

Responsible regulation: The key to reform

The central message of the latest Economic Survey is clear: “Get out of the way.” It advocates enhancing economic freedom as a catalyst for growth. To achieve this, the Survey proposes “systematic deregulation by systematically reviewing regulations for their cost-effectiveness” in terms of monetary, opportunity, and state capacity costs, as well as unintended consequences. This has been a recurring theme for about a decade, but has gained heightened attention in recent years as the adverse impact of excessive regulation on economic growth became evident. The call for deregulation today is at least as resounding as the push for decontrol that shaped India’s economic reforms in the early 1990s.

In her 2023-24 Budget speech, the finance minister urged financial sector regulators to conduct a comprehensive review of existing regulations to “simplify, ease, and reduce the cost of compliance.” In the interest of optimum regulation in the financial sector, she suggested public consultation in the process of regulation-making and issuing subsidiary directions. Building on this, the 2025-26 Budget proposes the establishment of a High-Level Committee for Regulatory Reforms to review all non-financial sector regulations. Additionally, it introduces a mechanism to assess the impact of existing financial regulations and subsidiary instructions. The Competition (Amendment) Act of 2023 reinforced this agenda by mandating periodic reviews of regulations by the competition regulator. It mandated the regulator to consult the public when making regulations and prescribed the manner of such consultation.

It is thus clear that deregulation is not less governance, it is better governance. It does not mean the withdrawal of regulations; rather, it signifies eliminating unwarranted regulations while preventing the introduction of unnecessary ones, ushering in an era of responsible regulation. Two key elements of responsible regulation, as evident from these policy initiatives are: (a) the scope of regulations covers primary legislation and subordinate legislation such as rules, regulations, subsidiary directions, circulars, and pretty much everything that prescribes any binding legal norms, made by the Union government, state governments and regulators, and (b) the process of making and reviewing such regulations integrates public consultation and economic analysis.

Financial regulators in India have been ahead of

the curve in adopting transparent and consultative regulation-making processes. The Securities and Exchange Board of India (Sebi) pioneered public consultations as early as 2002, well before the 2014 government policy requiring public consultation for all draft legislation and subordinate legislation, and the 2016 Supreme Court recommendation urging Parliament to institutionalise stakeholder consultation for making laws and regulations. Even without a statutory mandate, regulators such as the Insolvency and Bankruptcy Board of India, International Financial Services Centres Authority, and Pension Fund Regulatory and Development Authority have proactively formalised frameworks to govern their regulation-making process. The latest to follow suit is Sebi, which, on February 13, notified the Sebi (Procedure for Making, Amending, and Reviewing of Regulations) Regulations, 2025.

Sebi was India’s first major regulatory experiment, with many regulatory issues first emerging in its domain. The resolution of these issues has often set a precedent for other regulators. Sebi has long been regarded as the gold standard in market regulation. However, its recent regulations fall short of its standing and the broader “get out of the way” push for deregulation.

Ideally, the regulations to govern the regulation-making process (governing regulations), existing or yet to be made, should incorporate the following nine elements.

First, the legislature has delegated its law-making powers to regulators to specify legal norms within their jurisdictions. Therefore, governing regulations must apply not only to formal regulations but also to all other binding instruments, such as circulars, that impose legal obligations on market participants.

Second, the legislature has prescribed several safeguards to ensure democratic legitimacy for laws made by the unelected. A key safeguard is that only the governing board of the regulator makes regulations. This responsibility cannot be delegated to any department or officer. The governing board must be in the forefront, from the issuance of draft regulations to the approval of final regulations, and their reviews.

Third, public consultation helps prevent unwarranted regulations from entering the rule book. Governing regulations should mandate consulting the public at large—not just stakeholders—on draft regulations. The governing board must approve draft

regulations, consider public comments, and disclose its response to such comments, before approving final regulations.

Fourth, modern regulators use various methods—online, offline, and face-to-face—to reach out to the public. They engage with them in different formats—advisory committees, working groups, roundtables, seminars, workshops, and discussion papers. The governing regulations may specify the minimum requirements and methods of public engagement and require regulators to measure and disclose the quality of public consultation through a public consultation index.

Fifth, consultation is effective when the public is presented with an economic analysis of the proposed regulation, to enable them to appreciate its full import and suggest improvements or alternatives. This enhances acceptance of the proposed regulation, reducing the likelihood of regulatory reversals.

Sixth, the governing regulations must not allow discretion for exemption. There cannot be exceptions where, for example, public consultation is not good, and ought to be exempted. However, the regulations must recognise exigencies requiring immediate intervention. In such cases, regulations with a defined shelf life may be permitted, ensuring due process is followed for permanent regulations.

Seventh, biennial reviews must be mandated to eliminate outdated regulations, and keep all regulations, including governing regulations, aligned with evolving business and market needs.

Eighth, public consultation typically allows a short window for public comments. A more dynamic approach would be to enable the public to propose new regulations or suggest amendments at any time. Regulators should review such proposals biannually and integrate relevant suggestions into regulations, following due process.

Ninth, to enhance regulatory certainty, governing regulations should require regulators to provide binding clarifications upon request. Such clarifications must be enforceable and legally binding on the regulator, ensuring predictability for market participants.

Codifying these principles will ensure that lawmakers hold themselves to the same standards of accountability that they demand from regulated entities, fostering an environment conducive to sustainable economic growth. This balance will safeguard against over-regulation and underregulation while ensuring responsible regulation.

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