Regulatory Responsiveness in India: A Normative and Empirical Framework for Assessment

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December 15, 2016
What does this paper do?

1. **Identifies**: Generally accepted measures of regulatory responsiveness.
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2. **Asks**: Are Indian regulators responsive?
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Focus of this paper: *Responsiveness in quasi-legislative functions*
Motivation

- India has witnessed the emergence of a "regulatory" state post-liberalisation.
  - 4 regulators in the financial sector
  - 6 regulators in the infrastructure sector
  - Competition regulator
  - Food safety regulator
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Rationale for responsiveness in quasi-legislative functions:

1. Avoids regulatory capture
2. Better information collection
3. Political ideal of democracy
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Rationale for responsiveness in quasi-legislative functions:

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No literature:

1. measuring responsiveness of these agencies; or
2. identifying why some regulators are more responsive than others.
Methodology of measurement
Measures of responsiveness

- Rule-based measures: Analysing laws governing regulators (Kauffman and Kraay (2007)).
- Outcome-based measures: Assessing the existence and quality of consultation processes.
Key findings
Rule-based measures

- Indian laws governing regulators do not provide for uniform standards for regulatory responsiveness.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Regulator</th>
<th>Legal requirement for consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reserve Bank of India</td>
<td>No</td>
</tr>
<tr>
<td>2</td>
<td>Securities and Exchange Board of India</td>
<td>No</td>
</tr>
<tr>
<td>3</td>
<td>Telecom Regulatory Authority of India</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Tariff Authority for Major Ports</td>
<td>No</td>
</tr>
<tr>
<td>5</td>
<td>Insurance Regulatory and Development Authority</td>
<td>No</td>
</tr>
<tr>
<td>6</td>
<td>Competition Commission of India</td>
<td>No</td>
</tr>
<tr>
<td>7</td>
<td>Central Electricity Regulatory Commission</td>
<td>Yes</td>
</tr>
<tr>
<td>8</td>
<td>State Electricity Regulatory Commissions</td>
<td>Yes</td>
</tr>
<tr>
<td>9</td>
<td>Pension Fund Regulatory and Development Authority</td>
<td>No</td>
</tr>
<tr>
<td>10</td>
<td>Food Safety and Standards Authority of India</td>
<td>No</td>
</tr>
<tr>
<td>11</td>
<td>Warehousing Development and Regulatory Authority</td>
<td>No</td>
</tr>
<tr>
<td>12</td>
<td>Airport Economic Regulatory Authority</td>
<td>Yes</td>
</tr>
<tr>
<td>13</td>
<td>Petroleum and Natural Gas Regulatory Board</td>
<td>No</td>
</tr>
</tbody>
</table>
Step 1: Developed (a) an index of benchmarks of responsiveness; and (b) quantifiable outputs for each benchmark.

Step 2: Assigned equal scores to the outputs. Where output is partially achieved, assigned a proportionate score.

Step 3: Applied this framework to four regulators, SEBI, RBI, TRAI and AERA for January 2014-April 2016.
Some benchmarks used

- Does the regulator publish explanatory documents such as consultation papers/draft regulations?
- Does the regulator proactively communicate with groups most likely to be affected?
- Does the regulator publish comments received before issuing the final regulation?
- Does the regulator provide time for counter-comments?
- Does the regulator provide a response to the comments?
- Does the regulator provide more than one method of receiving feedback?
Finding 1: Multiplicity of legislative instruments (1st January 2014-30th April 2016)

<table>
<thead>
<tr>
<th>Instrument</th>
<th>SEBI</th>
<th>RBI</th>
<th>TRAI</th>
<th>AERA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations</td>
<td>51</td>
<td>48</td>
<td>22</td>
<td>0</td>
</tr>
<tr>
<td>Circulars</td>
<td>122</td>
<td>1016</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Orders</td>
<td>1</td>
<td>0</td>
<td>12</td>
<td>69</td>
</tr>
<tr>
<td>Directions</td>
<td>0</td>
<td>0</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>Guidelines</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>175</td>
<td>1064</td>
<td>48</td>
<td>70</td>
</tr>
</tbody>
</table>
### Key findings: Outcome based measures

**Finding 2:** How many legislative instruments were preceded by a public consultation process? (1st January 2014-30th April 2016)

<table>
<thead>
<tr>
<th>Item</th>
<th>SEBI</th>
<th>RBI</th>
<th>TRAI</th>
<th>AERA</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of instruments issued</td>
<td>175</td>
<td>1064</td>
<td>48</td>
<td>70</td>
</tr>
<tr>
<td>No. of instruments preceded by public consultation</td>
<td>18</td>
<td>14</td>
<td>27</td>
<td>29</td>
</tr>
<tr>
<td>Percentage</td>
<td>10.28%</td>
<td>1.39%</td>
<td>56.55%</td>
<td>41.42%</td>
</tr>
<tr>
<td>No. Output</td>
<td>SEBI</td>
<td>RBI</td>
<td>TRAI</td>
<td>AERA</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>------</td>
<td>-----</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>1. Does the agency publish explanatory documents?</td>
<td>0.1</td>
<td>0.02</td>
<td>0.57</td>
<td>0.41</td>
</tr>
<tr>
<td>2. Does the agency pro-actively communicate with groups most likely to be affected?</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>3. Does the agency publish comments received before issuing the final regulation?</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>4. Does the agency provide time for counter-comments?</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>5. Does the agency provide a response to the comments received?</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>6. Does the agency provide more than one method of receiving feedback?</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Question</td>
<td>Score</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>-------------------------------------------------------------------------</td>
<td>-------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Does the agency publish a statement of when the decisions will be made</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>based on the consultative process?</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Does the agency publish the name of the individual in charge of the</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>consultative process?</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Does the agency publish the source of the legal power to issue the</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>proposed regulation?</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Does the agency give adequate time for responding to the draft</td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>proposed by it?</td>
<td>0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

<table>
<thead>
<tr>
<th>Score</th>
</tr>
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<tbody>
<tr>
<td>1.10</td>
</tr>
<tr>
<td>0.2</td>
</tr>
<tr>
<td>4.57</td>
</tr>
<tr>
<td>2.41</td>
</tr>
</tbody>
</table>
## Applying benchmarks to two Indian regulators

Zooming in on output 10: Time given for responding to comments

<table>
<thead>
<tr>
<th>Regulator</th>
<th>Minimum</th>
<th>Maximum</th>
<th>Median</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEBI</td>
<td>7</td>
<td>35</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td>RBI</td>
<td>7</td>
<td>46</td>
<td>30.5</td>
<td>29.6</td>
</tr>
<tr>
<td>TRAI</td>
<td>15</td>
<td>44</td>
<td>29</td>
<td>27.41</td>
</tr>
<tr>
<td>AERA</td>
<td>5</td>
<td>44</td>
<td>14</td>
<td>17.72</td>
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in calendar days

As an aside, time-lag between close of consultation exercise and enactment of regulation:

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<td>SEBI</td>
<td>55</td>
<td>645</td>
<td>160</td>
<td>250</td>
</tr>
<tr>
<td>RBI</td>
<td>24</td>
<td>2232</td>
<td>658</td>
<td>1128</td>
</tr>
<tr>
<td>TRAI</td>
<td>14</td>
<td>246</td>
<td>58</td>
<td>82.26</td>
</tr>
<tr>
<td>AERA</td>
<td>4</td>
<td>1197</td>
<td>218.5</td>
<td>349.75</td>
</tr>
</tbody>
</table>

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2. Infrastructure regulators do relatively better than financial sector regulators, though all of them fail the half-way mark.

3. There is a strong correlation between scores on rule-based measures and outcome-based measures for the four regulators.
Implications of findings

1. Further work:
   1. Analysis of whether regulatory agencies use comments received.
   2. Regular benchmarking of Indian regulators.
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1. Analysis of whether regulatory agencies use comments received.
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Policy implications:
1. Feeds into parliamentary and other external oversight of regulators’ functioning.
2. Leads for what needs to change in the law or internal bye-laws of regulators.
Thank you


