

Issues for Parliamentarians

To facilitate informed discussions among Indian Parliamentarians on key economic policy issues

1/2005

Good Economics is Good Politics



Parliamentarians' Forum on Economic Policy Issues (PAR-FORE)

Regulatory Autonomy and Accountability

BACKGROUND

Since the early nineties there has been a paradigm shift in the approach to economic management in India. There is now a greater recognition of the significance of market-friendly processes in the economy. However, this does not mean that government ceases to be responsible. There are several imperfections in the functioning of market mechanism, which calls for some form of intervention. This requires the government to put in place proper market-regulatory system. In fact, the key to making markets work for the people is good regulation (see Box 1).

Regulatory Commissions (ERCs), the Insurance Regulatory and Development Authority (IRDA), the Securities and Exchange Board of India (SEBI) are some of the sectoral agencies that have been set-up. Besides, there is the Competition Commission of India (CCI), which has been given an economy-wide remit to promote and maintain competition.

The government has the sovereignty to formulate policies and set regulatory objectives, based on proper consultation, and regulatory agencies act as instruments in achieving the stated goals. However, the government must not intervene in the operational aspects of regulation, as it may affect the independent functioning of the regulators. Therefore, once regulatory objectives are determined, regulatory agencies need to be given sufficient autonomy to implement the same. An appropriate mechanism to hold regulatory agencies accountable for their actions is equally vital.

With this backdrop, this note presents the current scenario in India with respect to 'Regulatory Autonomy and Accountability' and highlights relevant issues for deliberation at the PAR-FORE.

Box 1: What is Regulation?

Regulation here does not refer to the mesh of complicated and opaque rules, which have stifled entrepreneurship and innovation in the past. The regulation referred to here is a set of transparent, consistent, and non-discriminatory rules that create a competitive and dynamic environment in which market players can thrive. In its absence, anti-competitive practices and regulatory failures may distort the market process and thwart its functioning.

Therefore, market-regulatory agencies, such as sector regulators and competition authority have been set-up in the country to ensure a predictable regulatory environment and participatory decision-making. These agencies carry out several functions *viz.*, balance conflicting interests, promote competition, facilitate investment, democratise decision-making, ensure overall development of the sector and so on.

The Telecom Regulatory Authority of India (TRAI), the Electricity

PRESENT SCENARIO

Experiences with regulatory regimes in India have been mixed so far. Regulatory agencies have facilitated participatory decision-making by following relatively transparent process. However, this emerging form of economic governance is yet to result in tangible gains for stakeholders concerned.

Popular perception is that regulatory agencies have not been able to live up to their expectations. Amongst the most cited reasons are:

- Lack of autonomy and accountability in regulatory agencies
- Legislative provisions and prevailing practices do not attract capable professionals

Box 2: Line Ministry vs Regulatory Agency: Turf War Continues...

The Department of Telecommunications (DoT) recently announced certain proposals for restructuring the tariff regime in telecommunications, considering these to be policy issues. However, TRAI has resisted these proposals on the grounds that tariff related matters fall under its purview. After TRAI's objection, the DoT is contemplating exercising its powers of issuing 'policy directives' to the regulator. The matter is still unresolved, and highlights the need to clearly demarcate policy and regulation issues.

In another similar incident, the Ministry of Power attempted to clip the wings of electricity regulatory commissions through amending the legislation. This has however been shot down by the Prime Minister's Office.

Retired bureaucrats/judges are being appointed with little attention to merit. Often these people do not have the attitude and vigour that is required to establish credibility of the institutions.

Inconsistent Approaches across Sectors

Several regulatory agencies have been created without due consideration to consistency and coherence in approaches across various sectors. For instance, electricity regulatory agencies are expected to facilitate investment and growth, and advise government on policy matters. They are even empowered to adjudicate on sectoral competition issues, such as abuse of market dominance, cartels, etc. In contrast, the amended TRAI Act has effectively

reduced the telecom regulator to a mere advisor.

Ambiguity in Relationships

Overlap between policy and regulation is a major impediment to regulatory autonomy. Regulatory laws often require the government to issue 'policy directives' to regulators, without even defining their scope. Leaving the term 'policy directive' vague and subject to arbitrary interpretations has given rise to conflicts and confusions. Temptation to command and control these autonomous institutions still prevails within line-ministries, often leading to turf wars (see Box 2).

Financial Autonomy Impaired

Financial autonomy of regulatory agencies is equally important, as the relevant line-ministry may use this instrument to curtail the functional autonomy of regulators.

TRAI, for instance, has been complaining of limited resources at its disposal that severely curtail its functioning. TRAI sought government's permission to allow it to share a part of the license fees, as its independent source of funding. However, the proposal was shot down by the DoT. Interestingly, the insurance regulator (IRDA) and the capital markets regulator (SEBI) are allowed to raise revenue in a similar way!

Accountability is Equally Important

Delegation of autonomy, without accountability, could lead to chaos. Therefore, appropriate mechanisms need to be in place to make regulatory agencies accountable. Current provisions with regard to regulatory accountability are far from adequate.

Parliamentary Oversight Inadequate

Regulatory legislations require regulators to submit an Annual Report before the parliament. Some regulatory agencies do not even submit their reports on time. Further, expecting the Parliament to devote the amount of time required for in-depth analysis would not be realistic. In any case, such provisions provide only for *ex post* analysis; hence are partial in nature. Appropriate mechanisms need to be in place to cope with possible under-performance of regulatory bodies. This requires ensuring accountability on *ex ante* basis, as well.

Appellate tribunals proliferating with not much work

Another approach for overseeing regulators' functioning is by providing for appeals in the relevant regulatory laws. This has, however, led to a disproportionate proliferation of appellate tribunals, though most of them do not have enough work and are an unnecessary burden on exchequer. It also fuels the undesirable trend of appointing retired bureaucrats/judges to head these bodies.

There is often an overlap between the functions performed by various regulatory agencies; for instance, between the competition authority and sectoral regulators, between electricity regulators and the proposed petroleum regulator and so on. Setting up an appellate body for each regulatory agency can lead to forum shopping in similar cases, and inconsistent decisions at the appellate level. As an alternative, it needs to be deliberated if a common appellate tribunal is desirable.

To sum up...

Making regulatory regimes more effective would require addressing the following two issues:

- Properly defining regulatory objectives, mandate, functions, autonomy, relationship with other agencies/line ministry, accountability, etc in the legislation
- Attracting and encouraging capable young professionals to join these bodies

GOVERNMENT'S MOVES

Realising the critical nature of issues involved, the government has asked the Planning Commission to prepare a policy paper on regulatory framework for infrastructure sector. Among other things, the paper will work out the general principles that a regulatory framework should adhere to and recommend changes in the existing policies. While the Planning Commission is currently engaged in this task, the Deputy Chairman, Planning Commission, Dr. Montek Singh Ahluwalia, during the course of several consultative seminars, has observed the following:

- Granting autonomy to regulators with respect to funding and staffing is important
- Regulators should be established across a broader set of sectors, such as one for the entire energy sector, to avoid capture by a line ministry, and for efficiency
- Broad set of regulators should have a common appellate tribunal with a provision for regional benches

ISSUES FOR DISCUSSION

- ◆ What measures should the government take to ensure coherence in regulatory frameworks across various sectors? How should regulatory objectives, mandate, function, and powers be determined so that the overarching objective of sectoral development is achieved?
- ◆ What is the appropriate relationship between the line-ministry and the regulatory agency? Under what circumstances should the line-ministry exercise the power of issuing 'policy directives' to regulator? Should it be made mandatory for the line ministry to hold consultations with the regulator and other stakeholders prior to issuance of such directives?
- ◆ Are retired bureaucrats/judges the best talent available to be appointed as regulators? How can the selection process be made transparent and objective and based on market salaries so that younger talent could be attracted to join these bodies?
- ◆ As a measure to reduce vulnerability of regulatory institutions, should these agencies be encouraged to become financially self-sustained?
- ◆ Whom should the regulator report to? Should a Parliamentary Standing Committee on Regulation and Competition be constituted as reporting authority for regulatory agencies?
- ◆ How can the regulator be made accountable? Should consumer organisations be resourced to perform the role of a watchdog?
- ◆ Do we need to have separate Appellate Tribunals for each regulatory agency? Alternatively, should there be a Common Appellate Tribunal for broad set of regulatory authorities, such as one for infrastructure and another for financial sector, with provisions for regional benches?



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Printed by Jaipur Printers Pvt. Ltd.,
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