Regulatory bodies

Regulation may be broadly understood as state efforts to regulate private action to address market failure, or equity concerns by imposing costs, prescribing/proscribing certain activities through rules and laws

Need

1. Market Failure- Condition when market forces fail to sub serve greater public good due to:

* Natural monopolies (first mover advantage, scale etc. eg. Power T&D sector in India)
* Asymmetry of information-
* Externalities- eg. industrial plant acting as negative externality on downstream user;

1. To check anti-competitive prices
2. To promote public interest- FRP, MSP, PDS

Examples- TRAI (Telecom), National Biodiversity Authority, FSSAI,

Issues with regulators in India:

* Independence-
  + Policy makers v/s regulators-
    - Financial dependence on ministries
    - Tenure of non-statutory regulators are generally in hands of political leadership (eg.
    - Lack of proactive delegation
    - Lack of clear distinction between roles and responsibilities and regulators end up acting as extension of ministries.
  + Pressure group influence- vote bank politics, money power etc.
* Operational issues Mechanisms that needs further strengthening
  + Legal gaps leading to blanket bans (lack on laws on new tech and subjectivity eg. AI, blockchain, cryptocurrency)
  + Financial accountability through CAG audits (eg. recent IL&FS crisis showed lapse on CRAs)
  + Administrative issues by control of ministries (eg. CERC limited control over DISCOMs which are in state control)
* Transparency
  + Citizen charters are voluntary in nature- no legal enforcement
  + Customers are largely unorganized (eg. City connect- Bengaluru, Bhagidari- Delhi)

Recommendation of ARC reports on regulation:-

* 10th report on CC admin
  + Regulation only when necessary- India burdened by voluminous and outdated statues which requires repeal
  + Regulation to be effective- Poor *enforcement and corruption* due to sheer number of authorities and statues involved. Also, there is *gap in capacity* of govt. officials. Thus, internal and *external supervision* is key for regulator’s effectiveness
  + Promoting self-regulation
  + Encouraging citizen partnership and making regulators transparent and citizen friendly
* 13th report on governance structure of India
  + Work division and clear mandate
  + Need for uniformity in terms of appointment, tenure and removal of regulators
  + Parliamentary oversight and accountability of regulators
  + Periodic assessment of quality and impact of regulators work

Unified v/s multiple regulator debate

* Arguments in favor
  + Helps in overall risk assessment of the system (more applicable for financial services than other sectors)
  + Demarcation between products and services have blurred leading to duplication of regulation leading to conflicts (eg. ULIP case of IRDAI and SEBI)
  + Chances of turf wars and pass the buck situation in case of crisis situation (eg. NSEL crisis)
  + Single regulator will provide better synergies leading to cost, administrative and functional efficiencies
  + Better monitoring and accountability of single body is possible
* Risks/Challenges associated-
  + Diverse range of issues require diverse expertise, resources, culture (eg. Banks have risk on asset side while insurance companies on liabilities side)
  + Driving process and change management across organizations itself will be an magnanimous effort in itself
  + Risk propagation across all sectors owning to lapse on one regulator

Quasi-judicial bodies

* A quasi-judicial body is defined as organ of govt. other than legislature or courts/tribunal which protects the rights of citizens through adjudication or rule making
* A tribunal is a quasi-judicial body established by parliament or state legislature U/A 323A and 323B
* Benefits of tribunals

- Expertise in new evolving complex issues (eg. TDSAT for Telecom)

- Reduce burden on judiciary which has 3.4 Cr pending cases

- Less expensive means of litigations

- Less formal and flexible approach (follow principle of natural justice)

* **Issues- Solution (as per Law Comission):**

- Separation of power doctrine is violated- rules for appointment (make the rules uniform reducing govt. control)

- Vacancy- Nodal body under Law ministry to monitor vacancy

- Expertise and independence questionable (Make reforms in qualification, reduce govt. interference)

- Long delay (2.4 years in tribunals) defeating the very purpose

- SC has become an appellate forum (60 out of 800 only related to constitutional measures)- allow challenge before the HC’s division benches

- Geographical extent scant- so people end up going to HC (establish new benches)