authority), M.G. Ramachandran (Advocate), Subodh Wagle (Coordinator – Prayas Resources & Livelihoods Group)
11:00-11:15	<i>Tea</i>
11:15-01:00	Session 7: Regulation as an Instrument of Social Policy in Electricity & Water <u>Parallel break out groups: Electricity and Water</u>
01:00-02:00	<i>Lunch</i>
02:00-03:30	Session 8: Regulation as an Instrument of Social Policy in Electricity & Water <u>Synthesis: Report back and discussion</u>
03:30-03:45	<i>Tea</i>
03:45-05:15	Session 9: What can be done? A plan of action Governance discussion, Substantive discussion on Electricity and Water

List of Participants

National Consultation on Regulation and the Poor'

New Delhi, July 12-13, 2007

Prayas,Pune and Centre of the Study of Law and Governance, JNU, New Delhi

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Presentations & Handouts

**How MWRRA Can Pursue The Objective Of
Protecting The Interest Of Poor Through
Regulation In The Water Sector**

Mr. Ajit Nimbalkar (IAS),

Chairman, Maharashtra Water Resources Regulatory Authority (MWRRA)

1. At the outset, it needs no emphasis that all policy decisions are taken only by the State governments. At National level, the Government of India has adopted the National Water Policy in 2002. Accordingly, Government of Maharashtra (GOM) has formulated a State Water Policy in 2003. For empowerment of Water User Associations (WUA), GOM has enacted Maharashtra Management of Irrigation System by Farmers (MMISF) Act in 2005. This involves WUA in irrigation management in planning as well as in implementation. To establish a water tariff system and enforce & regulate Entitlements, GOM has also enacted the Maharashtra Water Resources Regulatory Authority (MWRRA) Act in 2005. The Water Regulator has been created by this statute.
2. Pro-poor policies can be included by Government in statutes or through policy pronouncements. Left to itself, Government often finds its role as an implementation difficult to fulfill for various reasons with the result that pious declarations often are not translated into action due to the external environment. Regulators can be established at an arms length from Govt. to regulate the executive wing (or the implementation arm of Government) charged with the task of implementing these policies. It is thus the Regulator's role to ensure that Government's objective function is achieved. The Water Regulator set up by the Maharashtra government is expected to function independent of the executive arm of the Government i.e. the WRD and to ensure that important decisions such as setting of tariffs are not made in an arbitrary or irrational manner or under political pressure but in an objective way. The Regulator has thus a dual role viz. implementing government's social objectives which have a legal or policy backing and taking independent decision based on sound economic principles where needed.
3. The MWRRA Act has quite a few social commitments like providing water to drought prone areas, water management in times of scarcity, ensuring irrigation to atleast one acre of land in drought periods and removal of irrigation backlog in backward regions. The Authority, under the Act, is also required to work within the framework of the State Water Policy. The State Water Policy stresses the creation of an enabling environment for better and more equitable and productive water resources management in an environmentally sustainable manner for promoting growth, reduction in poverty and minimizing regional imbalance. It has been made obligatory under MMISF Act for WUAs to supply water from Tail to Head as per their Entitlement. The Regulator has to ensure that these obligations are adhered to.
4. Under the MWRRA Act 2005, the following functions have been entrusted to the Regulatory Authority
 - i) regulation of water resources within the State of Maharashtra
 - ii) facilitate and ensure its judicious, equitable and sustainable management, allocation and utilization
 - iii) fix the rates for use of water for agriculture, industry and drinking water and other purposes.In the discharge of above functions, Authority has to ensure that the three issues of equity, productivity and sustainability inform all its decisions. All three are important but not necessarily equally important in every case and may sometimes contradict each other. A judicial balance will have to be stuck on a case basis, especially when social concerns are also to be addressed.

5. In respect of Entitlements, the Regulator has more pro-active role to play. The concept of Entitlement, which is to be determined and regulated by the Authority, is a step towards equity. In the traditional government controlled irrigation systems, the small farmers especially those in the tail areas, were denied water which was largely cornered by the large farmers. Irrigation staff engaged sometimes in corrupt practices in distribution of water. With the decision to hand over systems below minor canal to WUAs for management under the MMISF Act and to deliver water to WUAs as per Entitlement on volumetric basis under MWRRA Act, the malaise of inequity in irrigation management would be addressed to some extent and water share according to land entitlement will become available to all. This can be expected to be the single largest contribution by the Water Regulator to the social sector.
6. As regards tariff, the Regulator will have to keep in view factors like paying capacity, affordability and self-sustainability of water resources projects. The MWRRA Act lays down that the water charges shall reflect the full recovery of the cost of irrigation management, administration, operation & maintenance of water resources projects. In this economic exercise, social concerns are automatically inter-woven.
7. The Authority has a special responsibility under the Act for implementing Governor's directives in regard to irrigation back log removal. Back log areas are identified on the basis of economic backwardness indicators and are inhabited by a relatively larger section of the poor than other progressive areas. The Authority can ensure fund - flow to backward areas and also see that these funds are fruitfully utilized to create new potential instead of spreading them thinly.
8. In the preparation of the Integrated State Water Plan (although required to be prepared by the State Govt.) the Regulator has a role of a facilitator and a monitor to ensure its timely finalization. State Water Plan is integration of all basin plans in the State. It is for the first time that a State Water Policy aims to promote overall and balanced development by treating the water basin as a unit. Adopting a multi sectoral approach by proper coordination among diverse water uses and ensuring equity in water distribution for the benefit of the State and its people are the essential features of the benefit of the State Water Policy. In the guidelines prepared by the Authority for developing such a plan, stake holder involvement is envisaged so that poorer sections / civil society get an opportunity to project their demands which will find a place in development plan.

Accountability of Regulators

R. V. SHAHI

In the last few weeks, several reports have appeared in the media about suggestions and views of a number of government & non governmental organizations on the issue of accountability of regulators. A reference in these reports has also been made about a suggestion from some Honourable Members of Parliament that there should be a separate Standing Committee on Regulatory Commissions/ Authorities. It has also been reported that Administrative Ministries feel that the respective Standing Committees of various Ministries are enough and there would be no need of a separate Standing Committee.

With the opening up of various sectors of industry and economy, facilitating entry of large number of players, it was felt necessary to have regulatory institutions to take care of the interests of all stakeholders including consumers. In our country, we have Telephone Regulatory Authority, Central Electricity Regulatory Commission, State Electricity Regulatory Commissions for each State, Appellate Tribunal for Electricity. Soon, there would be a regulatory institution for petroleum called Petroleum Regulatory Board. This Board is being operationalised shortly. There is also a talk about regulatory institutions for Civil Aviation, Port etc. Some of the Ministries and professionals have been suggesting regulatory institutions for Coal and for Railways also.

Basically, the concerns of those who have reflected the views on regulators accountability seem to be on following lines:

- i. We have distanced the government departments from some of the issues concerning license, tariff rationalization and overall regulation of the industry, and have attempted to regulate the activities in the respective industries through quasi judicial regulatory institutions. This is a welcome development. But, how do we ensure that these institutions perform in the manner expected and meet the objectives for which they have been set up? This is the main concern that has emerged.
- ii. This issue assumes added relevance because, once appointed, Regulators, during the tenure of their appointment, cannot be shifted or removed. This provision has, infact, been kept to ensure regulator's independence. But it is being voiced as a concern from the point of view of regulator's accountability.
- iii. Accountability of the executive wing of the government to the Parliament is for various actions or inactions, for performance and shortfalls. Working of government departments and various organizations under them are examined by various Parliamentary Committees. Finally the executive is accountable to the Parliament. Is there a missing link is so far as this basic requirement vis-à-vis the regulatory institutions is concerned?
- iv. What remedial actions are available for corrections and in what way Parliamentary control can be exercised? The belief of this school of thought is that it is the Parliament which represents views of people and it is they who are in touch with and are fully aware of the problems of the people. Could the functioning of the regulatory institution, just because they have been distanced from the government departments, be taken away from Parliamentary oversight?

These are very weighty arguments, no doubt, being advanced in favour of strengthening the system and procedure, and if required by introducing necessary provision in the Act to ensure accountability of regulators. However, there is another school of thought which advocates that if this is done, the whole purpose of distancing the decision making on these vital issues such as

development of market, tariff fixation, subsidies and cross subsidies etc. would be defeated. It may lead to the same situation as it was happening in the past when the Ministries and Departments had the control on these functions, and political system, through these departments, had the necessary influence in the decision making process. This argument is equally weighty.

Each school of thought has its own points of view. It would be necessary to examine the background under which the concept of regulatory mechanism emerged. While we need to keep in view the concern of those who want regulatory commissions not to be subjected to accountability of the type that is being projected, we also need to address the concern of those who articulate that in some manner the framework must provide for ensuring regulator's accountability for their performance. If we proceed examining the issues, taking the electricity sector into the focus, it could provide a reasonably good solution. Why electricity sector? Because, here the regulatory mechanism is most complex. We have a Central Regulatory Commission and we also have State Regulatory Commission for each of the States. Also, we have experience of about 10 years of these institutions now. Therefore, the examination of this sector could, to a great extent, take care of the concerns relating to other sectors as well.

It would be necessary to present, a brief historical background of regulations in electricity sector.

- a. Even before the Electricity Act 2003 came into being, an exclusive legislation on regulation, viz. Electricity Regulatory Commission Act, 1998 was enacted as a Central legislation. Apart from many other functions, the task of tariff fixation was envisaged as one of most important responsibilities for these commissions.
- b. Even prior to this Central legislation, Orissa Electricity Reform Act came into being in 1996 which not only provided for restructuring of the State Electricity Board but also for setting up of the State Electricity Regulatory Commission, with a number of tasks assigned to them, the most important of them being tariff fixation.
- c. Prior to these regulatory institutions, the job of tariff fixation was being done for central generating companies and transmission company by the Ministry of Power in consultation with Central Electricity Authority.
- d. Central Electricity Authority functioned as regulatory institution, in a limited way, for all practical purposes.
- e. At the State level, it is the State governments, which would finalize the tariff for their own power plants of Electricity Boards and also for the tariff for consumers.
- f. Various other regulatory Activities were controlled by the respective govt. ministry/ departments both at the central and state levels.

Electricity sector developed and grew under the above framework for several decades. As we all know, we can hardly say that this sector, and this type of institutional framework, gave a good account of its overall performance. The organizational set up and mechanism failed to deliver the results, as can be seen from the outcome listed as below:

- a. The losses of state utilities continued to increase.
- b. Commercial discipline hardly existed. Till the late nineties these situation was that most of the important players viz. the state utilities were not paying fully to generating companies, transmission companies, coal companies, railways, BHEL and infact, to almost any one, whom they owed to pay.

- c. There were state utilities which could not prepare their annual accounts for several years, 4-5 years, in many cases, seven to eight years.
- d. There were state utilities, which were not being allowed to even put up their proposals for tariff. There were extreme examples of tariff exercise not having been done for 8-10 years on one ground or the other – sometimes election of local bodies, legislative assemblies, midterm election, general election etc.
- e. The technical functioning of the utilities, in relation to reliability of power supply, timely provision of new connections and overall accountability to consumers, was very difficult to ensure. These were the issues which seldom received the attention of the departments which were the concerned regulators.
- f. It was a very peculiar situation of State Electricity Boards themselves having the dual role - some regulatory roles while also being the main operator in the system.

It is under these circumstances that it was considered necessary to distance the regulatory function from the government departments. We must also recognize and appreciate that quite often the political system is under pressure from public at large for a type of dispensation or supply of electricity which would render the industry commercially bankrupt and unfit to serve the consumers. Infact, in many cases it did happen exactly that way. We can not blame the political system as they have to be and need to be sensitive to people demands and aspirations while taking decisions. If the mechanism to decide is with them, would they be able to ignore such aspirations even if they are not always on rational consideration? It is in this background that the tariff fixation process was attempted to be insulated from the influence of political compulsion by entrusting it the regulatory institutions.

Now let us examine the relevant provisions of the Electricity Act 2003 and attempt to find out the underlying principles of regulation and process through which these institutions function. Similar provisions may be there in other sectors with some variations here and there. And, therefore, the analysis and conclusions could be, to a great extent, relevant to the regulatory mechanism existing or likely to be created for other sectors as well.

- i. These institutions have been conceived as quasi judicial in nature. Section 95 of the Electricity Act 2003 is reproduced below.

"All proceedings before the Appropriate Commission shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appropriate commission shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973".

- ii. Similarly procedure and power of the Appellate Tribunal have been provided in section 120 of the Electricity Act. It would be relevant to mention that the appeals on the decisions given by Regulatory Commissions (both Central & State) lie with the Appellate Tribunal (Sec 111) and not with the High Court. And, appeals on the judgement of the Appellate Tribunal lie with the Hon'ble Supreme Court (Sec 125).
- iii. An extract of the section 120 is given below.

120 (1) " The Appellate Tribunal shall not be bound by the procedure laid down y the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure".

120 (2) "The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

- iv. While examining this issue of accountability of regulators, a very important provision in the Electricity Act, which needs to be mentioned is in relation to power of the Central Government to issue direction to the Central Electricity Regulatory Commission and power of the State government to issue directive to the State Regulatory Commission. The relevant sections 107 & 108 are given below.

107 (1) "In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing".

107 (2) "If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final".

108 (1) "In the discharge of its functions, the Central Commission shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing".

108 (2) "If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final".

- v. Therefore, if certain issues are in public interest, the respective governments have the power to issue such directions. However, the Act is quite cautious and clear on such power to the State Governments & Central Government, to issue directions, when it relates to grant of any subsidy to any consumer or to a class of consumers. Section 108 does not empower the respective governments to decide the grant of subsidy without the government compensating the utility affected by the grant of subsidy. Section 65 is amply clear on this.

"If the State Government requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under section 62, the State Government shall, notwithstanding any direction which may be given under section 108, pay, in advance in the manner as may be specified, by the State Commission the amount to compensate the person affected by the grant of subsidy in the manner the State Commission may direct, as a condition for the license or any other person concerned to implement the subsidy provided for by the State Government:

Provided that no such direction of the State Government shall be operative if the payment is not made in accordance with the provisions contained in this section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard".

- vi. When Electricity Act was first passed by the Parliament in May 2003, section 121 of the Bill provided for superintendence and control, on the regulatory commissions, by the Chairman of the Appellate Tribunal. This provision was debated in both the houses of Parliament. Several amendments had been suggested in relation to this provision, in addition to many other suggested amendments. Finally, the government accepted to make necessary amendments on four issues and, on the basis of this understanding, the Bill was passed. These amendments were then brought by the Government and passed by the

Parliament in January 2004. One of these four amendments related to section 121 which, in the Act as passed in May 2003, provided for superintendence and control by the Appellate Tribunals on the regulatory commission. The amended provision which now is a part of the Act, is given below in section 121.

“The Appellate Tribunal may, after hearing the Appropriate Commission or other interested party, if any, from time to time, issue such orders, instructions or directions as it may deem fit, to any Appropriate Commission for the performance of its statutory functions under this Act”.

The objective of this change was to free the Commission from any routine and administrative control by Appellate Tribunal but empower the Tribunal in relation to the statutory functions of the commissions.

Thus, the points made, in this paper, as a part of the background, as also the relevant provisions of the Act, make it very clear that Regulatory institutions have to function in an independent fashion. Their proceedings are quasi judicial in nature. The desire, if any, executive or of the Parliament have to be circumscribed by these provisions of law. When, while passing the Electricity Bill, the Parliament did not want superintendence and control by the Appellate Tribunal, and conscionably provided for greater degree of independence to regulatory commissions, restricting the review by the Appellate Tribunal only of its statutory functions, whether any other form of control now would be necessary and justified, will have to be carefully considered.

The rules and reports of the Commission have to be submitted to Parliament & concerned Assemblies. During deliberations on the Bill as also during the examination of the Bill by the Standing Committee of Parliament on Energy, it had been clarified that the Standing Committee of the Ministry would have the power to examine necessary aspects in relation to the Regulatory Commission. Under the circumstances, it appears more appropriate that, since this regulatory commission would be on specialized subjects such as power, petroleum & gas, port, civil aviation, coal etc., the concerned Parliamentary Standing Committee may be the appropriate Standing Committee rather than an exclusive Standing Committee only for regulatory institutions.

That leaves us with the issue of accountability of regulators. In the light of what has been examined above, it appears that the Appellate Tribunal is the appropriate institution to ensure the accountability for performance of regulatory commissions. They have the powers to review, modify and null their judgments. The next level is the Hon'ble Supreme Court as provided under the Act. The central govt. & state governments do have powers, as mentioned, to issue directions in public interest, to the concerned commissions, though one would expect that such cases are few and far between.

Having said that, one more issue needs to be commented upon. Central Electricity Regulatory Commission and the State Regulatory Commissions have been given power, under the Act, to make rules & regulations, under sections 178, and 181, consistent with the Act and to carry out the provisions of Act. Under these sections a range of issues have been listed on which the Commissions have been given powers to make regulations. Thus, the commissions have not only been given the power to implement rules but also to frame rules and regulations. How do we ensure accountability in such a situation? In one of the recent judgments, the Appellate Tribunal for Electricity had observed that these powers of the commissions may need to be revisited. In the judgment of the Appellate Tribunal, since these are statutory powers given to the commissions to

make rules and regulations, it may be beyond the purview of the Appellate Tribunal to review these.

A plain reading of section 121 suggests that the Appellate Tribunal may issue such orders, instructions or directions as it may deem fit to any appropriate commissions for the performance of its statutory functions. Making rules and regulations are also the statutory functions. One interpretation could be that the Appellate Tribunals could issue orders, instruction, and directions to the commission in relation to these.

This is an important issue. Appellate Tribunal's Judgement needs to be examined. And, if any clarification is required or an amendment is required the same may have to be done. In the recent judgment of the Supreme Court, however, this issue has been indirectly addressed. The Central Electricity Regulatory Commission framed the regulation in relation to depreciation norm. This was not agreed to by the Appellate Tribunal in the process of hearing an appeal in one case, against the judgment of the Central Regulatory Commission. The Hon'ble Supreme Court upheld the judgment of the Appellate Tribunal. Perhaps an inference could be drawn from this case that the Appellate Tribunal does have the power to pass direction on issues which relate to statutory function of the regulatory commission to frame regulations, and, to that extent, it would be within its right to review the regulations made by the commissions. However, this is a complex legal issue and will have to be further examined. But, the fact is that accountability of regulatory function to be discharged by the commissions has to be ensured through the hierarchy that has been envisaged under the Act and i.e. Appellate Tribunal. The Parliamentary oversight is important and relevant and preferably it could be achieved through the respective Standing Committees of the Parliament.

A Regulatory Authority For Water?

Ramaswamy R. Iyer

When I was asked to speak at this meeting, I felt vaguely uncomfortable because I was not clear why a regulatory authority for water was being talked about. However, I overcame that hesitation – or shall I say, I was persuaded to overcome my hesitation by my friend Navroz Dubash – and decided to come here and share my reservations, and also to outline my own ideas on what kind of regulation is needed in relation to water.

At the outset, let me ask why electricity and water have been brought together in one meeting. They are very different from each other. Electricity is doubtless an important part of our lives, but at a pinch we can do without it. In the absence of water, we will die; in the absence of electricity we may be put to serious inconvenience but we will not die. (In the USA there is a community – the Amish – that lives in a pre-industrial, pre-electricity style, and it is a civilized life.) Water is a fundamental right, a human right; electricity, however important, is not on the same footing. Moreover, electricity and telecommunications are industrially produced supplies/services, but water is a natural resource. The policy issues relating to water and electricity are quite different, and nothing is gained by discussing them together.

Having made that point, let me return to the subject of the Consultation as formulated. In the telecommunications and electricity distribution areas, regulatory authorities came into being in the context of the privatization of these services. Historically, the origins of sectoral regulatory authorities can be traced back to the Margaret Thatcher era in Britain when a wave of ideologically driven privatizations began in that country. With privatization came the need to regulate the private service-providing parties, for the purpose of ensuring adequate and fair competition, reasonable tariffs and the protection of the consumers' interests. Against that background, any talk of regulatory authorities in relation to water has an ominous ring. Varying the metaphor, it seems to be the thin end of the wedge of privatization. If there is a case for the privatization of water services, then that case should not be taken for granted, but should be gone into and established first, before we start talking about a regulatory authority.

It may be argued that the case for a regulatory authority for water is independent of the case for the privatization of water services and does not presuppose the latter. The question then arises: what is to be regulated? With electricity or telecommunications the regulation is of the private corporate entities providing the service. With water, given the projection of a water crisis, what we need to regulate is the use of water. That broad distinction needs to be kept in mind, though it undoubtedly needs some qualifications.

My second and related point is that underlying the talk about regulatory authorities is the neo-liberal economist's view of water as an economic good or commodity subject to market forces; in that view, the principal instrument of regulation is market-led pricing aiming at 'full-cost recovery' limited only by competition. That is a seriously narrow and deficient if not distorted view. It is my feeling, subject to correction, that the Maharashtra Water Resources Regulatory Authority (MWRRA) is the outcome of this kind of thinking under the influence of the World Bank. Incidentally, again speaking subject to correction, neo-liberal economics is not particularly concerned about the poor. That philosophy places its faith in the market; regulation takes place within the market; and the very poor are outside the market. To talk about regulation in the interest of the poor strikes me as ironic. It may be theoretically possible but seems very unlikely.

Breaking out of the narrow neo-liberal economic view, we need to understand water in all its complexities and multiple dimensions. It is simultaneously an economic good or commodity, a social good, a fundamental or human right, an integral part of the ecological system, a part of culture and history, a sacred resource, and so on. It is also variously regarded as state property, private property, common property resource, etc. Corresponding to these divergent perceptions,

there are divergent prescriptions such as community management, water markets, state control, or public trust. We need to grapple with all these complexities and issues and arrive at a proper understanding before we try to regulate water.

That leads us to the question: what do we mean by 'regulating' water? That in turn leads to the much larger question of water policy, planning, management and conservation. That larger debate will point to the things that we need to do, the changes that we need to bring about, and so on, and these will include recommendations for appropriate institutional arrangements. In other words, we need to start from the water-policy end and proceed towards institutions. To talk about a regulatory authority first is to put the cart before the horse. It is a serious distraction from the issues that need to be discussed.

What then do we need to do about water? If we think that 'demand' is sacrosanct and that the essential thing to do is to make more water available for every kind of use, and if we think further that the responsibility for this can be shifted to private agencies or public-private partnerships, then it would of course be necessary to regulate the suppliers to ensure fair competition, good service and reasonable tariffs. On the other hand, if we think that the 'demand' for water cannot be allowed to grow unchecked but needs to be restrained, and that what is primarily called for is not supply-side augmentation but an acceptance of the finite nature of the supply in nature and the limiting of our draft on this scarce and precious natural resource through economical and equitable use and careful conservation, then 'regulation' takes on a different meaning.

In my book *Towards Water Wisdom: Limits, Justice, Harmony* which has just been published (Sage, 2007), I have set forth a Declaration on water and derived a series of action points from it. Among other things we need to do the following: restrain the growth of demand; promote equity, efficiency and economy in water-use; foster a consciousness of a scarce and precious resource; promote rainwater-harvesting and micro-watershed development extensively; limit recourse to big projects to the minimum, treating them as projects of the last resort; arrest the present disastrous over-exploitation of groundwater; and arrest and reverse the loss of good water to pollution and contamination. Some of these actions can be described as 'regulation' but this regulation is very different from what the regulatory authorities in the telecommunications and electricity sectors do.

There may be disagreement about some of the objectives that I have enumerated; and there may be disagreement about the means of achieving the objectives. We have to strive for a national consensus on what needs to be done about water, and that requires first a transformation of our thinking about water. We can then embody that understanding in appropriate institutions including not merely the governmental institutions but also the civil society. The MWRRA is essentially a bureaucracy with hardly any space for civil society. It does not strike me as embodying the right understanding, any more than the Central Groundwater Authority did. Fresh thinking is necessary, requiring both unlearning and learning.

Issue Notes - Electricity

Regulation and the Poor
National Consultation on Regulation and the Poor
12-13 July 2007

Issue note on Electricity

Deepak Saxena, Programme Officer, CUTS, Jaipur

Background

Energy is a key ingredient for the overall development of rural India. In current scenario of development, it facilitates effective and efficient delivery of most social services like safe drinking water, health care, education and basic sanitation for the poor and is an essential input for provision of the above basic services. The lack of access to affordable energy is one of the factors contributing to the relatively poor quality of life in rural areas. It is the backbone for the growth of an economy. Lack of electricity adversely affects every sphere of life and hampers the entire economy; from competitiveness of industries to depriving farmers of an important input for production.

At present, over 80,000 villages in India do not have access to electricity out of which 18,000 have been classified as remote and geographically inaccessible villages where grid extension is not economically viable. Based on the new definitions of electrification adopted earlier in 2003 by the Government of India and as per the 2001 census, the number of such villages is likely to be considerably higher. According to an estimate, over 43.5% of the households in electrified villages do not receive the benefits of electricity even now. This is both on account of the inability of households to afford electricity connections and the inability of electricity utilities to provide connections and supply power.

Status in Rajasthan

Rajasthan has been recognised as one of the two leading states that have vigorously pursued power reforms. The focus of these reforms is to provide an environment that is conducive for private sector participation. Independent regulatory commission has been established here like in many states. In the year 2006-07, the peak demand of electricity in Rajasthan is 5794 MW and as against that 4916 MW is the maximum available electricity, which is being distributed to the consumers. Thus the state is facing 15.2 percent of deficiency in electricity.

Key Issues

A. Management Related

Resource Planning

Like in the case of water, in power also, the government needs to undertake a comprehensive power generation planning for the State, with specific, time-bound, based on reliable information gathered from the relevant departments. Here unlike water, power can always be generated and purchased from various sources.

Maintenance and Modernisation

Like water, the maintenance and modernisation for electricity resources and its distribution also leaves lot to be desired. The accountability and feeling of ownership here also is missing among beneficiaries, which results into heavy loss and wastage. In power also, the designated bodies take care of the maintenance part in rural and urban Rajasthan under the new system. Required motivation, support and assistance, the formation of *Vidhyut Sudhaar Samities* should be given by the government, which would be helpful in addressing and combating the situation.

Power Theft

There has not been a set mechanism to check the power theft and as a result of that state is facing heavy losses. A training module can be prepared for imparting advocacy skills to consumer and other groups to take effective part in the process of checking and overcoming of this problem.

Technical Losses

In spite several measures by the government and stringent rules set by regulatory commission, discoms have not been able to overcome the grim situation so far. Critical mass of consumer organisations intervening at policy level still to evolve. The desired level of consumer participation in design level would be difficult to achieve till emergence of capable consumer organisations. This requires capacity building exercise at state level. The challenge is how to engage these groups and equip them with necessary information and knowledge (both about the process and contents for making interventions) so that they act as an informed watchdog and facilitate regulatory reforms in the electricity sector. This requires adequate training on consumer advocacy skills, provisions and procedures of regulatory hearings, primary knowledge of technical terminology, steps for analysing documents released by the regulatory agencies/distribution companies, etc.

Tariff settings

Issues such as regulatory hearings are quite complex in nature therefore repetitive exposure and training is required for grassroots consumer groups to achieve the desired level of outcome. Tariff settings is a system, where every stakeholders should/have to participate, before any final decisions is arrived at on part of the government. Even when consumer and other advocacy groups participate, the quality of representation is poor, as many do not have trained staff to comprehend issues, which are complex in nature. In order to have a greater role of consumers in the tariff settings, each district must have at least one capable organisation to work as a capable nodal agency so that can further percolate all these efforts down the line in very effective manner. In order to achieve this, intensive capacity building exercise must be executed. These nodal organisations must start playing greater role to take the initiative till the block level.

Attitudinal Changes

The behavioural aspect of the staff dealing should change with the reform process. A typical government approach style of functioning needs overhauling.

Vidhyut District Forums

Government's stand to set up *vidhyut forums for the purpose of grievance handling* and at the district level is a welcome step. But the overall functioning and monitoring should be there and

there should be atleast one consumer organisation/NGO representative as a member in these forums so that the consumer voice is also maintained. At present, only the discom officers represent these.

A. Distribution Related

Public Private Partnership

Like water, PPP initiatives for power also need to be conceptualized and implemented. There is need to sensitize corporate community to invest on power conservation issues.

Feeder Reforms

Feeder reforms work is a combination of both technical and non-technical aspects. Addressing these issues requires sound knowledge and competence to deal with techno-economical-legal issues and hardly a single consumer organisations/CSO having all that. Therefore coordinated efforts among all these organisations is must to share their core competencies with each other.

Evidently, there is a need to make concerted efforts to build the capacity of consumer and other advocacy groups to take part effectively in the process of regulatory reforms in the electricity sector. And, this is a gap, which exists in today's India. Consumer groups are not only inadequately/scarcely equipped to make effective interventions, but also there is no state-of-the-art effort to build the capacity of these groups.

Power Conservation

The government should adopt a strategy for the conservation of energy with the involvement of every stakeholder.

Rural Electrification

Distributed generation (DG), by way of setting up small generating units based on a variety of local energy sources with localized distribution, should be identified as one of the alternatives for ensuring supply of power in rural areas. In this context, it is widely accepted that renewable, as a distributed generation option, have a crucial role to play in achieving the objectives of the Village Electrification Programme for remote inaccessible villages, and the national objective of "Power for All" by 2012.

Renewable Energy

There are unresolved issues pertaining to (i) the extent to which renewable can fill the demand-supply gap that is created by the limitations of grid extension, and (ii) the facilitating mechanisms that are required to bring renewable-based distributed generation and supply of electricity into the mainstream of rural electrification/energisation planning.

Broadly, these issues can be categorized under:

1. Technology options and their techno-commercial viability
2. Delivery mechanism and management institutional requirements,
3. Funding and financial mechanisms

Issues for Discussion

- Government/ regulators should aim at bringing in attitudinal/behavioral change among masses also the issue involved are quite complex, therefore, repetitive and extensive efforts need to be put for longer duration to achieve the desired outcome.
- Utilities/ regulators have to acknowledge and compliment the efforts of consumer groups and come out to join hands with consumer groups and develop constructive partnership. Demand side management in agriculture sector, promoting energy efficient appliances, building social pressure against power theft is particular.
- The fall out of policy issues (energy costing, definition of rural electrification, provisions in E. Act and so on) directly affect the consumers at grassroots therefore a strong network of consumer organisations across the country must emerge out and advocate in coordinated manner.
- A report on consumer perception on electricity reforms in Rajasthan can be prepared to start with and bringing the facts into mainstream of national debate.
- While the UK reforms in the sector, which have influenced the reforms in India, have taken specific measures to address the concerns of consumers, specially the vulnerable sections of the society, where do the Rajasthan reforms stand?
- What is the opinion of government/regulators on minimum standards of service?
- Other stakeholders complain that the behavioural pattern of the utility is still the same and not in the spirit of reforms?
- How the institutional mechanism put in place is really effective?
- How do government/regulators propose to strengthen the institutional framework for consumers' engagement?
- How do government/regulators plan to assess the performance of the frontline staff of the utility?
- What directives have been given to front line utility staff/regulators to incorporate consumers concerns into decision-making?
- What difference do government/regulators find in the pre and post reform phases regarding focusing on the consumers interest?
- As per the Act, the subsidy on agriculture has to be paid to DISCOMs in advance by the government. This is not given on time and as a result of which the discoms are forced to take the money from the market at higher interest and this burden comes on the consumers.
- Why can't we have a discussion among the regulators, consumer organisations and discom officers a day prior to discussion on power in the state assembly

Regulation and the Poor- Some Eclectic Thoughts

Dr .Geeta Gouri*

1. Role of Electricity Regulatory Commissions (ERCs):

Marketisation of the electricity sector and commoditization of electricity to be sold and bought like any other market transaction is the essence of the reform envisaged under Electricity Act, 2003. Essential market features of open access, transparency and equal rights to all are the characteristics the Act attempts to develop through the establishment of Regulatory Commissions.

Sec 86 of the Act explicitly describes the function of the ERCs to ensure that the intent of the Act is achieved. The functions assigned to ERCs involve fixing of tariffs where natural monopoly conditions prevail; issue of licenses for network business and trading activities; open access and consumers choice; promotion of co-generation; specify standards with respect to quality; maintain balance between all stake holders; enable development of markets and advice state governments on policy matters. The functions outlined define the contours of well functioning electricity markets and include both price and non-price concerns. Presumably if ERCs function within the contours of the Electricity Act all consumers benefit, more so the poor.

Emphasis is on tools that make markets function for both price and non-price issues with preference for non-intrusive mechanisms and include:

- Issue of transparent tariff orders with reasons for deviations be it for social objectives or otherwise;
- Public Hearings,
- Benchmarking of performance
- Creation of consumer complaints cells – well laid out complaint handling procedures
- Citizens Charter
- Issue of regulations on maintenance of standards
- Ensure balanced approach during transition –
 - government interests are in contra to market reforms
 - differing levels of benchmarking such as on standards

The Electricity Act, 2003 with emphasis on both price and non-price interventions by Regulatory Commission envisaged a larger role than the traditional one of fixing of tariffs tends in practice, to be hemmed in by pre-reforms policies of the government that run contra to rational tariff fixation policy including that of subsidies. At the same time new and emerging concerns such as quality of service, 'universal service obligation' to include issues of accessibility which earlier were either underplayed or ignored have now been taken cognizance not so much though the Act but through several national policies including National Electricity Policy and Tariff Policy issued under Sections 3,4,5 &6. There is the Act and there are the policies. The Act does not specify the extent of government's involvement in implementing these Policies or the required areas of intervention of ERCs with regard to implementation and monitoring of the said Policies. A large area of greyness exists with regard to social policies and includes rural electrification and accessibility of power to all households or on environmental externalities and market functioning.

* Views expressed are personal.

Sec 95 vests with the Commission a quasi judicial role which raises the critical question - *Should judicial bodies be proactive?*

Arguments against pro-activism : Loss of neutrality as a body that balances the interest of all stakeholders; role of an adjudicatory diminishes;

Arguments for pro-activism: Implementation of government policies on areas such as rural electrification, distributed generation; supply of electricity to all including those who cannot pay the price.

In both cases the question is one of degree – degree of neutrality and degree of intervention.

Degrees of intervention must necessarily be defined in terms of ensuring that the centrality of reforms namely market modes of intervention remain intact. There is continuous need of ensuring that the easy option of slipping into the deceptively comfortable 'command and control' mode does not take precedence.

2. Role of Activists/NGOs/ Academics (broadly defined as civil society)

Critical to good regulatory practices is the necessary countervailing interventions of civil society to the judicial and administrative measures introduced by a Commission. Sensitizing the Commission on social concerns is a major role of civil society. How well is this role performed?

Experience of ERCs with civil society during public hearings or their responses to issue papers and draft regulations tend to give the impression that there is an undue unilinear concern on tariff increases to domestic sector and agricultural sector. While this concern is natural during the annual tariff and ARR filing, the concern does not extend to:

- a) Specific issues which relate to societal objectives instead the focus is on broad generalized statements
- b) Rarely give the impression of serious studied interventions based on an understanding of electricity markets
- c) Poor appreciation of problems of governance and more so on mechanisms of making them work

Consequently civil society representation tend to give the impression as being political extensions of a party rather than genuine concerns on how to make policy work for the poor and underprivileged. In the initial stages of reforms such interventions do have a place but as reforms need to move ahead an appreciation of market functioning and market related governance is required and how to accommodate the interests of the poor and the underprivileged.

Disturbing is that the responses of civil society are more in the nature of return to a 'command and control mode'. This maybe due to several reasons:

- Lack of an understanding of electricity markets and how to make them function;
- Lack of an understanding of governance and the assigned role of ERC, utilities and government;
- Implicit anti-market perception
- Very strong political biases

Differing perception of regulatory commissions on civil society and NGOs and in turn the perception of NGOs on regulatory commissions tend to dilute the expected synergy between ERCs and civil society.

Civil society must engage ERCs by sensitizing to social issues and to use of instruments that make electricity markets function well. Return to 'control and command mode' defeats the entire exercise as it will always be the preferred mode of intervention by ERCs and government, and

definitely will defeat whatever progress regulators have made with regard to reforms in the electricity sector.

2. Concluding Observations

In the Electricity sector the role of Regulatory Commissions have been critical and where actively involved such as Andhra Pradesh, the power sector has witnessed a turnaround. The necessary distancing from the executive and the legislature Regulatory Commissions have in the electricity sector brought about objectivity, rationality, openness and transparency maybe not to the extent required.

At present the need is to build further for any resting on laurels can set back the initial advantage by making the system dormant. To retain the dynamic initial advantage, market strengthening process is required be it economic regulation or non-economic regulation. While acknowledging the importance of civil society interventions in regulatory functioning a lot needs to be done not only for meaningful interactions with ERCs but for effective governance and democratic accountability. Civil society has to grow and the process may require a more careful step-by-step development for the present naiveté to mature into meaningful dialogue.

Some of the possible suggestions that can be examined in this consultation meet are:

- Selection of subjects for in depth analysis – preference is for issues raised in the Tariff Policy and Rural Electricity Policy. Here again it maybe more appropriate to concentrate on field level studies which is more down to earth than exotic for example a systematic survey of households in a *Taluk* that have access to electricity. The tendency to concentrate on technical subjects while attractive may not produce the required sensitization;
- Funding by ERCs need to be explored – any such funding will required intent of purpose, clarity of approach and strictly unbiased;
- An appreciation of governance issues in a market mode - the emphasis needs to be on developing simple market tools. Perhaps this may require a lot of academic inputs. What could be attempted in the initial stages is to develop a holistic picture of reforms under the Electricity Act, 2003 such that any suggested intervention should not go contra to the basic functioning of electric markets which is open access and competition. Get markets to work.

Ultimately consumers gain under independent regulatory authorities and Regulatory Commissions are necessary in infrastructure given the dominance of natural monopoly segment. Competition in the field and for the field will necessarily be strengthened with specially designed policies for the poor.

Subsidies For Electricity To Agriculture

R. Hema, Madras School of Economics

The Issue

“Subsidies offered for consumption of electricity by the agriculture sector need to be rationalized” is a plea that has been repeated *ad infinitum* for the past many years now and still we seem unable to squarely tackle this issue. Measures taken seem to either skirt the issue or to tinker elsewhere. The urgency with which this issue has to be faced squarely cannot be over-emphasized. It is urgent because the magnitude of subsidies offered and the *manner* in which they are being offered currently is actually badly hurting (instead of helping) the most disadvantaged sections of the population.

The magnitude of these subsidies undermines the financial health of the utilities and/or is a big drain on the government resources. However, this is not the only or even the major cause for concern. If the benefits (both short-term and long-term) accruing to the financially under-privileged sections of the population outweigh the costs it might well be justified. What is more problematic is the manner in which these subsidies are offered. To elaborate:

- Lower prices paid for electricity would increase the quantity consumed – the quantity consumed by an individual consumer would depend on what the consumer has to ‘pay at the margin’ i.e. for the last unit consumed; when consumers are required to pay a flat rate then the payment made is independent of the level of consumption and hence there is an incentive to ‘over-consume’. This over-consumption could be either in the form of more water drawn or in the form of more electricity used in inefficient pumps or both (as is most often the case). This leads to unsustainable use of both water and electricity.
- When excess drawing affects the groundwater table the poor farmers are the worst affected; they would not have the means to deepen their wells and often end up buying water from the better-off farmers paying exorbitant rates.
- The financial burden of the subsidies on the utilities and governments hinders their capacity to expand supply to meet even normal demand; but with the demand being ‘excessive’ the gap widens more.
- With the gap between supply and demand widening the ‘quality’ of supply falls: (a) the waiting time for new connections increase; (b) hours of supply get restricted; (c) voltage fluctuations become commonplace and voltage drops cause motors to burn out; (d) very often unannounced interruptions to supply occur particularly in rural feeders; (e) more of diesel pumps get operated when supply is pending or insufficient, which raises the environmental costs
- The absence of metering for consumers who account for over 20 percent of consumption provides an incentive to utilities to over-book the consumption by this category and use it as a cover for part of their inefficiencies

Falling water tables, increasing soil salinity, falling quality and inadequacy of electricity supply all these hurt the poorer sections of the population a lot more than the rest. In the long term they end up paying much higher hidden costs in return for the subsidy benefits received now.

Current Regulatory Provisions – An Evaluation

Section 65 of the Electricity Act 2003 empowers the SERC to require that the State Government pay in advance and in such manner as may be specified, the amount needed to compensate the utility which is required to grant any subsidy to any consumer. If the state government does not comply then the subsidy need not be operative. In reality, we observe that the SERCs are not always able to enforce this. More importantly, even if this provision gets enforced it only takes

care of the financial viability of the utility concerned. It does not address the larger issue of “social externality costs” imposed by the manner in which subsidy is offered. And it will be the poorer sections that will end up bearing a good part of these externality costs.

Options

A possible subsidy mechanism that could be implemented by the SERCs to tackle this issue is outlined here:

- every consumer's consumption (be it agriculture or low income domestic) must be metered
- every consumer must be given a bill indicating the amount due for the magnitude of their consumption, based on the tariff approved by the SERC for this category
- the State government may be allowed to offer subsidy as a part of the bill; this proportion may initially vary from 0 percent to maybe 80 or 85 percent. It should not be allowed to subsidize 100 percent. Every consumer must be made to pay for a certain part of the tariff (however small) and this payment must be based on their consumption level
- the bill can then indicate the amount payable by the consumer and the amount receivable from the State Government.
- the proportion of the bill paid for by the State Government may be restricted to a certain number of units consumed per time period (say 100 units or 500 units, based on norms of irrigation requirements). For any consumption in excess of this, the consumer may be required to pay the full amount. This is to ensure that only a basic minimum consumption is subsidized.

Effectively, this implies that the SERCs should be able to regulate the manner in which subsidies are offered (so as to minimize their social externality costs) and to impose a ceiling on the magnitude of subsidies also and not just ensure the financial viability of the utilities concerned.

Regulatory Constraints

There is nothing in the current provisions of the Electricity Act to prevent SERCs from adopting this mechanism. But at the same time there is nothing in the Act that requires them to adopt such an approach. In the existing institutional arrangements of the power sector, most of the utilities (whether in an unbundled framework or in a vertically integrated one) are under public ownership and the state governments are able to exercise significant control over them. Consequently, given the mandate and powers of the SERCs and given their equations with the State Governments they may have neither the motivation nor the will to implement such a subsidy mechanism. Under the circumstances a change in approach could be possible if the demand for it comes from those who are supposedly beneficiaries in the existing arrangement but who are indirectly paying a huge price.

Role of Civil Societies

In this context, Civil Societies could play a significant role by disseminating information to the poor on the long-term implications and the huge hidden costs of the present subsidy mechanisms and by effectively mobilizing their demand for a more rational subsidy mechanism that would still take care of the needs of the truly disadvantaged sections but will stop subsidizing those who don't deserve to be.

Energizing the rural poor
Svati Bhogle, TIDE, Bangalore

There is a serious energy crisis in rural India. The International Energy Agency World Energy Outlook 2006 has forecast progressively more energy poor people. In India there were 740 million energy poor people in 2004 and this number is projected to rise to 777 million by the year 2015. Access to energy (electrical, thermal and motive power), water and their exploitation for productive, financially remunerative purposes is a key requirement for rural poor to emerge out of poverty. However access to energy alone is not enough. It has to be complemented with several enabling mechanisms that can translate energy access into wealth for the poorest in the rural areas. This reality is not adequately understood by planners probably because there are inadequate institutional mechanisms for dialogue between development planners and the rural poor. This results in sub optimal use of energy as an instrument to alleviate rural poverty.

The Indian economy has been publicized around the world for its high growth rate of 8% per annum. But the rural economy has been expanding at barely 2% per annum creating an increasingly chronic rural urban divide. Access to energy accompanied by well conceived and well implemented enabling mechanisms has the potential to transform rural areas. National development strategies however, do not recognize energy security to the rural areas as a priority.

For example, power cuts of six hours during peak working hours are common in rural areas. We have experienced rural industries like jaggery making either shifting their working hours to the night because of non availability of electricity during the day for crushing sugarcane or investing in used diesel gensets for power generation. Night shifts in rural areas create social problems besides denying women employment opportunities. Using out dated, poorly maintained diesel gen sets for running the crushing units increases the cost of electricity and further erodes the profitability of the rural enterprises.

Several other rural industries can substantially increase their productivity if an incremental amount of reliable, good quality electricity is made available. We, at TIDE, have developed sub optimal designs of energy efficient equipment like lime and pottery kilns, biomass stoves for sericulture, textile processing, drying and other agro processing operations because of lack of electricity security for blowers and fans.

In all our field trips to rural area we are exposed to the reality that irrigation pump sets are never switched off because the farmer has no prior information of when and for how long electricity would be available. This has resulted in unnecessary, unsustainable over exploitation of electricity and ground water. During discussions with implementers of decentralized village energy security projects we have come across very innovative schemes for energy management evolved locally. The experiments of ASTRA (now Centre for Sustainable Technologies, IISc) in operating biomass gasifiers, generating power for water lifting and charging for irrigation (as a percentage the produce of the irrigated land after harvest) worked well up to a point. The replicability and sustainability of the strategy could not be demonstrated because of other factors; probably inadequate delivery capacity of local institutions but that is another issue.

It is imperative that the issue of reliable energy access to rural areas be addressed either through policy interventions or through decentralized technology – local institution capacity building or both.

In any agriculture only 25-40% of the produce is food. The rest is agricultural residues. It is these residues which can produce electricity via biomass-based power plants. Any marginal farm can produce agricultural residues even if the main food crop fails. About 600 million tons of agricultural residues are produced annually in India. Most of these residues are burnt in the fields as a solution to the waste disposal problem. Theoretically these residues can produce about 80,000 MW of electric power year round which is nearly 50% of total installed capacity of India. Thus the agricultural residues have potential to can take care of a huge chunk of India's energy needs.

The production of electricity in India via residues or the use of wood, from fast growing tree species, non-edible oil seeds will require huge investments initially in R & D, technology development and in a phased manner for equipment, infrastructure and local institution building. However it will bring more revenue to rural areas from electricity generation and create millions of extra jobs for a moderately skilled work force. Rural areas would become energy surplus rather than energy deficient.

Past experiences in energizing the rural poor suggest need for thought and action on the following:

- Rural energy access prioritised as an income generation option for poverty alleviation
- Develop social fabrics. Focus very strongly on local institutions delivery capacity especially for planning, co-ordination, management and monitoring. Clarify roles and responsibilities of local institutions, private actors in energy service delivery
- Business development to ensure that energy services contribute to livelihood development. Energy service delivery must be sustained by the community.
- Agro enterprise businesses for rural women
- Evolve networks and linkages for productive applications for productive uses of energy
- Focus on improved cooking fuels and devices
- Define the role of the global technological community to achieve the above

Issue Note on Electricity
Tejal Kanitkar, Prayas Energy Group

In the modern world, electricity has become a basic necessity. It is also recognized as one of the most essential inputs to achieve rural empowerment. From this perspective, it is important to ensure affordable and reliable access to electricity to all sections of the society, especially the poor. While the recognition of electricity provision as a basic service by the Government of India is a welcome step, efforts to ensure its delivery to the poor need to be increased. To achieve this, it is necessary to understand the issues affecting the poor in enjoying the benefits of electricity and also the obstacles to ensuring reliable service delivery.

44% of all Indian households still have no access to electricity. The percentage of rural population without access is even higher at 56%. Even those with access to electricity are either faced with unaffordable tariffs or poor reliability and quality of supply and service. Thus, for the poor (households, marginal farmers, small shops, artisans etc), there is no guarantee of sustained power supply even if the first hurdle of access is overcome.

To improve the delivery of electricity to the poor, it is necessary to evaluate the ways in which the new institutional framework introduced by the Government attempts to address these issues. An understanding of both the opportunities and limitations presented by the current framework will help develop better mechanisms to address the issues faced by the poor.

It is necessary to begin with the Electricity Act, 2003 which provides the basis for the new changes taking place in the power sector. The regulator is bound by the E-Act and thus it is imperative that clear directions are provided therein. While the Act tries to balance the various roles to be played by the regulator, the result is a lack of clarity about the regulatory mandate. The regulator on the one hand has clear directions to ensure reduction in cross subsidy and improvement in profitability of electricity utilities. On the other hand, the regulator is also expected to protect the interests of consumers. However the issues of poor consumers do not get the focus they deserve considering the magnitude of the problem – 44% households are yet to be connected to the grid, more than 60% of all households consume less than 100 units of electricity per month for domestic use, small consumers (marginal farmers, small commercial consumers like pan shops), receive poor quality of service etc.

From the view point of the policy analyst, issues affecting the poor fall under two areas: service delivery and governance & policy. This Issue note takes a view from the consumer perspective and describes the issues affecting the poor under four categories:

- Access
- Affordability
- Quality of supply and service
- Awareness and participation

Each of these issues is discussed separately below.

Access to Electricity

Some states in India, like Punjab have been able to achieve reasonable levels of electrification (more than 90% households have access). However some others like Bihar and Uttar Pradesh are far behind with more than 70% of the households as yet un-connected to the electricity grid. The situation gets worse in poorer areas within the states; for example, in the tribal belts in

Maharashtra (e.g. Thane, Nandurbar), the electrification rates are even lower. Usually the issues pertaining to electricity access for the poor can be categorized as follows,

- No connection as the electricity grid has yet to reach the village
- Grid has reached the village but the initial connection costs are too high for the poor
- Consumers were once connected but have now been permanently disconnected by the utility due to payment defaults (problems in metering and billing)

Due to an increased focus on improving profitability, the electricity utilities are most likely to disband their loss making sections, (i.e. their rural electrification wings). This has been the experience in Orissa - the first state in India to initiate power sector reforms. The rural electrification wings of the distribution utilities were disbanded subsequent to unbundling and privatization. As a result, electrification levels for the poor have actually decreased from 3.67% to 3.31% in Orissa after 1999.

As a result of utilities discarding their obligations toward rural electrification, the Government has had to play a more prominent role. Through various policies and programs it is trying to address the problems mentioned above. The Rajiv Gandhi Grameen Vidyutikaran Yojana, provides funding for grid extension, village electrification (with an emphasis on electrification of Dalit bastis and tribal hamlets), and household electrification. Also, through regulations formulated by the State Regulatory Commissions, getting new electricity connections has now become a right and does not just remain an obligation of the utility. The regulations formulated by some Commissions, like those of the Maharashtra Electricity Regulatory Commission (MERC) attempt to minimize barriers to getting a connection by removing many ambiguous utility procedures. The implementation of many of these regulations however, is not ensured and there are few instances of punitive action being taken for non-compliance by utilities.

The problem of initial costs is being addressed by provision of 100% capital subsidy for new connections to all households that lie below the poverty line (BPL). However, this criterion alone might not be sufficient to extend support to all those in need of subsidy. Not only are the poverty benchmarks themselves controversial, but several criticisms of the way in which BPL surveys have been conducted have come to the fore. A participatory study conducted by the 'Democratic Campaign for Good Governance' in 100 villages of Madhya Pradesh revealed that at least 10 to 15% of people living in acute poverty were excluded from the BPL lists. Thus it is necessary for policy makers and regulators to develop mechanisms for the power sector that will ensure minimum exclusion of the poor from the intended benefits of the Rajiv Gandhi Yojana.

The third problem of permanent disconnections, though quite ubiquitous in urban as well as rural areas, is not adequately addressed. Default in payment of arrears is cited as the main reason for these disconnections, but the number of wrong metering and billing instances leading to these consequences are also considerable. For example, during the period when the Maharashtra State Electricity Distribution Company's operations were being computerized, consumers in some areas did not receive bills for almost two years. When the bills were finally sent, the amounts were too large for poor consumers to be able to pay at once and most of them were disconnected due to defaults. Thus, the brunt of utility lapses had to be borne by poor consumers. Provisions to prevent these instances can be formulated by the Regulator, and also have been to some extent in states like Maharashtra. However, again, due to poor implementation, consumers continue to suffer.

Thus it is necessary to inspect the extent to which these problems can be solved by the regulator and whether a more significant and pro-active role of the regulator in rural electrification can yield positive results.

Affordability

Affordability of electricity tariff is a major issue faced by poor consumers. With reduction in cross subsidies, tariffs for low tension domestic consumers have increased. However, the Act as well as the national policies acknowledge the need to subsidize poor consumers. The National Tariff Policy directs regulators to target subsidies to consumers consuming less than a particular number of units. This has been taken up in some states regulators setting different thresholds based on local conditions (30 units/ month in Maharashtra; 18 units/month in Karnataka etc.). Where a telescopic method of tariff recovery was used earlier (consumption slabs were created and a particular tariff was used for units consumed in that slab), now a completely separate category for poor consumers has been created to minimize the siphoning off of subsidies by the non-poor. However, this could lead to a large number of exclusions due to no fault of consumers. In Maharashtra, for example, if the consumer exceeds the 30 units/month threshold even for one month of the year, he/she is removed from the "BPL" consumer list and is billed according to the non-BPL tariff – which implies an increase of four times in the billed amount. For poor households in the tribal belts for Maharashtra, this is an extremely unaffordable tariff. The possibility of exclusion is enhanced due to the large amount of wrong metering and average billing practices by power utilities.

The aspect that is the most difficult to capture is the diversity in the socio-economic conditions of consumers in the country or even in one state. The urban consumers consume more electricity as they usually have more appliances in the house, but the BPL threshold for these consumers is the same. So the urban poor pay higher tariffs for electricity even though their incomes are earned as day wage labourers and domestic workers. The National tariff policy does suggest a geographical basis for tariff determination, but this would be an extremely political decision for the Regulator to take. The chances of conflict are very high if the Regulator applies different rules for urban and rural consumers or for Western Maharashtra consumers and consumers in Vidarbha for example. Thus, the limitation of the Regulator in taking these decisions, need to be recognized and alternatives need to be discussed for the same.

The issue of subsidized tariffs also needs to be complimented with a discussion at the policy level about the use of alternative technology for poor households, e.g. pre-paid metering or limited load connections. Targeting subsidy is a difficult and a vast subject, but maximum outreach can be possible if alternatives to metering are also considered. The Regulator being bound by the Act cannot directly address these issues, if they are not discussed seriously at the policy level. This is even more necessary if the issue of quality of supply and service is taken into consideration.

Quality of Supply and Service

Unable to pay the entire cost of supply, poor subsidized consumers are given a low priority when it comes to quality and reliability of electricity supply. Load shedding is the highest in rural areas. Thus it is no surprise that cities with zero load shedding like Mumbai and Pune in Maharashtra boast of better examination results than those in rural Maharashtra. Almost 12-14 hours of load shedding is an additional burden laid by the power sector on students from rural areas who already have to battle against many odds. This along with stagnated hours of supply to agricultural consumers and small commercial consumers like grinding mills creates a grim scenario of the power situation in rural areas. Women, the most affected by this low reliability of

power supply, have to revert back to traditional, more time consuming ways to complete household chores – e.g manual grinding of grains. The huge supply-demand gap as a result of poor planning by the Government is largely to blame for this situation. However the neglect of the extremely adverse side-effects of high load shedding on the poor by both the policy makers and the regulators, adds to the problem.

The line between regulatory jurisdiction and utility initiative is fuzzy, thus creating a situation of inaction which subsequently hits the poor consumers the hardest. The regulator has so far been slow about pro-active initiation of demand-side management schemes and energy conservation - which would mean reduced consumption in the cities. The initiative is expected to come from utilities which rely more on increased load shedding hours to avert grid collapses thus trapping themselves and the consumers in a vicious circle. Integrated resource planning is mentioned in the national policies, but the regulator either lacks a clear enough mandate to adopt it or the prevailing atmosphere makes it less probable that an alternative method of planning will be taken seriously.

The same problems exist with quality of supply. Transformer burn-outs due to voltage inconsistencies is a recurring problem for farmers who most of the times have to do the repair and maintenance themselves. In addition to this poor consumers suffer the most due to low quality of service. In rural areas, sometimes many small hamlets make up one village. Even these hamlets are quite a significant distance from each other. Due to the difficulty in accessing these areas, consumers are sent average bills, which do not reflect their actual consumption. The uncertainty in meter reading and billing is more difficult for the poor to absorb and many times leads to payment defaults and permanent disconnections. Though this issue is being partially addressed at the regulatory level it needs to be coupled with a some serious steps toward understanding all the reasons for this problem (like operational problems within the utility – e.g. employment issues) and designing mechanisms to prevent the uncertainty.

Some methods like the franchisee system have been advocated by policy makers to address these problems. However it is still to be seen how it is implemented. There is the danger of concentration of power in the hands of a few local leaders, but it nevertheless provides for the participation of local communities and institutions like Panchayats and NGOs in the power sector. Serious capacity-building efforts for these institutions are needed to achieve effective participation; but if well designed, with the right checks and balances in place, many of the problems discussed above can be addressed. The success of this scheme however relies on the pre-condition that the consumers in the area are aware, willing and capable of participating in this new system; a condition which is far from reality.

Awareness and Participation

The issues discussed above are aggravated by the fact that the poor are the most under-represented before the Regulator. Even in states that conduct public hearings and give a fair hearing to all stakeholders, the participation by industrial consumers is overwhelmingly more than that of poor domestic consumers, marginal farmers, small commercial consumers etc. Effective participation by consumers, especially at public hearings for tariff determination is also very difficult given the complexity of both the process and the topic. Policy directives to regulators to facilitate capacity building of consumer groups are in effect, but a very few states have actually taken steps toward doing this. Whether these states have been more successful than others in addressing issues of poor consumers is yet to be seen, but with a mandate to do both - build capacities of consumer groups and protect the interests of the poor – the regulatory space can be effectively used to address many issues.

For the poor, even the local utility is not easily accessible at times. In case of a billing error, the maximum a poor consumer can do is to approach the local utility office. There is either no knowledge about the existence of another forum for grievance redressal or the forum is too inaccessible. To read and understand the various components of the electricity bill is itself difficult. The regulations, orders of the Commissions, provisions for consumer protection etc. are even more out of reach for poor consumers. The participation of local institutions in the power sector is thus an urgent necessity.

For the regulatory institution to be effective, it is necessary that all stakeholders get represented. Poor consumers form a majority of the consumers in the country. The national goals of rural development and empowerment cannot be achieved unless the issues faced by these consumers are identified and addressed. The regulatory institution can play an important if not a complete role in addressing these issues. It has been seen that the regulator, by fixing the standards of performance for utilities, formulating supply code regulations that attempt to protect consumers, etc., has tried to address consumer issues to a certain extent. However, monitoring and compliance ensuring mechanisms need to be strengthened if serious impact is to be made. The democratization of the regulatory institution by improving awareness and outreach to poor consumers is of utmost importance. The development of local institutions as facilitators for the regulatory process can go a long way in improving participation and the effectiveness of the process itself.

To address the issues of poor consumers it is necessary that every space available in the regulatory framework is utilized to ensure affordable, reliable and good quality access to electricity. However larger changes to the framework itself, made with the primary intention of addressing the issues of poor consumers, are needed to successfully use this new institution in the Indian context.

Regulation for the Poor or Poor Regulation?

G. Narendranath and Uma Shankari

Introduction.

1. The performance of regulatory mechanisms in the power sector has to be assessed in the context of the challenges in the sector. The challenges in the power sector are as follows:
 - A large population is still without domestic power supply, especially in rural areas, varying from 30% to 90% in different states. On the other hand, in the high growth sectors and areas, the demand for power is so high that generation and supply needs to be doubled every few years. Even now there is an acute shortage of power for certain categories of consumers especially during peak periods.
 - T&D losses continue to be very high, with little interest in power conservation or controlling power theft. 40 to 50% of power is not accounted for. An atmosphere of "free for all" prevails among the vested interests as well as in other categories of consumers.
 - Regulation proposals, especially hike in tariffs, are being met with stiff resistance from the poor as well as the politically articulate groups. Other issues like step-motherly treatment of public sector power plants, undue concessions given to private sector, estimates of demand in different categories of consumers are also being contested.

The (so called independent) regulators face no easy task in their jobs.

2. The most important factor to keep in mind is that the regulator at the state level is a small cog in the big wheel of "reforms", whose agenda is already predetermined. "Reforms" in power sector does not simply mean improvement from the present situation; it means a particular brand of reforms, i.e. the World Bank (WB) model of reforms, which is being propagated all over the world. It has been given a legal sanctity in India through the Electricity Act of 2003. In fact there is little space for maneuver for the regulator. Despite this, some regulators are trying to strengthen the TAP(Transparency, Accountability and Participation) process in their functioning. We shall examine the evidence from Andhra Pradesh.
3. The WB model of which most policy makers are convinced, has the following components:
 - dismantling the vertically integrated SEBs into separate entities for generation, transmission and distribution.
 - Encouraging privatization in all functions- from generation to distribution, to retail supply and billing.
 - Constituting RCs at state and central levels to regulate the power sector
 - Withdrawal of all subsidies in a phased manner, which has meant raising the power tariffs, especially for agriculture and domestic consumers which were earlier heavily subsidized
 - Moving the system to an open access market model with private power producers competing with each other and with the public sector producers.The critical question is whether the market model will work to provide sustainable and quality power to all categories of consumers in a situation of acute power shortage and poor affordability for the majority of consumers.

Experience with the Regulatory Process in Andhra Pradesh. The Initial years...

The Andhra Pradesh Electricity Regulatory Commission (APERC, from now on in this essay will be referred to as RC) was constituted in the year 1999 under the Electricity Reform Act of 1998. A retired IAS officer was appointed as the Chairman; the other two members were technical members, one from the engineering stream and the other from finance and public accounts. After five years another retired IAS officer was appointed, again assisted by two technical members. Without casting any aspersions on the individuals holding this august office, one wonders if Chairpersons with judicial background would have resisted govt. interference better than retired individuals from bureaucracy.

But the reform process had already started in the state, much before the RC came into existence, in the regime of Chandra Babu Naidu, then Chief Minister of AP, who was very much influenced by the guidelines of the World Bank. The Reform process was characterized by two important measures:

- i. Steep increase in tariffs for agriculture to the tune of 600 to 1200 % and substantial increase in tariffs for the domestic sector, going back on his own election promise six months earlier of continuing with the erstwhile NTR scheme for power supply to agriculture at Rs. 50 per horse power per annum.
- ii. Power purchase agreements (PPAs) with many private producers with conditionalities detrimental to public interest such as incentives for production above 68.5% PLF while state sector units were already producing well above 90% PLF without any incentive.

The RC held its first public hearing on ARRs (Aggregate Revenue Requirement) and Tariffs of APTRANSCO in the office premises of APERC in Dec 1999. It was a closed door affair. Only two members from each organization was allowed and that too only if they had already filed petitions and specifically expressed the desire to be heard in person. But the representatives of the WB were present! The civil society straight away objected to the WB presence and they had to leave the premises.

Carried away by the logic of the reform process in the very first year the RC increased agricultural tariffs by 60% and also steeply increased the tariffs for the consumers in the domestic category. These measures resulted in statewide opposition by several opposition parties and consumer groups, especially farmers. There were firings and a few were killed in them. There was a 13 day fast by the leader of the Opposition, the present Chief Minister Mr. Y.S. Rajasekhar Reddy.

Initially the then Chief Minister Chandra Babu Naidu said that the RC was an independent body and the state govt. could not interfere with the tariffs fixed by it. Later in the face of stiff opposition the GOAP modified the tariffs on the recommendations of a House Committee of the State Assembly. It did not dare raise the tariffs again either for agriculture or for the domestic consumer for the next 8 years in office! The new govt. which came to power under Y.S. Rajasekhar Reddy abolished tariff for agriculture including the arrears of around Rs.1200 crores and did not raise the domestic tariffs either. They have promised to continue this policy for the next ten years till 2014.

The free power proposals were however modified soon after the new govt. came to power in 2005. In fact the GOAP announced the modifications in January well after the ERC had announced the time table for the public hearings on tariff proposals of the DISCOMs (Distribution Companies), throwing the entire process of fixing the tariffs out of gear. When

several farmers' organizations objected to the lacunae in them, the RC simply bypassed the issue saying it was a matter of govt. policy and it can not interfere with it. While the state govt. did not even bother to apologize to the Commission for the disarray it had caused to the public hearing process, the RC went out of the way to "place on record its appreciation of the unstinted support extended by GOAP to the Commission, the regulatory process and for regular payments of subsidy amounts to the Utilities, as determined by the Commission from time to time." (Para 376, Tariff Order 2005-06).

The proposal for installation of meters to agriculture pumpsets was also opposed by the farmers and it has not taken effect till date and the deadlines for the same keeps receding like a mirage!

As for the PPAs, those signed **before** the formation of APERC, when challenged, argued that they were outside the purview of the Commission and the state govt. endorsed this argument. The resultant loss to the DISCOMS (ultimately to the public) was of the order of Rs. 400 crores to 600 crores per annum for the next ten years and even more in the future. It is however to the credit of the APERC that subsequently it allowed the right of public access to the PPAs. It is also to the credit of the RC that it rejected a PPA of M/S BPL in response to several issues raised in the public hearing. The M/S BPL had attempted to charge 50% more for a pit head plant than what the state unit of the APGENCO was offering.

The ERC also blocked the Non-Conventional Energy Producers from charging disproportionately high rates of power and for production beyond capacity.

It is also to the credit of the RC that it responded to requests from the public to simplify procedures for participations in public hearings (from filing six copies to two and doing away with affirmation by a Notary, etc.), for compelling the DISCOMs and APTRANSCO to publish the ARR and Tariff proposals and Tariff Order not just in English but also in the local language (Telugu), to require a representative of GOAP to make a presentation in public hearings, to hold public hearings in different places from year to year to encourage public participation.

However, The RC seems to have succumbed to political pressure in approving the PPAs of 4 additional gas based power plants without an assured supply of gas. In fact earlier it had approved M/S BSES (later Reliance) plant with only temporary assured supply despite protests in the public hearing. It also failed to question the absence of penal clause in case of non-supply of assured gas and instead approved the right of producer to switch to alternate fuel and pass on the excess bill to the consumers. Shortage of gas supply from 2006- 2009 implied that the 4 DISCOMs have to pay the fixed costs of the 4 new plants at Rs. 1020 crores per year and operating the older ones at 60% PLF. The GOAP renegotiated terms with two of the new four producers, offering generous concessions in future so that they forego the fixed costs till 2008. The other two have moved the courts demanding that fixed costs be paid to them.

Under the Administered Price Mechanism (APM) price of supply gas was fixed @ US \$1.95 per MMBTU (Million Metric British Thermal Units) which works out to Rs.3.20 per SCM (Standard Cubic Meter) including the transport charges. But Reliance is demanding US \$ 4.75 per MMBTU. Even if this is reduced by negotiations to US \$4 per MMBTU, it is likely to cost Rs.8 per SCM involving an additional expenditure of Rs.2500 crores for the 2700 MW generating capacity which is gas based, which will ultimately have to be borne by the consumers. This may mean that the price of power may nearly double to around to Rs.4 per unit. With the GOI –MOP (Murali Deora) having thrown up its hands about its inability to induce Reliance to agree to a lower price by it & unwillingness to create a Gas Regulation Authority, the GOAP is now trying

to talk to PM directly to reserve 50% of gas from KG basin to A.P State to be supplied at the administered price.

Evolution of the Reforms, reduction of powers of RC.

With the evolution of reform process, both the power to regulate as well as the subject to regulate have been drastically reduced leaving little room for maneuver for the APERC.

The powers of TRANCO which was looking after power purchase, transmission and distribution have been curtailed to transmission and collecting wheeling charges only. It is also expected to maintain the newly created State Load Despatch Centre till a formal body is created for it. The functions of power purchase, distribution and retail supply have been handed over to the 4 DISCOMs. In an effort to introduce long term planning and stability in the matter of tariffs, a policy of "multi-year tariff framework" was notified on 14-11- 2005. Under this the first control period was to be for a three year duration from 2006-07 to 2008-09. And thereafter for every five years. In practice this has been understood by the 4 DISCOMs that they do not have to furnish any information on the performance to the general public for the public hearings on ARR's & Tariffs! And it was furnished only on demand to a limited few during public hearing of 2007-08. Even more damaging to the TAP process has been the conclusion that here after Public hearings on tariffs will be held not annually but only once in five years! Reducing them to mere rituals.

The effect of all the above has been that there is no platform to discuss the issues affecting the power sector as a whole. There has clearly been an attempt to scuttle the TAP process and limit the discussions to local issues of comparatively minor nature.

Thus the regulatory process in AP has gradually moved away from the public. The issues to be regulated have been brought down drastically as well as the powers to regulate through legislation. Its authority to interfere with the PPAs signed by the govt. and the power bodies as well as attempts by APTRANSCO to recover various amounts due to it from the IPPs and regulate charges to be paid to the Non-conventional energy producers were promptly stalled in the High Court of AP. In the meantime GOI itself has brought in fresh legislation curtailing the powers of RCs vis-à-vis the state govts. Thus the earlier Act of 1998 stated, "if any disputes arises between the RC and the state govt. as to whether or not a question is a matter of policy or whether a policy direction issued by the govt. adversely affects or interferes with the exercise of the functions (of RC), the same shall be referred to by the state govt. to a retired judge of the Supreme court in consultation with the Chief Justice of the Supreme Court whose decision thereon shall be final and binding"(Sec 12 (2)). The Act of 2003 states, "If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Govt. thereon shall be final." (Sec . 108 (2)). Besides, the Act 2003 also constitutes an Appellate Tribunal over and above the ERC before appealing to the High Court. The Act 2003 also downsizes the space available to RC to permit levy of surcharge by the DISCOMs in lieu of loss of income due to consumers moving away to open access. The GOI has further constrained this space.

From privatization to PPP...

When privatization failed to take off after Enron and Orissa experiences, Public-Private partnership (PPP) has become the new buzzword, encouraging privatization with state bodies acting as facilitators. While the public sector picks up the costs of infrastructure, the private agencies are expected to deliver the services in a cost effective manner at reasonable profits. The

consumers are supposed to benefit from assured supply of cheapest possible quality power through a competitive market situation. No one is even talking about environmental impacts.

In generation it has come to mean shell companies in public sector to take care of clearances, rehabilitation of the displaced etc., after which the real generator, usually a foreign MNC, moves in. The price of power to be produced, the fuel agreement, and other details are not made public. The EIA studies and public hearings are eyewash affairs and cleared despite questions and protests by the public.

In transmission and distribution as well as in retail supply, it is leading to a situation wherein the better recovery areas are being taken over by the franchisees, leaving the non-paying areas with the DISCOMs. Management of substations by private agencies who are mostly formed by ex-employees recruiting raw untrained people from local areas, is fraught with many risks, apart from low wages paid and poor work conditions.

In billing, there have been complaints of no regular meter reading and instead serving the consumers nominal or mutually agreed bill and a heavy bill after a couple of months! Of course the DISCOM employees may also do all this. Under the present tariff structure, poor people having a single bulb or consumption below 15 units a month are having to pay at Rs. 5 to 6 per unit thanks to the service and billing charges, as the utilities often put them in the higher load category of 250 watts. It is another matter that nobody bothers the consumers whether they have an official connection or not.

The Regulators and the Poor...

The discussion on regulators and the poor thus becomes meaningless unless we take the wider realities into the picture. The main factor being that the regulator's wings have been clipped badly. The public, especially the poor consumers, have been gradually sidelined and more or less moved out of the participatory process. **Eleven years after the initiation of reforms, a sense of 'drift' seems to prevail in power sector.** The brave reformers of the yester years are afraid of touching the tariffs in fear that govt may fall. Even urban consumers, and not necessarily the poor, are indulging in large scale pilferage of power. In other words, we seem to be back to square one or worse (despite all the CRISIL ratings). Where do we go from here?

Accountability first.

- Instead of focusing on "recovery of costs", it may be better to concentrate on accountability. In a situation where a large number of poor consumers exist, with little culture of paying for the power or water they consume, it is essential that they be provided power at concessional rates, but even if they are provided free or at nominal cost, the service should be accounted for.
- Every consumer should know the real cost of power consumed and the subsidy being enjoyed and must be made to pay the existing tariff before "reforms" are introduced. The idea of paying for what one consumes needs to sink into all categories of consumers, including the poor. This logic should be extended to generation as well, where people should know the hidden and the real costs, including the social and environmental costs of generation, so that it would be easier to adopt conservation measures.
- This needs to be followed up by assuring that power tariffs will not be raised for the next ten years and concentrate on energy audit and checking pilferage.

Review Reforms, Act and all, and evolve our own model of reforms.

- As private producers are capable of bypassing the system through the open access regime, leading to a situation where the state owned DISCOMs would be left with poorer consumers, it is necessary to critically review the reforms, and bring out a model which is our own, not continue with the WB led model.

Tap the civil society for TAP

- Last but most important, the regulators should be bold to utilize their powers to ensure that TAP (transparency, accountability and participatory) process is not diluted. The conscientious civil society groups will certainly support the regulators in this.

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Issue Note on Electricity

Veena Joshi, SDC, New Delhi

1. 10 kW_e biomass power for remote villages

Experiences from SDC supported projects (2002 onwards)

2. SDC's orientation

To support 100% biomass based small power to strengthen the livelihood basis in remote villages.

3. Main areas of support

- Technology development, fine-tuning and standardization
- Support strategic pilots (one fully and the others partially)
- Capacity building
- Knowledge building and sharing

4. Installation details

S.No	Start date	Location	Power level	Support
1	May 2004	Kanheiput, Orissa (G V)	10 kW	Full
2	Dec 2004	Deodhara, Nuapara, Orissa (OREDA)	10 kW	For monitoring
3	Feb 2005	Jemara, Korba, Chattisgarh (NTPC)	10 kW	For monitoring
4	Apr 2006	Bhaogarh, Anta, Rajasthan (NTPC)	10kW	For monitoring
5	June 2007	Jambopani, Khandwa dt, MP (VESP)	10x2 kW	Partial hardware
6	Aug 2007	Damania, Burhanpur dt, MP (VESP)	10x2 kW	Partial hardware

5. Main experiences (project financing)

- Low benchmarking costs for initial capital in VESP
-20,000 Rs/HH, 90%center 10%state contributions: Rs 6lakhs/10 kW compared to the realistic cost of 7.5 lakhs. Results in substandard materials, non-branded engine, low quality control.
- No funds for running. Operator salaries (2000 Rs/month) and fuel costs (Rs 100/day) to be managed from tariff collection
- No working capital provided. No cash for paying operators in the initial period, resulting in downtime. Desirable to have about Rs 20,000 as working capital towards salaries and fuel. AMC and O&M costs for 1 year are provided in the initial grant.
- Very low funds for implementing agency for social mobilization, handholding, livelihood creation, minor technical improvements etc. Rs 4 lakhs for implementing agency with Rs 1.5 lakhs extra for training. Need more funding (~Rs 20 lakhs) for quality support.

For NTPC projects

- Initial cost adequate, but L1 bidding with some negotiations. Specifications include branded engine. Full costs provided by NTPC.
- 5 yr AMC (compulsory) included in initial funding.
- Salary costs for 2 yrs now provided as part of initial funding (not there earlier). However, fuel costs to be completely taken care of by VEC through tariff collection. 1000 Rs/HH initial collection by VEC towards fuel costs and contingencies. Fuel wood usually contracted to someone in the village itself.
- Social consultant hired by NTPC for the pre and post installation stages. Paid ~Rs 10 lakhs for a few villages in a cluster around the main NTPC power plant. Identification of consultant through bidding.

6. Electricity tariff

- Realistic tariff to be structured in such a way to collect at least Rs 3000 per month to ensure viable operation. Translates to 30 Rs per point per month, which approximates to 5 Rs/unit.
- Domestic load tariff at 10 Rs/point/month for BPL and 15 Rs for others in Chattisgarh (estimates based on solar systems). Shortfall of about 67%, making the biomass power unviable. No tariff policy yet for other states.
- RGGVY ensures 1 unit /day/HH and tariff fixed at 1 Re/unit for BPL families.
- Kerosene consumption for lighting 5lit/month or about 50 Rs/month per HH. Government saves ~10000 Rs month for a 100HH village by not providing kerosene. Rational tariff setting needed considering avoided costs, rural development etc.
- Electricity based productive activities highly desirable to offset low load utilization (20%) leading to high cost of power. Some known PUs such as oil expelling, flour milling etc can get extra tariff from mill owners (Rs 800 and Rs 2000 per month respectively), but do not lead to increased paying capacities of BPL families. No major success stories so far in income generation schemes. Innovative programs and high coordination among different government bodies needed for livelihood creation and perpetuation.

7. Remote village electrification: main concerns

- Realistic potential? (Originally 18000 villages, later 25000. After RGGVY, only about 2000 at present certified by REC). Applicability for other (so called) electrified villages, and for enterprises such as irrigation pumping, IT kiosks, drinking water schemes etc. to be surveyed.
- Remoteness (> 25 km from nearest block, > 7 km from nearest sub-station, no approach roads, many on hill tops etc.) poses special problems for initial installation and engine maintenance.
- Biomass availability to be ensured in the planning stage itself (~10 acres of plantation needed. Alternatively farmers to be encouraged and supported to adopt tree plantations.)
- Subsequent demands from village HHs for lighting during night and in the early morning hours, and for entertainment load (mainly TV) to be addressed effectively. Night and early morning lighting can be easily solved by providing a battery charger and CFLs, but initial costs have to be built into. Notions of supplying grid quality electricity (24 hr supply

and 50 Hz) need to be modified (50 Hz not a concern for all the pilots so far, as there are no load fluctuations)

- Development of loads and electricity-based livelihoods would need long-term thinking and planning and of course increased fund outlays. Considerable efforts for social obilization required, as grid electricity is the most preferred option for rural people (even though it is not available for most of the time).

8. Way Forward

- Focus on capacity building and knowledge network
- Develop labeling systems or standards for “Quality Rural Energy Services”
- Develop capacity building modules with focus on vocational training and skill up gradation
- Knowledge network/sharing platform for bio-energy involving different stakeholders
- Need long term continued support for capacity building and knowledge sharing network

Issue Notes - Water

Regulation & The Poor In The Drinking Water Service Provision:

Biraj Swain, Policy Research Officer, WaterAid India

Some Issues to ponder:

Citizens Participation in regulation or keeping a public eye on essential services is organic growth of citizens' participation in the larger issue of governance. Probably India/South Asia requires intensive capacity building of citizens bodies, civil society for the same. This should be viewed as an essential ingredient for sustainable solutions to essential services issues, especially so in water with contesting/conflicting demands.

Finland- 2nd in WPI- Local Government Act- 1856

Water Act- 2005

This brings the other operational issue **of financing capacity building- Aid or Debt?** Since debt is an expensive pool & primarily a deterrent in investing on soft components, it is a rigorous tool too. Aid on the other hand is the ideal pool for capacity building and more so for essential services but has the threat of profligacy too.

1. Need for the regulator in the context of “accountability” of the basic services even if the State is the dominant provider. Because of the past history of unaccountable service provision regime with equally unaccountable bureaucracy at helm. Key regulatory function in a vital sector like watsan **needs to have within its remit** the following:
 - Coverage i.e. equity
 - Tariff structure (Social)
 - Tariff levels (Economic)
 - Setting & enforcing quality standards/competition rules
 - Protecting customers/consumers
2. Institutions tasked with regulatory functions have to work in collaboration with NGOs, Policy think-tanks, customer groups and other government agencies. These institutions could assume a leadership role to modify ways in which regulatory frameworks are implemented if they have the legit and are respected as repositories of sector knowledge by other stakeholders. For this to happen the **regulatory policy needs to be conducive & the civil society, customer/citizens groups need to have the capacity both of which are concerns.**
3. We are **agnostic about the nature of provider?** Public, Private or Small Scale Independent however the provision needs to be pro-poor. Hence the **need to recognize the SSIPs** (who mostly provide to the poorest areas) who are neither utility scale nor municipality linked and the regulatory remit needs to **regulate them** too.
4. Most issues of inequity mostly boil down to operational inefficiency (extension of network to unconnected because of municipality restrictions like tenurial security et al) and hence there's **an absolute need for clarity amongst civil society regarding the O&M and policy issue.** Understanding institutional arrangement and supply-side blockage and demand-side responses is vital.
5. **Need for an independent regulator?** Again, quite agnostic as long as the utility does have an independent and autonomous department/wing with consumer/citizens representation on service provision, tariff structures and levels and grievance redressal.

Eg. Govt of AP's social audit dept with elaborate institutional mechanism for NREGA/EGS social audits where transaction cost of the audit is paid by the government and the capacity of the community is also built in the process.

6. Any regulation in watsan, it is vital to clarify policy on:
 - -Consumption and Connection Subsidy
 - -Tariffs levels and structures
 - -Coverage would be a better criteria of bench-marking than revenue collection
 - Targeting subsidies
7. Some **thoughts on regulatory frameworks accounting for the poor**:
 - a. A framework for competition with wide range of service solutions which can compete within a level playing field
 - b. Create incentives for dominant operators for extending services
 - c. Flexi-approach to service quality & levels
 - d. Establishment of tariff level & structure which ensures high access to services without jeopardizing financial stability
8. Some **common challenges on limiting benefits of regulation to the poor**:
 - Regulatory framework with reference to the dominant operator
 - Rigid & inappropriate quality and service standards (like 24X7)
 - Bane of any operations evaluation-Lack of specificity in target setting
9. Some thoughts on policy & regulation arena: Defining remits:

Pro-poor policy measures (some examples):

- Define goals for services to the poor (8 mn in 8 years-SA)
- Broad principle of tariffs & subsidies- Lifeline tariffs & free-water (SA)
- Ban disconnection on non-payment-UK
- Public Service Commissions with stringent pre-conditions to disconnections like repeated notification and assistance to defaulting consumers on the various agencies present who can help payment before disconnection (New Hampshire-US)

Examples of regulatory measures for the poor (some examples):

- Specify coverage targets for providers
 - Apply penalties on non-achievement
 - Implement tariff principles and set tariffs
 - Evaluate financial impact on providers
 - Specify measures for service providers to take phased payments from consumers
10. Absence of utility operators/workers in such deliberations. Unpacking reforms and setting of specific targets are best done with utility operators- DWASA.
 11. Over-designed projects, inadequate public consultation and incomplete disclosure on project financials are major issue. How does regulation prevent these recurring problems? Should regulator have a role in this?
 12. Dangers of the easy solution of extreme competition even if the service continues in public domain with all staff contractual and all remuneration performance based? Eg Uganda

Issue Note on Water

Deepak Saxena, Programme Officer, CUTS, Jaipur

Background

Water is one of the natural resources, which is invaluable and essential for the survival of living beings. Under the Constitution of India, water is a State subject. It is the responsibility of the state to arrange for this fundamental need. It is, therefore, essential to frame a common guideline for equitable and judicious distribution of water and in consonance with the guidelines and general direction of the National Water Policy.

The second United Nations World Water Development Report (2006) places India at 133rd position in terms of availability of water resources and at 120th position for quality of drinking water.

Status in Rajasthan

Rajasthan is one of the driest states in India, in possession of only one percent of the total surface water resources of the country, which are confined to the south and southeastern parts. It is, however, the largest state in the country and home to 5.2 percent of the total population.

Large parts of Rajasthan were once lush green with water streams flowing through the land. Wells, *baoris* and *jhalaras*, *talabs* (ponds), *kunds* (wells), and *baories* (step wells), traditional rainwater harvesting systems were developed by the *raj*as and the rich for pooling of water. Communities had independent control of all these resources. But continuous land degradation resulted in silting of reservoirs and destroyed traditional rainwater harvesting systems. The ground water level has gone low because of over-exploitation and scanty rainfall. Later, central government introduced public water supply system and took away the ownership from the community. As a result, the traditional water harvesting system became defunct.

Key Issues

A. Management Related

Resource Planning

The government needs to undertake a comprehensive Integrated Water Resource Planning for the State, with specific, time-bound work-plans, based on reliable information gathered from the relevant departments. In this regard, the process of establishment of the Central Planning Authority and Central Information Centre for water sector of Rajasthan has to speed up.

Recharge of Groundwater Resources

The mechanism in practice to recharge groundwater resources is inadequate, with no regulation on groundwater exploitation, which needs to be put into place. Most of the traditional water harvesting systems are defunct in most part of the state.

Maintenance and Modernisation

The maintenance mechanism for water resources and water supply system leaves much to be desired. In urban and rural areas, the maintenance part is taken care of by the designated government departments. There is a lack of accountability for maintenance and feeling of

ownership is missing among beneficiaries resulting in wastage of water. Decentralisation of maintenance to 'Water Users Association' as recommended in the Sate Water Policy would be helpful in addressing this.

Rationalisation of Water Rate

There are no set rules based on which people could be charged for using water. Although farmers have to pay subsidised rate for using water for irrigation purpose, there is inconsistency in fixation of the rate. Also there are no ceiling on the quantity of water used, which often go against the interest of the small, marginal farmers while benefiting the big farmers. At the household level, there is no mechanism as such for charging rent for using water (as observed in the urban, peri-urban areas). Every user pays equal amount irrespective of the quantity of water used. This system has to be revised, and use-determined water rates are to be arrived at after having undertaken proper 'willingness-to-pay' surveys across various economic classes in urban, peri-urban areas. Water rates need to also take into consideration the 'scarcity' element of water.

Participation in Water Management

Involvement of beneficiaries (water-user groups/other CBOs) in water management system is lacking who are not consulted during decision-making process. Further, NGOs/VOs working in the state have rich experience on water resource management, which is unparalleled in the country. Representatives of these stakeholder groups have to be consulted in the process of water resource planning and implementation.

Establishment of Water Zones and Watershed Management

Water zones should be demarcated based on availability of amount of water. It would help frame effective policies on water use. There is a need to work on watershed concept in water crisis areas. But watershed concept should not be allowed in those areas where water is percolating naturally down the ground. The watershed program should be practiced in those areas where water is flowing out of the catchment area.

Flood Control and Management

There should be some mechanism to check rainwater runoff. During rainy season, large part of rain water wastes away. In the absence of proper vegetation, water fails to percolate down the soil and flows out of the catchment area. Integrated Command Area Development (CAD) plans have to be made operational.

Roof/rain water harvesting should be promoted at the household and community level, in established urban/peri-urban areas and made mandatory in upcoming townships, etc., with proper monitoring through 'Resident Welfare Associations'.

In rural areas, resuscitation of rainwater harvesting structures have to be done in partnership with the user communities.

Scarcity Area Management

In dry zone areas, where availability of water is a larger problem, there should be some norms to check wastage of water. Water intensive crops should not be allowed to grow. To maintain the

moisture of the land, plantation of trees should be encouraged. Efforts should be made for the revival of natural resources.

B. Distribution related

Drinking Water and Quality Control

Adequate drinking water facilities need to be provided to communities in urban and rural areas, keeping in view the both current demands and future needs. In industrial areas like Chittorgarh, Dausa, Bhilwara, Rajsamand, Udaipur, marble slurry is a big problem. Fluoride problem is found in Jodhpur, Sikar, Jhunjhunu, Dungarpur, and Churu. Projects to ensure availability of good quality potable water (after remediation or from alternative sources) to the communities in this region need to be target-oriented. Surface and groundwater quality has to be regularly monitored against the national standards, and the government has to allocate resources for such programmes, which could also be implemented in partnership with research institutions/NGOs, who have experience on water quality monitoring.

Regulation of ground water for irrigation

For irrigation purpose, government has built canals and rules have been developed for equitable distribution of water but these rules are hardly being followed. Rich farmers are benefiting more than the poor farmers. Bore wells for irrigation purpose should be regulated by certain norms. The depth should be fixed to avoid any misuse of groundwater. Local people should be given responsibility to decide on the regulations, with government department assuming more of a supervisory and conflict resolving role.

Water Allocation Priorities

It is necessary to set priorities for water use. It is the general public that should be given priority for using water first, mainly for drinking and other household activities (with the volume to be made available being consistent with national water availability standards, both in urban and rural areas). As agriculture is the main livelihood for people of the state, next priority should be given to agriculture sector. Generation of electricity should be given the third priority. Industry and recreational activities should be given the last priority. However, the allocation should be preceded by proper, scientific study of the demand.

Public Private Partnership

Public private partnership initiatives for water resource conservation have to be conceptualized and implemented. There is a need to sensitise corporate community to invest on water conservation issues.

Equal Norms

Precautions should be taken while framing rules and regulations on using water resources. Rajasthan is a state of extreme diversity. It has plains, hills and desert areas. An equal policy should not be adopted for all areas because of geographical diversity. People should be consulted and allowed to frame their own norms suitable for their environs. Guidelines should be user friendly.

Training and Education

The state needs to encourage education of public at large on water conservation measures and the need for it. This aspect would need to be incorporated in the academic curricula in schools, colleges and universities. Campaigns should also be undertaken in partnership with NGOs/Research Institutions to convey 'Key Messages'.

Issues for Discussion

- Is it not feasible, for Rajasthan to have only a Department for Water Resources dedicated to water resources development and management in the state, rather than have these functions scattered among various Departments?
- In view of the recurring shortage of water in the state and the discrepancy in its availability across geographical locations and economic sections, should it not be appropriate to develop an 'Integrated Water Resources Programme' for the state with time bound targets by incorporating the elements of equity and justice?
- The draft State Water Policy recommends the establishment of a Central Planning Authority to be established for policy related issues connected with integrated water resource development and management in the state. What has been the progress so far on this? How far have plans of setting up a Central Information Centre for the water sector of Rajasthan, progressed? Whether the proposed 'Water Institute' in Jaipur will serve this purpose?
- Is there any mechanism in place for cooperating with other states on the sharing and use of common water resources? If not, is it time that such mechanisms were adopted?
- Should it not be appropriate for the government (and other political parties) to agree on ensuring some sort of 'continuity' with regards planning and implementation of water resource development and management programmes, outside the tenure of the government in power?
- Recommendations from various quarters have pointed at decentralising the functions of maintenance and management of water resources - in the rural areas to PRIs and in urban/peri-urban areas to Resident Welfare Associations or Ward Committees. Are the state policy-makers making any move on this?
- Is there a need to regulate the cropping pattern in the state? Given the scarcity of water, should water-intensive crops like opium, tobacco, sugarcane, wheat be ever promoted?

Regulation In The Water Sector And Poor¹

Hardeep Singh

CONTEXT: WATER GOVERNANCE, LIVELIHOODS AND IWRM

In the Indian context where water is generally accepted as a key to improve livelihoods of a large number of poor people, the issue of water governance is one of building social support for equitable and sustainable development of the resource based on comprehensive participatory planning. Public policies and institutional frameworks need to be designed that are inclusive. For that it is necessary to create spaces where civil society actors develop capacities to understand issues related to water governance in their various dimensions and interact among themselves and with the state in a systematic and meaningful manner.

Water governance concerns the formal and informal institutions through which authority is exercised to allocate and regulate the resource². Disputes over water revolve around the manner of harnessing and using water. It has many parallels with land but one difference. Water flows from upper reaches to lower reaches, gets stored, evaporates and precipitates. This dimension of water makes water governance more complex.

State governments have enacted a number of acts to manage irrigation systems and of late some on groundwater. Surface irrigation is sought to be regulated through water allocation following different rules in different areas and by technical design of outlets to control discharge. The State Irrigation Departments were authorized to supervise the regulation. The Departments' collusion with or incapacity to withstand pressure from influential farmers failed the system. The Departments could not collect even the minimum irrigation cess resulting in poor maintenance of infrastructure. As a result some States have enacted acts to hand over the management to farmers elected bodies. As of groundwater, while Central Governments repeated efforts at getting States to legislate on the same has met with some success the implementation of the acts have been inadequate, an example being APWALTA, 2002. Another solution being recommended of water markets may lead to inequity and unsustainability. Also, the prescription of dense and competitive markets suggested during the 1980s has been criticized on the grounds of the resulting over-exploitation and inequity. The Water Sector Restructuring Projects, which are being implemented in several states, have had a limited focus on cost recovery and revamping of the water bureaucracy. No systematic effort has been made to involve the Civil Society

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SPWD is a Delhi based NGO, which among other things is involved on a programme on developing practicable scientific approaches on water governance and livelihoods and on contributing to policy dialogue on basin issues.

² Water in the main, especially surface water in rivers, streams and dams, is governed by the state. As of groundwater the ownership of land carries with it the ownership of groundwater, subject to regulation and control by the state. Under Indian Constitution water is a State subject, though Centre has been assigned an important role in inter-State rivers and river valleys. Also, under the 73rd and 74th Amendments a third tier has been constituted in the Constitutional structure whereby drinking water, water management, watershed development and sanitation have been devolved to panchayats and nagarpalikas.

Organisations in Water Governance Issues though many of them are working on water management on ground.

The need to look at water as a part of basin is being increasingly felt. The specific challenges in the Indian context have been studied by IWMI³. Its review of the problems in transferring successful river basin management models to the developing countries like India suggests that the problems here are different: (a) providing access to water for drinking and growing food, (b) eradicating poverty, and (c) stopping groundwater overexploitation. It also points to the need for "facilitation of dialogue and negotiation on resource allocation among organized stakeholders and representative bodies (such as national or state governments sharing a river basin)". It is increasingly felt that formation of basin level organizations through redesigning and adaptation of the institutional models used in the west is necessary though not sufficient. J.A. Allan⁴ argues that "Integrated Water Resource Management (IWRM) approach can only be safely deployed if two conditions are also taken into account. First, IWRM must be seen as primarily a political process in terms of getting policy in place ... it should be renamed as IWRAM: water resource *allocation* and management ... Second, the river basin concept must not limit the scope of IWRAM. Economies, whether they fit hydrological boundaries or not, cope with water resource deficits and challenges with remedies deriving from beyond immediate watershed(s)."

Water governance becomes the most important issue if water is viewed as an aggregated category. A necessity is being felt of taking following types of integration in Water Resource Management into account between (a) different sectoral uses and environmental requirement (b) rainfall, surface water and ground water (c) structures [larger/smaller] (d) institutions, and (e) different land uses. There is a need to critically examine the existing governance structures. A lot has been already said in the literature on water about lack of coordination among the various agencies, a lack of convergence among various programmes and the presence of acts/ policies, which are oftentimes contradictory. As of departmental coordination, none of the agencies that have jurisdiction over the various stretches of the sub-basin are working on a comprehensive basin approach, often leading to unintended outcomes. Nor is the civil society able to effectively and meaningfully engage with the government on these issues.

Water Regulatory Authorities have been brought into effect in several states, in the absence of a clear strategy the concept of IWRM has not been translated into practice on the ground. There has been no organisational coherence in authorizing policies, plans and decisions on water harnessing and use between local, State and national level. As Peter Mollinga⁵ says "different categories of people appropriate the different meanings of 'integration' in different ways and for different purposes. This is only to be expected ... What is important is to understand the who, the why and

³ The Challenges of Integrated River Basin Management in India, http://www.iwmi.cgiar.org/home/integrated_river_basin.html

⁴ IWRM: The New Sanctioned Discourse? in Mollinga, Peter P., Ajaya Dixit and Kusum Athukorala (eds.). 2006. Integrated Water Resources Management in South Asia. Global Theory, Emerging Practice and Local Needs. Water in South Asia series No.1. Sage, New Delhi.

⁵ Mollinga, Peter P., Ajaya Dixit and Kusum Athukorala (eds.). 2006. Integrated Water Resources Management in South Asia. Global Theory, Emerging Practice and Local Needs. Water in South Asia series No.1. Sage, New Delhi

the how of this process, that is, the politics of IWRM and related concept, and to position oneself (as an individual, group or organization) in that field as one of the strategic actors.”

WATER REGULATION AND POOR

A question has been raised in the concept note⁶ thus – is regulation an appropriate model for improving governance in the water sector? The answer depends upon whether regulation is looked upon as providing the alternate to political space or as an alternate political space. This will also depend on (1) one's understanding of improved governance and (2) how 'independent' independent regulation turns out to be.

The regulation of water is complex and is at the same time pressing. Independent regulation is required to provide institutional space for reconciling different interests. Water cannot be separated from the rest of the natural resources, and needs proper management in the various hydronic zones of the river basin right from the water source zone to the final use zone and beyond. The land under different zones falls under the jurisdiction of different departments. Here regulation would require managing inter-departmental and inter-sectoral conflicts along with other social conflicts over water use. In case of water the regulatory institution has to be designed very carefully with a clearly defined domain and authority.

A parallel can be drawn between water and electricity as regards their governance but only partially since the former has not yet fully turned into a commodity. The nature of water is different from that of electricity. Societies have survived without electricity but not water which is essential for life support. Even today water can be harnessed with family labour or cooperative labour and does not always need to be harnessed under elaborate market operations. Consequently, in the case of water, the question of inter-linkages between appropriate technology and social institution appears more prominently determining the harnessing and distribution of water. This is unlike the case of electricity where it is the market which at present largely determines the production and distribution.

The question is not whether regulation is an appropriate model but whether a regulatory institution can really take on board all the concerns, especially the concerns related to environment and poor, and still sustain its independent character. If regulatory authority restricts its role to creating water markets by reconciling the interests of investors/ public utilities and the select consumers' satisfaction, then the poor as well as environment concerns may lose in many ways. The regulatory authority may become like any other bureaucratic institution, which is answerable only to the government and select water users but not to the large section of the poor.

The rural poor households are dependent not only on agriculture but also on various other livelihood strategies, which act as a coping mechanism. The livelihood portfolio of the rural poor is to a large extent dependent on access to natural resources especially water. As of urban poor and seasonally migrating labour access to safe drinking and domestic water at affordable cost is critical to their very existence as they have no other means to live other than by selling their labour power and safe drinking water is critical for its reproduction. The poor are in the main recognized as isolated individuals, are defined statistically as to their number and, are categorized and assorted fragmentarily in terms of income poverty, health poverty, water poverty etc.,. They are not viewed as integral to the socio-political structure. Absence of an effective voice in socio-political affairs is a better way to meaningfully characterize poor when deliberating on regulation as a model for governance.

⁶ Prepared by Dr. Navroz Dubash and Prayas, Pune

Civil society can play its role against exclusion of poor marginalized groups from decision-making processes based only on an understanding of how 'power' operates at various levels, on how the coalition of dominant interests may make the poor invisible and how conflicts can be negotiated democratically. Taking lessons from the experience of various 'development' programmes where the poor got benefited marginally, the interest of the poor has to be worked out in concrete terms. In the process of participating in governance, the category poor will get worked out materially and not merely verbally. Democratic governance would mean the involvement of the larger masses of the poor in refashioning of the socio-political structure. Will the regulatory space be conducive to this refashioning? This depends on how the regulatory institutions are structured. Turning regulatory space into an alternate political space for the poor can only help it become a new democratic space or otherwise the space may get converted from one of regulation for poor into regulating the poor.

Issue Note
Politics of Water Regulation – random thoughts

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The present note is with reference to WATER REGULATION only:

- Regulation of development, access & consumption of Natural Resource as water to be done at social level for the entire quantum – **not just for the poor separately as they consume/influence/impact least but are impacted the most. Their vulnerability is contingent on actions of powerful minority.**
- Regulation has to be targeted not at water – but at those who control water decisions and actions. Critical constituencies to be regulated are – water guzzling irrigation, industrialists and urban elite – as not only do they consume and damage large quantum of water but also constitute the main decision makers through their nexus with various effective governance agencies.
- Regulation is a governance issue – but governance is a political issue
- Regulation is thus **political issue** – NOT a management issue per se– (Gilbert to send his note on regulation of Coastal Management issues that highlights the point)
- Regulation as a means of control can act as a double edged sword – who controls for whose interest/agenda – both processes can be called regulation – but need to be distinguished for clarity of discourse
- Regulation – in interest of poor – has to be an essential constituent of broader process of strengthening democratic process through transparency, accountability etc.
- This requires power struggle that challenges extant monopolization of water resources at rural, urban, industrial etc. level
- Key questions to be asked – **who** will regulate, **what** will they regulate, **for what objective** will they regulate – these must be articulated upfront explicitly.
- Regulation through free working of markets can constitute only one of the means – NOT the objective - of regulation. Means can only be justified if they serve the subjectively agreed goals of regulation that are based on the underlying rationale' why regulation is necessary. Blind faith in ability of markets – free or not so free- to achieve equitable water security for majority – IF that is a declared objective - is open to question. One - markets do not enter areas that are not profitable. Two – resources necessary for livelihood need not cater to profitability concerns.
- Non-market routes through developing public control over public services for equitable access to water according to prioritized needs (eg Porto Alegre & other Brazilian cities) is an avenue worth exploring – but is pre-empted as it does not meet the agenda of decision makers.
- Recognition of existing distortions in development of WR & asymmetries in access to facilities created - needs to point of departure of regulation discourse for water
- **Integrated** conceptualization of the source – policies to be rooted in therein
- Need for policies to PRECEDE action/implementation for WRD –not the other way round
- Need for allocation policies to PRECEDE development, technology & utilization policies - Prior to its division as per various use categories –

- However – the above prioritization will not come as a wish list but has to be struggled for to realize by those who are typically deprived.
- The above needs capacity building for getting organised, understanding the water issues & strategizing for collective action to compel the adoption of pro-poor priorities as a policy - followed by social pressure for action.
- Regulation of water actions (criteria, accountability, principle of WRD & Management) is necessary for decisions to reflect water security for the ordinary citizen based on sustainable water availability – precisely because these interests are being dishonored by the agencies that monopolize benefits of unregulated WRD.
- Such agencies – that are clearly very powerful - can be expected to RESIST genuine attempts to regulate water (development, management & use) according to socially just criteria. This resistance to give up established control by small minority will involve elements of political struggle/contentious process. Bureaucracy – such as the Regulatory Commissions of Maharashtra for example –can lend itself (quite naturally) to reinforcing control of those who monopolize water rather than the opposite. Effectiveness of such platforms as Regulatory Commissions - to serve the objective of democratic access to water resource will depend on the extent of 'political' nature of the discourse/actions emanating from them that will prevent Regulation institutions from becoming yet another agency of control by established vested interests. The challenge is to use such a platform as an instrument of control by majority of citizens for ensuring democratic water governance.
- This requires mobilisation, study/home work of issues, advocacy, networking, consolidation of social base, negotiation and so forth by the general body of citizens – not necessarily (mis) represented by NGOs/political parties/sectional fora etc.

National Consultation on Regulation and the Poor

Note on Issues

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In this brief note we would like to highlight four sets of issues: one, issues related to the formal theory of the necessity for IRAs; two, issues related to the particular needs of IRAs stemming from water as an ecosystem and basic livelihood resource; third, issues related to the historical conjuncture in which IRAs are now being promoted; and fourth, the implications that IRAs have for mass-based organisations and movements who are directly working amongst the poor and their politics.

The Theory of necessity of IRAs

The necessity of IRAs is premised on the need for “independence”. This assumption of ‘independence’ needs critical examination. The questions are independence ‘from’ what and ‘for’ what. Independence generally means independence from ‘political’ intrusion and freedom for full operation of ‘economic’ criteria. Thus IRA, the way it is being designed and operationalised is very much part of neo-liberalism. We need to accept this upfront – and not be apologetic about it – as this would help us to demarcate the boundaries of what it can do and what it cannot do.

The IRAs need to be independent not from politics but from the executive if they have to go beyond (economic) efficiency and become part of a broader institutional mechanism for sustainability, equity and democratisation and address the concerns of the poor. The independence of the IRA from the executive should be assured (for example, part of the proceeds from the sector must be automatically earmarked for it), else, it becomes dependent of the executive.

In fact, there is a need to recognize that there should be a minimum common set of norms that include particular social, political as well as economic objectives regarding the resource/utility which should inform the decision of any IRA and the IRA should be held *accountable* to those principles.

The IRA should be embedded in a *process* that involves the different stakeholders and allows them space to bring their viewpoints to bear on the decision. Also, a distinction needs to be made between direct stakeholders and indirect stakeholders, or so to say between, stakes held as access rights and stakes held through proximate effects.

Basic rights of access to resource (especially to fulfil livelihood needs) and rights for profit making (or surplus generation) need to be distinguished and treated differently. In other words access rights that are part of livelihood activities of the poor must be preserved (though there may be some consideration of provision of alternative assured livelihoods in some cases). Privatisation of rights (or resource) and mere privatization of service provision or delivery must be distinguished and the former must not be allowed to happen under the guise of the latter.

Bottom line is a normative framework that serves as a guide for decision making that needs to be stipulated quite clearly. Proactive efforts must be made to ensure representation of vulnerable sections whose interests might not get articulated easily. Environmental and long term

sustainability interests must be explicitly part of the normative framework and represented separately if possible. (The environment cannot represent itself, etc.)

Unfortunately there does not seem to be any effort in evolving such a framework in India and IRAs are being promoted and set up in the absence of such a framework for governance or very often in lieu of it! They operate in the same old framework; there is no attempt to question the present unequal access, allocations and entitlements; very often the fight is over procedural transparency. The Maharashtra Water Resources Regulatory Authority (MWRRA) Act and the debate around it is a case in point.

Water and IRA

Water is different from many other resources or utilities, say, electricity. First of all we should see water as an ecosystem resource with very specific and distinguishing bio-physical and social characteristics. Many of the difficulties that arise in dealing with water are related to the very nature of water as an ecosystem resource and its characteristics. Some of these important characteristics are as follows:

- Water is divisible and amenable to sharing
- It is a common pool resource. While this is true of all forms of water it is presently clearly accepted only in respect of surface water. Presently groundwater falls predominantly within the private property regime and is exploited and managed privately, though there is an increasing awareness of the need to treat it as a common pool resource and manage it accordingly.
- Water is a variable resource. Unlike other resources whose quantum is certain, water availability and quantum is associated with varying degrees of uncertainty. Situations of surpluses and shortages are as natural as normal situations.
- It has multiple and competing uses and users and there are resultant trade-offs involved.
- The problem of excludability is inherent in its nature. Exclusion costs involved are very high.
- It involves the issue of scale and boundaries and evolving some understanding around them. For example, what does one call local and exogenous, downstream and upstream, and what are the relationships between these entities?
- The way water is planned, used and managed causes externalities – both positive and negative. And there is the added possibility that some of the externalities may be unidirectional.
- Water is an embedded ecosystem resource and cannot be treated as a freely manipulable and aggregable resource. Water becomes available to us through ecosystems and ecosystems in turn are dependent on water and its availability cannot be presumed independent of the ecosystem that provides it.

These important characteristics of water as an ecosystem and common pool resource do have a bearing on all issues related to water governance and institutions. These characteristics also have the potential both: to become an instrument of equitable and sustainable prosperity for all those who depend, directly or indirectly, on water for their livelihoods; as well as, to trigger contention and conflict thus becoming an instrument of polarisation and exclusion.

Thus water as an ecosystem resource and its bio-physical and social characteristics have implications for the framework which would guide the functioning of IRA and its organisational structure and procedures.

Water is also the basis of livelihood needs, especially production needs of the rural poor, for agriculture and livestock as well as for processing and artisan work (tanning, pottery, etc.). In a way it is a means of production for many of the poor, unlike say electricity. In fact some of the "Notes" that are being circulated do capture this close relationship between water and livelihoods and how it is more basic to the lives and livelihoods of rural toiling people

In both these respects, water –as an ecosystem resource and as a basic resource for livelihoods – differs from electricity. Electricity is more a centralised resource in terms of supply and use therefore it is amenable to greater control. Water on the other hand is a dispersed and often individually appropriated resource. For the poor electricity is mainly a matter of individual consumption not of production and livelihood (or only in a limited sense). Water policy, as it stands today provides an insufficient basis for laying down a proper normative framework for this purpose, leave alone translating it into practical guidelines. Equity is either not defined or if it is, it is treated only in terms of access to water in relation to the land one owns in the "command" areas. Defining entitlements (as in the case of MWRRA Act) is a big step forward; but defining entitlements or freezing them in today's terms is not. There is a need to specify a double tier of entitlements: a basic assured right to be provided so as to be affordable for the poor i) as share that translates into X amount to be provided with high dependability iii) as basic service to be provided to all irrespective of land holding; and, iii) subject to revision after say 10 years or so to take care of changes in the interim period and as an economic good to be employed for further gain over and above livelihood needs subject to reduction under shortage conditions (a small step in this direction is to be seen in the MWRRA).

The dominant thinking within state agencies is that of bulk surface water provision by the state even though regulation within a framework of integrated water use includes surface and groundwater regulation. Present thinking of the irrigation establishment is heavily and almost solely oriented towards surface water. This needs to change. Though difficult, if not done, we regulate a leaky pot with unregulated leakage!

What is needed in the context of regulation is an explicit water resources plan that provides for water allocation between different i) uses and ii) regions (at least that down to a district level) and principles of sharing surpluses and shortages. Mere proportional 'cut' will not do. This plan needs to be evolved explicitly through public and stakeholder participation. Regulation acquires meaning only in the context of such a common plan.

The water policy documents are often wish lists and themselves are poised to bring in privatisation of rights under the guise of privatisation of services. Initially in the case of MWRRA, the state tried to saddle the authority with both tasks, preparing the plan as well as regulating it. After criticism, it has dropped the plan making from the authority but also seems to have just ignored the task altogether.

The present MWRRA is largely unacceptable in its present form because it does not address many of these issues. (This is an issue separate from engaging with it in its present form since it is already in existence.) It is too centralised and goes against the grain of the process of decentralisation. In fact there is a paradox here. While there seems to be an effort towards decentralisation in political governance, there seems to be a move towards greater centralised control and towards 'non politics' in resource regulation. Increasingly we find development and control over resources being separated from politics so that we finally find political decentralisation through 73rd 74th amendment being granted to the lower tiers, but with their being left with very little to govern!

What is needed is a regulatory *machinery* that starts from the district (sub-basin?) level at least and extend upwards up to the state level. Only inter district issues and special individual issues that cannot be resolved by the district machinery may then move upwards.

Historical conjuncture of IRA promotion

The third set of issues relates to the historical juncture of IRA promotion or what are the historical reasons for regulatory bodies now? Here the issue of motivation (of World Bank to various state governments) to promote IRA becomes critical.

Also, we need to see IRAs in the overall context of the LPG regime and then the question is whether IRA is a new instrument of capital accumulation and restructuring capitalism?

We also need to recognise the two types of shifts – shift from state control to more direct forms of social control and the shift from state to market and profit making. The World Bank and others want a move towards market and privatisation and see regulation (IRA) as an instrument for this. All these are part of the neo-liberal agenda that we talked of in the beginning.

In fact both these streams also seem to be talking the same language but we need to distinguish the content. For example the principle of delinking water rights from land rights was first taken up by Pani Panchayat and later taken up and further developed by the Mukti Sangharsh Movement and Pani Sangharsh Chalwal in South Maharashtra. Here this demand was or is part of a radical agenda for restructuring water sector in more equitable lines. Now we also find that the World Bank is also talking about delinking water right from land rights. For the World Bank the rationale for de-linking the water rights from land rights is to make it a commodity and make it fully tradable. For the social movements and grassroots initiatives committed to the equity agenda it is to create wider access to the resource poor sections including the landless. Thus the very same demand of de-linking land and water rights is being pushed forward to serve two opposing interests. In fact the various policy initiatives in Maharashtra (especially the Maharashtra Farmers' Management of Irrigation Systems Act, and MWRRA Act) have provided the space for tradability of water.

This also brings us to the point of how does one envision or see regulatory mechanisms. Very often the focus is on procedures and not on the content (or the framework) of regulation. There is a need to make a distinction between the content and procedures – procedures may be more transparent, but content which would address the question, regulation for what or the overall policy issues related to rights, entitlements, allocations, cost recovery, etc., also need to be debated and discussed. They are also in the political realm and need to be so. This is very important if we see the IRA in the context of poor.

Implications for mass based organisations and movements: politics of the poor

IRAs can offer certain space for the poor for negotiation only if it can step out of the neo-liberal agenda and position itself as part of an institutional mechanism which operates within a clearly defined normative framework wedded to sustainability, equity and democratisation. Defining or evolving this normative framework or the guiding principles for regulation is a political process and here the role of mass based organisations and movements is very critical especially in redefining the content of regulation. Thus the realisation of the pro-poor space within the IRA is contingent on a new type of "politics" (a new developmental politics which involves the masses in a creative articulation of "alternatives") and not shying away from politics which IRAs seems to advocate. In the absence of such a political engagement, we are afraid, we would end up only with tinkering around the procedures creating more space for the for specialized and "professional" NGOs and civil society groups, but not for the traditional mass-based

organizations and movements who work more directly with the different resource poor, exploited sections.

Experience also shows that IRAs can come in the way or act as a stumbling block in the assertion of the poor as very often regulatory bodies operate in the "non-political" space. Also, the design of IRAs further distances the site of political action and the location of negotiation with the state. The quasi-judicial procedures in IRAs can also become impediments.

On the other hand the mass based organizations and movements also have to change their more conventional ways of political mobilisation, strategies and tactics, and devise innovative methods if they have to engage with the space that is offered by the IRAs. They also need to understand the resources if they have to come up with peoples' alternatives and articulate an alternative framework. The professional NGOs also need to link up with mass based organisations and movements, and work with them, and not substitute them, in articulating a pro-poor agenda for regulation. For this we all need to have our feet not only on the ground, but also in the muddled water and get a bit dirty in the process.

However, it is important that acceding to the MWRRA as it stands implies an abdication of what IRAs should be. In an era of SEZs and contract farming that is already being built into the MMIFSA, there is even more need to call for a complete overhaul of the MWRRA because it does not pay sufficient attention to the nature of water as an ecosystem resource and to its equitable and sustainable use. If we are satisfied merely with transparent procedures, we are afraid that the solution will freeze inequalities in place much more securely than ever.

National Consultation on Regulation & Poor Issue Note

Pradeep Purandare*

Following points with particular reference to Maharashtra Water Resources Regulatory Authority [MWRRA] may be considered:

1. MWRRA, theoretically, appears to have necessary authority to govern both public & private utilities effectively due to following :

- (1) It is established by an Act
- (2) It has quasi – judicial powers
- (3) It shall be working in the domain well defined by
 - (i) State Water Policy
 - (ii) Integrated State Water Plan prepared by State Water Board [Sec 15]** & approved by State Water Council [Sec 16]
 - (iii) Governor's directives [Sec 11, 21]
 - (iv) Government's directives [Sec23]

MWRRA's decisions & actions, however, shall throw light on how exactly it has exercised its authority in practice & whether it needs more authority.

2. MWRRA's mandate is not restricted to economic decision making only. Determining, issuing, enforcing & monitoring Water Entitlement is the most important mandate of MWRRA. For this purpose, it will have to address socio – political ground realities in Water Sector. Prima facie, it appears that MWRRA has got potential as institution to safeguard & protect the interests of the poor. It is, perhaps, too early to make any comment on utilization of MWRRA's potential.
3. MWRRA is accountable to a certain extent to State Legislature [Sec 20]. Magnitude & severity of water conflicts in near future, however, may demand significant increase in MWRRA's accountability.
4. MWRRA, at least at present, is very much dependent on Water Resources Department in particular & on Govt. of Maharashtra in general in respect of budget, facilities & staff. Ways & means need to be devised urgently to make MWRRA autonomous in real sense. Enforcing water entitlement, especially, may demand establishment of machinery on the lines of Election Commission! It is that important!!

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** Section number from MWRRA Act, 2005

5. The necessity of objective decisions based on technical skills [instead of arbitrary / adhoc decisions] is no doubt a felt need in water sector too! But it would be too naive to believe that “objective” decision, especially, regarding water sector can be taken without giving due justice to political considerations based on certain principles / ideology. Since water sector is full of contradictions, not only efficient water management but also management of contradictions is very much required. And there comes the politics for managing the real life contradictions! [Ofcourse, one must differentiate between politics based on principles & sheer political expediency!] Following provisions of MWRRA Act, for example, would help manage certain contradictions in respect of regional imbalance in the contemporary Maharashtra:

- Special representation to Marathawada, Viderbha & rest of Maharashtra in State Water Council [Sec16]
- Governor’s directives [Sec 11, 21]
- Government’s directives [Sec 23]

The point is objective decision & politics are not mutually exclusive! In fact, socially workable / acceptable objective decision would, rather, should always be a right mix of politics, economics & technology!!

6. In large scale public water [& not only irrigation!] schemes designed, constructed & operated on the principles of open channel flow, private ownership & participation appears to be rather difficult, at least for the time being, because of following reasons

- Large number of heterogeneous consumers distributed over a very large area
- Unpredictable availability of water sometimes even at the source itself
- Poor physical status of open canal systems which means no effective control over water, excessive conveyance losses & unauthorized use
- Limitations on increasing water charges
- Poor recovery of water charges
- Difficulties in disconnecting the service to the defaulters & offenders
- Too many variables in respect of soil – crop – climate
- No options regarding source of water & conveyance system in given project
- No possibility of competition in respect of storage & delivery of water in the given project
- No guarantee of assured returns / benefits

In view of above points, Independent Regulatory Authorities in water sector may have to primarily concentrate on following for many more years to come

- Improvement of canal systems to first bring in water control & make them compatible with the concept of water entitlement
- Efficient regulation of large scale public water schemes to streamline & rationalize water management
- Water laws & governance
- Public scrutiny & participation

MWRRA, more or less, has apparently adopted above strategy.

7. A training programme to adequately orient Activists / Academics / NGOs in respect of large scale public water schemes is perhaps immediately required.
 8. MWRRA appears to be a good beginning in improving governance in water sector. Following amendments may further improve its relevance & acceptability:
 - Representation to non – irrigation water users in the Authority itself
 - Representation to Project Level Associations [irrigation] in the Authority itself
 - Transformation of Irrigation Development Corporations into River Basin Agencies in truest sense of the term
-

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[Views expressed in Issues Note are personal views of Mr. Purandare & not that of WALMI, Aurangabad.]

Issue Note on Water Regulation
Resources and Livelihoods Group, Prayas, Pune

Introduction

There have been remarkable changes in the water sector in many countries around the world since the last two decades. These changes, initiated in the legal, policy, and administrative spheres, indicate a break from earlier thinking in the water sector and mark a new era that will have long-term impact on economy, society and even culture in many countries. It is a paradigm shift which involves moving gradually away from the old 'state-centered' paradigm of decision-making toward the 'market-centered' paradigm. This paradigm shift envisages radical restructuring of the water sector with emphasis on institutional reforms, a demand responsive approach and community participation in the management of water resources. The establishment of independent regulatory mechanism and decentralized system of water allocation with government playing the role of the facilitator are some of the key measures promoted by reforms.

Changes in the Water Sector in India

The reflection of these changes in the water sector in India is evident since the late 80s. Radical changes in the policies and programmes at national as well as state levels reflect adoption of many new concepts and principles that are part of the reform agenda. The role of the multinational agencies like the World Bank and the ADB in driving these changes is also evident. Today, regulatory reforms are introduced in Maharashtra and Arunachal Pradesh by establishing independent regulatory authority in the water sector. In Gujrat, Madhya Pradesh, and Delhi, draft legislations to bring regulatory reforms are under way. Many states have passed legislations with the objective of increasing farmers' participation in irrigation management. Further, many states have also enacted laws to control and regulate groundwater in the state. There are proposals in big cities across the country to privatize water service delivery. Considering far reaching impacts of reforms in the water sector, there is a need to ponder on implications of these reforms for society in general and poorer sections in particular.

Importance of Regulation in the Water Sector

Water has always been a very sensitive and contentious issue in India. The development of water resources in India has largely remained uneven resulting in regional disparity. Dominance of an engineering and bureaucratic approach in the water sector has largely failed to comprehend the complex and multi-dimensional nature of water and its unique role in sustaining ecological processes that are vital for human existence. The management and distribution of water has also been a controversial issue in most of the states. The emergence of strong vested interests and monopolies in the water sector gave rise to skewed decision making. As a result, water sector in India is today paralyzed with many burning issues, such as, unequal distribution of water, non-availability of safe drinking water to a majority of people, pollution of water resources, increasing number of drought-prone areas, regular occurrence of floods in different parts of country, and inter and intra state water disputes.

There is no doubt that current situation in the water sector calls for urgent efforts to improve regulation and ensure minimum benefits to all, including poorer sections in the society. However, the model of independent regulatory authority, promoted by the donor agencies in the water sector, raises important issues. First, we have a decade long experience of regulatory reforms in the electricity sector in India. It is important to learn from lessons from electricity sector before bringing in such reforms in the water sector. Second, peculiar nature of water resource also raises some questions about feasibility of such reforms.

Experience of Electricity Sector Reforms

The regulatory reforms in the electricity sector have not yielded the results expected by different quarters. The ideal of an institutional mechanism that is politically neutral and capable of making decisions on technical and objective bases alone seems not to be working. Consequently, reforms in the electricity sector proved a halted and slow process. The apprehensions of opponents of reform agenda that it will lead to privatization of electricity sector on a wide scale across the country also proved erroneous. The experience of the electricity sector shows that, although reforms are designed and implemented with certain logic, they do not always follow a definite path. The process of regulatory reforms depends on politics in the country. Political economy plays an important role in deciding the course any reform agenda will take in any sector. In a sense, the path of reforms is open for the influence of the actors who take conscious and decisive actions.

There is also a need to consider peculiar nature of water resource while thinking of a new institutional mechanism. Because of local and dispersed a nature of water resources, it becomes extremely difficult to impose the control through a centralized system. The vested interests developed at the local level and the economic and political power they command make this task even more difficult. The economic and political vulnerability of poorer sections and caste dynamics, especially in villages, are some of the constraining factors.

Some issues for Deliberation

On this background, we feel that following issues need deliberation:

- Considering unique nature of water resource, what kind of regulatory system should be adopted for its effective regulation? Is proposed regulatory system (suggested in the recent legislations) appropriate for water sector in India?
- Can there be uniform system of regulation for all states in India? Considering geographical diversity and different problems in different states in India, is the model of independent regulatory mechanism appropriate for all states?
- Considering strong vested interests in the water sector in India, what course reforms will take? What will be the response of established interests in the water sector who enjoy economic, and in some states, even political power? How to deal with the issue of regulatory capture by the vested interests?
- What are the implications of recent institutional reforms in the water sector for poorer sections in the society? To what extent, can regulatory authority be useful to protect the interests of poor sections? Which policy framework should be adopted to protect the interests of the poorer sections?
- How to deal with retrogressive principles that are part of the reform agenda (for example, water as an economic good, full cost recovery etc.)? What strategies should be applied to reduce ill effects of retrogressive principles on the one hand and increase potential of regulatory mechanism on the other?
- Can we evolve a coordinated, comprehensive agenda to deal with challenges posed by reforms? What should be our strategic response to regulatory reforms in the water sector? Should we adopt a multi-pronged strategy? For example, making simultaneous efforts to: (a) create pressure to implement progressive provisions in the act; (b) bring change in the retrogressive provisions in the act, (c) ensure inclusion of equity and transparency, accountability, and participation (TAP) related provisions in the act; (d) create awareness among people and civil society organizations about negative impacts of these reforms where reforms are under way.

Issue Notes - Governance

Checklist and MoU / MoA Governance Issues and discussion note

Vinay Baindur¹
Casumm

Municipal sector

A series of projects funded by IFIs and bilaterals have recently been launched at state level in India aimed at municipal and urban reforms. This brings us to the topic of urban infrastructure. With proposed / estimated range of Govt investments in (63 JNNURM + 4000 odd UIDSSMT) urban centres in the country having recently gone up from around Rs 1,00,000 crs (2005) to Rs.2,25, 000 crs (2007) the industry lobbies are eyeing urban and other infrastructure as a HUGE CASH COW (Outlook Business 20 July 2007 "Building Cities") which will subsidise their growth "sustainably" in the near future and throughout the 12th 5 year plan (2007-2012). These two projects / schemes are based on Guidelines periodically issued by the concerned ministries. These are currently under review. Performance of cities and states are judged in a report card based on the timelines of MoA / MoU.

We observe an increasing convergence of vested interests (IFIs, media and the lobbies) with the emphasis on the need for world class infrastructure investments. Of course the context is the proposed US \$ 300 bn worth of Govt infrastructure expenditure in the next few years. When these are now lining up to provide "*services to all*" (remember health for all, water for all slogans) in the cities which includes the urban poor (119 mn people- 50% of urban popln 2001 census) a close examination of the proposed policies and pro-poor strategies if they exist at all is needed.

This must be juxtaposed with the basic need for providing water and other amenities (not services) and investment in them which support the exercise of the right to life for the poorest of the poor. While the poor through anti-poor policies (2002 Draft Karnataka Urban drinking water policy planned to hike water tariffs at 20% / annum) are being deprived of the right to water and access to water, commercialisation policies are being foisted for the benefit of private sector and industry through capital cost recovery and 10% beneficiary user charges. To aid this process the MoUD GoI has appointed various Credit rating companies (CARE, CRISIL etc) and is in the process of completing this for all 63 JNNURM cities. Recent World Bank funded road project in Bangalore Corporation area cost 10 times more per km than in May 1997.

The formulation of certain policies and content for the (specimen) Model Municipal Law 2003 by a USAID funded consultant (Times Research Foundation, Kolkatta) is a case in point. The MoUD identified need for preparing a Specimen Municipal Law in 2000. This in itself can be questioned since the domain of the central govt does not include urban local govt a topic which pertains to State Govt only (Sch VII, list II Constitution of India).

In 2002 USAID through its FIRE(D) project got invited to the Steering Committee in charge of this and subsequently took over the entire process. It appointed the above consultant and then had a complete draft prepared by March 2003.

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This law is being actively considered for adoption in 19 states and UTs which have set up drafting committees and are in the process of adopting the law after modifying their municipal legislation.

An independent municipal regulatory commission is now proposed by it. A municipal / panchayath ombudsman is also proposed by others for other projects. It suggests forming a State Municipal Advisory Committee with a list of 14 identified functions.

There has been no role for the Parliamentarians in the drafting of the above policies or the identifications and development of many projects so far. In the projects listed above and the reports presented to the Standing committee of Urban Development of Parliament it is quite clear that there is gross misinformation and directives / decisions of the committees are neglected or ignored.

Some questions to be explored:

While there is a need for stronger regulation what is the role of the local government in the setting of tariffs for provision of services and the identification of commercial or other projects if all this is to be done by the central govt or the regulator?

What is the role for Parliament, elected political councils and forums in identifying citizen friendly policies if the municipal regulator / advisory committee will be involved at every step?

How will the policy framework for pro-poor planning and strategies for serving them work if they are not provided by the political actors but by consultants?

How would the municipal regulator coordinate with e.g. the Pollution Board for environmental violations?

Actual improvements in governance which could be observed esp in decision making with respect to the citizen?

Would the poor person also be treated as a citizen or as a consumer?

Will there be any role for the political in the redressal of grievance at all?

How will regulation not be seen as a form of governance to create a comfort level within industry?

Some issues from SANDRP: July 6, 2007

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1. The water sector regulation will potentially have much more far reaching impacts than the electricity sector regulation for the simple reason (among other reasons) that water is a much more fundamental need than electricity. Fighting regulation in water sector is even more important than fighting regulation in electricity sector.
2. The current regulation model (for electricity and water) has the potential to take away even the limited accountability that politicians have to the voters. This outsourcing of decision making is not democratic, even with respect to the limited depth of democracy that we have currently. This is a trend opposite of deepening of democracy, that some places are experiencing (I was told recently that California is conducting more referendums on important issues, a sign of deepening of democracy).
3. The regulation model has the potential to open up the sector for a greater transparency and scrutiny and even interventions from non govt side (which includes business/ commercial entities and also NGOs). However as the things stand now, the business and commercial entities are much better equipped to use that potential than NGOs and even to lesser extent the communities/ movements at grassroots. Basically because the expertise required understanding the issues and preparing studied responses in a time bound manner is lacking. It also requires substantial financial resources.
4. Under the circumstances, the regulation is likely to make (/ is already making) the sectors more business friendly, "efficient" and open, leading to greater problems for the people at large.
5. The regulation system has much lower capacity/ aptitude/ inclination to address the social (including equity issues) and environmental issues that affect the people at large. On the other hand, the existence of regulatory system can allow the government to get away from addressing these issues.
6. However, regulation has come to stay, is not likely to go away soon. To the extent we can slow it down (highlight its limitations and raise issues of democratic incompatibility) and also influence to make it realise these issues/ limitations of regulation model as in practice now and address them, it would help. How to achieve that is something that we should discuss.
7. Also, where regulation has come to stay, we need to see how we can make more effective use of the potential it has created for Civil Society. Is that a possibility at all?
8. Is there a possibility to ask the regulator to set up an independent body to address social and environmental issues and also create linkages with the mainstream issues? It would also be useful to ask the water regulator to including members that can address these issues, though, this may not help as we know what kind of people the govt can put there. Just some loud thinking.
9. How can we address the issues that give rise to the perceived need/ justification for the regulation? I think failure to do that has strengthened the case for regulation.

Some Issues on 'Independent Regulation' and the Poor

Shripad Dharmadhikary

Manthan, Badwani

Regulation is a necessary and critical part of any governance system. It plays an important role in the checks and balances. Regulation has always existed in the water and power sectors. In the recent years, one particular model of regulation – the so called 'Independent Regulator' (IR) model has gained currency. The experiences of the power sector with this model give us valuable insights as the model is being pushed in the water sector too.

On the whole, the concept note captures most of the issues well, identifying some of the key criticisms of the model and its implementation. I wish to highlight some of these, and also raise some other issues.

Framework is most Critical

The framework in which the regulation is created is most critical in determining its impact. This framework includes both, the structural framework and the policy framework.

The IR model in India was brought in with the express purpose of allowing private operators / owners in areas that were hitherto in the public sector. That purpose determined the structure of the IR.

Along with the entry of the private operators / owners, the sectors were undergoing major restructuring, towards turning them into fully commercial operations. The policy framework therefore was changing to bring in features like full cost recovery, elimination of subsidies etc. The IRs were created partly to implement these changes.

These two factors have placed severe limitations on what the IR can do and cannot do. Thus, it is difficult to see the IRs as vehicles of ensuring any kind of justice or relief to the poor – their purpose and structure is something different. For example, the power sector restructuring Act in Madhya Pradesh that created its regulator specifically mandates that the tariffs have to ensure that at least 75% of the cost is recovered from any category of users. This puts a bound on what the regulator can do.

If we want to talk about putting the poor at the centre, it is important to start with the larger structure and policies of the sector, rather than with the regulator. The appropriate structure of regulation would evolve from this.

One among many models

It is important to understand that there are many different models of regulation and the model of IR as proposed in the World Bank led 'reforms' is not the only one. There is nothing *given* about this model. It is important to recognise that we have a choice – both, in the model of the reforms, and the model of the regulation.

We should choose the kind of regulation that will help achieve our aims rather than see how a given model can help the poor.

De-politicising the Sector

The IR model is being pushed with the explicit aim of depoliticising the tariff setting, and more generally, depoliticising the sector. This aim needs to be questioned.

Politicisation of decision-making has come to be seen as a bad thing, but actually this is because of the corruption and perversion of the political process. Politics is essentially the practice of making public policy, so de-politicisation of the water and power sectors is an oxymoron.

It is important to remove the distortions from the political process, rather than attempt to remove politics from decisions in the power and water sector. Doing the latter will divorce social and environmental issues from decision making, reducing it only to technical matters, as pointed out in the concept note.

Today, the political process, no matter how distorted, offers the poor possibly their only point of intervention in the decision-making process. To depoliticise the sectors is to take away even this small space available to them.

It should be noted that the way the IR are structured currently, it is the well-off, better educated people who can easily intervene and use the process; it is most difficult for the poor and not so well educated. It thus dis-empowers the poor even further.

This notion of de-politicisation of the water and power sectors needs to be strongly challenged.

Regulators as Instruments of Accountability

Sometimes, it is argued that the one of the roles of the IR is to address the very distortions that have crept into the political process. The IRs have opened up some spaces and created some mechanisms for accountability, but to a very limited extent. There are several reasons for this. For one, there are very clear boundaries to what the IR can do or not do; most distortions in the political processes are beyond these boundaries. Secondly, experience has shown that what the IR does often depends on the individual holding the office. While this is a universally true of any such institution, the performance of the IR, without its own checks and balances and accountability mechanisms, can be far more individual-dependent.

This brings in the question of the accountability of the IR itself, which needs to be addressed.

Another question is whether the institution of the IR has led to the reduction in the accountability of the Government? Has the government been able to hide behind the IR and evade responsibility for its decisions and actions?

Further Directions

Given the origins of the current model of IR – to open up the sectors for privatisation and commercialisation, and given the experience of these institutions till date, there is a case for rejecting this model and the larger framework of reforms in which it is set.

Rather than starting with an *a priori* assumption of independent regulator model, the real question should be: What is the policy framework that should be in place to ensure that the poor are benefited? What should be the structure of the sector to reach the poor, to ensure other goals of economic, financial, social and environmental sustainability? What is the system of checks and

balances that is necessary to ensure that the system works? The regulation model will be one part of this, which will have to evolve from the needs of the system.

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Background Paper

Background Paper for a National Consultation on Regulation and the Poor
New Delhi, July 12-13, 2007

A Brief Review of Theory on Independent Regulatory Agencies

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Introduction

The creation of independent regulatory agencies is a relatively recent phenomenon in India and indeed in much of the developing world. In recent years they have become well established in the infrastructure sector, particularly electricity and telecoms, and there is now discussion of extending them to a variety of other arenas. Regulation in electricity is about a decade old, although most state regulators have only about five – seven years experience. Water regulation is just beginning to be established, with creation of a water regulator in Maharashtra and discussion of water regulators in other states.

While regulation has always been a part of the state role, independent regulatory agencies (IRAs) are distinguished by being separate, or independent from the executive branch of government. Moran defines regulation as the “the administrative technology of controlling business through law-backed specialized agencies,” which originated in the United States, and has spread to the European Union and to the developing world through the 1990s.

Until now, attention has disproportionately been focused on the techniques and methods through which new IRAs exercise their powers, such as on alternative regulatory approaches to tasks such as price setting, controlling entry and exit and so on. But this focus on economic performance ignores several additional questions about regulation to which answers have to be sought in disciplines other than economics. For example, given their control over a sub-set of economic decisions, how are regulators to be placed under political control, while not compromising their independence? Is it possible to draw a clear line between economic and non-economic decision making, or do regulators have to be attentive to other concerns? For example, in eliminating cross-subsidies (an important theme in India) regulators are likely to impose costs on the poor and the vulnerable. How are they to balance these concerns? These are the sorts of issues that motivate this paper.

This brief review is aimed at correcting the lack of attention to political, legal, and institutional concerns around regulation. As a result, it does not deal in any detail with the economics literature on alternative methodologies of setting tariffs and creating incentives for regulated companies. Instead, it seeks to paint a broader picture of the political economy of regulation, with the main arguments grouped in three categories. First, I deal with the underlying theories of regulation – how do we understand the reason for establishing IRAs and what frameworks can we draw on to understand how they work in practice? Second, I explore the idea of “regulatory governance,” which examines different ways of understanding how the regulator interacts with governments and other stakeholders. Finally, I turn to some consideration of the scope of regulatory action, particularly examining whether there is a clear line between economic goals on the one hand, and social or environmental goals on the other. I conclude by briefly relating this discussion to the Indian context.

Theories of Regulation

The literature on regulation is voluminous, and spans political science, law and sociology, as well as economics. Each of these traditions frames their questions in different ways. One useful way to cut across disciplines, however, is to group theories of regulation under the categories of public interest, private interest, and institutionalist theories of regulation (Morgan and Yeung 2007).

Public interest theories

Writings on regulation have their longest history in the United States. The intellectual justification for regulation appears in a frequently cited early judgement of the US Supreme Court, *Munn vs. State of Illinois*, which dealt with whether a legislative assembly could limit prices charged by private railway companies for storage of grain being transported by those railways. The court ruled that when "...one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good..." (Touro Law Centre 1876). The judgement is significant because it provides a basis for state control over private property when the public interest is involved.

The most common invocation of regulation in the public interest is that of regulating monopolies. From this perspective, regulation is a substitute for competition, where competition is not possible for reasons of natural monopoly,¹ for provision of public goods, or to address externalities. The goal of regulation is limited: to increase allocative efficiency. Note, however, that the *Munn* judgement, although delivered in the context of a private rail monopoly, provides an overarching rationale of the common good that extends beyond the narrow case of monopoly. Scholars such as Sunstein, (cited in Morgan(2007, p. 27) explore the rationale for regulating in the public interest when various "substantive" values such as social justice, diversity or redistribution are involved. He notes that the choices that individuals make as consumers may not be equivalent to those they make as citizens; as citizens they may wish to live in a society that has attributes that cannot be obtained simply by buying goods as a consumer.

If such substantive values are to be promoted in the regulatory process, however, then we have to move beyond a vision of regulators as a neutral technical entity to one capable of choosing between alternative social values. This leads immediately to a discussion of regulatory legitimacy; since regulators are unelected, how do they derive the legitimacy to make alternative social choices? One influential answer, given by Prosser (1999) is that regulatory legitimacy is derived from procedural robustness, which allows for social choices to emerge from deliberation within regulatory processes. We return to this theme below.

The public interest view of regulation is criticized for a naiveté about the good intents of regulators, a critique particularly developed by the private interest theories that follow. Moreover, when regulation extends beyond the vision of neutral and competent regulators applying well-known principles to regulators as social decision-makers, the public interest view of regulation also raises concerns about legitimacy and accountability.

Private Interest Theories

Private interest theories of regulation begin with a critique of the public interest view as politically naive. They question the optimistic assumption that simply because a case can be made for promoting the public interest, regulatory actions will indeed do so. They suggest, instead, that

1 A natural monopoly occurs where it is less costly for one rather than many firms to produce a commodity for reasons of economies of scale. Under such conditions, forcing many producers would lead to efficiency losses, so it is better to simply allow a single firm, but regulate the price it charges.

regulators emerge to serve the private interests of individuals or organized groups. If they also serve the public interest, then that is merely a fortunate side-effect of serving private interests. There are many variants of the private interest view, including among them a Marxist perspective which sees regulatory agencies as a sort of franchise on public power handed out by the state to private interests (Moran 2002).

Perhaps the best known elaboration of this approach is the theory of regulatory capture most closely associated with George Stigler (1971). Stigler argues that "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit." Indeed, "...the problem of the regulation is the problem of discovering when and why an industry (or other group of like-minded people) is able to use the state for its purposes."² An interesting variant of capture theory (which actually preceded Stigler's work) suggests that regulatory agencies go through a life-cycle, characterized by an early pioneering spirit, only to fall prey to capture as they develop increasingly close relations with industry (Bernstein, cited in (Moran 2002)).

Stigler's work is part of a larger school of "public choice" theories that place the emphasis on regulation as the outcome of a political marketplace in which voters, politicians and bureaucrats are all working to maximize their self-interest. More recent versions go beyond other forms of capture theory in moving beyond the bilateral relationship between regulator and regulated alone. Regulation may be designed to further the interests of the political elite and to preserve their power (Cook et al. 2004). For example, the regulatory bureaucrat may collude with both regulated and politician to maximize his agency budget. The prescriptive implication of public choice is to rely on the market where possible, and severely limit reliance on regulation and regulatory agencies.

The main criticism of the private interest view is its absolutism (Morgan and Yeung 2007). While this perspective may be a necessary corrective to the naiveté of the public interest view, at the same time, it leaves no space whatever for expression of public interest. For the theory to serve its predictive role, all action has to be understood as entirely self serving, and self serving in terms of either narrow economic or political returns. Moreover, capture theory has been critiqued for exercising an incomplete form of reasoning: if a regulation benefits an interest, it must have been designed to do so. This form of thinking excludes competing explanations. At the same time, the public choice variant of private interest theories does seem to resonate in the Indian context, especially given continued public ownership of electricity and water utilities for the most part. While little has been written on situations where the regulated entity is publicly owned, as is often the case in India, the public choice perspective that allows for "political capture" may yield some insights in India.

Institutionalist Theories

While the theoretical categories of public and private interest views of regulation are well established and used widely, the institutionalist category is somewhat less cogent. Morgan and Yeung (2007) suggest the term "institutionalist" to capture the rule-based (formal and informal) explanations of these ideas, their examination of internal institutional dynamics, and their common efforts to blur the divide between public and private rules. Here, I briefly discuss three such approaches: "regulatory space" "responsive regulation," and a "stakeholder model" of

2 Notably, the evidence amassed to support capture theory rests heavily on studies of IRAs as opposed to other forms of regulation (e.g. Environmental or health regulation from within a government department).

regulation. The first is largely focused on providing a model with which to understand regulation, while the latter two have clear normative implications.

The *regulatory space* idea associated with Hancher and Moran (1989) starts by questioning the assumption that there can be a distinct and inviolable public sphere separate from the private. Instead, they argue that under advanced capitalism, the large firms being regulated carry out many functions of an essentially public nature. Thus, not only do they provide basis services, but their decisions on investment, employment, output and research have implications that carry over to the public sphere. Hence, the key question becomes not trying to force apart public and private, but better understanding the space within which organizations with these mixed attributes interact. To do so requires not only looking at those within the regulatory space, but also those excluded from it, and seeking to understand why. The authors suggest that exclusion is often driven by the details of institutionalized procedure such as standard operating procedures and customary assumptions. As a result, national peculiarities also become important; regulation is not the same everywhere. In sum, the regulatory space idea points us to look at the empirical specifics of regulatory spaces, including national legal traditions, organizational actors, and specific procedures.

The idea of “*responsive regulation*” makes the paradoxical suggestion that regulation should aim for an optimal level of capture (Ayres and Braithwaite 1992). Too much interaction of the wrong sort risks capture, but equally, too little interaction and limited regulatory discretion – typical solutions proposed to the problem of capture -- risks rigidity, limited innovation, and stifled cooperation. The proposed solution is regulatory “tripartism,” where a third actor, civic associations or “public interest groups” (PIGs), are introduced as a “fully fledged” third player in the regulatory game. As suggested here, PIGs have access to all the information available to the regulator, have a seat at the table when all deals are done, and have equivalent standing to sue as does the regulator. Accountability of PIGs is accomplished either through competition for the role of PIG, most likely through the vote, or accountable in some way to other PIGs. Notably, the PIG need not be a disinterested party. For example, trade unions could be involved in occupational health and safety regulation, or an industry association of flour grinders in regulation on wheat prices. The idea is that insiders may be the ones with both information and interests to participate effectively, and in promoting their own interests, will also promote the larger interest. More broadly, in different circumstances responsive regulation may involve delegating regulation to PIGs, unregulated competitors, or even self-regulation by the firms. An underlying idea is that to achieve the objective of effective regulation but with limited interference the conditions should be created where persuasion is the dominant strategy, while command regulation with punishment is a realistic, but little used, threat. This idea is captured in the image of a regulatory pyramid, where the broadest part is occupied by self-regulation, and the narrow top by command and punishment. In a subsequent paper, Braithwaite (2005) argues that developing countries with a regulatory capacity problem are particularly ripe for responsive regulation in a model of “networked governance” where the regulatory state relies heavily on non-state actors to participate in the regulatory task.

The role of external actors beyond regulator and regulated is also central to Prosser’s (1999; 2005) articulation of a “*stakeholder theory*” of regulation. Similar to the regulatory space approach as well as tripartism, regulation is explicitly understood as a network of relations that extends to include not only regulator and regulated, but also competitor firms, consumers, employees, and so on. But now regulators are expected to explicitly pay attention to the interests of different stakeholder groups, and seek to achieve a balance across these. The legitimacy of regulators is then tied to how well they do so. Note that this is exactly the *opposite* of the recommendation that comes out of the capture theory of Stigler and others. The stakeholder

approach leads directly to a focus on strong procedures in the regulatory process to ensure openness to the full range of interests. Prosser also takes the argument further and argues for explicit efforts to compensate for inequalities in power or information across different stakeholder groups. Not surprisingly, the main problem with this theory is the challenge of implementability, both conceptual and practical. Conceptual challenges with implementing this approach in practice include the difficulty of developing criteria to determine which interests should be considered, how to weigh them, and how to decide among them. Practical challenges include managing the potential risk of deadlock, and implementing a more proactive form of stakeholder regulation which compensates for existing inequalities.

These institutionalist theories share a common aim of greater realism in understanding regulatory processes, and at least two of them have an explicitly normative bent. It is striking that with realism comes a common greater attention to the wider web of stakeholders that surround a regulator. While there remain many unanswered questions about how to practically engage stakeholders, the literature suggests a common attention to the importance of their role.

Regulatory Governance

The discussion above, and particularly the stakeholder version of regulation, suggests that regulators have to take on a significantly expanded role, indeed, as Prosser (1999) puts it, to be “governments in miniature.” This is a considerable distance from the vision of regulators as narrowly focused entities that derive their legitimacy from technical expertise and political neutrality alone. It requires exploring further how regulators fit within and are shaped by larger governance structures, and how regulators operate when they are viewed as a governance structure. In this section I discuss how the concept of regulatory governance arose from the perspective of protecting investor interests, but also how the concept has progressively been broadened, so that the idea of regulatory governance can equally be understood to focus on questions of the accountability and legitimacy of regulation to the public.

Regulatory Governance from an Investor Perspective

The term “regulatory governance” was popularized by Levy and Spiller (1994) in a path-breaking paper. The paper was significant for introducing regulatory economists to issues that had hitherto been the domain of political scientists, and for doing so using the language of “transaction cost” economics.³ The task of regulation is understood narrowly as limiting scope for arbitrary administrative action (such as expropriation or politically motivated tariff setting) thereby creating conditions favourable to investment.

The key insight of the paper is that while much attention has been paid by economists to regulatory incentives – how regulators can use their tools to set incentives for efficient performance – too little has been paid to the “mechanisms that societies use to constrain regulatory discretion and resolve conflicts...” – regulatory governance. Understanding these mechanisms requires exploring issues such as the separation of powers between different branches of government, the extent to which the judiciary can be counted on as a dispute resolution forum, whether bureaucracies are strong or weak and other features of the larger political environment within which regulation operates. Notably, Levy and Spiller conclude that the model of independent regulatory agencies is only appropriate in a limited set of contexts, and in other contexts, use of contracts, or continued public ownership and control, is more appropriate.

3 More recent work seeks to update the Levy Spiller approach and apply it to Asia (Cubbin and Stern 2005; Stern and Cubbin 2005).

The Problem of Delegation and Regulatory Creation

A more overarching framing within which to understand regulatory governance is the problem of delegation. Regulation is characterized by the delegation of authority from elected bodies to “non-majoritarian” institutions, i.e. those that exercise authority but are not directly accountable to populations. The problem, then, is to explain why elected bodies would voluntarily choose to delegate authority away from themselves, and with what consequences. Typical answers to the problem include governments’ desire to signal credible commitment (e.g. by handing over tariff decisions they promise not to interfere in them), overcome information asymmetries (specialized bodies may do better at unearthing information), and avoid taking blame for unpopular policies (by blaming decisions on “independent” regulators) (Thatcher and Sweet 2002).

These are all functional explanations (i.e. the existence of the regulator is explained by the function it is meant to perform) consistent with the transaction cost framework of Levy and Spiller. However, there are also other, more sociological explanations to explain the problem of delegation. Sociologists argue that institutional solutions such as independent regulators spread because a perception is created through a complex process of social construction that regulation is the best solution to a particular type of problem. Once constructed, regulators may be created through an epidemic of borrowing, often for symbolic reasons (Thatcher and Sweet 2002). The result is that regulation as a form of governance becomes more legitimate than others, and indeed, can favour one set of actors over another. Moreover, institutional design by copying – “isomorphism” in sociological terms – can also occur through coercive means, through the imposition of conditions as has occurred in Europe (regulation as a pre-condition for entering the European Union) and in many developing countries through donor conditions. This sociological explanation certainly appears to fit the way in which electricity regulation, for example, spread in India.⁴

Regulatory Governance as a Problem of Accountability and Legitimacy

Viewed from the perspective of delegation, the creation of IRAs raises questions beyond Levy and Spiller’s narrow concern with signalling predictability to investors, to larger issues of legitimacy and accountability. If democratically elected legislatures and appointed executive bodies hand over a portion of their powers to regulators, then it is incumbent on them to ensure that regulators, too, are accountable in some form. Moreover, ensuring accountability is a precondition for regulatory legitimacy.

The question of how to ensure regulatory accountability was the subject of a substantial study by the UK House of Lords entitled “The Regulatory State: Ensuring its Accountability” (House of Lords 2004). The UK experience is of interest since many developing country experiments, including in India, have followed the UK experience with utility restructuring, regulation and competition in areas such as electricity and water. The UK Lords Study suggests accountability should be achieved through a three part approach: the duty to explain backed by robust processes; exposure to scrutiny, including but not limited to parliamentary scrutiny; and scope for independent review and appeals. Moreover, they call for a “360 degree” view of accountability, whereby the regulator is accountable not only to Parliament, ministers and courts, but also to citizens, interest groups, consumer representatives, individual consumers and regulated companies.

As Prosser (1999) notes in his discussion of the stakeholder model of regulation, this vision of regulatory accountability places considerable emphasis on robust procedures, particularly to

4 I have tried to reconstruct this process elsewhere, in Dubash (2000)

ensure open access to information and participatory procedures in regulation. "Regulatory governance" from this perspective, can be re-interpreted from the investor-focused emphasis on predictability espoused by Levy and Spiller, to a citizen-focused emphasis on democratic accountability.⁵

This perspective has recently inspired both theoretical and empirical work that suggests ways to improve regulatory governance. Palast et. al. (2003) argue that the democratic checks in place in the US regulatory system have served well and resulted in a relatively well-functioning US electricity system. Hira et. al. (2005) review the mechanisms for public participation in operation in different electricity regulators around the world. These range from the common public hearing model, to a public survey and research model, to direct public participation. The Electricity Governance Initiative is an effort to develop an analytical framework for governance procedures in electricity, including but not limited to regulation and apply it to four Asian countries, including India (Nakhooda, Dixit, and Dubash 2007). That the concept has become mainstream is exemplified by a US Agency for International Development Study which sees legitimacy of regulators tied to the effectiveness of their public participation processes (USAID 2005).

There have also been multiple recent efforts to examine democratic regulatory governance in India, with most of the work focused on the electricity sector. A survey of regulators by Prayas Energy Group examined the functioning of multiple electricity regulators, documenting several loopholes in regulatory procedures (Prayas 2003). The Electricity Governance Initiative concludes that while legal procedures are relatively robust in India's electricity regulation, the "software" of selection processes in practice, use of procedures, and civil society capacity to use those procedures remains thin (Mahalingam et al. 2006). A case study based analysis of three state regulators, in Delhi, Andhra Pradesh and Karnataka, found that while public participation has brought some gains, the degree of confidence in regulatory stakeholder processes are well short of that required to confer legitimacy on existing regulators (Dubash and Rao 2007).

In some ways, the literature on regulatory governance has gone full circle. The early literature explored the conditions under which regulators could serve to damp the unpredictability in decision making that comes with the rough and tumble of political process. More recent literature seeks to explore whether the full range of interests are sufficiently well represented in regulation, evoking Prosser's idea of regulation as "government in miniature." Regulation, it would appear, cannot legitimately be a detour past political processes. Instead, through an attention to procedures and process, the question that now emerges is whether it can be both a robust and reasonable efficient process for representation of interests.

Regulation and Social Objectives

To summarize the argument so far, the institutionalist perspective provides a middle road between the extremes of public and private interest theories. It thereby reclaims some space for regulation in the public interest, although with a caution to pay particular attention to national and historical context, and not to take for granted that regulation *will* act in the public interest. The discussion on regulatory governance led us to consider the importance of procedures as a way of providing space for representation of the full range of stakeholders, and thereby bolstering the accountability and legitimacy of the regulatory process.

Are robust procedures that provide space for the voices of all stakeholders, however, a sufficient basis for regulatory effectiveness and legitimacy? As Prosser (1999) argues, robust procedures

5 For one, partial, effort to spell out a governance based analysis of regulation, see Minogue (2001).

still require some basis on which alternative competing interests are to be weighted and prioritized. In other words, even procedurally robust regulatory processes require some “substantive” guidance.

Market Efficiency as Substantive Value

The latest wave of regulatory agencies has come bundled with public enterprise reform and privatization. As a result, maximizing economic efficiency has either implicitly or explicitly emerged as the predominant substantive goal of the regulatory process. Combined with the goal of regulatory predictability, utility regulation has emphasized formula-based, predictable regulation that achieves the goal of efficiency enhancement.⁶ In practice, however, this approach has proved problematic conceptually and practically.

On a conceptual basis, Stewart (1975) notes several obstacles to economic logic as a determining rule for regulation: applied economics is an art that often produces multiple, not single answers; preferences over alternative choices do not remain fixed by change over time, leading to questions on which set of preferences decisions should be based on; distributional concerns are inadequately addressed; and economic analysis leaves no space for “process values” on which legitimacy depends. In her insightful analysis of larger regulatory trends, Morgan (2003) argues that competition, or the prioritization of a market logic, casts a “shadow” over social citizenship, by which she means the aspiration to growing equality and fairness in social and economic spheres.

From a practical viewpoint, the experience of the UK, the benchmark for regulatory reforms, is useful to consider. The first UK electricity regulator, Stephen Littlechild, is known for formulating a price setting formula linked to the retail price index that purported to automatically promote efficiency while reducing regulatory discretion. In practice, however, the formula has had to be modulated for political reasons such that companies receive an acceptable rate of return on assets. As a result, regulators have had to return to scrutinizing the internal functioning of utilities, re-introducing regulatory discretion (Thomas 2005). In another example, the regulator has been forced to grapple with social issues such as the interests of low income groups. Thus, the UK Utilities Act of 2000 makes consumer protection the primary duty of the regulator (Owen 2004). Over time, the onset of privatization in the UK has had the ironic result of leading to the emergence of an explicit body of public service law where none existed before (Prosser 2000).

Similar lessons on the blurring of economic and social objectives emerge from a close scrutiny of Indian electricity regulators (Dubash and Rao 2007). While the regulator is legally mandated to reduce cross subsidies (a higher price paid by one consuming class to reduce prices for another), in practice, regulators make political judgements about whether and how much to do so. There is also substantial evidence that instead of following the mandated cost-plus formula to determine tariffs, they use various creative means to keep tariffs within politically acceptable bounds. Despite these tensions, nothing analogous to the UK’s emergence of a body of public service law has, as yet, occurred in India.

This discussion suggests that the implicit assumption that regulation in India can and should be a single-minded instrument of applying economic logic is both misplaced and unworkable. By seeking to exclude social objectives, the only outcome accomplished is to drive consideration of these objectives underground. As Prosser (1999) puts it, “no single logic can or should form a basis for their [regulators’] decision making and they should not be seen as capable of

6 Often associated with this view is a perspective that social objectives are best served through minimalist regulation, through allowing market forces to drive down prices to everyone’s benefit (Smith 2000).

implementing a mandate of simply applying government guidance.” Instead, the aim should be development of an *explicit* framework within which social choices are made in the regulatory process.

The Search for Workable Substantive Principles

The discussion above suggests that an important part of regulation as a means of governance is determining the substantive principles (or outcome oriented goals) that will guide regulators. There are two parts to the task.

First, the broad substantive guidelines handed down to regulators from the legislature need to be defined, and themselves done so in an open and transparent fashion. At the moment, the Electricity Act 2003, for example, provides a long list of regulatory tasks, but does not set clear priorities for how competing priorities are to be met.⁷

Second, keeping in mind that regulatory discretion cannot entirely be legislated away, the literature suggests the need for a robust set of procedures that allow for discretion to be legitimately applied in keeping with substantive principles. One interesting approach to defining these principles is to suggest that the proceduralist approach (interest representation through robust participation) can only work under conditions of certain minimum social welfare rights. Then implementing these rights – such as right to water, livelihood etc. – then themselves become part of the regulatory objective (Prosser 1999).

Arguments against implementing substantive goals, such as ensuring reasonably priced access to water and electricity -- through regulatory process are based on the perceived lack of legitimacy of un-elected regulators. However, as discussed above, regulators already make these decisions; they simply do so in a non-transparent way and without clear substantive guidance. Acknowledging this discretionary and substantive role of regulators and providing them guidance would be a step forward. Moreover, with appropriate procedural safeguards, regulatory processes could be potentially *more* legitimate than parliamentary ones, in that they could provide greater scope for consideration of all interests and issues.⁸ This argument is strengthened in the context of many developing countries, such as India, where parliamentary processes are not seen as highly legitimate or effective.

In closing this section, it is important to not give the impression of scholarly consensus on the issue of whether regulators should be guided by substantive values, how these substantive values should be decided, and the linkage between procedural values (good process) and substantive values (good outcomes). There remains considerable debate on how to ensure regulatory consistency, and therefore legitimacy, even while steering clear of an unrealistic view of regulation as entirely rule-bound and predictable. What is clear, however, is that robust procedures are an important part of the regulatory story, and that there needs to be space for debate and discussion on substantive values for regulation that go beyond application of economic logic alone.

⁷ By contrast, the Utilities Act of the UK clearly states the primary interest of regulators is to protect the interest of consumers, with the rider that wherever appropriate this is to be done by promoting competition (Owen 2004).

⁸ In fact, Wood (2005) argues forcefully that “confusing democratic governance with voting should simply be unacceptable.” She suggests that limiting discussions of democracy to voting alone exclude sensible and full consideration of governance in decision making processes such as regulation.

From Substantive Values to Tangible Social Outcomes

The sorts of concerns that motivate a social agenda in regulation include issues of access to electricity and water, appropriate pricing for low income groups, attention to quality of service issues including special considerations such as the use of pre-paid meters, and related social issues such as rights of labour employed in electricity and water sectors. Given the limited experience with regulation in the developing world, there is a definite scarcity of literature examining the implementation of these social issues within a regulatory framework. The literature that does exist tends to detail individual cases rather than drawing larger lessons.

One experience, however, that reinforces the larger point being made here about substantive values is that of South Africa. In South Africa, the right to basic services such as electricity and water is enshrined in the Constitution. This provides a ready benchmark for substantive guidance to the regulator. Hence, debate over regulatory approaches and objectives in South Africa tend to centrally include discussions over access (Camay and Gordon 2005). Indeed, concerns over the poor are put at the centre of the regulatory agenda as evidenced by a substantial conference organized by the City of Johannesburg to address pro-poor regulation. The lesson that emerges is that a large part of the battle involves appropriate framing of regulatory responsibilities, for example in an enabling act or, as in South Africa, in a constitutional framing. For example, the potential formulation of water related regulatory Acts in various states in India are ripe for intervention to include social objectives.

As this example suggests, the first stage is to reclaim regulators as legitimate vehicles for articulation of social policy. The recent trend toward replacing public control with privatization and market principles has also had the effect of orphaning social policy. If indeed the state, in the form of the executive, is to play a less central role in delivering electricity and water services, then regulators remain perhaps the only viable option for pursuing a social agenda. Moreover, with appropriate procedural safeguards and substantive mandate, it is worth asking whether independent regulation, under some circumstances, can even be an improvement over a centralized executive bureaucracy as a space for social policy.

Conclusion: Regulation and Social Policy in India

Regulation in India is still a recent institution. It is also an institution that is fast losing public confidence (at least in the electricity sector) even as there is talk of expanding regulation in other sectors (notably water). In this concluding section, I wish to briefly trace the evolution of electricity and water regulation in India and relate it to the discussion in this paper, with the intent of stimulating discussion on whether there are fruitful ways to re-envision regulation as an instrument of social policy.

Electricity regulatory bodies were established under donor pressure as a means of insulating the sector from politically motivated decision making. The approach broadly followed the Levy-Spiller template -- regulation as a means of limiting arbitrary decisions, so as to attract investors - - outlined above.⁹ The substantive value enshrined was economic efficiency. Regulators have adopted the rhetoric of economic efficiency wholesale, even while, in practice, regulators have often bowed to political dictates, made their own judgements on how much to bend to public pressures versus investor pressures, and have been forced to apply their discretion and judgement at every turn. Public participation procedures enshrined in regulatory statutes have led to some gains, but neither have these been followed diligently, nor have they been used to their full

⁹ However, it must be noted that Levy-Spiller are much more nuanced in limiting the conditions under which regulators can work than were the designers of regulation in India.

potential, in part due to civil society capacity weaknesses. Regulatory capability has also been weak, both at the level of Members and staff, with a heavy reliance on external consultants in some cases.¹⁰

The original hope of electricity regulators as some sort of island insulated from politics was flawed in its conception. The problem has been compounded by implementation. There have been some tangible gains, notably procedural, but they are heavily dependent on individual regulators. Without resulting in either procedural integrity or real tangible substantive outcomes, electricity regulators risk becoming increasingly considered non-legitimate bodies.

Water regulation is a far more recent institution. And the social stakes in water regulation are, if anything, greater and more apparent than in electricity regulation. Once again nudged along by donor influences, the early signs are that water regulation will share in the fiction of an apolitical space for decision making. The role of procedural safeguards and the need for active public participation as a central element in regulatory process once again seems to be lost. The process is seemingly driven by the vision of handing over problems to the apolitical, objective and competent technocrat. The experience in electricity suggests that this is a false hope, particularly given the greater and more direct social stakes in water, which will require the repeated exercise of judgement by regulators.

At the same time as there are grounds for scepticism about regulatory institutions, the multiple decade long experience with direct control over electricity and water provision directly by state agencies has also not inspired confidence. In this model, social goals were intended to be directly addressed by ministries. However, there was little scope for public debate and discussion over what social goals should be and how they should be addressed. As a result, an important question for advocates, policy-makers and activists to consider is whether there is an altered vision of regulatory bodies that provides a workable route to more democratic governance of water and electricity.

What might such an altered vision look like? Drawing from the discussion above, the route to legitimacy and effectiveness of electricity regulation would lie in re-orienting the institution to be an *active site of political debate*, rather than an island in a sea of politics. The delegation of important decisions around electricity and water to regulatory agencies can only be considered legitimate if various interests have adequate potential to express their views and have the confidence they are listened to. In other words, regulation would have to truly provide a democratic space for decision making.

In addition, however, regulation would have to be guided by a larger substantive framework that makes consideration of social goals an explicit part of regulatory objectives. This would force explicit and transparent consideration of trade-offs and alternatives, rather than the current situation which presumes, incorrectly, that there is one economically correct answer to every regulatory problem.

This discussion is particularly salient to the water sector. Substantive guidance to the regulator that defines the scope of decisions that can be taken by the regulator, and provides a set of parameters within which regulatory discretion can be applied, is essential if regulators are to take on social concerns. Since regulatory acts are yet to be written in most states, there is a moment of opportunity to shape the framing of water regulators. Also, the experience of electricity regulators

¹⁰ This composite snapshot is compiled from several different recent sources (Prayas 2003; Mahalingam et al. 2006; Dubash and Rao 2007).

suggests that the first few years of operation is critical in setting down the institutional norms that shape, in practice, how the regulator functions. It is important that sound procedures for participation be enshrined at this early stage.

In conclusion, this paper has highlighted that independent regulatory agencies are a complex institutional form. Questions of regulatory legitimacy, the extent to which they can provide a democratic space, the degree to which they can and should have discretion versus be rule bound, are all questions actively debated and contested. Whether regulatory institutions hold greater prospects for gain or harm needs to be discussed on a sector by sector basis. If, however, on balance regulatory institutions hold out more promise then there is an important agenda to frame the substantive purpose of regulation to include social policy, and to re-orient regulation toward democratic governance.

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Annotated Bibliography

An Annotated Bibliography on Independent Regulatory Agencies: Theory, Governance, and Practice

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INTRODUCTION AND GUIDE

This annotated bibliography covers only a limited section of the vast literature on regulation. It focuses mostly on independent regulatory agencies, and within that sub-set on utility and particularly telecoms and electricity regulation. This sectoral bias reflects the larger tendency in the available literature, which has tended to focus on telecoms and electricity regulation. A substantial section of the literature is about explaining the origins of regulation, much of which is focused on Europe, although there is an emerging literature on the US. The literature on regulatory governance is considerable, which I have broken down into investor and stakeholder categories. Much of the empirical work here is on electricity and telecoms since these regulators have been in existence the longest. There is surprisingly little written on treatment of social issues through utility regulation. I have not considered the broader literature on “social regulation” such as health and safety, which is distinct from the literature on independent regulatory agencies. Finally, there is a section on international experience that tried to draw on empirical studies. This last category includes a few studies specifically on the water sector.

The entries are grouped around the following categories and sub-categories:

- | | |
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| a. Overviews and Origins; | |
| b. Public Interest; | |
| c. Private Interest; and | |
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¹ I am grateful for the research assistance of Ashiwini Swain and Debajit Barkataki, who have assisted in compiling this bibliography.

1) THEORIES OF REGULATION

a. Overviews and Origins of Regulation

Jordana, J. and D. Levi-Faur (2004). "The Politics of Regulation in the Age of Governance." "The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance". J. Jordana and D. Levi-Faur. Cheltenham, Edward Elgar Publishing Limited: 1-28.

This is a collection of essays on the politics of regulation, one of the view such existing. The essays are focused more on industrialized country experience than on developing countries. The introductory essay sets up the context for contemporary regulation, moving beyond the economic rationale to understanding the move toward a "regulatory state" and the changing nature of decision making and politics. They argue that moves toward a regulatory state have been far reaching and have shaped the nature of politics. They examine different motivations for regulation, such as technical competency, delegation to enhance political credibility, and as a reaction to the decline of trust in public institutions. They also view regulatory institutions as part of a larger tendency toward greater transparency and demands for accountability in an age of governance.

Levi-Faur, D. (2006). "The Diffusion of Regulation and the Diffusion of Capitalism." "Dreaming of the Regulatory Village; Speaking of the Regulatory State". M. McConket and P. Dutil. Toronto, Institute of Public Administration of Canada: 11-22.

A big picture overview of the rise of what the author calls "regulatory capitalism". A shift from delegation of authority to elected representatives to a form of "second-level indirect representative democracy" where citizens elect representatives who control and supervise experts who formulate and administer policies.

Majone, G. (1994). "The Rise of the Regulatory State in Europe." *West European Politics* 17(3): 77-101.

This paper initiated the idea that a new "regulatory state" was on the rise, in the European context. Regulation has become, in this idea, the "new border between the state and the economy." The key change is that while traditional state intervention has multiple goals (equity efficiency etc) regulation is intended ONLY to improve efficiency by correcting market failure, monopoly and externalities. Because the intervention is more targeted, Majone argues it can be understood to strengthen not weaken the state. For example privatization was accompanied by a broadening and widening of specialized state agencies. So de-regulation is not about retreat of the state but is more appropriately a re-regulation (as others have said), a re-defining of state borders. Regulation is an expression of an underlying belief that the market works well in most cases, and only needs interference where it does not – externalities, monopoly etc. By contrast, a positive theory of regulation (Stigler) holds that regulation is not instituted for protection of the public, but is designed and operated to benefit industry (by keeping some out). In Europe, Majone argues that even if this were the case, to establish regulators, the normative public interest explanation has to be used as the justification.

One problem with regulators is that they are a "constitutional anomaly" that appears to violate separation of powers. They raise an independence- accountability problem: either they are part of state administration in which case they are not independent, or they are independent, but then accountability is problematic. The American experience suggests you need a combination of controls: legislative and executive oversight; procedural requirements, public participation, and substantial (i.e. on outcomes of decisions and not only process) judicial review. The charge that government by technocrats is democratically weak is countered by the claim that electoral

processes also suffer from problems. Given this, an open regulatory processes which also includes competent analysis may provide at least as much basis for accountability. Here the American Administrative Procedures Act provides a useful model.

Two concluding thoughts: deregulation is only a first step toward re-regulation, i.e. economic incentives vs. administrative rules. Second, despite need for multiple controls and need for transparency, old habits die hard, and new regulators are often designed as secretive and non-participatory, with authority continuing to rest with governments. So even post privatization there may be behind the scenes pressure; not much may change. Sum, shift to regulation is an attempt to improve procedural and substantive rationality, but does introduce many other changes in the role of the state.

Moran, M. (2002). "Understanding the Regulatory State." *British Journal of Political Science* 32: 391-413 (1-24).

Abstract: *A regulatory state is now commonly said to exist in a wide range of geographical and institutional settings: writers speak of a regulatory state in the US and in Britain; of the European regulatory state; and even of refinements like 'regulatory state inside the state'. This article is a review article on the regulatory state. It studies the changes in the characteristics of the state organization. The core question of the article is - If the regulatory state does indeed exist, is it truly something new, and is its novelty similar in all the various places where it has allegedly been observed?*

This is a sweeping review of literature on regulation that covers the different strands of debate both regionally and conceptually. The article starts with reviewing American literature, including public interest theories and capture theories, including their major strands. It then examines ideas of self-regulation and the tension between command and control and creativity in the regulatory process. He then shifts attention to Europe and the rise of the regulatory state associated with the European Union, which leads to a discussion trends in the UK, where regulation is most closely associated with privatization, particularly of utilities. The paper concludes with a discussion of the globalization of regulatory processes. This is a rich and complex paper, well worth reading carefully, although it operates at a high level of abstraction.

Parker, D. and C. Kirkpatrick (2004). "Economic Regulation in Developing Countries: A Framework for Critical Analysis". "Leading Issues in Competition, Regulation and Development". P. Cook, C. Kirkpatrick, M. Minogue and D. Parker. Cheltenham, Edward Elgar Publishing Limited: 92-113.

This paper attempts to structure a framework to understand economic regulation in a developing country context. It reviews various theoretical propositions on regulation, such as information asymmetry, embeddedness of regulators in local context, and capture and then examines these in a developing country context. The resultant proposed framework emphasizes:

- An assessment of regulatory goals, economic and social, and a definition of regulatory effectiveness
- An Assessment of institutional context: political, social, cultural, scope for independence, likelihood of capture, credibility and independence
- Nature and extent of information asymmetry
- Scope for effective competition
- Assessment on regulatory capacity

Thatcher, M. and A. S. Sweet (2002). "Theory and Practice of Delegation to Non-Majoritarian Institutions." *West European Politics* 25(1): 1-22.

This paper is the introduction to a special volume looking at emergence of regulatory institutions in Europe. It sets the stage by examining the concepts behind delegation of

responsibility to these institutions. Regulatory bodies are *non-majoritarian* institutions, which means that they are governmental entities that possess or exercise specialised public authority, but, are neither elected by nor directly managed by elected officials. The core question is: why do governments delegate responsibility to such bodies? The first step in answering this question is to look at it in a "principal-agent" framework. From this perspective, the benefits of delegation to the principal (here the government; the regulator is the agent) must be greater than the costs for it to have happened. So, the benefits have to be discovered. They include: resolving credible commitment problems (governments may not be trusted when they make a commitment such as to raise tariffs); overcome information asymmetries (regulators are better at extracting information from utilities than are governments); increase efficiency; deflect blame for unpopular policies. But principals most often do not completely control agents. Hence there is a "zone of discretion" that requires further exploration to understand how principals and agents interact in practice. Consequently, this functional logic (regulators are explained by their benefit to the government) does not provide a complete explanation. Instead, one has to look at sociological institutionalist theories. For example, these theories suggest that institutions spread through a form of "isomorphism" in short copying! This can be coercive in nature (where an outside actor dictates setting up of regulators). The kinds of issues for further research identified include: the relationship between elected officials and regulators within the zone of discretion; indirect effects of regulation, such as how it changes the strategic decisions of other actors; and how regulators forge legitimacy - whether through outcomes, or through strength of process.

b. Public Interest Theory

Touro Law Centre. (1876). "Munn V. Illinois. October Term". Retrieved 3rd March, 2005, from www.tourolaw.edu/patch/munn/.

This is a landmark judgement that set the basis in the US for independent regulation as a way of protecting the public interest. It is frequently invoked to explain a "public interest" perspective on regulation.

The case is based on Midwestern farmers who felt that they were being victimized by exorbitant freight rates they were forced to pay to the powerful railroad companies. As a result the state of Illinois passed a law that allowed the states to fix maximum rates that railroads and grain elevator companies could charge.

The salient issue was "whether the general assembly of Illinois can, under the limitations upon the legislative power of the states imposed by the Constitution of United States, fix by law the maximum of charges for the storage of grain in warehouses at Chicago and other places in the state having not less than one hundred thousand inhabitants, 'in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved'."

The Supreme Court of United States argued that "property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

The court upheld the Illinois law because the movement and storage of grain were considered to be closely related to public interest. This type of economic activity could be governed by state legislatures, where as purely private contracts could only be governed by the courts. "Their (warehouses') regulation is a thing of domestic concern, and, certainly, until Congress acts in reference to their interstate relations, the State may exercise all the powers of

government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction." The court held that laws affecting public interest could be made or changed by state legislatures without interference from the courts and for protection against abuse by legislatures, the public must resort to the polls, not the court.

c. Private Interest Theories

Stigler, G. J. (1971). "The Theory of Economic Regulation." *The Bell Journal of Economics and Management Science* 2(1 (Spring)): 3-21.

This is a seminal article that is most closely associated with the private interest theory of regulation. In contrast to the public interest view, the central thesis of the paper is that "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit." [3] The problem of understanding regulation then becomes reduced to "discovering when and why an industry (or other group of like-minded people) is able to use the state for its purposes, or is singled out by the state to be used for alien purposes." [4] However, to do so is costly for the group, and also imposes costs on society. From this starting point, he builds a theory of regulation that explains:

- Who will receive the burdens and benefits of regulation
- What form of regulation will take place
- The effects of regulation on the allocation of resources.

d. Institutional Approaches

Ayres, I. and J. Braithwaite (1992). "Responsive Regulation: Transcending the Deregulation Debate". Oxford, Oxford University Press.

This is a pathbreaking book that suggests there is a stalemate between those arguing for less government involvement in regulation, and those arguing for more social control. In their formulation, regulatory discretion leads to captures, regulatory rigidity leads to non-flexibility. The answer is "responsive regulation" which they conceptualise as an optimal amount of capture. They argue that a strict separation of public and private is neither desirable nor realistic. Instead, there needs to be openness in the regulatory process. They also envision a substantial role for public interest groups centrally in the regulatory process. PIGs would have full access and complete standing to intervene in regulation, thereby serving an accountability role. However, the PIGs would themselves have to be held accountable, through some measure such as competition among PIGs or something equivalent.

Braithwaite, J. (2005). "Responsive Regulation and Developing Economics, Global Economic Governance Programme".

This paper by an eminent Australian regulatory theorist, builds on his idea of responsive regulation (laid out in detail in Ayres and Braithwaite), and applies it to the developing world. He suggests that networks of govt and non-govt actors can reduce capacity deficits. He postulates emergence of a "regulatory society" model that bypasses the regulatory state. To carry this idea further he suggests that a "bounty hunting" approach, such as fees for successful private prosecutions, may have to be resorted to where state capacity is weak.

Carpenter, D. (2006). "Reputation and the Regulator. Frontiers of Regulation: Assessing Scholarly Debates and Policy Challenges", Bath, UK.

Note: PLEASE DO NOT CITE. THIS IS A CONFERENCE PAPER AND THE AUTHOR HAS ASKED IT NOT BE CITED WITHOUT PERMISSION. I SHARE THIS INFORMALLY FOR INFORMATION ONLY.

Both public and private interest views on regulation are limited. The public interest view is, in many ways, just a "straw-man" which is not really articulated as a cogent theory. The private interest views of Stigler (regulation designed for private benefit) and rent seeking theories has not held up empirically very well. Moreover, it is subject to circular logic -- the intended effects are deduced from an examination of which interests are likely to have benefited. Instead, the paper proposes a theory based on organizational reputation "a set of symbolic beliefs about capacities, roles and obligations of an org, where beliefs are embedded in audience networks." Reputation of regulatory agencies more generally affect whether and how regulators are set up, and the particular institutional structure and powers. Once established, regulatory behaviour can also be understood as a concern with shaping reputation. This view recognizes that individuals may strive for prestige as much as for money which leads to a study of the "arts of impression management" which leads to different approaches than a focus on profit maximization. For example, auto safety regulators may be driven by concerns over their reputation to regulate ex post (i.e. based on crash records) rather than on ex ante (e.g. design issues), because the former is more in the public eye, even though the latter may be more important. This approach, the author argues, provides a more realistic perspective on regulation. For example, it leads to attention to:

- politics over identity struggles (attacks on regulators may be about reputation and not money or power)
- reputation as asset value maintenance, i.e. regulators may be defensiveness and cautious about irreversible decisions in order to maintain their reputations
- familiarity and predictability become an important currency
- regulators may pay attention to networks as a way of reputation maintenance
- regulators may present different faces to different audiences in order to maintain reputations with different constituencies.

Hancher and M. Moran (1989). "Organizing Regulatory Space. Capitalism, Culture and Economic Regulation". L. Hancher and M. J. Moran, Clarendon Press.

This paper suggests use of the idea that regulation occurs in a "regulatory space" thereby trying to overturn ideas that regulation is a bilateral exercise between regulated and regulator. It also suggests that the idea that there should be an "inviolable space" of public regulatory authority insulated from capture ignores the reality that public and private are blurred. Most actors in regulatory processes are organizations which have acquired important attributes of publicness (e.g. water and electricity providers). The regulatory space calls attention to all the actors who are included in the space and their attributes, but also to those excluded and the institutional procedures that leads to their exclusion: "institutional procedure is the dominant influence in deciding who is taken into, or kept out of, regulatory space." 154 Several aspects shape regulatory space: national characteristics, historical timing (often crisis driven), organizational status of participants (individuals, associations, etc.), the role of copying in regulatory design, role of interdependent networks, and the nature of the issue or sector being regulated.

Prosser, T. (1999). "Theorising Utility Regulation." *The Modern Law Review* 62(2 (March)): 196-217.

Many claims about regulation, both in practical policy and in economic theory, are misleading; regulation is a much more complex task. Regulation has been seen as a temporary way out of protecting customers of monopolies and thus 'holds the fort' until market replaces it with the free play of competition; like the state in Marxist theory, regulation then withers away. In this article, Tony Prosser has discussed two possible theoretical approaches to regulation which, he considers, are inadequate to bear the weight of understanding, or reforming, regulatory practice. First approach is a bilateral or contractual model of regulation in which the primary

relationship is between regulator and regulated firm; a variant of this can be found in the economist's favourite critical model of 'capture theory'. The second approach is that of stakeholder theory with the regulatory agency seen as the centre of a web of relations in which the firm may be only one interest out of many, and this has something in common with the proceduralism popular in some legal writing.

2. REGULATORY GOVERNANCE

Anant, T. C. A. and J. Singh (2006). "Structuring Regulation: Constitutional and Legal Frame in India." *Economic and Political Weekly* 41(2): 121-127.

This paper seeks to examine how regulation works within the doctrine of separation of powers, with specific application to the Indian constitution. The operating framework is that when the state acts on a decision, it must do so in a way that minimizes "transactions costs" (a term from institutional economics that sees both economic costs and transaction or frictional costs in any economic action). Since regulation combines elements of all three branches of government -- legislative, executive and judiciary -- there can be the risk of under or over delegation of power to such bodies. The paper argues that there is only a "weak" separation, as in the Indian constitution, the risk of inefficient delegation (in a transaction cost sense) is high.

a. Investor Perspectives

Cubbin, J. and J. Stern (2005). "Regulatory Effectiveness and the Empirical Impact of Variations in Regulatory Governance: Electricity Industry Capacity and Efficiency in Developing Countries". Washington DC, World Bank: 1-45.

This paper assesses for 28 developing countries over the period 1980-2001 whether the existence of a regulatory law and higher quality regulatory governance are significantly associated with superior electricity outcomes. This paper seeks to conduct an empirical analysis of "regulatory governance." The authors' perspective is that the underlying reason for utility regulation is that "governments, particularly at certain times, have a strong incentive to behave in a shortsighted and populist manner that reduces welfare summed over a medium to long-term period." [5] Regulatory governance solves this problem through both formal measures in establishing regulators and an appropriate decision making framework to ensure consistency. Thus the authors closely follow the Levy Spiller framework.

The authors are concerned with whether better regulatory governance in developing countries:

- increases rated generation capacity per capita; and
- increases efficiency e.g. by increasing capacity utilization in generation and/or reduced transmission and distribution losses.

The empirical content is organized around an index consisting of:

- 'Whether the country has an electricity or (energy) regulatory law';
- 'Whether the country has an autonomous or a ministry regulator for electricity';
- 'Whether the country's electricity regulator is funded from license fees (or equivalent) or out of the government budget'; and
- 'Whether the staff in the electricity regulator can be paid as appropriate given skill needs and labour markets or whether staff have to be paid on civil service pay scales'.

Positive findings:

- The largest estimated regulatory effect is from having an electricity law, which is more than having autonomous regulatory agency.
- 'The estimated impact of regulation increases with experience- at least for the first 3-5 years or more'.

- 'The effects of the enactment of a regulatory law, of having an autonomous regulator, and licence fee funding of the regulatory agency were each positive and statistically significant'.
- 'Better overall country regulatory governance is a statistically significant determinant of generation capacity utilization'. This argument has weak evidence.
- 'Better the rule of law, the stronger the regulatory effect'. Weak evidence
- 'There is reasonable evidence that superior regulatory governance improves generation utilization rates'. [40]

Negative findings:

- There is no evidence on positive effect of any of the regulatory governance measures on T&D losses; and
- There is no supporting data set that 'competition and privatization were significant determinants of generation capacity either individually or when interacted with regulatory governance'. [41]

Levy, B. and P. T. Spiller (1994). "The Institutional Foundations of Regulatory Commitment: A Comparative Analysis of Telecommunication Regulation." *Journal of Law, Economics, & Organization* 10(2): 201-246.

This is a classic article which articulated the idea of "regulatory governance" as a separate category from regulatory incentives. Regulatory governance is understood as a function of political and social institutions. The key point is that regulation should be designed keeping these in mind. The paper develops a decision tree to do so. The framework also assumes that the object of regulation is only to restrain "arbitrary administrative action" for the purpose of attracting investment. Thus, only under some circumstances would an independent regulator make sense. In others, contracts, guarantees, or in the limiting case, public ownership and no regulation would be more appropriate. The authors apply the framework using data from various countries such as Argentina, Chile, Jamaica, Philippines and UK. The key insight of the paper is articulation of regulatory governance, definition of which continues to be guided by this paper. The weakness is a limited application to regulation from the perspective of investors.

Stern, J. and J. Cubbin (2005). "Regulatory Effectiveness: The Impact of Regulation and Regulatory Governance Arrangements on Electricity Industry Outcomes". Washington DC, The World Bank: 1-59.

The paper reviews a number of studies of the effectiveness of utility regulatory agency and governance arrangements for the electricity industry, particularly for developing countries. It discusses governance criteria and their measurement, both legal frameworks and surveys of regulatory practice. It also discusses the results from econometric studies of effectiveness for regulatory agencies in the electricity and telecommunications industries and compares these with the results from econometric studies of independent central banks and their governance. The paper concludes with a discussion of policy implications and also of priorities for information collection to improve understanding of these issues.

Stern, J. and S. Holder (1999). "Regulatory Governance: Criteria for Assessing the Performance of Regulatory Systems. An Application to Infrastructure Industries in the Developing Countries of Asia." *Utilities Policy* 8: 33-50.

Drawing on classic Levy and Spiller article which first separated regulatory governance from regulatory instruments, the authors come up with a six part framework for analyzing regulatory systems, three of which are institutional and three are practice related: clarity of roles and objectives; autonomy; accountability; participation, transparency and predictability. They then apply these qualitatively. Ironically Indian telecoms and electricity (Orissa) are closest to

best practice for the authors. They use the results to draw conclusions. Their effort is focused on understanding how all these factors affect amount of investment, which is the central independent variable. Thus the concern is less with public benefits, or public confidence, and more with the story about regulation as a precondition to investment.

b. Stakeholder Approach

Ackerman, J. M. (2005). "Social Accountability in the Public Sector: A Conceptual Discussion." *Social Development Papers: Participation & Civic Engagement*. Washington DC, World Bank.

This World Bank report outlines "social accountability" as a process of accountability over public institutions through civic engagement. The core is a requirement that public officials inform and justify their decisions, allow their behaviour to be monitored for results and are sanctioned according to performance. Citizen engagement can take the form of report cards, participatory budgeting, citizen score cards and so on. To apply this approach requires attention to both government and CSO capability. The report is quite sophisticated in its use of current social science ideas, discussing "state-society synergy", the importance of locating any such efforts within local historical and political context, and in particular the need for any social accountability measures to link with formal accountability arrangements and public sector rules. The report sets out a training module that could be used for social accountability.

Available online at:

http://siteresources.worldbank.org/WBI/Resources/Social_Accountability_in_the_Public_Sector_with_cover.pdf

Dixit, S., S. Wagle, et al. (2001). "The Real Challenge in Power Sector Restructuring: Instilling Public Control Through Transparency, Accountability and Public Participation (TAP)." *Energy for Sustainable Development* V(3, September): 95-102.

The authors argue that the root cause of the power sector crisis is "the lack of public control on the three critical governing processes in the sector, viz., policy- and decision-making, execution of the decision made, and regulation of this execution. This lack of public control arises from inadequacy and breakdown of mechanisms for ensuring transparency, accountability and public participation (TAP)." [95] This results in irrational decisions and lax implementation and regulation. The authors discuss this outcome using examples of Independent Power Producers, tariffs for irrigation pumpsets, and non-conventional energy sources. Failures of accountability are at the root of flawed outcomes such as these. The authors stress the distinction between investor oriented TAP provisions, around which the reforms are framed, and public or citizen oriented TAP provisions, which they argue are needed.

Dubash, N. K. (2006). "The New Regulatory Politics of Electricity in India: Embryonic Ground for Consumer Action." *Journal of Consumer Policy* 4(6).

The paper is organized around three "narratives" of electricity regulation. First, regulation as apolitical sphere based on the development of regulation at World Bank urging in Orissa. Second, the narrative of regulation as captured by government, in "taken for granted" ways such as through appointments processes. Supporting information for this narrative is taken from Prayas survey and EGI report. Third, if we accept that regulation and politics are inseparable, then one can view regulation as a contested political space. This leads to a discussion of the procedures that shape the political space, and how that political space is used. The paper concludes with the observation that regulation is currently balanced between taken for granted capture and becoming a new form of democratic politics.

Hira, A., D. Huxtable, et al. (2005). "Deregulation and Participation: An International Survey of Participation in Electricity Regulation." *Governance: An International Journal of Policy, Administration, and Institutions* 18(1 (January)): 53-88.

This paper starts from the premise that while regulation is justified for reasons of reducing transactions costs and ensuring stable market rules, consumers also need responsive regulation, and the public and collective interests also need to be taken care of. The authors discuss the rationale and arguments behind more participation in regulatory processes as a way of protecting collective and consumer interests. For example, expert decisions are not good enough because experts are not insulated from pressures of various sorts, participation helps build political sustainability, elite decision makers come from backgrounds with different knowledge frameworks and interests than do the majority of the public affected by decisions and so on. At the same time, participation brings many challenges and is not easy to accomplish. The core of the paper is an examination of seven different models of participation in different parts of the world, and their implementation in practice:

- Indirect (implicit) consumer representation model.
- Public hearing model.
- Formal representation by appointees or delegates (officials represent consumers on regulatory boards).
- Corporatist representation: (Specific NGOs or government-created consumers associations are supposed to represent consumers' interests.)
- Tort-based representation: (like US, consumers are able to use the legal system for harmful effects of regulatory decision-making).
- Public survey/research model (parts of the regulatory board have a mandate not only for hearing complaints and educating, but also for seeking input from the public, like California and Uruguay).
- Direct public participation (like in Dutch and Danish).

House of Lords (2004). "The Regulatory State: Ensuring its Accountability". S. C. o. t. C. House of Lords. I.

This UK document argues for three key processes for accountability:

- duty to explain
- exposure to scrutiny
- possibility of independent review

Other emphases are: effective processes; improving parliamentary scrutiny; and effective rights of appeal. One interesting concept articulated is 360 degree accountability to parliament, courts ministers, but also to interest groups, regulated companies, consumers, consumer representatives etc. (p. 20). The report is organized around regulation for what, to whom, accountability in practice, factors which can undermine accountability, improving structure, and independence and accountability.

Hutter, B. M. and J. O'Mahony (2004). "The Role of Civil Society Organisations in Regulating Business". London, ESRC Centre for Analysis of Risk and Regulation, London School of Economics and Political Science.

This paper reviews the growing role of CSOs in business regulation. It examines CSO actions in information gathering, standard setting and behaviour modification. A large part of the paper is devoted to assessing the potential of CSOs as a source of regulation. Issues include questions of representativity of CSOs, prospects of CSO capture (especially through funding), but also their advantages through innovation, and new thinking and broad information gathering.

Lodge, M. (2004). "Accountability and Transparency in Regulation: Critiques, Doctrines and Instruments". *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*. J. Jordana and D. Levi-Faur. Cheltenham, Edward Elgar Publishing Limited: 124-144.

No notes available

Prayas (2003). A Good Beginning But Challenges Galore. Pune, Prayas: 1-69.

A path breaking early analysis of Indian electricity regulators based on a self reporting survey. The survey looks at regulatory procedures, as well as details of regulatory orders to analyze the state of regulation in India. The report covers governance procedures as well as substantive decisions. A notable feature of the report is the commentary by three external senior power sector specialists.

Prosser, T. (2005). "Regulatory Contracts and Stakeholder Regulation." *Annals of Public and Cooperative Economics* 76(1): 35-57.

Viewing regulatory relations within a contractual principal-agent framework has two main problems. First, the framework is increasingly criticized even in the context for which it was intended - a company and shareholders. Second, the regulatory relationship has many multiple objectives and interests vs. the single profit maximizing interest of a company. Thus there are all sorts of problems applying the regulatory contract approach. One insight is that since contracts are socially embedded, the degree of trust, mutual understanding etc are important to how the contract works out. Hence the interesting part of the contract is ex post negotiation, which leads to the idea of "relational contracts" which set out conditions of interaction rather than a definite outcome. However, if contracts lose the certainty dimension, they become much less attractive as a solution to regulatory problems.

In the UK, early regulatory efforts were modelled around some sort of contractual understanding. This proved inadequate since regulatory duties set a wide range of goals, requiring regulators to balance competing interests and views. The regulator began consulting widely to balance multiple goals.

The author suggests a stakeholder model in which the regulator is surrounded by a web of interests. This is an open and plural model of regulation. This approach requires attention to regulatory procedures to allow "common development through discursive processes" of regulatory solutions. But there still needs to be a basis to determine who should have the opportunity to participate, which requires substantive guidance in matters such as social regulation.

USAID (2005). "The Nexus between Energy Sector Reform and Democracy & Governance", United States Agency for International Development: 1-53.

The paper seeks to flesh out the relationship between energy sector reforms and democratic governance principles. The paper states that 'energy sector reform divorced from democratic governance will not succeed in a non-authoritarian country'. "Energy sector reform needs be designed to draw upon lessons from democratic governance, particularly lessons in effective public interaction, in the creation of checks and balances against abuse of authority, in transparency and in accountability. In turn, successful energy sector reform offers broad support to democracy, both through the stability that comes with robust economic growth and through 'creating opportunities for participation, accountability and transparency that advance the larger transformation process toward more democratic governance.'" [6]

The paper reveals three significant differences between the evolution of the regulated, privately owed energy sector in the US and developing countries:

'Regulation in US emerged in part as a populist response to abuses by privately owned monopoly, whereas those in developing countries flowed from conditions imposed by external donors'.

'The early actions of US regulators tended to benefit customers (by lowering tariffs) and therefore to be popular with the general public whereas the regulators in most developing countries are expected raise tariffs during the first years of operation'.

In developing countries where rates had been held far below costs, the creation of nominally independent regulators was intended as much to protect the utilities from politically motivate decisions as it was to protect the general public from abuse by monopoly service providers'. [10]

The link between democracy and energy sector reform is discussed with reference to investment, access and tariff reform. A regulator can play a useful role in all these cases. But "what is needed is a development of 'second generation' approaches, that is, paying attention to the interplay among government, market and civil society in designing regulatory institutions and strategies." [18]

To conclude, the lessons learned from the US experience, coupled with the experience of two decades of energy sector reforms worldwide, provides for some general principles and best practices: "These best practices consists of including the public early and often, protecting societal values during the restructuring process, and mitigation of harmful social impacts of restructuring...Donors should consciously incorporate democratic governance principles of transparency, accountability, efficiency, and rule of law into all energy sector reform programs...Successful energy sector reform requires that donors and host governments pay attention not only to strengthening the energy sector, but also to strengthening the institutions of democracy, such as legislatures and courts, so that governments are able to make credible commitments over time and thus attract private sector investment." [45] And finally educating public and civil society building should be emphasized.

Wood, D. (2005). "Taking Power: Social and Political Dynamics of the Energy Sector." International Conference on "New Frontiers of Social Policy: Development in a Globalizing World", Arusha, Tanzania.

Through a discussion of case studies on electricity reform, the author seeks to examine closely the concept of "public participation." She argues that public participation is too often understood narrowly on terms of a consumer orientation, whereas the requirements of a reform debate and the issues at stake require a broader conception of public participation within the framework of citizenship and rights. For example, she argues that civil society dissent over electricity reforms have to do with tariff issues, unfair power purchase deals and other such issues that cannot simply be addressed by opening customer service centres. Based on this line of thinking, she argues for greater democratization of reform processes, but argues that democracy must be conceived of in a far larger framework than voting alone. Establishing such a broader democratic process needs to be at the heart of public participation. This paper is also noteworthy since it is written by a staff member of the US Agency for International Development, and is in part an internal critique of the dominant mode of donor functioning.

3. SOCIAL ISSUES

Amann, E. (2006). "Regulating Development: Evidence from Africa and Latin America". Northampton, MA, USA, Edward Elgar.

Compilation of cases focusing on Brazil, South Africa and to some extent other African countries. Combination of analysis of WTO and other international effects, domestic case studies, and multiple sectors: telecom, water, electricity, steel etc. Some papers quantitative with a focus on economic impact, and others more qualitative. One of the few efforts to compile LDC experience with regulation. (Book on order)

Kessler, T. (2005). *Social Policy Dimensions of Water and Energy Utilities: Knowledge Gaps and Research Opportunities*. International Conference on "New Frontiers of Social Policy: Development in a Globalizing World", Arusha, Tanzania.

Argues for reducing the distinction between "social sector" issues such as health and education and utility sectors such as water and electricity since considerations such as poverty reduction, inequality, and exclusion make utility sectors heavily socially relevant.

Suggests a three part analytic framework for social development of utilities:

- Policy framework: legal framework, including scope for participation measures, extent of commoditization vs. social good, approaches to pricing and subsidy provision
- Conditions for accountable governance: asymmetric information, monitoring, issues, regulatory attributes such as accountability, independence, enforcement, ability to analyse contracts
- Mechanisms of enforcement: participation provisions, empowerment provisions, capacity, including of local government, focus on scale of regulation.

Owen, G. (2006). "Sustainability Duties: New Roles for UK Economic Regulators." *Utilities Policy* 14(2).

This paper examines how a growing sustainable development mandate is managed in UK water and electricity regulators. On social issues, the energy regulator has a clear role in pricing policy to help those in "fuel poverty" i.e. low income groups. On environment, there is a dedicated environmental agency and the water regulator has to coordinate with it in implementation. In water, the responsibility for environment is left vague, so there is a gap with no one taking responsibility.

Prosser, T. (2000). "Public Service Law: Privatization's Unexpected Offspring." *Law and Contemporary Problems* 63(Autumn): 63-82.

The paper argues that while privatization in the UK was intended to be accompanied by minimal legal controls and maximal use of competitive measures, an ironic outcome of the process has been to strengthen public service law. Public service law is law "designed to make basic public services available to all citizens without discrimination." It can include modification of market operation.

New regulatory bodies, as a result of various political compromises, have included some types of social regulation within their powers -- number of public phone booths, special tariffs for low income users, safeguards against disconnection and so on. Through these efforts, regulators have brought into the open questions about how best to safeguard the poor, in a manner that implicit and non-transparent efforts to do so under public ownership did not accomplish. So, while regulators were meant to provide investor comfort, they also unintentionally created basis for a body of public service law.

At the same time, regulators were hampered by perceptions that their meddling in social issues was undemocratic. This was addressed by a new Utilities Act of 2000 (by a new Labour govt.) that called for explicit government statutory guidance to regulators on social issues and where significant financial implications are involved, new primary legislation. The new Act gives regulators a single duty: to protect consumers. It also specifies where ever possible this is to be done through promoting competition.

The paper contrasts this approach to that in France, which has a very different tradition. Public service is protected in the Constitution through a statement that any enterprise which has the character of a public service is to be public property. In practice, this has been exercised through public ownership, or publicly controlled concessions. It is not inconsistent with incorporating social principles into functioning of private enterprises. How the notion of "public service" is to be worked out in practice has been actively debated at the EU. The debate has

turned on an open ended conception of public service as in France, and a more limited notion of universal access.

Ironically, post privatization, the UK has moved closer to a European continental view of public service through discussions on regulatory role and function.

Sclar, E. (2005). "Public Responsibility for Public Services: Moving Beyond the Limits of the Privatization Debate". *New Frontiers of Social Policy: Development in a Globalizing World*, Arusha, Tanzania, World Bank.

No notes available

Smith, W. (2000). "Regulating Infrastructure for the Poor: Perspectives on Regulatory System Design. *Infrastructure for Development: Private Solutions and the Poor*". London, UK, The World Bank.

This paper aims to develop a particular look at what regulation from the view of supporting the poor would be like. The particular challenges for addressing the process access, affordability, constrained capacity, political risk environment. The general message is that intervention is harder to achieve in the context of poor capacity and weak regulatory environment and therefore result in unintended effects. So the author argues for a lighter regulatory hand in such situations. Thus, broader and less restricted entry is likely to more benefit the poor, while price regulation often does not include those outside the formal sector and so excludes the poorest. So the approach advocated is more competition and lighter touch regulation. The implications for regulatory bodies themselves are the normal ones of independence and expertise. The implications for regulatory process is that engaging stakeholders becomes especially important, to understand needs and priorities of the poor, engage broad groups and delegating to appropriate levels.

4. EMPIRICAL STUDIES OF INTERNATIONAL EXPERIENCE

Amann, E. (2006). "Regulating Development: Evidence from Africa and Latin America". Northampton, MA, USA, Edward Elgar.

A compilation of cases focusing on Brazil, South Africa and to some extent other African countries. Combination of analysis of WTO and other international effects, domestic case studies, and multiple sectors: telecom, water, electricity, steel etc. Some papers are quantitative with a focus on economic impact, and others more qualitative. This is one of the few efforts to compile LDC experience with regulation.

Dubash, N. K. (forthcoming). "Regulation as an Arena for Social Policy: Examples from Electricity in Asia". "New Frontiers in Social Policy". T. Kessler, A. Dani and E. Sclar. New York, Palgrave Macmillan.

The paper argues that electricity regulators are a possible new arena for social policy. During the 1990s, the "social compact" that guided electricity has given way to a commercial logic which has left no space for the unavoidable social components of electricity. Regulation is one potential space through which social policy can be returned to consideration of electricity as well as sectors such as water. But to do this requires creation of a democratic political space and appropriate procedures. The paper draws on Electricity Governance Initiative data to examine how far regulators in various Asian countries can be considered viable spaces for social policy.

Eberhard, A. (2005). "Regulation of Electricity Services in Africa: An Assessment of Current Challenges and an Exploration of New Regulatory Models". "Towards Growth and Poverty Reduction: Lesson from Private Participation in Infrastructure in Sub-Saharan Africa", Cape Town, South Africa, The World Bank.

A review of regulatory experience in Africa, with a focus on electricity but more general applicability to other sectors.

Issues:

- lack of regulatory commitment leading to political expediency and limited independence
- lack of transparency in practice
- institutional fragility and weakness as evidenced by high turn over of members and management
- regulatory decisions compromised because of lack of competence (greater the discretion allowed the regulator, higher the need for capacity)
- regulatory jurisdiction curtailed by contracts especially in privatisation cases

Main theme: effective regulation needs strong commitment and strong capacity. Where one or both are missing, it may be wiser to limit regulatory discretion through contracts. So the idea is to get a good fit to local circumstance through a mix of regulatory discretion and regulatory contract. This is a message the World Bank is also shifting towards.

Intermediate and hybrid options to deal with the weak commitment/weak capacity situation include:

- regulation by contract: pre-specifying regulatory details such as tariff setting formulae
- contracting out regulatory functions to external contractors
- setting regulators as advisory bodies only
- bundling together regulators for regions so as to maximize capacity
- building demand side for reg transparency
- mandated public reviews of regulators
- partial risk guarantees for regulators

Conclusion: explore transition and hybrid models for developing countries

Hira, A., D. Huxtable, et al. (2005). "Deregulation and Participation: An International Survey of Participation in Electricity Regulation." *Governance: An International Journal of Policy, Administration, and Institutions* 18(1 (January)): 53-88.

This paper starts from the premise that while regulation is justified for reasons of reducing transactions costs and ensuring stable market rules, consumers also need responsive regulation, and the public and collective interests also need to be taken care of. The authors discuss the rationale and arguments behind more participation in regulatory processes as a way of protecting collective and consumer interests. For example, expert decisions are not good enough because experts are not insulated from pressures of various sorts, participation helps build political sustainability, elite decision makers come from backgrounds with different knowledge frameworks and interests than do the majority of the public affected by decisions and so on. At the same time, participation brings many challenges and is not easy to accomplish. The core of the paper is an examination of seven different models of participation in different parts of the world, and their implementation in practice:

- Indirect (implicit) consumer representation model.
- Public hearing model.
- Formal representation by appointees or delegates (officials represent consumers on regulatory boards).
- Corporatist representation: (Specific NGOs or government-created consumers associations are supposed to represent consumers' interests.)
- Tort-based representation: (like US, consumers are able to use the legal system for harmful effects of regulatory decision-making).
- Public survey/research model (parts of the regulatory board have a mandate not only for hearing complaints and educating, but also for seeking input from the public, like California and Uruguay).

- Direct public participation (like in Dutch and Danish).

Jamison, M. A. (2004). "Leadership and the Independent Regulator." Retrieved 29th March, 2005, from <http://bear.cba.ufl.edu/centers/purc/publications/documents/leadership.pdf>.

This paper is written by a practitioner and head of one of the major training institutes for regulators. The paper presents a pragmatic view on concerns such as regulatory independence. He notes that it is impossible for the regulator to avoid being or being perceived as a player, in that his or her decisions affect interests and outcomes. He advocates a regulator being highly informed of the context within which he works, and actively work to shape and mould that context. The core message is that "an independent regulator simply implements established laws and policies". [11] "But we all know that this extreme is unworkable; regulators around the world play policy roles, whether formally or informally. But the more active the regulator is in being a player in the policy arena, the more he or she is like a political government official and the more the regulatory agency is like a ministry, this creates a paradox that is hard for the regulator to reconcile." [11]

Morgan, B. (2006). "Emerging Global Water Welfarism: Access to Water, Unruly Consumers and Transnational Governance". *Consumer Cultures, Global Perspectives*. F. Trentmann and J. Brewer, Oxford: Berg Press.

The paper argues for a political reading of the "routinization" of various decisions around water, suggesting that these routines carry political salience. For example, charging for water on a volume basis may seem ordinary, but is extraordinary compared to a history of flat rate or free water delivered through a tap. Similarly, regulatory and other routines create political space for some and exclude others, which is why they need to be paid attention to. The paper explores this theme through cases of consumer activism around water in New Zealand and South Africa.

Morgan, B. (2006). "Global Business, Local Constraints: The case of Water in South Africa". "Making Global Regulation Effective". N. Woods, Oxford University Press.

This paper examines how global water companies are faced by changing local, national and global contexts in South Africa's water sector. The case is interesting because in a post-apartheid context, the state is unusually supportive of access rights, and social movements are highly mobilized. However, the global framework is also changing, with an emerging corporate welfarism in water provision. The state is unusual because it has supported a constitutional right to water. Institutionally, they have chosen to implement this WITHOUT a water regulatory agency but instead through control at the municipal level through a separate non-profit company. So far, this agency operates on terms that are in keeping with the global corporate norms, and operates in a transaction to transaction way rather than based on a system of political accountability. Perhaps as a result, private participation has increased in South Africa. However the pattern of policy development that followed was a back and forth between greater transactional safeguards tempered by soft law or policy initiatives to soften any side-effects. The result is contradictory signals. At the same time, both adversarial and cooperative forms of local politics have been developing. The paper develops all three themes in a very nice synthetic account of recent South African water politics. The author concludes. "we are reminded that debates about governance are increasingly proxy for debates on the appropriate limits of market capitalism."

Morgan, B. (2006). "Turning Off the Tap: Urban Water Service Delivery and the Social Construction of Global Administrative Law." *The European Journal of International Law* 17(1): 1-32.

Global administrative law in water is being constructed through formal and informal participation at both local and global levels. There is an iterative movement between formal legal

processes, and informal political modes such as protest and political negotiation. This iterative movement is shaping emergent global administrative law around water. This argument is developed through case studies of Argentina and South Africa.

One important insight of the paper is the formulation of administrative law as a contingent political opportunity structure: it shapes who wins and loses political contexts, but not in predictable ways. Sometimes it buttresses power, others it weakens it. The key issue that emerges is administrative law shapes who gains access to decision making processes and under what conditions.

International processes examined include international investment protection, the ISO process for water standard setting, and the efforts to formulate a human right on water at the UNECOSOC. These global efforts are juxtaposed against on the ground struggles and debates in Argentina and South Africa.

Nakhooda, S., S. Dixit, et al. (2007). "Empowering People: A Governance Analysis of Electricity". Washington DC, World Resources Institute.

This is a summary report of an attempt to assess governance processes in electricity -- legislative, executive and regulatory -- in four Asian countries including India. The underlying concept behind the report is that better processes -- more transparent, participatory, accountable and backed by adequate capacity -- are likely to improve decisions in the sector. Based on this, the authors place emphasis on the procedures through which decisions are made. The study is based on a "toolkit" that provides a checklists of processes to examine. The toolkit itself may be a useful tool for NGOs who are trying to understand the underlying governance processes in the electricity sector.

Owen, G. (2006). "Sustainability Duties: New Roles for UK Economic Regulators." *Utilities Policy* 14(2).

This paper examines how a growing sustainable development mandate is managed in UK water and electricity regulators. On social issues, the energy regulator has a clear role in pricing policy to help those in "fuel poverty" i.e. low income groups. On environment, there is a dedicated environmental agency and the water regulator has to coordinate with it in implementation. In water, the responsibility for environment is left vague, so there is a gap with no one taking responsibility.

Palast, G., J. Oppenheim, et al. (2003). "Democracy and Regulation: How the Public can Govern Essential Services". London, Pluto Press.

This book argues that the model of electricity competition is a false hope, and that the best way forward lies in strengthening regulatory systems. In particular, the authors call for the sort of highly transparent and open systems, which although they involve substantial transactions costs, have proven themselves in a US context. The book is devoted to making this argument, mostly through detailed explanation of how the regulatory process works in the US. It also includes chapters on developing country experience, which aim to demonstrate that the trends toward unbundling and competition in the electricity sector may not be as useful as pursuing an approach toward strengthening regulation.

Concept Note & Invitation Letter

Concept Note for the National Consultation on Regulation and the Poor¹

Summary and Objective of the Consultation

Independent regulatory agencies are spreading in India as a new form of economic governance. While these agencies have been set up to improve economic decision making, there are several questions about both regulatory design and implementation. These questions include whether they have the necessary authority to govern both public and private utilities effectively, whether they can and should only be restricted to economic decision-making, and whether and how they are accountable to the public. The last concern has led to a debate within the political establishment on whether it is necessary to limit regulatory independence as well as authority. Where regulatory bodies have been created, they have introduced substantial changes in decision making process, some of which create opportunities for citizens and civil society. With the prospect that regulation in sectors such as electricity is here to stay, and may even expand into new sectors such as water, this National Consultation aims to reflect on the potential of regulatory agencies in these two sectors as new instruments of democratic governance, and on their potential as institutions to safeguard and protect the interests of the poor.

What is Independent Regulation?

In many countries around the world, governments have begun delegating certain elements of their decision-making authority to separate agencies. These agencies are meant to function independently of the executive arm of the government. In the electricity and water sectors, these decisions can include licensing of service providers, setting tariffs, reviewing and governing the performance of service providers, setting policies and rules for functioning of the system, and setting and monitoring rules for consumer feedback. As this list suggests, independent regulatory agencies (IRAs) can be quite powerful.

But why was it necessary to delegate these functions to a separate agency? The main theoretical basis for IRAs, in many countries, is that independence from the executive branch of government is considered necessary to make sure that important decisions such as setting of tariffs are not made on an arbitrary or irrational basis, and particularly that these decisions are not made under political pressure to benefit some interest or the other. Instead, these decisions are intended to be made in an objective way based on technical skills available to the regulator.

This requirement of objective rather than arbitrary decision making has been seen as a pre-requisite for attracting private sector investment. Without assurance that key decisions such as tariff setting and approval of investments will not be arbitrary, it has been assumed the private sector will not enter a country. Hence, the rationale for independent regulatory agencies has historically been closely tied to the presumption that private ownership and participation will grow in regulated sectors.

To sum up, IRAs are intended to be technical skill-based specialized agencies to make economic decisions on seemingly objective grounds, in large part to send signals to the investors that their profits will not be affected by arbitrary decisions. In practice, this simple idea behind regulatory bodies is open to question on several grounds. Before discussing these complexities, we briefly summarize the recent past of electricity and water regulators in India.

¹ Prepared by Dr.Navroz Dubash and Prayas, Pune for the 'National Consultation on Regulation and Poor'
- New Delhi, July 12-13, 2007

Independent Regulation in Electricity and Water in India

Electricity was among the first sectors to be subject to independent regulation in India. In the mid-1990s, state-level electricity regulation was introduced in Orissa as part of a larger effort to “unbundle” (separate into generation, transmission and distribution entities) and privatize the existing Orissa State Electricity Board. This program was supported by the World Bank, and largely designed by donor-funded consultants. The underlying logic closely followed the logic described above – reform was aimed at attracting private investors, who would not enter without the creation of an independent regulator to take key decisions.

Although the track record of the Orissa reforms was mixed at best, other states followed rapidly, and the adoption of the IRA model was enshrined at the central level in the Electricity Regulatory Commissions Act (1998) and further endorsed in the Electricity Act (2003). It is worth noting that although regulation accompanied privatization in Orissa, in all other states (except Delhi) IRAs have been created to regulate publicly owned companies with the primary intent of rationalizing subsidy and tariff as well as investments in the sector. Hence, this is a significant departure from the accepted wisdom on regulation.

This regulatory replication may be about to be repeated in the water sector. It remains to be seen if water sector regulation is also driven by a perceived need to separate out the political content of decisions. Maharashtra has been the first state to introduce a water regulator, and many other states are debating similar measures. It is extremely important to understand the lessons from the electricity sector before embarking on replication of regulators in the water sector.

Why are Independent Regulatory Agencies Important?

Citizens and civil society groups interested in greater democracy and improved pro-poor outcomes need to understand the importance of IRAs for at least three overarching reasons.

First, regulation has a growing role in governing key sectors such as electricity (and potentially also water), but there are many reasons to doubt the full effectiveness of regulatory bodies. Past work on regulation suggests that there are many flaws in Indian electricity regulators, including problematic selection processes, weak capacity, a tendency to be reactive rather than proactive, a failure to aggressively monitor public or private companies in their implementation of regulatory directives or quality of service and so on. In particular, it suggests that simply creating regulators is not sufficient to remove political interference and considerations in decision making. This record suggests that in absence of attention, scrutiny and concerted action by civil society groups, regulators could become increasingly ineffective at their core task, which will place burdens on society as a whole, and may place the greatest burden on the poorest, who pay disproportionately more for basic services as a percentage of their income. *Attention to regulation is important because where regulation has been introduced, more effective governance will require public scrutiny and participation in regulatory processes.*

Second, regulation may lead to an artificial distinction between economic and social policy, shrinking the space available to articulate social concerns. As discussed earlier, regulators are meant to make economic decisions on technical grounds alone. Larger social and environmental considerations, as well as questions of economic policy, are meant to be dealt with at the policy level rather than the regulatory level. In practice, this separation between economic and social concerns is difficult to bring about. For example, the removal of cross subsidies in electricity -- industrial users subsidizing residential and agricultural users -- is seen as an economic measure,

but it has considerable social implications. Governments may seek to avoid grappling with these challenging questions by handing them over to regulators. But regulators have a mandate only to address economic concerns. As a result, the available space to discuss and debate social concerns becomes smaller. *Regulation is important because many social issues may be affected by regulatory decisions.*

Third, regulation raises complex problems of democratic accountability. Regulatory agencies are not directly elected, function independent of the executive, and are only indirectly and loosely accountable to the legislature. It is not fully clear how they are to be held accountable for their actions. At the same time, regulatory agencies have introduced standards of transparency through information disclosure and participation through public hearings that are far beyond the decision-making processes that existed in power or water ministries. Existing studies suggest that while these procedures are promising, they are far from being fully implemented. If these measures were more fully implemented and fully utilized, regulatory agencies could emerge as a forum for greater direct accountability to the public, although one with less accountability through the electoral process. *Regulation is important because it represents potentially new forms of democratic governance.*

How could Activists/Academics/NGOs Engage Independent Regulatory Agencies?

The discussion above suggests that the model of an apolitical and technocratic regulator is not a realistic guide to how regulation works in practice. While regulation was initiated as a way of devising an apolitical mechanism of decision-making to reassure investors, in practice regulation has not changed the political influence over decision making. It has, however, forced decision-making into the open. To explore the potential of new regulatory institutions for social change it is worth further exploring three potential areas of citizen engagement.

First, citizen groups could use the regulatory process to scrutinize and influence economic decisions that indirectly have social effects. To do so would require the technical skills and knowledge to scrutinize regulatory decisions, backed by grass-roots networks to identify key issues. Examples of relevant issues include:

- Approval of Power Purchase Agreements (PPAs): PPAs comprise the majority of the cost of power to the consumer. These purchase agreements were previously negotiated in non-transparent fora. With regulatory scrutiny, consumers have an opportunity to comment and identify weak areas in regulatory oversight. There have been a few instances of gains for consumers in PPAs as a result of regulatory scrutiny when backed by citizen engagement and pressure;
- "Open access" in electricity: Open access policies affect the terms on which whether industrial and other large consumers can buy electricity directly from private generators. However, the details of these terms could affect the larger public, and particularly those receiving subsidies. While packaged as an economic issue, this is a deeply political and social issue. Public involvement in this regulatory decision could help shape the outcome with impact for lower income groups.
- Quality of Supply & Service (QoS) of Electricity Distribution utilities: Electricity Regulators have prepared regulations on QoS of distribution utilities with benchmarks of performance and reporting procedures. Regulators are expected to monitor these towards improving the QoS. Public involvement could bring out the possible inequalities in implementing QoS (urban Vs rural; poor Vs rich etc) and build up pressure to improve the QoS for all, over a period of time.

Second, regulation could be used more directly as an instrument of “social policy”. Since various social issues such as rural electrification, allocation of water, and maintenance of cross subsidies in both electricity and water have both social and economic content, regulatory agencies could become the arena to debate and discuss these issues. At the moment, these issues are inadequately discussed in legislatures, and policy formulation on these issues is entirely non-transparent. With adequate citizen engagement, these regulatory bodies could become the place for promotion of these agendas.

Third, the potential for regulation to serve as a more democratic space for decision-making could be explored further and strengthened. Past studies suggest that robust procedures exist for regulatory transparency, but these are insufficiently utilized. Slow improvements have been won over time in electricity regulation. It is important that these gains be reflected in the initial stages of the design of water regulators. Currently, the new water regulatory system that is being conceived in some states is being done in a very non-transparent manner. Activists and researchers need to come together to influence the current processes and ensure that the new regulatory structures and procedures would be adequately transparent, accountable, and participatory, and thus open to influence of citizens and civil society organizations. There is an urgent need for concerted efforts to make the best use of this window of opportunity in the initial period, before the new system is formed and consolidated.

Key Questions for the Consultation

The following are some initial questions for discussion at the workshop, although other questions will be added based on participant feedback.

- What are the greatest costs and risks of adopting a regulatory model?
- What are the critical governance improvements brought about by regulation?
- Has regulation proved to be a good model, on balance, for improving governance in the electricity sector?
- Is regulation an appropriate and realistic model for improving governance in the water sector?

Prayas

Amrita Clinic,
Athawale Corner
Karve Road, Pune – 411 004

June 4, 2007

Dear Sir/Madam

Subject: Invitation for the **National Consultation on 'Regulation and Poor'**

Prayas, Pune in association with Dr. Navroz Dubash¹ is organising a National Consultation on the theme 'Regulation and Poor' at New Delhi, on July 12-13, 2007. This consultation will bring together practitioners and analysts interested in applying the theme in the Electricity sector and exploring its prospects for the Water sector. Prayas Energy Group has a history of extensive work in power sector, on issues ranging from policy, regulation, utility functioning and governance. The Resources and Livelihoods Group of Prayas has worked with grass-root groups, carried out advocacy as well as research on range of issues related to livelihoods of underprivileged sections. Navroz K. Dubash has extensive research and analysis background in governance with a recent focus on regulation in the public interest.

Regulation as a new institution of governance

Independent regulatory agencies are spreading in India as a new form of economic governance. While these agencies have been set up to improve economic decision making, there are several questions being raised. These include whether they can achieve this task, whether they can and should be restricted to economic decision-making alone, and recently, political establishment is voicing demand to limit the regulatory independence as well as authority. Where regulatory bodies have been created, they have introduced substantial changes in decision making process, some of which create opportunities for citizens and civil society. With the prospect that regulation in sectors such as Electricity is here to stay, and may even expand into new sectors such as Water, this consultation aims to reflect on the potential of regulatory agencies in these two sectors as new instruments of democratic governance, and on their potential as institutions to safeguard and protect the interests of the poor.

Independent Regulation in Electricity and Water in India

Electricity was among the first sectors to be subject to independent regulation in India starting with Orissa in the mid-1990s. This program was supported by the World Bank, and largely designed by donor-funded consultants. Reform was aimed at attracting private investors, who would not enter without the creation of an Independent Regulatory Authority (IRA) to take key decisions.

Although the track record of the Orissa reforms was mixed at best, other states followed rapidly, and the adoption of the IRA model was enshrined at the central level in the Electricity Regulatory Commissions Act (1998) and further endorsed in the Electricity Act (2003). It is worth noting

¹ Two groups of Prayas - the Energy Group and the Resources and Livelihoods Group – are involved in this event. Dr. Dubash is with the Centre for the Study of Law and Governance, JNU, New Delhi.

that although regulation accompanied privatisation in Orissa, in all other states (except Delhi) IRAs have been created to regulate publicly owned companies with the primary intent of rationalising subsidy and tariff as well as investments in the sector.

This regulatory replication may be about to be repeated in the Water sector. It is to be seen if Water sector regulation is also driven by a perceived need to separate out the political content of decisions. Maharashtra has been the first state to introduce a Water regulator, and many other states are debating similar measures. It is extremely important to understand the lessons from the Electricity sector before embarking on replication of regulators in the Water sector.

Why this National Consultation?

There are currently many citizens' groups, academics and activists working on issues of Electricity and Water, who bring detailed field level knowledge and innovative ideas about promoting a social agenda. There is a far smaller group of individuals and activists who have directly engaged the regulatory process. This consultation aims to bring these groups together to explore whether the work of social activists could be strengthened by engagement with regulation and those working on regulation could deepen their own knowledge. It also hopes to add to the core of participants committed to a more democratic regulatory process.

The objectives of the consultation are:

- Broaden and deepen the understanding on the scope, potential and limits of regulation as an institution of governance. This will be based on sharing the theory and practice of regulation.
- Share information on concerns in Electricity and Water sectors with respect to issues relating to sector's governance that are affecting the poor.
- Explore the potential of regulation to address these concerns, towards understanding regulation as an instrument of social policy.
- Consolidate ideas on strategies and potential work by different actors on 'regulation for poor' in the Electricity and Water sectors. Begin with the lessons from Electricity sector and debate the direction of Water sector regulation.

Organisation of the National Consultation

The consultation is planned as an intense interactive event involving practitioners and analysts working on regulation and policy aspects in Electricity and Water sectors. A Concept note on the theme 'Regulation and Poor' prepared by the organisers will be distributed to the participants few weeks before the event. Each participant is requested to write a 3-4 page Issues note that specifies their own work, concerns in Electricity or Water sector, and understanding of their linkage to regulation. All these notes will be circulated to all the participants at least one week before the event. A short paper on theoretical ideas in regulation with accompanying literature review prepared by the organisers will also be circulated to the confirmed participants.

The Consultation will begin with presentations of key insights and points raised by the Issues notes. There will be presentation and discussion on the theoretical context of regulation world-wide and application to India. Panel session, with senior analysts and officials participating as panellists, will focus on understanding how regulation works in India. Facilitated discussion and break-out sessions will help to explore regulation as a governance institution and regulation as a

potential instrument of social policy. Discussions will be aimed at moving toward a proactive agenda on issues of 'Regulation and the Poor' in Water and Electricity Sectors in India.

Key Dates

- Confirm Participation: June 15, 2007
- Organisers send the concept note: June 22, 2007
- Participants send their Issues note: June 29, 2007
- Organisers send the short paper: July 6, 2007
- National Consultation at New Delhi: July 12-13, 2007

Venue & Accommodation

Venue: India International Centre, Max Mueller Marg, New Delhi, 110003. Accommodation and travel support will be provided to those requiring it.

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We sincerely hope that you will be able to participate in this event and look forward to your early confirmation.

Thanking you
Yours sincerely

Girish Sant

Subodh Wagle

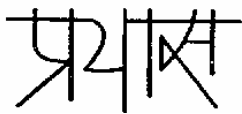
Navroz Dubash

Proceedings of the

National Consultation on Regulation and the Poor in Electricity and Water Sectors

The Prayas Energy Group, Prayas Resources and Livelihoods Group and the Centre for the Study of Law & Governance, JNU jointly organised a National Consultation on Regulation and the Poor at New Delhi on 12-13, July 2007. The consultation was an effort to bring together various academic and civil society groups to broaden the understanding of the scope, potential and limits of regulation as an institution of governance. One of the objectives was to consolidate ideas on strategies for different actors on the issue of ‘regulation and the poor’ in the electricity and water sectors. There were around 50 participants in the Consultation – working on electricity and water sectors and coming from 7 States. There were two panel sessions in which senior analysts and bureaucrats shared their views.

This Report captures the key aspects of the Consultation. It contains the final Agenda, List of participants, Report of the Consultation, Presentations, Handouts, Issue notes prepared by participants, Background paper on ‘Theory of Independent Regulation’, Annotated bibliography on Independent regulation, Concept note and the Invitation letter.



आरोग्य, ऊर्जा, शिक्षण आणि पालकत्व
या विषयांतील विशेष प्रयत्न

