

# ADVOCACY AND REGULATORY MECHANISM ON DEVELOPMENT ISSUES

*M.M.K. Sardana*<sup>\*</sup>

System of regulatory mechanism in the industry and service sector, though of recent origin in India, has come to stay. It began taking shape in the nineties; it has since grown immensely and reached its present form. Earlier, the Government used to formulate policies, issue licenses, regulate activities of stake holders and fix tariffs, set up standards and codes and adjudicate disputes. The purpose of such a mechanism is to provide a level playing field to further competition, with a view to improving quality and providing goods and services to the consumers at competitive prices.

The concept of regulatory mechanism has advanced to social sectors as well to those with increasing private sector involvement targeting beneficiaries spread far and wide and covering varied economic strata. Ministry of Human Resource Development is ready with a legislative formulation with a view to constituting regulators in Higher Education sector to ensure that the service providers do not indulge in unfair trade practices. The Ministry of Urban Development is also serious in bringing about regulators in the real estate sector so that consumers at large get a fair deal from the developers and without suffering unfair practices. There is a talk of the need for setting up water management regulators as well. Such attempts in the social sectors have raised expectations among the consumers belonging to different strata.

Recognising that the delivery system, particularly for the schemes meant for the poor and the weaker sections and also for those below the poverty line and disadvantaged groups has not proved adequate, the Government has resorted to legislative measures in some cases to ensure that the targeted beneficiaries obtained the benefits due to them. NREGA has been enacted so that people living in rural areas get assured work for 100 days in a year for one member of the family. In the same vein, Food Security Bill is also being discussed to ensure availability of food grains at reasonable prices for the targeted groups.

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<sup>\*</sup> The author is a Visiting Fellow at the Institute.

The very fact that legislative measures are required to be placed in position is itself an admission of failure in reaching benefits to the needy through administrative means alone.

There would be a large number of schemes covering different categories of disadvantaged and poor groups and also others in the population, where the intended benefits would not be reaching them in time and in a straightforward manner. It would neither be desirable nor feasible to place in position legislative instruments to ensure compliance of the objectives of such schemes.

In fact implementation of legislative measures such as NREGA has not been satisfactory to the extent the legislature would have intended. Consequently NREGA has come under the scanner of Supreme Court and it is expected that the Supreme Court may set up a mechanism to look into the charges of corruption in the implementation of NREGA.<sup>1</sup> It has been alleged that the mandatory social audit provision as provided for under Section 15 of the Act has been given a virtual go by leading to large scale corruption in the implementation of the scheme. Government has already spent Rs. 95,000 crore, of which Rs. 62,000 crore was paid as wages, which should have enhanced the livelihood security of people in rural areas. Having had no satisfactory response from government to the allegations made by the petitioners before them, Supreme Court indicated that it may appoint a nodal agency to make the Government implement the statutory provisions under the Act. The honourable court went on to state that the High Courts would look into these aspects in areas of their jurisdiction.

Food Security Act is also on the anvil. This Act would statutorily oblige the state to provide specified quantity of grain at fixed prices to the targeted families in each state. The experience of implementation of NREGA should forewarn the government and the legislature that they have to devise prescriptions so that the targeted groups get their due as guaranteed by the legislation and that, too, in a straightforward manner. Besides, other Acts such as Right to Education and the proposed Relief and Rehabilitation Bill should also include such prescriptions before they are implemented/enacted.

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<sup>1</sup> Mahapatra, Dhananjay, "NREGA implementation deficiencies come under SC scanner," *The Times of India*, Lucknow, Saturday, August 28, 2010. <http://lite.epaper.timesofindia.com/getpage.aspx?articles=yes&pageid=8&max=true&articleid=Ar00801&sectid=2&edid=&edlabel=TOIL&mydateHid=28-08-2010&pubname=Times+of+India+-+Lucknow+-+Times+Nation&title=NREGA+implementation+deficiencies+come+under+SC+scanner&edname=&publabel=TOI>

What should be such a prescription? While answering this question, it would be interesting to recall the reply of government in the monsoon session of Parliament in 2010 that after a survey it was found that only 14% of rural population and 25% of urban population were aware of the RTI Act; the efficacy and otherwise of which is reported almost daily in the newspapers. This gives a feeling that though legislations are enacted for the benefit of people and specifically for the disadvantaged groups; the targeted groups and beneficiaries remain unaware of such legislations and the benefits which are intended to be provided to them through such legislations. If a group remains unaware, it cannot even consider approaching the appropriate authorities for exacting the benefits due to them. The implementing agencies also do not have enough aptitude, time and means towards educating the targeted beneficiaries for delivering the benefits meant for them. If we wish to increase the efficacy of the legislations such as NREGA, Right to Education, Right to Food Security and Relief and Rehabilitation provisions, it would be necessary to disseminate information about the provisions among the targeted beneficiaries and also the ground level implementing agencies in an organized and sustained way. Similar approach would have to be followed for the development schemes which may not be having statutory backing. Mere pronouncements through radio and leaflets, etc., will not do.

Competition Commission Act, 2002 has a unique provision of 'advocacy' which enjoins on the Commission set up under the Act to sensitize the stakeholders involved in competition related issues. The provision of advocacy as brought out in the Competition Act is for such stakeholders who otherwise would be well informed to pursue their own interest and would be also well equipped to fight their own battles. However, the corresponding advocacy provisions should exist in social sector legislations such as NREGA casting duties on a continuous basis on the authorities and providing them with suitable financial resources to do advocacy of the provisions of the Act among the targeted beneficiaries and lower level functionaries by enlisting the support of ground level self-help groups, NGOs and also of research institutions, etc. The programme officers, as in NREGA, would hardly be equipped to conduct the socio-economic studies of the schemes implemented and to be implemented. Such studies should be part of the advocacy functions. Actually, the task of sensitizing the beneficiaries and the implementing agencies of the benefits that are available to the targeted groups on statutory basis or otherwise is an enormous one and in the light of dismal record of delivery system so far, it may be necessary to create, through a statute, an agency for advocacy of all these statutory and non-statutory schemes meant for citizens in general and poor and disadvantaged sections in particular. The functions of such an agency

would be to: a) spread awareness of the schemes among the targeted groups and also grass-root level functionaries; b) place and position facilitators who would assist, if need be, by approaching the targeted groups. The task would be accomplished by enlisting the support of local self-help groups, NGOs, individuals, etc.; c) enlist the support of research institutions to make available socio-economic studies of the schemes implemented/to be implemented with a view to suggesting/giving directions for reorienting the schemes and also provide feedback to all levels including the policy level; d) identify the schemes for which advocacy provisions would be applied and notify the same; e) fund the assisting agencies like research institutions, local area groups, individuals, etc., for completing the tasks entrusted to them by the agency.

Annual Report of the advocacy agency would be tabled in Parliament. The agency could set up state level agencies also in consultation with the state governments for similar objectives and the report of the state level committees would be tabled in the state legislative assemblies.

Advocacy functions, though designed to facilitate, would not be sufficient to provide due benefits to the targeted groups because of many other constraints which have been the subject of many studies and administrative reports. Legislations like NREGA provide a grievance redressal mechanism to address these issues. The committee comprises officers of implementing agencies or their superiors. The beneficiary, who is an organized one, may not be encouraged to approach the same set of people—who have earlier denied the same—in seeking his due. It would be necessary to have an Independent Development Regulator at the District level outside the administrative implementing agencies who can be approached by the aggrieved beneficiary for seeking adjudication on his/her claim for seeking relief. Such regulators could be headed by a District Judge level officer and would include two eminent persons of the district having administrative and public affairs experience. On being approached, such regulators would call for the comments/replies from the implementing agencies on an affidavit. After going through the complaint and the reply/comments, District Level Regulator would be empowered to a) reject the complaint; b) pass necessary directions on the implementing agencies for granting the relief as ordered. The complaints should be processed in a time bound manner and correspondingly the implementing agencies would be bound to file their replies/comments within the prescribed period, otherwise the complaints so received could be passed on further only if the Regulator grants extension keeping in mind the security reasons. The complainant could approach the Regulator on his

own or with the assistance of local self-help groups. The provision of approaching the Regulator through lawyers should be specifically debarred. There should be an Appellate Regulator at the state level where the Chairman could be of the level of a High Court Judge and other members also of eminence from the administration and public affairs. The scope of these Regulators should cover statutory as well as notified non-statutory schemes and should aim at availability of timely relief in a straightforward manner. The central government/state governments could notify the schemes which should be brought under the ambit of these Regulators. Such notification should include schemes which are meant to provide relief not only to disadvantaged and the poor groups, but also to general public. The number of members in the regulating bodies could be increased depending upon the work load which devolves upon such regulators so that the complaints are disposed of expeditiously with proper directions as may be necessary.

Establishment of such regulatory bodies and advocacy agencies would ensure accountability of failures in delivery systems which are in existence but specific responsibilities have not yet been determined. The output as provided by the advocacy agency and also the Regulators would provide a feed back for all concerned, including at the policy level to set in motion the corrective actions to improve the efficacy of the schemes under implementation. Cost for setting up advocacy agency and the regulatory bodies would be insignificant compared to the funds which are being invested for the development schemes. These twin agencies would also spare the honourable higher courts for being bothered in the first instance for setting up monitoring mechanisms, etc. Their jurisdiction would always remain as provided in the Constitution and that should be invoked only when administrative and regulatory systems are felt to be inadequate by the individuals and NGO's.