Independent Regulatory Agencies
Promise and Reality

Navroz K. Dubash

Centre for Policy Research
New Delhi

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Why Should We Be Concerned with Independent Regulatory Agencies?

- IRAs ("law-backed specialised agencies") are proliferating
  - Existing: Telecom, electricity, petroleum/gas, SEBI
  - Planned: coal, environment, health, education, real estate…

- IRAs represent a puzzle
  - Why do they proliferate when they often don’t work?
  - Why are ministries so keen to delegate large portions of their authority to IRAs?

- IRAs are often seen as a silver bullet
  - A “one-size-fits-all” governance solution for India?
Background and Concepts

• IRAs: Law-backed specialised agencies
• Extend sphere of “apolitical” decision-making
• Three broad types
  – Economic regulation: financial and infrastructure
  – Social regulation: media, environment
  – “Integrity” Agencies: watchdogs, audit, Lokpal
• Focus here on infrastructure regulation
• Regulation as a global phenomenon
  – Closely associated with liberalisation
Regulatory Agencies – 1970
(Levi-Faur et. al.)
Regulatory Agencies – 1980
(Levi-Faur et. al.)
Regulatory Agencies – 1990
(Levi-Faur et. Al.)
Regulatory Agencies – 2000
(Levi-Faur et. al.)
Regulatory Agencies – 2007
(Levi-Faur et. al.)
Regulatory Agencies in the “Global South”

- Frequently transplanted without understanding of local context
- Regulators confronted with pressures of redistribution
- Weak state capacity
- These factors play out differently in different national contexts
Three Myths of Indian Regulation

• Regulators can single-handedly de-politicize decision-making
  – Many regulated sectors require reform but reform requires politically costly trade-offs

• For a regulator to be truly independently requires selecting the right person – the Seshan effect
  – Regulators are unelected and have no democratic legitimacy to manage political trade-offs

• Legitimacy can be obtained through technocratic virtuosity
  – Many regulatory decisions do not have a single technical answer
Toward Design Principles

• Don’t overload regulators with decisions they cannot handle
  – Avoid delegating discretionary decisions that create winners and losers
  – Substantive guidelines on political choices

• Regulation as governance – legitimacy through robust procedures
  – Opportunities for voice through hearings
  – Detailed reasoning
  – Multiple levels of accountability
    • Strengthened legislative oversight from above
    • Review from below - procedural robustness
    • Robust appeal process
  – Sufficient capacity
    • Regulatory selection process
    • Staff capacity and incentives
Conclusion

• Regulatory agencies can improve governance, but not under all conditions
• Apolitical regulation may not be possible or desirable – regulation is a governance process that requires multiple levels of accountability
• Successful regulation requires attention to much more than the regulatory agency – legislature, stakeholders, judiciary, bureaucracy
Thank you

ndubash@gmail.com
Outline

• Background and Concepts
• IRAs as Global Phenomenon
• Three Myths of Regulation
• Regulation as Governance: Design Principles