

Regulatory responsiveness in India

Bhargavi Zaveri
Finance Research Group
Mumbai

February 8, 2021

Structure

- 1 Motivation
- 2 Measuring regulatory responsiveness in India
- 3 Creating an eco-system for regulatory consultations

Motivation

- Rise of the administrative state
 - 4 regulators in the financial sector
 - 6 regulators in the infrastructure sector
 - Competition regulator
 - Insolvency and Bankruptcy Board of India
 - Food safety regulator
 - State-level real estate regulators
 - International Financial Services Centres Authority

Motivation

- Rise of the administrative state
 - 4 regulators in the financial sector
 - 6 regulators in the infrastructure sector
 - Competition regulator
 - Insolvency and Bankruptcy Board of India
 - Food safety regulator
 - State-level real estate regulators
 - International Financial Services Centres Authority
- Rationale for responsiveness in quasi-legislative functions:
 - ① Regulatory capture
 - ② Better information collection
 - ③ Political ideal of democracy
 - ④ Increases legitimacy of regulatory standards

Motivation

- Rise of the administrative state
 - 4 regulators in the financial sector
 - 6 regulators in the infrastructure sector
 - Competition regulator
 - Insolvency and Bankruptcy Board of India
 - Food safety regulator
 - State-level real estate regulators
 - International Financial Services Centres Authority
- Rationale for responsiveness in quasi-legislative functions:
 - 1 Regulatory capture
 - 2 Better information collection
 - 3 Political ideal of democracy
 - 4 Increases legitimacy of regulatory standards
- 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

Burman and Zaveri 2018

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

Methodology of measurement

Measures of responsiveness

Burman and Zaveri 2018

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

- Developed a baseline of benchmarks of a good consultation process.
- Tested four Indian regulators - SEBI, RBI, TRAI and AERA - on the baseline of benchmarks.

Key findings

Rule-based measures

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

S. No.	Regulator	Legal requirement for consultation
1	Reserve Bank of India	No
2	Securities and Exchange Board of India	No
3	Telecom Regulatory Authority of India	Yes
4	Tariff Authority for Major Ports	No
5	Insurance Regulatory and Development Authority	No
6	Competition Commission of India	No
7	Central Electricity Regulatory Commission	Yes
8	State Electricity Regulatory Commissions	Yes
9	Pension Fund Regulatory and Development Authority	No
10	Food Safety and Standards Authority of India	No
11	Warehousing Development and Regulatory Authority	No
12	Airport Economic Regulatory Authority	Yes
13	Petroleum and Natural Gas Regulatory Board	No

Measuring outcome-based responsiveness

- 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 recieved 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?

Key findings: Outcome based measures

Finding 1: Multiplicity of legislative instruments (1st January 2014-30th April 2016)

Instrument	SEBI	RBI	TRAI	AERA
Regulations	51	48	22	0
Circulars	122	1016	0	0
Orders	1	0	12	69
Directions	0	0	14	1
Guidelines	1	0	0	0
Total	175	1064	48	70

Key findings: Outcome based measures

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

Item	SEBI	RBI	TRAI	AERA
No. of instruments issued	175	1064	48	70
No. of instruments preceded by public consultation	18	14	27	29
Percentage	10.28%	1.39%	56.55%	41.42%

Final scores

No.	Output	SEBI	RBI	TRAI	AERA
1.	Does the agency publish explanatory documents?	0.1	0.02	0.57	0.41
2.	Does the agency pro-actively communicate with groups most likely to be affected?	0	0	0	0
3.	Does the agency publish comments received before issuing the final regulation?	0	0	1	1
4.	Does the agency provide time for counter-comments?	0	0	1	0
5.	Does the agency provide a response to the comments received?	0	0	0	0
6.	Does the agency provide more than one method of receiving feedback?	0	0	1	0

Final scores, and Outputs 2-9

No.	Output	SEBI	RBI	TRAI	AERA
7.	Does the agency publish a statement of when the decisions will be made based on the consultative process?	0	0	0	0
8.	Does the agency publish the name of the individual in charge of the consultative process?	0	0	0	0
9.	Does the agency publish the source of the legal power to issue the proposed regulation?	1	0	1	1
10.	Does the agency give adequate time for responding to the draft proposed by it?	0	0	0	0
Total		1.10	0.2	4.57	2.41

Time-lag between consultation & enactment

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

Regulator	Minimum	Maximum	Median	Average
SEBI	55	645	160	250
RBI	24	2232	658	1128
TRAI	14	246	58	82.26
AERA	4	1197	218.5	349.75

in calendar days

Puzzles

Thumb rules:

- 1 Technical subjects v. “hip” subjects

Puzzles

Thumb rules:

- 1 Technical subjects v. “hip” subjects
- 2 Inertia

Puzzles

Thumb rules:

- 1 Technical subjects v. “hip” subjects
- 2 Inertia
- 3 Noise v. sound

Puzzles

Thumb rules:

- 1 Technical subjects v. “hip” subjects
- 2 Inertia
- 3 Noise v. sound
- 4 Meaningful engagement

Eco-system for regulatory consultations

Effective notice

Some Indian regulators have made considerable progress on this front.

- TRAI: ▶ Consultation page with comments received.
- AERA: ▶ Dedicated consultation page with status

Eco-system for regulatory consultations

Co-opting stakeholders

Need not be limited to initiatives of the State alone.

Example of an initiative, titled 'Regulation Room', set up by a University, [▶ here](#)

Eco-system for regulatory consultations

Ease and access

- 1 Availability of data
- 2 Framing of the questions
- 3 Timeline for responding
- 4 Regulator's responsiveness track record

For the entire thing, see Zaveri 2016



Burman, Anirudh and Bhargavi Zaveri (2018). “Measuring regulatory responsiveness in India: a framework for empirical assessment”. In: *William and Mary Policy Review* 9.2, pp. 1–26.



Kauffman, Daniel and Aart Kraay (2007). “Governance Indicators: Where Are We, Where Should We Be Going?” In: *World Bank Research Observer*.



Zaveri, Bhargavi (Jan. 2016). *Participatory governance in regulation making: How to make it work?* URL: <https://blog.theleapjournal.org/2016/01/participatory-governance-in-regulation.html>.