CHAPTER- XI
COMMON LEGISLATION A BETTER SOLUTION

The roadmap set out by FSLRC and the problems in taking forward the same was discussed in the earlier chapter. In view of the same, the present chapter discusses possible solution which could ensure that the independence of the sectoral regulators as also the RBI, as monetary authority of the country could be maintained.

This Chapter identifies and proposes a Common Legislation as an ideal solution for the regulatory structure of India without disturbing the existing structures. It is felt that such an approach would lead to better development of the markets as each market is a specialized one and required to be maintained as such given complexity of the Indian market conditions.

Going by the issues discussed in the previous chapter, it would be clear that there is no need to change the status quo ante of the present regulatory structure, given its resilience, its independence, and its time tested performance and governance of financial sector. Instead, a common Legislation which binds together all the regulatory structures would prove to be more effective in achieving the advantages of both unified as well as multiple structures. Again, this should prescribe the general principles that are to be common across the regulators. Under this arrangement, there could be an autonomous statutory body that could be run by a Committee consisting of Governor of RBI as Chairman, with Chairman or Deputy Chairman of other financial regulators as members of the Committee which could supervise and oversee the co-ordination amongst various regulators and one member representing Central Government. As the regulatory structures have accountability to the Parliament since they are creations of legislations, Government nominee on the Governing Board will ensure accountability. At the same time the independence of the Board will also be ensured by the structure itself. Furthermore the role of Central Bank is very critical in any jurisdiction from the view point of macroeconomic perspective as
also the lender of the last resort. Hence, the Governing Council is required to be headed by the Governor. This common legislation could also bring about general principles to be followed by the regulators, provide a mechanism for resolution of all conflicting regulatory issues, and arbitrate on regulatory overlaps.

Objective of the Legislation: The Legislation would be dedicated to promote the stability of the financial systems in the country within the framework of regulatory landscape laid down by Government from time to time, by laying down the principles and common practices across the markets as also to reconcile the conflicts present in different regulatory structures and promote co-ordination and cooperation amongst the regulators in financial markets.

The following should be the general principles of such common legislation:

1. Such a legislative framework will only be a principle based legislation, laying down the broad principles within which all the regulators would operate.
2. There will be no scope for change in the status quo of the operation of the existing structures.
3. All the actions of the Governing Council taken under this legislation shall be directed towards achievement of its stated objectives.
4. Efforts should be taken to reduce the inconsistencies in regulatory decisions.
5. All actions of the regulatory framework shall be guided by the principles of fairness and natural justice.
6. Accountability should underscore the regulatory actions.
7. There shall be an endeavour to promote greater disclosures and transparencies by all the regulators. Sharing and collection of market information amongst the regulators and quickly acting on the same in times of crisis shall be the guiding factor.
8. Scope for Conflict of interest by the regulators shall be avoided in all its potential actions.
The following should be the main features of the proposed law:

1. The objective of the legislation is to ensure orderly and smooth functioning of various regulatory structures within their respective spheres of operations integrating them through common legislative principles.

2. Another important area is governance as it plays a very vital role in any financial market. The governance framework must be a strong structure which should be transparent and promote ethical standards. The framework should be holistic enough to carry out the financial activities in respective spheres. Therefore, the common legislation could provide for the broad common principles for governance.

3. There should be a governing body armed with statutory authority to decide on various issues that may arise amongst the regulators.

4. There should be clearly laid down principle of regulatory jurisdiction. Jurisdiction of each regulator should be clearly defined viz. capital market activities, bond market, currency market etc. In case of any overlap of jurisdiction, the governing body should arbitrate amongst the regulators and settle the matter. This has since been implemented by the Government through the recent Securities and Insurance (Amendment and Validation) Bill, 2010 which seeks to establish at joint-committee through an amendment of Reserve Bank of India Act, 1934. The contents of the Bill are attached as Appendix A. However, this bill seeks to create a structure of executive element in the legislative set up. That means to say by making the Financial Minister and Ministry Officials as part of this Committee, it seeks to rob the autonomous status envisaged under the proposed legislation. In order to impart a degree of independence and impartial functioning of the regulatory framework, the most important step
is to ensure that it is made apolitical. If not, it may lead to political exigencies finding expressions in the implementation of financial sector agenda and interfere with the healthy regulation of the financial markets which ultimately may affect smooth functioning of these markets.

5. The statute should also provide for a risk management mechanism which can be implemented across the regulators governing the various markets. It should lay down the common risk management principles. The specifics of such regulations may be implemented by the respective regulators as risk management practices across different markets could differ.

6. The statute should prescribe the rules governing non-obstante clauses under legislations operating under the same area of activity. For instance, the need to have an overriding provision in law should be guided exclusively on need basis and only if it is essential for the purpose of carrying out the objective of the legislation.

7. It should also prescribe guiding principle for imposition of penalties under various legislations under the jurisdiction of different regulators. This will pave the way for rationalizing the penalty structure in the statutes and recovery of the same. This will also result in uniformity of approach.

8. The statute should propose a common appellate structure across all the regulators. When there is a multi-regulatory structure in place, it is ideal to have a common Appellate Tribunal instead of each regulator having its own. It will serve the twin purpose of ensuring uniform appellate system as well as the regulated and investors will be relieved of costs and time overruns.
9. There should be common principles of Dispute Resolution across various financial regulatory statutes. This will bring uniformity, clear understanding of dispute resolution mechanism amongst the regulated and regulators.

10. The legislation should provide clear principles for smooth flow and sharing of information amongst the various Regulators. The principles should lay down under what circumstances the regulators need to share information available with them on any regulated entity.

11. There should also be prescription of common approach towards acceptance of collaterals collected by various participants. To have a common link or system to track collaterals which are used by participants who move the same in different markets. This common mapping will prevent fraudulent practices that may be attempted by unscrupulous participants.

12. The legislation should ensure fair play and discipline across the markets by prescribing general principles of code.

13. There should be a principle for co-operation amongst the regulators for handling crises especially when there is contagion effect of crisis spreading from one market to another.

A model Common Law, mentioned above, is enclosed as part of the Appendix ‘B’.
Creation of this structure would be a step in the right direction as it enhances the effectiveness of the existing regulatory system in the country without making any overhaul or radical change to the existing system. Further, it would enhance the existing level of mechanism for implementation which is the main bane that plagues most of the State machineries in India. By giving total autonomy to various regulators and the Governing Board under this proposed legislation free from political and bureaucratic interferences, would make the regulatory structures very strong and impartial in the performance of their roles. This indeed will pave the way for the Board under this Common legislation to act more as “arbitrator” of issues than as a “Super Regulator”

By way of conclusion, the researcher observes that a Common Legislation which would be principled based across the financial sector could help sort out most of the problems that have been pointed out in earlier chapters. This could be achieved with least disturbance to the existing regulatory structures. Taking into account the developing nature of the Indian economy, it may not be appropriate to attempt any drastic change to the existing regulatory structures. Any such tryst with major overhaul could be counterproductive.