

'COMMENTARAO' in "The Telegraph" of June 24 2013

"Future Regulatory Architecture" by S L Rao

For the first forty years after independence, the regulation of the Indian economy was by departments of government. The exception was the Reserve Bank of India. It was created in 1935 as the apex monetary authority to regulate currency and finance. However, it worked closely with the central government. Independent views and policies occurred only under Governors who were strong personalities. The Comptroller and Auditor General of India was created under a constitutional provision and was intended to be independent of government. The Forward Markets Commission created in 1952 was in fact a department of government, (there is now talk of making it an independent body). SEBI was created in 1988 to regulate equities and other securities, and became independent of government by statute in 1992. The Insurance Regulatory and Development Authority came into being in 1999. TRAI, OERC and CERC and State ERC's, followed for infrastructure (telecom and electricity).

Statutory bodies for economic regulation arrived from the late 1980s. Statutory regulators were to replace government departments. Some were made independent of government. Others were advisory, or under government. Constitutional regulators (like CAG) were free of control. However, most of the economic regulation remained with government departments.

CERC and SERCs were designed to be independent, as was Competition Commission of India. TRAI, AERO, Atomic Energy Board, and PNGRB were more constrained. There are more regulatory bodies in the offing: for real estate, roads, coal, etc. Many, designed to be independent of government have been subservient. TRAI, the telecom regulator was emasculated when Parliament disbanded the earlier body that had decision making powers (for example on tariffs), and replaced by a TRAI that was recommendatory. But appellate bodies over regulators for telecom, electricity, competition were outside government influence. Electricity and Information have both central and state regulators. Purely central regulators handle sectors that are in the central list in the Constitutions.

Today almost all regulatory bodies are headed by retired I.A.S. officers. Members are retiring bureaucrats and other government

servants. Most are subservient to the opinions of Ministers and bureaucrats in service. Few function truly independently. They tend to function as departments of government. Where there are state regulatory commissions, they are even more subservient.

. With economic growth, allocating contracts for natural resources under government ownership (land, coal, oil, gas, telecom spectrum, air routes, building roads, etc), became immensely valuable. Their allotment mostly to private parties gave immense discretionary powers to politicians in power and bureaucrats. Licensing, product/service pricing, manner of use, other clearances, had to be determined. Such decisions could earn the licensor (government and its officials) large sums of money. Ministers and bureaucrats, who took the decisions, could become wealthy. The abuse of powers led to huge losses (notional and real) for the nation. Independent regulation was meant to prevent such abuse through transparent decisions, in consultation with all stakeholders.

However, the design and staffing of many regulatory bodies has perpetuated the problems. Governments continue to have the major say. Misuse continues.

The Petroleum and Natural Gas Regulatory Board has no tariff powers. It has powers to license pipelines. However in the early years the government department retained powers and were used by the Ministry without consulting the Board. Appointments to the Board have lrd at times to loss of harmonious working.

Now there is to be a Coal Regulator who will also ultimately be under the Ministry. He will function under government directions. Being nationalized, all powers (production, allocations, and tariffs) over this valuable and critical natural resource are with government. An independent regulator operating transparently is overdue but government proposes a regulator who will take its directions.

The Airports Regulator was created recently. The functioning of this regulator has been unsatisfactory for passengers and the airlines. The entry of private sector into operating airports appears to have tilted the regulator to favour the private operators.

Independent regulation as a mechanism of governance in India has been captured by the bureaucracy. It is a post-retirement perquisite usually given on seniority. There is as yet no attempt to introduce accountability of regulators and legislative oversight over them. Some

appointees are able to overcome a lifetime of working as administrators. A few who have transformed themselves, they have been constitutional regulators or in the RBI. This cannot be said about practically any statutory regulators.

Regulators in most cases do not need expertise in electricity, telecommunications, oil and gas, etc. They must understand the main drivers and the contours of their sector. Equally importantly, they must be skilled at understanding interdisciplinary connections-the economy, societal conditions, finance, accounting, the constitutional framework, the legal rules for the sector and for the regulatory commission, and the behavioral characteristics of the consumers. They must be intellectually honest and strong, possess courage of convictions, and able to stand firmly against contrary government and public influences.

Most economic regulators till now have been subservient to government diktats, populist in philosophy, procedural in orientation, and with little interest in enterprise efficiency, measured by the return they earn on investment. Their intellectual convictions are easily changed by external authority.

Fortunately, the Appellate Tribunals and the higher judiciary for electricity, telecom, competition, recognize the need for efficiency. They have taken steps to correct biased regulatory decisions and support objective ones.

It is evident that independent regulation is the only way to prevent theft and misuse of government resources. It will become the major factor in economic governance, despite administrators having captured regulatory bodies. Visible changes in the socio-economic context will ensure this happening.

These include private investment becoming increasingly important in building additional capacities. It will demand respite from secretive discretionary decisions. Experience in regulating state-owned enterprises will make regulators enforce better planning and monitoring of their performance. Macroeconomic pressures- like government deficits, revenue and productivity considerations, will bring greater commercial orientation to state-owned enterprises. Consumer pressures for better and consistent service delivery will compel these enterprises to become efficient.

There will be growing reliance on markets to set prices for balancing supply with demand. The transparent functioning of markets and Exchanges will become an important priority for regulators. The delivery mechanism-transportation, transmission wires and pipelines, and ensuring open access to them, i will become areas for regulatory intervention.

Government is unwisely creating multiple regulatory agencies dealing with closely related subjects. But regulators will intervene with other agencies where it affects their jurisdiction over a sector. They will consider costs of inputs like fuels, and delayed clearances by government departments leading to cost pressures.

Consistent support from the Appellate bodies and Courts will also compel independent and transparent functioning of regulatory agencies. Regulators will also press for reform in targeting and paying for subsidies by governments, and to eliminate cross-subsidies.

The present proliferation of new 'independent' regulatory bodies adds another layer of clutter to our governance structure without improving it. Government departments must, with the creation of regulatory agencies, simultaneously down size. Safeguards to keep both government and regulatory bodies effective are required. For this, ministries and departments must coordinate decision-making. Combining responsibilities between regulatory bodies to reduce the number of regulators dealing with related subjects must happen. Mandatory consultations between regulatory agencies on specific issues that impinge on common jurisdictions should be in place.

However, the starting point for regulatory reform is the selection, term, and accountability of regulators. Government has a selection system apparently based on seniority. Selections must be broad-based and consider other professions, not just government bureaucracy. Selections should be from many more professions. Younger regulators and a full tenure of five years must be aimed at.

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