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Regulatory Public Administration

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ABSTRACT: In the current phase of liberalisation, privatisation and globalisation, and now broadly governance, regulatory administration has acquired growing importance as an instrument of achieving socio-economic objectives. It is through instrumentality of regulatory administration that the government is able to exercise effective political and economic sovereignty and control over the country's governance process and resources. Governments of nearly all developing countries have initiated policies and procedures to promote and strengthen regulatory bodies and agencies. However, the results of these promotional and regular activities have varied considerably, often reflecting large inadequacies in policies, organisational structures and procedures. Increasing emphasis is now being placed at the national level on a more flexible regulatory administration to enforce compliance with nationally established policies and requirements in various political, economic and social spheres. As a watchdog for the public interest, governments both at central and state levels should engage in activities for the promotion of social and economic justice, so as to ensure the happiness and prosperity of the people.

KEYWORDS: regulatory, governance, resources, public, policies, administration, justice, political

I. INTRODUCTION

An important and yet the most neglected area of public administration is perceived to be regulatory administration. On it depends the achievement of socio-economic goals and development. More and more countries¹—developed or developing—are now taking strong and positive steps to strengthen it. In the context of liberalisation, privatisation and globalisation, the regulatory administration has assumed particular importance in developing countries. Governments of these countries are keen on exercising effective economic sovereignty, and control over their national resources and environment and on ensuring that their use by the private sector, especially its foreign components,² is in harmony with nationally desirable goals. An effective regulatory system is essential for furthering socio-economic development in a developing Indian economy. It is seen as a major instrument available to the government to enforce adherence to national requirements. Emphasising the importance of regulation,³ Sharad S. Marathe wrote that 'regulation of economic activity is and will continue to remain an important aspect of governmental activity, particularly at the central level [in India]. Such regulation doesn't and indeed, should not be deemed as synonymous with administrative regulation'⁴. An important and yet the most neglected area of public administration is perceived to be regulatory administration. On it depends the achievement of socio-economic goals and development. More and more countries—developed or developing—are now taking strong and positive steps to strengthen it⁵. In the context of liberalisation, privatisation and globalisation, the regulatory administration has assumed particular importance in developing countries. Governments of these countries are keen on exercising effective economic sovereignty, and control over their national resources and environment and on ensuring that their use by the private sector, especially its foreign components, is in harmony with nationally desirable goals. An effective regulatory system is essential for furthering socio-economic development in a developing Indian economy. It is seen as a major instrument available to the government to enforce adherence to national requirements. ⁶Emphasising the importance of regulation, Sharad S. Marathe wrote that 'regulation of economic activity is and will continue to remain an important aspect of governmental activity, particularly at the central level [in India]. Such regulation does not, and indeed, should not be deemed as synonymous with administrative regulation'⁷

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An important and yet the most neglected area of public administration is perceived to be regulatory administration. On it depends the achievement of socio-economic goals and development. More and more countries—developed or developing—are now taking strong and positive steps to strengthen it. In the context of liberalisation, privatisation and globalisation, the regulatory administration has assumed particular importance in developing countries. Governments of these countries are keen on exercising effective economic sovereignty,⁸ and control over their national resources and environment and on ensuring that their use by the private sector, especially its foreign components, is in harmony with nationally desirable goals. An effective regulatory system is essential for furthering socio-economic development in a developing Indian economy.⁹ It is seen as a major instrument available to the government to enforce adherence to national requirements. Emphasising the importance of regulation, Sharad S. Marathe wrote that ‘regulation of economic activity is and will continue to remain an important aspect of governmental activity, particularly at the central level [in India].¹⁰ Such regulation does not, and indeed, should not be deemed as synonymous with administrative regulation’. Regulatory Authorities are government-created institutions that regulate, supervise, and govern diverse industries like insurance, finance, education, and healthcare. Each sector in India has its Regulatory Authority.¹¹ They may be independent or act under executive supervision. For example, food safety is the responsibility of the FSSAI, just as financing of rural development is the responsibility of the NABARD. Telecom Regulatory Authority of India (TRAI), National Housing Bank (NBH), National Green Tribunal (NGT), and others are instances of regulatory entities.¹² At present, there are many regulatory agencies in our country. However, below is the list of essential regulators of India.¹³

S.NO	Regulatory Authority	Area	Activities
1.	NABARD (National Bank for Agricultural and Rural Development)	Financing of rural development	To build a financially strong rural India by financing, refinancing, planning, and monitoring rural development.
2.	SEBI (Securities and Exchange Board of India)	Securities and stock market	The securities market must be controlled, and the interest and rights of the investors must be safeguarded.
3.	RBI (Reserve Bank of India)	Banking, Finance, and Monetary policy	Among other responsibilities, RBI regulates all banking and financial operations.
4.	TRAI (Telecom Regulatory Authority of India)	Telecommunication	To introduce rules and norms to boost the efficiency and flexibility in delivering telecom services.

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5.	IRDAI (Insurance Regulatory and Development Authority of India)	Insurance	Monitoring and development of the insurance and reinsurance sector of India.
6.	SIDBI (Small Industries Development Bank of India)	Financing small, medium, or microscale industries	To provide a loan or financial aid to small and micro industries in India for their development.
7.	NHB (National Housing Bank)	Housing finances	To finance housing developments, either nationally or at the regional level.
8.	CBFC (Central Board of Film Certification)	TV/Film certification, censorship	To certify films that are publicly exhibited.
9.	FSSAI (Food Safety and Standards Authority of India)	Food and beverage	To ensure food safety, the processing, production, distribution, marketing of foodstuff are all controlled and monitored.
10.	FSDC (Financial Stability and Development Council)	Financial sector development	It deals with the financial rules and regulations in the financial sector of India.
11.	BIS (Bureau of Indian Standards)	Certification and standards	To develop and establish product standards, thus aiding the economy by supplying high-quality commodities.
12.	BCCI (Board of Control for Cricket in India)	Cricket	To control, monitor, and enhance the standards of cricket in India. It is also responsible for protecting the values of the sport.

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| 13. | NASSCOM (National Association of Software and Service Companies) | Information Technology | To make the trade in software and services more flexible, and also support the development of software technology. |
| 14. | National Green Tribunal | Law | To effectively and timely resolve issues related to environmental preservation and forest conservation. It also deals with recovering damages to an individual or property due to environmental law violations. |
| 15. | CCI (Competition Commission of India) | Competition | To promote healthy competition and flexibility of trade in the Indian market. It is also responsible for minimising practices that have a negative impact on competition. |

Apart from the above fifteen important regulators of our country, there are several other regulatory agencies as well, such as:

- Atomic Energy Regulatory Board (AERB)
- Insolvency and Bankruptcy Board of India (IBBI)
- Central Drugs Standard Control Organisation (CDSCO)
- Project Exports Promotion Council of India (PEPC)
- Organisation of Plastic Processors of India (OPPI)
- Manufacturers' Association for Information Technology (MAIT)
- Indian Stainless Steel Development Association (ISSDA)
- Indian Chemical Council (ICC)
- Association of Mutual Funds in India (AMFI)
- Pension Fund Regulatory and Development Authority (PFRDA)
- Advertising Standards Council of India (ASCI)
- Express Industry Council of India (EICI)
- Engineering Export Promotion Council of India (EEPC)
- Federation of Indian Export Organisation (FIEO)
- Indian National Shipowners' Association (INSA)¹⁴

II. DISCUSSION

A Regulatory Authority is a government entity or agency accountable for implementing the rules and regulations in various sectors. It is among its functions to apply norms, restrictions, or limitations, establish the standard for

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operations, and enforce or ensure conformance in these areas. The following are the primary responsibilities of a regulatory authority.¹⁶

- Remedial measures
- Regulations and instructions
- Review and evaluation
- Enforcement
- Licensing/Inspection
- Guarantee that the market is fair and transparent, especially after liberalisation.
- Provides private investment with functional autonomy and protects them from any intrusion.¹⁵

The Indian economy was spared the effects of the global financial crisis owing to the RBI's, SEBI's, and IRDAI's strict foreign investor regulations. The TRAI has safeguarded customers from profit-driven cell phone companies. The strict monetary policy of the RBI has allowed it to battle inflation.¹⁷ The CCI has aided in dismantling the cement mafia, who purposely maintained high prices and restricted competition. A Regulatory Authority forms the structure of the society we live in. It assists us in managing our activities by imposing strict rules and regulations. The Regulators have supervisory control over several sectors of human activity. These regulatory bodies have many names, such as Regulators, Regulatory Authorities, and Regulatory Agencies. There are many Regulatory bodies in India. The article includes a list of a few major regulatory agencies and their principal function.¹⁸

Regulation has a variety of meanings that are not reducible to a single concept. In the field of public policy, regulation refers to the promulgation of targeted rules, typically accompanied by some authoritative mechanism for monitoring and enforcing compliance. Accordingly, for a long time in the United States, for example, the study of regulation has been synonymous with the study of the independent agencies enforcing it.¹⁹ In political economy, it refers to the attempt of the state to steer the economy, either narrowly defined as the imposition of economic controls on the behaviour of private business or, more broadly, to include other governmental instruments, such as taxation or disclosure requirements. The two meanings share a focus on the state's attempt to intervene in private activities. A third definition of regulation moves beyond an interest in the state and focuses on all means of social control, either intentional or unintentional.²⁰ This understanding is commonly applied in anthropology, sociolegal studies, and international relations because it includes mechanisms such as voluntary agreements or norms that exercise social control outside the reach of a sovereign state and not necessarily as an intentional act of steering.²¹

Thus, different strands of regulation studies share an agreement on the subject of regulation (the state), the object (the behaviour of nongovernmental actors), the instruments (an authoritative set of rules), or the domain of application (e.g., the economy). However, they do not necessarily agree on all those elements. The concept of regulation points to the rules that structure the behaviour of individuals within a given context without postulating where the rules come from and how they are imposed.²²

The diversity of meanings of regulation has led to controversy and misunderstandings between scholars, most notably on the topic of deregulation. In the economic tradition, deregulation refers to the elimination of specific controls imposed by the government on market interactions, in particular the attempt to control market access, prices, output, or product quality. However, if regulation is conceived of more broadly as a form of economic governance, it is difficult to imagine the total elimination of state intervention. Moreover, the relationship between regulation and competition has been transformed.²³ Regulation used to be depicted as the enemy of free-market interactions. However, many scholars came to believe that some regulations facilitate competition whereas other regulations impede competition. Thus, regulation is not necessarily the antonym of free markets or liberalization (relaxation of government controls)²⁴. In this perspective, many scholars preferred using the terms reregulation or regulatory reform instead of the term deregulation. The theoretical debates around the concept of regulation reflect different disciplines and research agendas and can be broadly divided into approaches to regulation as an act of government and perspectives on regulation as governance.²⁵ Regulation as a governmental activity has been studied extensively, including the reasons

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for regulation and the process by which it is effected. The original justification of government intervention in economic interactions was public interest. This perspective considers the market as an efficient allocation mechanism of social and economic welfare while also cautioning against market failures. Market failures commonly include natural monopolies, externalities, public goods, asymmetric information, moral hazard, or transaction costs. Regulation was considered necessary to overcome those difficulties.²⁶

Conceiving regulation as a tool for overcoming market imperfections, however, has been criticized on a number of points. First, with the evolution of economic theory, several scholars have questioned the understanding of market failure underlying the explanation of government regulation. Second, economists have pointed out the often considerable transaction costs of imposing regulation, which might make it an ineffective policy tool and harmful to social or economic welfare. Finally, the market failure approach argues that regulation is put into place with the goal of achieving economic efficiency. However, this makes it hard to account for other objectives, such as procedural fairness or redistribution at the expense of efficiency.²⁷

The Chicago school of economics, known for its advocacy of laissez-faire economics, focused instead on private interests as the source of regulation. The principal aim of this perspective is to understand how private interests and public officials interact. A central claim made by theorists following this approach was that policy outcomes are most often contrary to societal or public interest because industry representatives lobby the government for benefits they might gain through protectionism or other forms of economic controls. Politicians are susceptible to these demands because they are interested in financial contributions that business actors can offer. Thus, interest groups compete for specific policies in a political market for governmental regulation. As long as interest groups exist, regulation can be expected, which impedes the achievement of maximal social and economic welfare.²⁸

The theory of economic regulation has been criticized for its risk of tautology. Regulation is in place because private interests lobbied for it effectively, and, as a consequence, one can only know who asked for it by determining who benefits from it. Therefore, a particular industry advantage is the cause and effect of regulation. Furthermore, if regulation is defined in a narrow sense as specific economic policies aimed at the control of prices or market entry and access, the decrease in regulation of several industries in the United States during the 1970s and '80s seemingly refutes the theory. Nonetheless, as a model of business-government interactions, the theory of economic regulation directly or indirectly informs a large number of studies in the field of political economy.²⁹

III. RESULTS

A large number of studies have also grappled with the empirical fact of regulation. Such pragmatic-administrative perspectives shed light on regulation as an act of policy making. The study of the politics of regulations is informed by the tools of public policy analysis, organizational sociology, and political science. In the 1950s American economist Marver H. Bernstein described the rhythm of regulation as a life cycle of regulatory commissions, with phases of gestation, youth, maturity, and old age. This view facilitated the analysis of the initial activism in the formulation of a regulatory policy approach and the specific management problems that occur in the course of its lifetime. Regulation had been classified as a specific type of public policy, indicating that policies should be categorized according to the degree and application of governmental coercion and that regulatory policy should be separated from distributive and redistributive policy making.³⁰

Other studies of regulation have aimed at characterizing different policy regimes or, more ambitiously, state capacity. The predominantly European literature on the regulatory state sought to show that governmental action was increasingly based on the use of authority, rules, and standard setting, rather than distributional or redistributive tasks, such as public service provision. In an extension of this debate to the European level, it was argued that the governmental capacity of the European Union (EU) was strongly biased toward regulation. As a political system, the EU could therefore develop into a regulatory state but not into an interventionist welfare state. In the context of

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Volume 2, Issue 12, December 2015

economic globalization, regulatory studies moved away from focusing on independent agencies and governmental control of the economy only. Scholars recognized that some interactions of market participants, product standards, or processes were no longer regulated through state intervention. Rather, they were regulated through international agreements or even self-regulation arrangements between private actors. Because it seemed pertinent to address these new modes of economic governance, it became common to address regulation in the absence of direct governmental authority. Other studies pointed at patterns that govern the behaviour of certain actors without reference to a unitary subject of regulation³¹. As in the context of the EU, scholars of regulatory reform also became interested in regulation at the international level. In certain sectors, such as e-commerce or telecommunications, international agreements had become decisive for controlling the market behaviour of individuals. Moreover, many studies pointed out the effect of self-regulation of firms or various sets of public-private partnerships for the elaboration, monitoring, or implementation of targeted rules. They showed how different forms of private authority structure the economic behaviour of firms in sectors as diverse as maritime transport, mineral markets, or financial services.³²

It is often difficult to identify exactly who or what leads to the rise or fall of regulatory reforms. While regulation and deregulation in the United States can be identified closely with specific political leaders and parties, a growing literature investigates what mechanisms lead to the diffusion of regulatory reforms across countries or policy contexts. Animated by the desire to understand regulatory emulation, this research agenda connects the study of regulation with the ongoing debate about the roots and consequences of liberalization and globalization.

Federal regulations (also called rules) are issued by the executive departments and agencies of the Federal government under statutory authority of the Congress. Because regulations have the force of law and affect in profound ways the daily life of Americans, they are often contentious. Since 1946 the Administrative Procedure Act has laid out the steps the issuing agency must follow in developing the regulation. Importantly the Act allows for judicial review.³³

The first phase in the process is the issuance of the regulation in a proposed version. All proposed regulations are published in the daily Federal Register. Agencies will preview anticipated rules and proposed rules twice a year in their Unified Agenda, also published in the Federal Register. In their proposed stage, regulations can be modified after hearing comments by interested stakeholders before they become final. Proposed and final rules since the early 1970s have explanatory information in their preamble which can be important in determining original intent and understanding subsequent amendments.³⁴

Regulations are arranged by subject and published in a code called, naturally, the Code of Federal Regulations (CFR). Only final regulations are added to the code. Proposed regulations are in the Federal Register or in an unofficial commercial service published for practitioners in a particular field: tax, securities or the environment for example. In between yearly printing of the CFR new added regulations are listed in a slim volume called the List of Sections Affected (LSA). A quick check of the annual LSA can determine if a regulation was changed in the interim.³⁵

- Code of Federal Regulations (CFR) 1996-present

An annual codification of the regulations of the Federal government. It is completely revised each year to reflect regulations currently in effect. New regulations first appear in the daily Federal Register and then are codified in the CFR. Coverage begins in 1996 - present.

- Federal Register

Published daily by the Federal government containing new and proposed regulations (rules) of the executive agencies, e.g. IRS, EPA, FDA and etc. The President's proclamations and executive orders may also be found here. All final rules will later be published by subject (titles 1-50) in the Code of Federal Regulations.

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Volume 2, Issue 12, December 2015

- Federal Register: What It Is and How to Use It

An introduction to the development of the regulatory process, the organization of the Federal Register, and the relationship between it and the Code of Federal Regulations and Public Laws. Search tools are also discussed.³⁰

- Reginfo.gov

The principal goals of the regulatory system include protecting health, safety, homeland security, and the environment, and improving the performance of the economy, without imposing unacceptable or unreasonable costs on society. To achieve these goals, Congress and successive administrations have created elaborate procedures intended to ensure: Public availability of regulatory information; Effective regulatory planning; and Sound economic and scientific data for regulatory actions.

- Regulations.gov

This is an online source for U.S. government regulations from nearly 300 federal agencies. It is committed to improving citizens' access to and participation in the federal regulatory process. You can: Search for a regulation such as a proposed rule, final rule or Federal Register (FR) notice; Submit a comment on a regulation or on another comment; Submit an application, petition or adjudication document; and Quickly access regulations that are popular, newly posted or closing soon.³¹

IV. CONCLUSIONS

The Public Service is regulated primarily by the Constitution and the Public Administration Act. Also of importance are the regulations of the Public Service Commission. Other regulatory instruments governing the Public Service are the directives issued by the Principal Permanent Secretary under the Public Administration Act, and the Public Service Management Code. The Constitution includes various provisions dealing with the Public Service. Article 124 defines the Public Service as the service of the Government of Malta in a civil capacity. Article 124 excludes various posts from this definition,³² notably those of ministers and members of Parliament and the membership of boards or commissions established by law. The holders of such appointments are not, therefore, considered Public Service employees. Article 124 defines a "public office" as an office of emolument, or salaried post, within the Public Service, and a "public officer" as a person appointed to such an office. Chapter X of the Constitution deals with appointments and discipline in the Public Service. In particular, this chapter establishes the Public Service Commission – an independent body responsible for appointments and discipline in the Public Service. The role of the Commission is to ensure that appointments are free from discrimination and that discipline is fair. Article 92 of the Constitution, which deals with the appointment of Permanent Secretaries and heads of Government departments, is also worth noting. The current Public Administration Act (chapter 595 of the laws of Malta) was enacted into law. This Act repealed and superseded an earlier Public Administration Act (chapter 497) which had been enacted in 2009³³. The Act sets out the values of public administration. It also establishes a code of ethics which applies not only to Public Service employees but also to the employees of entities in the wider public sector. The Act makes it clear that whoever acts in breach of the values or the code of ethics may face disciplinary proceedings. The Act also includes provisions for revolving doors and, for the first time, a list of vulnerable positions has been included as a new schedule to further reinforce good governance within the public administration. The Act defines ministries and departments in organisational terms and specifies how new ministries and departments can be created. This law also deals with the leadership of the Public Service. The Act creates the position of Principal Permanent Secretary (Segretarju Permanenti Ewlieni). The holder of this position is required to provide leadership to the Public Service and to take measures to improve the performance of the Service. The Principal Permanent Secretary has various powers under the Act, notably to issue directives and guidelines on matters relating to the organisation and management of the Service. The Act also sets out the responsibilities of Permanent Secretaries and heads of department. The Public Administration Act does not only cover

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Volume 2, Issue 12, December 2015

the Public Service. It also includes provisions regulating the wider public sector. The Act provides for the creation of "Government agencies" – bodies which are subject to direction by the Permanent Secretary in each ministry, but which are not part of the Public Service. The Act also regulates other Government entities and places such entities under the supervision of Permanent Secretaries too, with a view to improving coordination within public administration.³⁴

Article 121 of the Constitution empowers the Public Service Commission to issue regulations with the consent of the Prime Minister. There are three sets of such regulations: the Public Service Commission General Regulations, which govern the Commission's internal proceedings; the Public Service Commission Appointments Regulations, which govern appointments in the Public Service; and the Disciplinary Procedure in the Public Service Commission Regulations, which regulate discipline in the Public Service.

These laws can be downloaded from here:

Constitution

Public Administration Act

PSC General Regulations

PSC Appointments Regulations

Disciplinary Procedure in the Public Service Commission Regulations

The Public Administration Act empowers the Principal Permanent Secretary to issue directives and guidelines. A directive is binding, and it may also incorporate guidelines which are not binding in themselves but which are intended to assist public employees in interpreting and abiding by the directive. Several directives have been issued under the Act. Among others, Directive 4 sets out service quality standards to be followed by Government organisations. Directive 8 sets out timeframes within which requests by Public Service employees on matters concerning themselves (such as requests for leave) have to be answered, and states that if the employee does not receive a reply within the prescribed period, his or her request is automatically granted.³⁵

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