Global Trade and Financial Regulations

Dr. V. Balakista Reddy
Professor of Law and Registrar
NALSAR University of Law, Hyderabad
www.nalsar.ac.in
Email: registrar@nalsar.ac.in

Global Financial Institutions and Financial Regulations

- Why this topic is Important today? Heather to we were only dealing with the national Financial issues, which came before the Various Tribunals, High Courts and Supreme Court of India. But hereafter, we have to deal with financial conflicts, which have international dimensions and Indian Financial sector is no exception to this emerging trend.
- How Int. Financial norms deal with trade and business issues?
- What are its effects on national Financial regulations?
- What are the tools for resolving conflicts between international trade and Financial Regulations?
- In order to answer above questions my Discussion will focus on:
- Why the Establishment of International Financial Institutions and how they regulated and failed in Financial maters?
- What is the Impact of Globalization and how globalization effected the Financial, Banking and Insurance Sectors ..
- How India is Implementing Global Banking, Insurance and Financial Regulations.

Bretton Conference and Int. Trade and Financial Regulations

- Why Bretton Woods Conference ?

  Economic Policies of late 19th early 20th Century- beggar-thy neighbor, Great Depression, World War II let to set back to international trade and business activities.
- Establishment of the IMF, its objectives, structure functioning and criticism etc
- Establishment of the IBRD (IFC, IDA, ICSID & MIGA) its objectives, structure functioning and criticism etc
- Establishment of the ITO/ GATT,
- How WTO is different from the above Institutional setup
- GATS and Services including Banking, Insurance and Financial Services

Why IMF and its Objectives

- The need of IMF was emphasized American Secretary of treasury-What are the conditions under which commerce among the nations can once more flourish?

  -Why : Due to competitive currency depreciation, excessive tariff barriers, uneconomic barter deals, multiple currency practices etc which ultimately resulted in world wide depreciation and wars.

  -Stable International Exchange without loosing country's freedom

- Objectives of IMF: To **promote monetary cooperation** through a permanent institution providing machinery for **consultation and collaboration** on monetary problems.
- To facilitate the expansion and balanced growth of international trade and business
- To promote exchange stability and avoid competitive exchange depreciation
- To assist in the establishment of a multilateral payments system and the elimination of foreign exchange restrictions hampering the growth of world trade
- To make the Fund's resources available to members so as to enable them to correct maladjustments in their balance of payments
- To shorten the duration of the disequilibrium in the international balance of payments of members

IMF and Monetary Regulations

- **Three Phases**
- International Monetary Monetary Regulations before IMF ---Trade between states, Currencies were Exchanged, Monetary Reserves were in Gold and Silver, 1920s and 1930s Gold standard was instable and need for fixed rate system through an Int. Org.
- London International Monetary Conference-1933 proposed Dollar-Franc-Pound stabilization -US not accepted, Beggar –thy- Neighbour Policies were applied by different States which resulted in Increase in price, decrease in International trade and unemployment.
- **Monetary Regulations under Bretton Woods Regime** (1945-1973):Modification owing to changes in world economic conditions. First two decades reserves were– gold and USD. Main trends:----Rigidity to flexibility, drawing rights and SBAs, Monetary Institution to Lending Institution, Western industrialized to third world countries and Special Drawing Rights
- **Post Bretton Woods Regime (1973 onwards)**

IMF Reforms

- Committee Twenty was appointed in 1972 and submitted report in 1974 outlined Reforms in IMF
- Globalization of money and finance necessitated reforms-1978 Amendment.
- Shift from monetary regulations to diffuse of BOP.
- Economic surveillance-individual and global level.
- IMF lost much of its old role with Dollars centered fixed rate system (floating).
- IMF Reforms and New Forms of Credit System
- GBA- General Arrangements to Borrow
- SAF-Structural Adjustment Fund
- EFF-Extended Fund Facility, the Oil Facility.
- CFF-Compensatory Financing Facility.
- ESAF-Extended Structural Adjustment Facility
- SAP-Structural Adjustment Policies, e.gs--Fiscal reforms,Privatization, Removal of Interest Rates, Devaluation of currencies, good governance, etc.

What IMF Can Do?

.,

- World's **central organization** for international **monetary cooperation**
- primary purpose is to ensure the stability of the international monetary system
- **Prevent crises**: by reviewing national, regional, and global economic and financial developments
- **Provides advice** to its members, encouraging them to adopt policies that foster economic stability, reduce their vulnerability to economic and financial crises, and raise living standards
- **Serve as a forum** where they can discuss the national, regional, and global consequences of their policies
- **Finance :** member countries to help them address balance of payments problems—that is, when they find themselves short of foreign exchange because their payments to other countries exceed their foreign exchange earnings
- Provide **technical assistance and training** to help countries build the expertise and institutions they need for economic stability and growth
- Criticisms on IMF: Increasing of conditionalties, Increasing debt problems of South, Undemocratic character of IMF, No transparence and accountability, IMP Programmes increased unemployment , IMF prescriptions have determental impact on Workers, the poor, the environment, women, human rights, etc

World Bank-IBRD

- Bretton woods conference also establishment of the IBRD

Objectives of IBRD

a) To assist in the reconstruction and development of member countries.

b) To promote private foreign investment

c) To promote long range balanced growth of international trade and maintenance of equilibrium.

- The World Bank is one of the two Bretton Woods Institutions which were created in 1944 to rebuild a war-torn Europe after World War II. Later, largely due to the contributions of the Marshall Plan, the World Bank was forced to find a new area in which to focus its efforts.
- Subsequently, it began attempting to rebuild the infrastructure of Europe's former colonies. Since then it has made a variety of changes regarding its focus and goals. From 1968-1981 it focused largely on poverty alleviation.
- In the 1980s and 1990s its main focus was both debt management and structural adjustment.

World Bank Group

- The **International Finance Corporation** (IFC) promotes sustainable private sector investment in developing countries as a way to reduce poverty and improve people's lives.
- The **International Development Association (IDA**) created on September 24, 1960 to helps the world's poorest countries. IDA loanns, address primary education, basic health services, clean water supply and sanitation, environmental safeguards, business-climate improvements, infrastructure and institutional reforms.
- **ICSID** established in 1966 to settle the investments disputes. With the proliferation of BITs most of which refer present and future investment disputes to the ICSID, the caseload of the ICSID substantially increased.
- **MIGA** promotes foreign direct investments into developing countries by insuring investors against political risk, advising governments on attracting investment, sharing information through on-line investment information services, and mediating disputes between investors and governments. MIGA provides guarantees against noncommercial risks to protect cross-border investment in developing member countries.

GATT and International Trade and Finances

- Objectives of the GATT: Raising standards of living, ensuring full employment, ariff reduction, free trade, etc.,
- Basic principles of GATT: MFN, National Treatment, Binding commitments, transparency, etc.,
- General Description of GATT: GATT now consists of Objectives and Four parts-
- Part 1 (art. 1 & 2) on MFN Clause and tariff binding or schedules of concessions;
- Part II (Art.3-23) containing commercial provisions which form the GATT’s code of for its C.Ps with regards to trade matter
- Part III (Art, 24-35) Procedural and miscellaneous provisions
- Part IV (Art. 36-38) Provisions relating to developing countries.
- GATT Contribution to International Trade Regulations
- GATT and Various Rounds of Negotitaitons

WTO/GATS and Financial Regulations

- ITO/GATT and Trade Regulations, GATT and various rounds of Negotiations--**Why Uruguay Round?**
  - To Understand the globalization better let us also know the Uruguay Round which paved the path for the establishment of WTO.
  - By 1980s, world-trading system changed, the factors, which are responsible for these changes include; LPG or GLP
  - Added to this, the service sector contributed to more than 40 - 60% but it was out of the GATT system.
  - As a consequence, investments required guarantees, the IPRs required better protection and the proper dispute settlement mechanism was required.
  - As GATT could not address all the above-mentioned areas the Uruguay round of negotiations attracted lot of importance.

GATS and Financial Services

- The GATS negotiations in the financial services sector include two broad categories of services:

1. **Insurance and Insurance-related services:**

- Insurance and insurance-related services cover life and non-life insurances, reinsurance, insurance intermediation such as brokerage and agency services, and services auxiliary to insurance such as consultancy and actuarial services.

2. **Banking**

- Banking includes all the traditional services provided by banks such as acceptance of deposits, lending of all types, and payment and money transmission services.

3. **Other financial services.**

- trading in foreign exchange, derivatives and all kinds of securities, securities underwriting, money broking, asset management, settlement and clearing services, provision and transfer of financial information, and advisory and other auxiliary financial services.

Types of Financial Services under GATS

Under the Annex on Financial Services to GATS, financial services are defined to include the following banking and other financial services:

- acceptance of deposits,
- lending of all types,
- financial leasing,
- payment services,
- guarantees and commitments,
- trading money market instruments,
- foreign exchange,
- derivatives,
- exchange rate and interest rate instruments,
- securities and other financial assets,
- money brokering,
- asset management etc.

Globalization and Its Impact on Financial Services

- What is Globalization?
- Globalization is the term used to characterize the processes of growing interconnection and interdependence among the different nations of the world. It offers to the increased flow of trade, people, investment, technology, culture, ideas among countries and creates a more integrated and interdependent world
- Globalization of markets is one of the most fascinating developments of this century. Its impact on economic transactions, processes, institutions, and players is dramatic and wide ranging. It challenges established norms and behavior and requires different mindsets.
- Globalization of markets involves the growing interdependency among the economies of the world; multinational nature of sourcing, manufacturing, trading, and investment activities; increasing frequency of cross-border transactions and financing; and heightened intensify of competition among a larger number of players

Impact of Globalization

- Globalization has been catalyzed by developments in technology, communications and international trade, which have also changed the traditional understanding of trade and commerce.
- In this age of globalization and interdependence, principles of international business transactions affect all states, small and large, rich and poor, weak and powerful alike.
- Many of the structural changes that have taken place in the world economy since the early 1980s resulted liberalizing of capital markets and the capital remains no longer domestic; it moved freely across borders. Manufacturing was also no longer a domestic process. This lead to the loss of control on local markets, goods, financial services including the banking sector by the National governments.

Various Dimensions or Facets of Globalization

First is the fluid nature of manufacturing and sourcing activities. Today, business activity flows freely to places best equipped to perform it most economically and efficiently.

Second, competition for customers and markets has intensified significantly as a result of globalization.

Third, the types of international business transactions have proliferated. In the past, much of international business activity was in the form of export-import and foreign direct investment. Today, transactions are varied and more complex: contract manufacturing, franchise operations, countertrade, turnkey construction, technology transfers, international strategic alliances, and more.

Fourth, technology spreads freely and rapidly between markets and players. Technological leadership does not provide a monopolistic advantage for very long. Companies must capitalize on their discoveries quickly, before others match them.

Fifth, borrowing-financing activity has become worldwide as well. Businesses finance their growth and expansion through international capital markets. As such, they are able to take advantage of varying interest rates and currency markets by tapping a wide variety of funding sources.

Positive and Negative Impact of Globalization

On the positive side, it generated by growing international economic, cultural, and political cooperation and solved many global problems which were not answered. It also Lower prices for goods and services, Improved Economic growth, Increase in consumer income, Countries specialize in production of goods and services that are produced most efficiently and Creates more jobs

- On the negative side, globalization also has profound implications for states such as the autonomy and policy-making capability of states is being undermined by economic and cultural internationalization.
- Role of States have Changed from Law-maker to Law-takers
- Many governments see their role as not to regulate markets but to facilitate their expansion.
- Globalization and regional interactions are wiping out national borders and weakening national policies.

Globalization and India

- India Globalized its economy in 1991 With Mounting problems- huge fiscal deficits, BoP crisis and foreign exchange crisis, Foreign investors and NRIs had lost confidence in Indian economy
- Major measures as a part of the Globalization strategy, Devaluation of Currency, Disinvestment, Dismantling of The Industrial Licensing Regime Abolition of the MRTP Act , Allowing Foreign Direct Investment, Wide-ranging financial sector reforms
- Reforms relating to the banking system-- Capital base of the banks were strengthened by recapitalization, public equity issues and subordinated debt, Prudential norms were introduced and progressively tightened for income recognition, classification of assets, provisioning of bad debts, marking to market of investments, New private sector banks were licensed and branch licensing restrictions were relaxed., Credit delivery was shifted away from cash credit to loan method

Globalization in India Cont..

- Exchange Control and Convertibility-- Exchange controls on current account transactions were progressively relaxed culminating in current account convertibility.,
- Foreign Institutional Investors were allowed to invest in Indian equities subject to restrictions on maximum holdings in individual companies.,
- Restrictions remain on investment in debt, but these too have been progressively relaxed., Indian companies were allowed to raise equity in international markets subject to various restrictions.,
- Indian companies were allowed to invest a small portion of their assets abroad, Indian companies were given access to long dated forward contracts and to cross currency options.(Derivatives)
- Reforms in the capital market SEBI- the apex regulator of the Indian capital markets Regulations were framed for insider trading Abolition of capital issues control Introduction of free pricing of equity issues On-line trading was introduced at all stock exchanges

Setting of Global Norms and Supervision

- •In response to the failure of Bankhaus Herstatt, the Group of 10 established the Basel Committee on Banking Supervision under the auspices of the Bank of International Settlements (BIS). In 1975, the Basel Committee signed its "Concordat," which outlined core principles of banking supervision.
- The International Accounting Standards Committee (IASC), a private sector group founded in 1973, also became active during this period and sought to harmonize accounting standards in response to the growing internationalization of capital markets.
- Securities: International Organization of Securities Commission's (IOSCO) Insurance: International Association of Insurance Supervisors' (IAIS) Insurance Supervisory Principles (ISP) were established.
- Payments Systems: Committee on Payment and Settlements Systems' (CPSS) Core Principles for Systematically Important Payment Systems, complemented by Recommendations for Securities Settlement Systems (RSSS) for countries with significant securities trading.
- •

Impact of GATS on Financial Sector India

- Customs Tariff Act, 1975;
- FEMA, 1999
- The Foreign Trade (Development and Regulation) Act, 1992
- The Foreign Trade (Regulation) Rules, 1993
- The Foreign Trade (exemption from Application of Rules), 2002; The Conservation of Foreign Exchange And Prevention Of Smuggling Activities Act, 1974;
- The Customs and Excise Revenue Appellate Tribunal Act, 1986;
- The Smugglers and Foreign Exchange Manipulator (Forfeiture of Property) Act, 1976
- The Special Cess Act, 1986;
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976.

Financial Legislative Structure in India

- India has over 60 Acts and multiple rules / regulations that govern the financial sector – Still not satisfactory.
- Many laws from the 1950s and the 1960s have an emphasis on banning certain financial activity, rather than on establishing regulatory structure for it.
- The RBI Act and the Insurance Act were enacted in 1934 and 1938 respectively and the Securities Contracts Regulation Act, 1956 – Not suitable to current situations – amended acts - complex, ambiguous, inconsistent, and occasionally open to regulatory arbitrage.
- Reforms in Financial Sector:
  - Increase in financial globalization & complexities of financial regulation.
  - concerns arising from terrorism-related financial activities.
  - The new obligations under the Financial Action Task Force (FATF) and Combating the Financing of Terrorism (CFT) regimes
  - necessitates coordination between domestic law and international law to bring financial stability.
  - Need for the creation of efficient and stable financial institutions and markets.

Implementation of Standards and Financial Regulations in India

- The development of international standards and codes in the current context has five important features, viz., it is part of the reform of the international financial architecture; it represents a consolidated view of several interrelated standards and codes; it is a collaborative effort involving different groups of countries, markets and international financial institutions and standard setting agencies and bodies; it has elements of both external and internal assessments of degree of compliance; and, finally there is an assumption of linkage between the implementation of standards and codes and financial stability.
- On the whole, much of the responsibility of implementing the standards and codes falls on authorities charged with the responsibility of regulating various areas of the financial system such as the Department of Company Affairs (DCA) of the Ministry of Finance, Reserve Bank, Securities and Exchange Board of India (SEBI) and Insurance Regulatory and Development Authority (IRDA).
-

Thank You