



ROLE OF NEW SECTORAL REGULATORS IN INDIA - A REVIEW

Dr.Akula Somanarsaiah

Assistant Professor, Department of Public Administration, Kakatiya Government
College, Hanamakonda, Warangal, Telangana State – 506001.

Abstract

Regulatory bodies represent a distinct change from the three organs of the state as their function is to create a level playing field and protect the interest of stock-holders. It is also different from control mechanisms, its mandate is not coercive, rather facilitative. It is a post LPG model of reinventing administrative adulation, for ensuring faster grievance redressal and to control market failures. Since it is a quasi-judicial body, it amalgamated judicial jurisprudence with administrative acumen. Supreme Court has repeatedly stressed on need of making these regulatory bodies free from executive control and make them really independent. OECD report has criticised the obsolete traditional approach with regulatory bodies, Damodaran committee has said regulatory authorities have been functioning as extension of ministries and departments. In 1991, there came the paradigm shift in the economic Policy regime towards neoliberalism (predicted on bureaucratic deregulation, privatization and business liberalism—nationally and globally) under P.V. Narasimha Rao Congress Government. The effects of these economic reforms are evident in areas such as industrial licensing, financial sector reforms in banking, stock market and telecommunications, electricity, company affairs, security and exchange, insurance, coal, petroleum etc. In all these sectors, new regulatory agencies have come under parliamentary statutes with varying degrees of autonomy. Various sectors of national economy, which were earlier managed under direct ministerial and bureaucratic control have been now placed under IRAs, reporting to the Parliament annually. Among the new financial regulatory bodies in India, besides the RBI whose origins go back to British India, there are Securities and Exchange Board of India (SEBI), Pension Fund Regulatory and Development Authority (PFRDA), Forward Market Commission (FMC), Insurance Regulatory and Development Authority (IRDA), Foreign Investment Promotion Board (FIPB), Central Electricity Regulatory Commission (CERC), Telecom Regulatory Authority of India (TRAI), Competition Commission of India (CCI), etc. The role of the regulator is to achieve mandated policy objectives and maintain competitive conditions in the market by ensuring level of playing field. On the other hand, the role of the government is to spell out long-term objectives and development vision. Many sectors remain unexplored from regulatory point of view. Another issue that needs to be given importance is stimulation of competition in natural monopolies through public private partnerships. More than 23 years of independent regulation in India have been characterized by the government inability to create or follow a clear or consistent approach. Quite often there is no clarity about the objectives that the government wishes to follow to in any sector. At times the regulatory mandate falls short of what is required for achieving the stated policy objectives. A multi stakeholder approach is often absent in most of the sectors and given opaque regulatory mandates as well as limited regulatory capacity, this evolving form of governance has failed to develop teeth or evolve a cogent and coherent approach that can be truly independent in its functioning.

Key Words: Regulation, Regulatory Authority, Regulatory Agency, 1991 LPG Reforms, Independent Regulatory Commission, Customer Service, Constitutional Provisions, Behaviour, Entry And Exit, Technology, Cost And Content Regulation.



Introduction

Independent Regulatory Authorities are agencies of modern democratic governments, parts of the executive wing with a certain degree of statutory or constitutional autonomy, reporting directly to the legislature. Like the general executive they are accountable to the legislature and subject to judicial review. India started developing regulatory institutions with the introduction of reforms in 1991. But the regulatory environment which has developed over a period of time does not seem homogeneous across sectors. There are three sets of justifications for regulatory interventions; they are prevention of market failures, restriction or removal of anticompetitive practices, and promotion of public (consumer) Interest. The Independent Regulatory Authorities became attractive in the context of the transition from government to governance and in the quest for mutual autonomous of the government the Civil Society, and the market, their accountable and transparent functioning in network governance, and their non – patrician administration.

Regulation: Conceptual Explanation

With the coming of liberalization, privatization, and globalization, the new economic policy liberalized the economy for entry of private companies including the international and multinationals ones in public sectors. Telecom, power distribution, pension, food, construction of highways and toll roads, and such others were opened for investment of the private players. This brought in the concept of regulation. Regulation refers to a rule or order issued by an executive authority or regulatory agency of a government and having the force of law. Regulation entitles rules covering all the activities both private and public in nature. Regulation, thus, is an attempt to control and monitor private behavior in a desired direction with the implications of certain rules and regulations.

There were the public private projects that operated under build, own, operate model (BOO); and build, own, operate, transfer model (BOOT). Regulatory mechanism ascertain economic efficiency, as the government can now ensure and monitor that the private sector companies adhere to the guidelines and standards laid down by the regulatory agency, there by prohibiting , monopolistic, restrictive, and unfair trade practices; provide citizens with a choice friendly market, and finally, promote effective and efficient utilization of resources and modernization of services. These objectives are in tune with article 39(c) of the Indian Constitution, which states ‘that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.’ On the whole, regulatory commissions were set up with the following objectives. They are 1) Safeguard the consumer interest by securing quality and reliable facilities at affordable prices. 2) Arrive at a negotiation, as conflict resolution mechanism, among various stockholders involved. 3) Foster competition, plurality, and investment. 4) Strike equilibrium in meeting the social welfare objectives based on viability.

Statement of the Problem

As state organizations, regulatory agencies originated in various boards, ad-hoc committees, other pre-modern organizational entities that during the 20th century became the pillars of the modern administrative state. Regulatory Commissions became a distinctive feature of the American Administrative state in the early 20th century. What other countries in world often nationalized their institutions, but the United States regulated. Indeed, the history of the American administrative state is also the history of the establishment of regulatory agencies in the world. One of most important indicators of the growth in the scope and depth of the regulatory activities in modern society in the proliferation of the regulatory agencies as administrative and intellectual core of national and global systems of regulatory governance. Regulatory agencies are not a new feature of modern systems of



governance, but they become a highly popular form of regulatory governance since 1990s. A regulatory authority is a non-departmental public organization mainly involved with rule making, which may also be responsible for fact-finding, monitoring, adjudication, and enforcement. It is a Autonomous in the sense of that it can be shape its own preferences; of course, the extent of the autonomy varies with its administrative capacities, its ability to shape preferences independently, and its ability to enforce its rules.

Objectives

This paper presents the general overview and analysis of sectorial regulatory agencies in India. It's institutional framework and autonomy to the regulator are elaborated in this paper. Reasons for focus on regulatory authorities in post-LPG reforms also discussed in the paper. And one more important objective of the paper is features of the regulatory agencies and Issues with regulatory authorities still continues in the state also elaborated. Finally these agencies or authorities need some reforms by experts committee and ARC recommends some important changes and governance related questions. Some other solutions to regulatory issues are discussed in this paper.

Review of Literature

Thomas D. Lancaster and Reem Abdalla conceptualise IRAs as mechanisms of political monitoring by administration. This approach, they argue, raises fundamental and common questions about the governance of public and collective resources, relevant institutional choices and effects of decisions related to monitoring mechanisms, rulemaking and enforcement. A comprehensive survey of the comparative regulatory theories on virtually a global scale is the hallmark of this contribution.

Sudhanshu Tripathi underlines the need to theorise public authority in the emergent neoliberal state as a mechanism for coordinating diverse interest's inclusive and consensual governance in a responsible, accountable and participatory democratic way. The real issue boils down to reconcile democracy capitalism that goes beyond the failed or made to fail welfare state.

Dolly Arora maps the contours of the contemporary discourse on IRAs almost globally in the context of their proliferation and emerging evidence of significant variation in their designs and functional patterns in their specific political economy context and the larger goals of social justice and sustainable development sought to be attained in a way which can address the challenges of competing rights claims in unequal power parameters.

Rajendra Kumar Pandey delves into the intellectual roots of IRAs in the USA and India. He argues that neither The Federalist nor the US Constitution shows inkling or inclination towards an institution like this as they were heavily preoccupied with more or less unitary visions of the legislative, executive and judicial powers, and their interface in a government. The Indian political tradition, in the opinion of the author, displays praxis rather than precept; it was in modern times dominated by the colonial rulers in London and the British East India Company. As a result, the executive-dominated government in British India created a more or less unitarian conception of the executive. It was thus an infertile ground for mechanisms of IRAs, barring the Reserve Bank of India whose autonomy in British India would appear to be a prima facie suspect. India turned somewhat more receptive to such institutions after the Independence and under the postcolonial Constitution predicated on parliamentary-federalism, fundamental rights and weariest directive principles of the state policy.



Amitabh Rajan begins with the exposition of administrative theory of regulation and then shifts to the depiction of the Indian landscape of IRAs. The theoretical thrust of the framework of regulation that his survey of the literature presents to the regime of capitalist accumulation in which agencies are re-crafted as modes of mediation and intervention among stakeholders in the production system and the social structure of accumulation. He goes on to survey the theories aimed at the reshaping of regulatory governance, regulatory capture, emergence of laws of regulation, democratic oversight of regulatory agencies and agencies of social regulation. In the Indian context, he highlights some key domains of regulation such as monetary policy, fiscal stability, capital flows and external sector management, settlement system accountability, stock exchange, issues of capital and disclosure requirements, economic competition and risk management, pricing, privacy and data management, telecom spectrum management, insurance, natural resources and power, tariffs, accreditations, food safety, etc., and the existing and emergent IRAs therein

Methodology

The major objective of this paper is to review and analyze the regulatory agencies origin, acts, features, issues and remedies in their independent functioning. The methodology of this paper is descriptive and the required information is collected from different secondary sources like Text Books of Public Administration, Management Studies, Economics of India, IRAs Websites, research articles, periodicals, manuals and reports of the financial market, etc.

Types of Regulation

Regulation in India can be placed under broad heads: economic regulation, regulation in the public interest and environmental regulation. Economic regulation prevents or handles market failure. This is accomplished by rules that prescribe and penalize market distorting behaviour. Regulation in the Public Interest is required where industries fail to meet a standard or uphold something of grave Public interest. A classic case is of health and safety, where firms can fall short in protecting employees or the general public from physical damage. Environmental regulation or protection has given constitutional status. As per the Directive Principles of State Policy, state that protecting and improving the environment is the duty of the state as well as citizens of the country. The GOI has enacted various laws to protect the environment through the Environment (Protection) Act, 1986, as the umbrella legislation. These set standards for emissions and discharge, regulation of the location of industries, management of hazardous waste and protection of public health and welfare. Under the EPA, Statutory clearances relating to pollution control and the Environment are necessary for setting up units in 31 categories of industries. This list includes petrochemical complexes, petroleum refineries, thermal power plants, cement, fertilizer, bulk drugs, dyes, paper etc. Ministry of Environment and Forests is the key agency for environmental legislation.

Sector Regulation In India: Trends and Ways

Sector regulators are important as individual have their own characteristics which, in turn, determine the nature of regulation. These provide orderly procedures, and protect consumers and investors from market failures and anti – competitive actions in a particular sector. Government efforts have been consistent in promoting competition in the market place. In some areas such as telecom, civil aviation, insurance, railway container traffic, gas distribution etc., Government monopolies have been curbed by allowing the private sector to enter. However, if one examines each sector in detail we find that principles of competitive neutrality have been compromised or overlooked.



Reasons for Focus on Regulatory Authorities After 1991

1. To check market excess and failure, ensuring the citizen is not treated as a customer.
2. In post – LPG model, government reinvented its role from being doer and become a facilitator to ensure institutional plurality of market forces while protecting the citizen's interest.
3. Global constitutionalism movement: This expanded the scope of fundamental rights of people and ensured the interest of economically, socially and ethically backward sections.
4. The Organisation for Economic Cooperation and Development (OECD) estimates that the Pandemic will lead to a 1.5% slowdown in global growth. The World Trade Organisation (WTO) also expects a "substantial" impact on the global economy.
5. India's progress has been steered by dramatic improvement in a few parameters in Ease of Doing Business, mainly in 'resolving insolvency' (from 108 2018 to 52 in 2019). But it has remained stagnant at 163 in 'enforcement of contracts'.

Features of Regulatory Authorities

1. Collegiate form of organisation, that is, a multi-member body.
2. Formed through a legislation or executive order.
3. Financial such as SEBI, IRDA, CCI
4. Non-financial - University Grants commission, Central Pollution Control Board.
5. They are specialised agencies and independent of executive interference and quasi-judicial in nature.
6. They should be composed of experts and create a level playing field by setting standards enforcing them and protecting the interests of stakeholders.
7. Their mandate is regulation not control and interference.

Regulatory Authorities in India Issues and Challenges:

1. Powers and functions of the Regulatory agencies are not clearly delineated.
2. Absence of coordination among regulatory commissions is another important issue.
3. Qualifications, composition, appointment, removal and service conditions of the different commissions are vaguely defined.
4. Lack of transparency and bureaucratization of these commissions .For example retired bureaucrats are appointed mostly in these organizations.
5. Sectorial regulation commissions do not have freedom from executive interference and do not have effective power to deal against emerging issues.
6. Sectorial regulation has do not ensured and there is a conflict among their jurisdictional spheres resulting in regulatory overload. Example Competition Commission of India vs Securities and Exchange Board of India
7. Regulatory Authorities have been unable to prevent market failures in the following scams. a) Reserve Bank of India non-performing assets. b) Sarada scam incident in West Bengal c). Corruption in regulatory architecture: MCI d) Punjab National Bank Scam e) Sahara scam.
8. There has been overregulation in the sense that multiple regulators have jurisdiction over the same or conflicting areas.
9. They have semi-executive, semi-judicial and semi-legislative functions.
10. No power of contempt and frequently their decisions are appealed. Hence, their efficacy is reduced in some instances.



11. Populist pressure: In India political populism often overtakes the economic agenda. This casts a shadow on regulation. There are constant interferences in the functioning of regulatory bodies by the ruling political parties.
12. Recommendations made by Regulatory Authorities are rarely implemented in some instances.
13. Presence of many regulatory bodies causes overlapping of powers (RIGGS prismatic society feature)
 - # For example: Environment- Central Pollution Control Board (CPCB) and National Green Tribunal (NGT).
 - # Controversy between SEBI and IRDAI over Unit Linked Insurance Policy.
 - # Education sector- All India Council for Technical Education (AICTE) and University Grants Commission (UGC).

Solutions For IRAS Strengthening

- iii) FSLRC recommended a super regulatory authority, creation of FSDC and statutory power.

DAMODARAN COMMITTEE RECOMMENDATIONS:

M. Damodaran Committee main purpose is customer service in the banks,

The committee headed by former SEBI chief M. Damodaran has proposed a slew of customer - friendly measures. RBI appointment this committee.

1. Regulatory impact assessment of regulating authorities.
2. Time-bound decision-making and single-window clearance.
3. Setting up a regulatory review authority
4. System of Advance ruling to prevent conflicts among regulators.
5. Most important recommendation is transparency in appointment and supervision of regulatory authorities
6. Clear mandate for regulatory commissions

2nd Administrative Reforms Commission Recommendations

1. There should be uniform provision in terms of composition tenure, service conditions and removal.
2. There should be transparency in appointment or regulatory authorities.
3. Neo-regulatory body should not be created without proper study of present regulatory.

Some Other Solutions to Strengthening IRCS

1. Regulatory organisations should undertake a self-evaluation of themselves once in a few (say three) years, and put out the conclusions in the public domain for informed discussion and debate.
2. Genuine functional autonomy would also have to be reinforced with financial autonomy by putting in place a system where regulatory organisations are not dependent on government departments for financial support.
3. Functional autonomy without corresponding accountability is a sure recipe for chaos.

Thus, there is a need to make sure such bodies imbibe the ethos of transparency and accountability in the functioning of the authorities.

1. There is need for re-institutionalisation, restructuring to bring unity of command and ensure innovation and faster decision making.



2. Parliamentary scrutiny over regulatory bodies through standing committees.
3. Many countries have adopted techniques like "Regulatory Impact Assessments". India can also mandate such techniques through legislation and thereby pre-serve economic value.
4. Introduce uniform code administrative procedure in sectorial authorities
5. Enhance Parliamentary scrutiny over regulations issued by statutory regulatory authorities.
6. In Sectorial regulation commissions conduct regulatory performance evaluations.
7. One of the most important suggestions is provide specialized relevant training to regulatory officials.
8. Enhance awareness and effectiveness of Real Estate Regulatory Authorities in civil society
9. And Enhance regulatory effectiveness using a proactive and sustainable approach.

Conclusion

Structural, procedural and generic changes in regulatory sphere are required to ensure they are agents of good governance and ease of doing business. Regulatory Authorities need to balance themselves between regulation, control and autonomy to market players to ensure role as arbitrator, mediator and conciliator of public interest.

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