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CUTTING THROUGH THE CLUTTER



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The Regulatory Review Authority is a welcome step. Should it cover more ground?

The welcome move of RBI to constitute a Regulations Review Authority (RRA) has not come a day too soon. For persons like me, who have, at every conceivable opportunity, suggested that all authorities empowered with the writing of regulations should have an RRA, this is music to the ears.

Why is this important? Like many other matters, the world of regulations has a stock element and a flow element. The stock element comprises a number of regulations, which were relevant when they came into being, but have ceased to be contextual over a period of time. This has been both because the regulated universe has changed significantly in form and content, and the regulatory philosophy has also redefined itself over the years. The existence of outdated regulations, in the collection of currently valid regulations, often causes confusion to the layman and the legal mind alike. The post 2008 phenomenon of financial sector regulators worldwide, writing regulations frantically, as if there was no tomorrow, has only compounded the already existing problem. It is in this background that the RBI needs to be applauded for constituting this Authority.

This is the second occasion when the RBI has done something of this kind. RRA 1.0, set up in 1999, owed itself to the wisdom of Dr YV Reddy, then Deputy Governor of the RBI. He headed the Committee himself, and in the course of 2 years, including 1 year of extended tenure, the Authority contributed significantly to bidding goodbye to outdated regulations, circulars and the like, and consolidating, in some cases, into a master circular, those elements that needed to be retained from the earlier regulations, guidelines or circulars. Like RRA 1.0, RRA 2.0 has also been set up for an initial period of 1 year from May 01, 2021. There is of course the usual stipulation that its tenure could be extended by the RBI. Limiting the initial tenure to 1 year is a sub-optimal decision. So long as new regulations continue to be written, and new guidelines and circulars continue to be issued to respond to contemporary needs, the relevance, in whole or in part of earlier regulations, guidelines, or circulars, would cease to exist. Ideally therefore the RRA should be a body without a finite tenure, and should not have the spectre of a deadline staring it in the face because that could lead to hasty decisions and formulations. Stated differently, the RRA should be a part of the regulatory landscape indefinitely.

The terms of reference of RRA 2.0, which borrows significantly from the terms of reference of its predecessor, include the removal of redundancies and duplications in existing regulatory and supervisory instructions, and reduction of the compliance burden on regulated entities by streamlining the reporting mechanism, by revoking obsolete instructions and by obviating paper-based submission of reports. This exercise is premised on the obtaining of feedback from regulated entities on simplification of procedures and enhancement of ease of compliance (there is an implicit assumption that ease of compliance exists presently). RRA 2.0 is also expected to examine and suggest changes required in the dissemination process of RBI circulars and instructions.

In a sense, both the content and the process of regulations fall within the ambit of RRA 2.0. Considering that feedback from the regulated entities is critical to the functioning of the RRA, the RBI has constituted a 6-member Advisory Group, with representatives of different segments of the regulated universe. The 6-member Group, chaired by a Managing Director of State Bank of India, is expected to assist the RRA by identifying areas, regulations, guidelines or returns

which can be rationalised. The Group is expected to submit periodic reports to the RRA, containing its recommendations and/or suggestions.

While the RRA and the Group of Advisors have what it takes to undertake this clean-up exercise, it is necessary to ensure that instead of passively waiting for suggestions and responses from the regulated universe, the Group of Advisors should actively engage with them in small groups to impress upon them that is an opportunity that must be availed of in their own interest. RRA 1.0 received 235 applications containing more than 400 suggestions. There is reason to believe that through an active outreach approach, RRA 2.0 should receive a few thousand suggestions.

RBI could consider taking a leaf out of the Government of India's book. Many years ago, the Government finally decided to get to grips with the problem of taking out of the statute book, a number of laws, which clearly belonged to another day and age. This was a mammoth task, but when one considers the results that were achieved, the effort was clearly worth it. One example will help to illustrate the kind of contextually irrelevant laws that remained for several decades, after the ground situation had changed. There was a law which provided that every inn (place which serves food) should have a facility for horses to have access to water. When a junior, but relatively smart, police officer, after having partaken of food at a 5 star hotel, declined to pay the bill, and the manager insisted on his making the payment, the officer enquired whether the facility had complied with the aforementioned provisions of the Act. The manager being no less intelligent, pointed to the swimming pool. That Act has gone into the annals of legislative history.

Regulatory culture and environment also provide some interesting examples of guidelines and circulars that have overstayed their welcome. It is rumoured that a State had a Board of Revenue, which was the ultimate repository of information and authority. A Revenue official, along with a couple of his companions, and armed with heavy duty weapons for safety, entered a forest. When a wild elephant came charging at them, the Revenue official hid behind a tree, and saw his two companions being trampled upon by the elephant. When asked why he did not resort to fire to chase away the elephant, his defence was that he could not remember the specific regulation in the Board of Revenue Manual which authorised him to act thus. Other oddities include the payment of a wartime allowance to workers of a textile mill till 1980, the war under reference being the second World War, which ended around 35 years earlier. Similarly, there were provisions on which side of the road should be used for walking dogs, an activity for which an allowance was paid irrespective of whether the officer concerned owned a dog. Such instances abound not only in folklore, but also in compilation of laws, regulations, circulars and guidelines. Instead of waiting for outsiders to point out these anachronisms, RBI could look at the universe through the lens of contextual relevance, and weed out some of them.

One wishes that the RBI had travelled a little further, and tasked the RRA with not merely reviewing the existing regulations, but taking all relevant elements from partly outdated regulations, and weaving them into master circulars on different subjects. The icing on the cake would of course be the putting together of master circulars in simple English, shorn of jargon, and containing the bare minimum technical usages and expressions, suitably explained and annotated.

In addition to the stock element of regulations, guidelines and the like, there is also the flow element that needs to be dealt with. It will help no one's cause if, while the stock element is being tackled, the flow of fresh regulations and guidelines continues unabated, especially when some of them address very specific issues, relevant for very short periods. Today's flow will be tomorrow's stock. One way to do this would be to task the RRA with also looking at fresh regulations, to determine whether they are necessary, and to examine whether the problem sought to be addressed can be fixed by existing regulation.

If RRA 2.0 is not required to have RRA 3.0 and the like as its descendants, it might be useful to consider incorporating sunset clauses in the newer regulations, so that in the event of their losing relevance, they could fall off without any overt action being required.

The senior citizen in the universe of Regulators has shown the way. It is perhaps time for its younger siblings to step up to the plate, and to constitute formal Regulation Review Authorities within themselves. Surely, this is not too much to ask. Cutting through the clutter is imperative.

For me personally, this is a reminder of my grandson picking up a small broom, vigorously attacking some non-existent dirt on the floor, to the accompaniment of a song "Clean-up, clean-up, every body clean-up...". The time for everyone to clean up regulations is here and now.

THE REMIT OF RRA 2.0

1. To make regulatory and supervisory instructions more effective by removing redundancies and duplications, if any.
2. To reduce compliance burden on regulated entities by streamlining the reporting mechanism; revoking obsolete instructions if necessary and obviating paper-based submission of returns wherever possible.
3. *To obtain feedback from regulated entities on simplification of procedures and enhancement of ease of compliance.*
4. *Examine and suggest the changes required in dissemination process of RBI circulars/ instructions (this would entail suggestions on the areas where the manner of issuing circulars, their updation and website linkages).*
5. *Identify any other issue germane to the subject matter.*

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