



Rule of law and regulation

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What is regulation?

- "...obligations imposed by public law designed to induce individuals and firms to outcomes which they would not voluntarily reach. Regulation is largely enforced by public officials and compliance is aided by the threat or imposition of some sanction. As such, *regulation covers a vast array of state controls over industrial and commercial activities*" - Ogus, 2009
- Regulation shapes incentives for firms, consumers, and public entities, thereby shaping economic outcomes/ GDP/ growth

Why is regulation important?

- Indian growth story premised on moving away from "licence raj"
- This meant: Shift from a department making regulations to a Statutory Regulatory Authority (SRA)
- Dozens of regulators proliferated across Union and States (telecom, finance, energy, health...)
- Contribution to GDP of regulated sectors at least 60%; departments and ministries continue to carry out regulatory functions
- Poor regulation increases cost of doing business, creates barriers to entry, stifles competition, and dampens growth
- Getting regulation right essential for welfare, investability, economic development

How regulation is broken

- Relocation, not retreat of State: Regulators have recreated structures of discretionary control; this is different from patchy removal of licence raj in policy/ law (eg, elec generation v. trade, transmission, distribution)
- Some examples:
 - SEBI: Inconsistent penalties and standards of proof; increasing intrusion by the state (example, definition of 'insider')
 - CERC/SERCs: Tariff orders routinely delayed
 - RBI: Non-publication of punitive orders; demonetisation
- This is different from 'deregulation': Some regulation is legitimate, and needs to be done well, but is not
- Need to improve regulation where needed; understand what to regulate, and how it should be done

What are the concerns about regulators?

- *Concerns at institutional level:* Separation of powers (SoP), legitimacy, accountability, clear constraints to guardrail use of State power, interface with other parts of State machinery
- *Concerns at functional level:* Each of the combined functions is broken:
 - Quasi-legislative (rule-making): Disguised legislation, lack of parliamentary oversight
 - Executive (enforcement): Arbitrary and selective, little transparency on how and why action is taken
 - Quasi-judicial (adjudication): Orders often unreasoned, poorly written; appeals slow and costly; lack of clarity and predictability of the law

Why is regulation broken?

- Traditional/ canonical reasons:
 - Lack of democratic legitimacy (not authorised by the people)
 - Lack of accountability (too independent)
 - (non-)Separation of powers (no checks and balances)
- Contemporary concerns are different:
 - Capture by political executive (majoritarian control)
 - Accountability through appointments (dubious independence)
 - Non-SoP escalated to systemic level ('centralising drift' complete)
 - Abdication of Parliamentary responsibility, parent legislation poorly drafted
 - Interface with judiciary dysfunctional: varying standards of deference, conflicting judgments, decision-making disconnected from reality (consider Shamsher Kataria)
- Knowledge base and community:
 - No clarity on what a regulator's functions are, how to distinguish between them (PTC, GRIDCO, AERA)
 - Expertise on why regulation is broken, and how to fix it, is nascent

Beginnings of reform: FSLRC

- Financial Sector Legislative Reforms Commission (FSLRC, 2013) was first concerted, systematic effort at regulatory reform in India
- Some wins (eg SAT jurisdiction expansion), but did not fructify as enacted policy/law
 - Parliament not ready for big legislative change?
 - Lack of political will/ bureaucratic support?
 - Ideas too far ahead of their time?
- Did generate downstream knowledge, frameworks, and community of practitioners and researchers working on better regulation

How TrustBridge tries to make things better

- **Public scrutiny of regulatory instruments (laws, regs, orders):** Bring evidence into mainstream on how and where regulation is broken, and identify potential fixes
- **Develop theoretical underpinnings of an Indian regulatory theory:** Build India-specific framework for regulatory design, accountability, and review, drawing on constitutional structure, economic context, and regulatory history.
This helps us up our game from tactics to strategy.
- **Build tools that augment state capacity and constrain it within guardrails:** E.g. Order Review Tool that provides nudges for reasoned order-giving, based on strong theoretical foundations

This gives us a theory of change:

- Work at multiple points in the policy pipeline simultaneously
- Build evidence, frameworks, tools, narratives, and community
- So that when the window for reforms opens - as it did with FSLRC and SMC - well-developed ideas are ready to be implemented

Signs of progress

- Growing literature documenting problems, proposing reforms: Eg Leap Blog, working papers on RePEc
- Some meaningful changes emerging:
 - Regulation-making regulations
 - Penalty determination guidelines
 - Securities Markets Code 2025 emphasises precedent in regulatory quasi-judicial functions; small steps towards proto-SoP

Thank you