

Parliamentary Oversight of Regulators

Background Note for the Conference on Effective Legislatures

With economic liberalisation in the 1990s, the private sector’s participation in providing infrastructure and services grew. Functions that were previously performed by the government were now also performed by private operators. The shift in the approach necessitated the regulation of sectors where private operators were permitted. Regulators were established through statutes to ensure their independence from the government departments and to provide a level playing field for public and private agencies. In this regard, India followed the broad model adopted by several other democracies. According to the OECD, the key benefits sought from the independent regulatory model were to shield markets from interference by politicians and bureaucrats.¹ However, as the House of Lords Committee on Constitution has observed, regulators do not exist in a vacuum outside government policy.² While regulators have independence in performing their role, they still fall within the broad definition of the executive branch of the State, and are accountable to the legislature.

To simultaneously ensure regulatory independence and implementation of regulations consistent with government policies, legislative oversight of regulators is necessary. Government departments are held accountable to the electorate through the legislature, for instance, through questions put to ministers by Members of Parliament (MPs). The same mechanisms may not apply effectively to independent regulators. Though ministers respond to questions on regulators, they cannot be held accountable for the regulator’s actions. For example, a distinction may be drawn between Securities Exchange Board of India (SEBI) and the Forward Markets Commission (FMC), that regulate the securities and the commodity futures markets respectively. Whereas the FMC is a department of the Ministry of Food, Consumer Affairs and Public Distribution, SEBI is an independent regulator under the SEBI Act. While the Minister of Consumer Affairs can be held accountable for the functioning of FMC, the Minister of Finance cannot be held accountable for all the actions of SEBI.

In this note, we focus on the means of parliamentary oversight of regulators, recommendations on strengthening the current mechanism for oversight, and an analysis of the processes adopted by different countries.

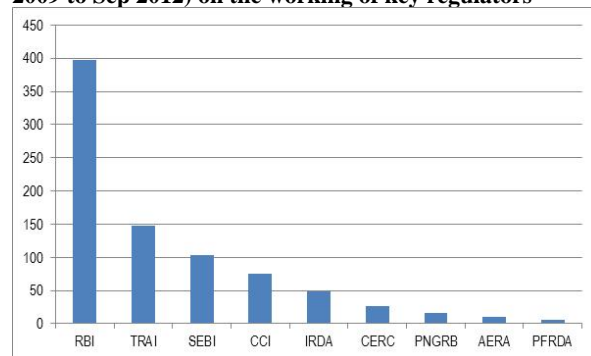
Parliamentary oversight mechanisms in India

In India, parliamentary scrutiny of the regulators can take place through the following means: (i) question hour; (ii) discussions in Parliament; (iii) parliamentary committees. Some of the means of legislative oversight, such as annual submission of reports by regulators to Parliament, are provided in enactments. Other mechanisms are laid down in the Rules of Procedures of the Parliament.

Question Hour: Every regulator falls within the administrative domain of a government department. During question hour, MPs can ask questions to scrutinise the functioning of ministries and the regulators related to their departments. It is the role of the minister, and not of the regulator, to respond to the questions. Given that regulators function independently of the department, there is a gap in the accountability of the regulator’s actions.

The number of questions posed by MPs on key regulators in the Lok Sabha since June 2009 is depicted in Figure 1. The largest number of questions related to the Reserve Bank of India (RBI): 398, followed by the Telecom Regulatory Authority of India (TRAI): 148. In this period 58,234 questions were asked to all ministers on various topics.

Figure 1: No. of questions raised in the 15th Lok Sabha (Jun 2009 to Sep 2012) on the working of key regulators



Sources: Parliamentary questions, Lok Sabha; PRS.

Discussions: Parliament may take up the role of regulators for debate under different Rules of Procedure of Parliament (such as half-hour discussions and discussions under Rule 193 in the Lok Sabha). In these debates too, the concerned minister responds to the issues raised by the MPs. During these discussions, regulators cannot be summoned to explain their functioning.

Department related Standing Committees: The Committee system of Parliament is often used in several countries for oversight of regulators. In India, there are 24 Department Related Standing Committees that comprise members from both Houses of Parliament. These committees are ministry specific, and may review the working of regulators within their respective departments. For example, in August 2012, the Standing Committee on Energy presented a report on the functioning of the Central Electricity Regulatory Commission'. In 2011, the Standing Committee on Information Technology had listed the functioning of TRAI for examination, but the Report has not yet been tabled.

Regulators are not required to regularly submit reports to parliamentary committees on their policies or to justify their actions. For instance, the Governor of RBI may be asked to depose before the Standing Committee on Finance about interest rates fixed by the RBI. However he does not have to periodically report to the Committee on these matters. This is in contrast with the position in the United Kingdom, where the Bank of England periodically engages with the Parliament. The Bank of England submits its reports on inflation and market stability to the Treasury Committee of the House of Commons and its officers have to depose and provide evidence on the Bank's reports.³ Similarly, in the United States of America, the Federal Reserve Board is required to explain its monetary policy stance to the Banking Committee of both Houses twice a year.⁴

Finance Committees: The two parliamentary committees on finance which exercise oversight of regulators are: (a) the Committee on Estimates; and (b) the Public Accounts Committee (PAC). The Committee on Estimates reviews budgetary estimates of government departments. Such estimates include the budget of regulators.

Most laws establishing independent regulators require the Comptroller and Auditor General (CAG) to prepare annual audit reports on the accounts of the regulators. These reports are tabled before Parliament and reviewed by the PAC. The PAC may require the regulator's officers to depose before the Committee. For instance, the Chairman and senior officers of SEBI deposed before the PAC when it was examining the working of SEBI.⁵

Case Study: Review of the working of the independent civil aviation regulator by the Committee on Estimates

The Committee on Estimates while examining the civil aviation sector, made recommendations on the functioning of the Airports Economic Regulatory Authority (AERA). The AERA fixes tariffs including the User Development Fee (UDF).

Statutory guidelines to regulators: It noted that there were no guidelines under the enactment by which the AERA could determine the levy of UDF. To establish its regulatory philosophy, the AERA had undertaken stakeholder consultation.

Issues: The Committee noted that it was not clear why UDF was not levied at certain airports. It also observed that there was a huge variation between charges imposed at different airports. It recommended that the AERA review these issues.

Source: Fourteenth Report of the Committee on Estimates on the Development and Regulation of Civil Aviation, April 26, 2012.

Ad-hoc Committees: Parliament may establish ad-hoc committees which may examine the working of regulators. For instance, the terms of reference of the Joint Parliamentary Committee (JPC) on the allocation of 2G spectrum include the review of the policy on spectrum pricing and grant of telecom licences. Another example of parliamentary oversight through ad-hoc committees is the scrutiny of the working of SEBI and RBI by the JPC on the stock market scam.

Case Study: Joint Parliamentary Committee on the Stock Market Scam

The JPC on the Stock Market Scam was established in 2001. Prior to this, a previous parliamentary committee on the securities scam had made recommendations on the role of the RBI and SEBI in preventing securities scams. The 2001 JPC referred to the recommendations in the 1992 committee report while making its observations on the role of SEBI and RBI.

The JPC noted that the RBI and SEBI's assurances in the Action Taken Report to the 1992 Report were not implemented effectively. For instance the Committee observed irregularities in the regulators' inspection of banks and stock exchanges. In order to ensure that its recommendations are implemented, the JPC recommended that ATRs on the JPC's recommendations be presented to Parliament every six months.

With the initiation of the inquiry by the JPC, various steps were taken to strengthen the functioning of the regulators. For instance, the SEBI Act was amended to strengthen the regulator. Inter-regulatory coordination which was recommended by the Committee was undertaken and quarterly meetings between the RBI and the Enforcement Directorate were instituted. According to the JPC, the steps taken by SEBI reduced market manipulations and improved integrity of the market.

Source: Report of the Joint Parliamentary Committee on the Stock Market Scam, 2002; Action Taken Report on the Report of the Joint Parliamentary Committee on the Stock Market Scam 2003.

Recommendations by committees on strengthening legislative oversight

The Planning Commission and the Second Administrative Reforms Commission have made recommendations on strengthening parliamentary oversight of regulators. We summarise these recommendations in Table 1.

Table 1: Recommendations on increasing oversight through department related committees

Issues	Planning Commission	Second Administrative Reforms Commission
Nature of the Committee	-	Legislative oversight of regulators should be performed by sector specific committees. Oversight should not be conducted by a cross sectoral committee that is empowered to review the working of all regulators.
Power to require attendance	The regulators should be present before the standing committees to explain their actions and be subjected to legislative questions.	As regulators work closely with their ministries, appearance before the department related standing committee facilitates effective legislative oversight.
Parameters for gauging the performance of the regulator	Parliamentary committees should be empowered to review: (a) the rules and regulations notified by the regulator; (b) a summary of the decisions of the regulators and their compliance; (c) disclosure of the method for inviting public opinion; (d) the regulator's recommendations to amend laws, reduce regulatory burdens, paperwork and procedural formalities.	Once in five years, a body of reputed experts should be constituted to propose guidelines for the evaluation of the regulator for the next five years. Based on these guidelines, the government, in consultation with the parliamentary committees and the regulator, should finalize the principles the regulator should be held accountable for, and the parameters for conducting annual evaluation.
Timeline and periodic review	The regulator should annually present a report to Parliament assessing its success in achieving the objectives set out in its annual plan. The demand for grants for the regulator should be examined by committees before they are voted upon.	Committees should conduct periodic review of regulators. Annual reports submitted by the regulators to Parliament should include the progress on pre-agreed evaluation parameters and should be discussed in the parliamentary committee.
Access to reports and evidence	-	The annual report and the committee's discussions with the regulator should be made widely accessible to the public.

Sources: 'Approach to Regulation of Infrastructure', Planning Commission, September 13, 2008; 'Organisational Structure of Government of India', 13th Report, Second Administrative Reforms Commission, April 2009; PRS.

The House of Lords in the United Kingdom recommended steps to improve parliamentary oversight.² These are summarised below.

Expert support to MPs: The Committee noted that effective scrutiny depends on the skill and resources available to the parliamentary committees. Committees, as compared to the regulators they seek to oversee, may often be under resourced and thus fail to ensure accountability.

Regularity of scrutiny: It was observed that ad-hoc scrutiny of the regulator was not adequate for effective oversight. Furthermore, the Annual Reports did not reflect that they were prepared for the purpose of parliamentary scrutiny. The reports should be prepared keeping in mind legislative oversight.

Co-ordination between regulators: Parliament should address the question of co-ordination in its scrutiny of regulators. Different regulators, while complying with their respective statute, and executive orders, may take regulatory decisions that are in conflict with the over-arching policy or the objectives of other regulators. It recommended that a dedicated joint parliamentary committee to oversee regulatory bodies be established.

International experiences

The need for legislative oversight of regulators is widely accepted. However, countries have adopted different models for exercising such oversight. A comparison of the means of oversight adopted by Australia, the United Kingdom and the United States of America are provided in Appendix 1.

Notes

1. 'Regulatory Policies in OECD Countries - From Interventionism to Regulatory Governance', OECD, 2002, p. 97.
2. 'The Regulatory State: Ensuring its Accountability', 6th Report, Select Committee on Constitution, House of Lords, 2004.
3. 'Bank of England: Relation with Parliament', accessible at <http://www.bankofengland.co.uk/about/Pages/parliament/default.aspx>
4. The Full Employment Act of 1978; and the American Homeownership and Economic Opportunity Act of 2000.
5. Twenty-fifth report of the Public Accounts Committee on 'Unfruitful Expenditure of Investors Money – SEBI', February 24, 2011.

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Appendix 1: Parliamentary oversight of regulators through the committee system in other countries

Country	Approaches to oversight	Review by committees	Regularity of scrutiny	Expert support	Oversight of financial regulators
Australia	Parliamentary oversight is mandated through enactments. Laws establishing regulators specify the Committees that shall enquire into its functioning.	Annual reports of authorities are automatically referred to the relevant committee for inquiry.	Committees hold periodic hearings with regulators. For instance, the Committee on Corporations and Financial Services oversees Australian Securities Investments Commissions' performance by holding four hearings a year.	Independent expert witnesses are invited to submit information during hearings about the regulator. The Department of Parliamentary Services provides research support to Committees.	The Standing Committee on Economics can inquire into the annual reports of all regulators referred to it. It reviews the annual reports of the Reserve Bank bi-annually.
United Kingdom	The Committee on Regulatory Reforms and the Committee on Delegated Powers and Regulation specifically oversee the working of all regulators across sectors.	Review of regulations and regulatory reform is undertaken by the Regulatory Reforms Committee and the Delegated Powers and Regulatory Reform Committee. Oversight is also undertaken by the department committees.	Departmental committees undertake ad-hoc review of working of regulators. However, some committees require periodic depositions and conduct scrutiny regularly. For instance, the Treasury Committee reviews the Bank of England's reports on inflation and market stability.	The committees are assisted by the National Audit Office (NAO) in preparing their reports. The NAO supplies officers on deputation to the committees. Committees are empowered to appoint specialist officers to assist committees and elucidate complex matters within the committee's ambit.	The Bank of England is overseen by the Treasury Committee. The Committee scrutinises the inflation and financial stability reports prepared by the Bank. It prepares reports on the appointment of members to high-level committees, such as the Monetary Policy Committee of the Bank and reviews its functioning.
United States	Regulators are required to prepare cost-benefit analysis before making rules. These are reviewed by the chief regulatory oversight body: Office of Information and Regulatory Affairs (OIRA), and subsequently the Congress. These requirements are imposed through laws such as the National Environmental Policy Act, and the Paperwork Reduction Act.	The Committee on Oversight and Regulatory Reform oversees regulation and regulatory reform. It reviews the working of OIRA. Sectoral committees also oversee regulatory reform. Committees may even perform this role jointly. For example, the Regulatory Flexibility Improvement Act was referred to three committees.	According to the Rules of the House of Representatives, each standing committee has to adopt an oversight plan for the 112 th Congress and submit it to the Committee on Oversight and Regulatory Reform.	The Committees may require witnesses to depose before them. The witnesses are also required to submit written evidence 24 hours before their appearance. Non-governmental witnesses are also required to disclose the amount and source of each federal grant they may have received in the past two years. The Committees may appoint task forces and panels to carry out their functions. Committees are also supported by the Congressional Research Service.	The Committee on Financial Services is responsible for ensuring compliance by financial regulators. It has submitted a plan that included oversight of the Securities Exchange Commission (SEC) that regulates financial institutions. The Federal Reserve Bank is also required to appear, through its Board of Governors, before Banking Committees of both houses bi-annually.

Sources: 'Themes and Trends in Regulatory Reform 2008-09', 1st Special Report, Regulatory Reforms Committee; 'Public Business', Standing Orders of the House of Commons, 2012; 4th Report of the Treasury Committee, September 2012; 'Statutory oversight of the Australian Securities and Investments Commission', Parliamentary Joint Commission on Corporations and Financial Services, Parliament of Australia; 'Standing Orders' 2012, House of Representatives, Australia; Parliamentary Department Services, Australia; 'Review of the Reserve Bank Annual Report 2012', 1st Report, Standing Committee on Economics: House of Representatives; Summary and Status, Regulatory Flexibility Improvement Act, 2011, House of Representatives, United States of America; Committee Resolution, The Rules of the Committee on Oversight and Government Reform, House of Representatives, United States of America, 112th Congress; 'Oversight Plan of the Committee on Financial Services for the 112th Congress', Committee on Financial Services, February 10, 2011; Cost-Benefit and Other Analysis Requirements in the Rulemaking Process, Congressional Research Service, 2011; American Home-ownership and Economic Opportunity Act, 2000; PRS.