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Regulation of the statutory regulators

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Why in News: The establishment of statutory regulators constitutes one of the most significant governance reforms of the last century. There is a global surge in the popularity of such agencies as an alternate mode of governance. To deliver on this potential, regulators need to be well governed.

A brief about Regulatory Bodies

A regulatory body also called a regulatory agency is a public authority or a government agency which is accountable for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity.

Regulatory agencies are generally a part of the executive branch of the government or they have statutory authority to execute their functions with oversight from the legislative branch.

Their activities are generally scrutinized by the legislature. Regulatory authorities are usually established to implement standards and safety, or to oversee use of public goods and regulate business.

Regulatory body, independent governmental body established by legislative act in order to set standards in a specific field of activity, or operations, in the private sector of the economy and then to enforce those standards.

Regulatory agencies function outside direct executive supervision. Because the regulations that they adopt have the force of law, part of these agencies' function is essentially legislative; but because they may also conduct hearings and pass judgments concerning adherence to their regulations, they also exercise a judicial function – often carried out before a quasi-judicial official called an administrative law judge, who is not part of the court system.

Regulatory agencies became popular means of promoting fair trade and consumer protectionas problems of commerce and trade became more complex

Examples are Securities and Exchange Board of India, RBI, IRDAI, PFRDA, Telecom and Regulatory Authority of India, etc.

Functions of regulators

Protection of public interest

Monitoring compliance with contractual obligations to the government and users, and other legal and regulatory requirements

Establishing technical, safety and quality standards and monitoring their compliance

Imposing penalties for non-compliance

Administering tariff adjustments and periodic reviews

Establishing accounting standards and undertaking operator's cost and performance analysis

Facilitating dispute resolution between parties

Providing advice and counsel to government on policy matters and other related matters to private sector involvement in the sector

Issues with Regulatory bodies:

In India there are total 60 regulatory bodies at the Centre and state level. In the name of specialization excessive regulatory bodies have been created. This has created complexity in day to day operations.

Regulatory bodies have failed to fulfill their basic duties. They are continuously failing to meet the benchmarks. Example: Failure of RBI to curb the menace of NPAs

Government’s failure to demarcate functions of regulatory bodies has created overlapping of functions. This creates not only confusion among these bodies but also becomes reasons for conflict. It also hampers Ease of Doing Business. Example: There is overlapping of functions in CVC and CBI, RBI and SEBI.

Regulatory bodies lack autonomy as the members of the regulatory bodies are appointed by government. Thus, nepotism or favoritism cannot be ruled out.

Audit of regulatory bodies have never been prioritized by the government. As these bodies do not face regular audit, they have involved into corruption. Example: Medical Council of India.

All the regulatory bodies are dependent on budgetary resources for their day to day functioning. Government through the budgetary provisions interferes in the functioning of these bodies.

Measures to improve the governance

To deliver on this potential, regulators need to be well governed. Governance of these agencies centres around their governing boards (GB). Five design features relating to GB can significantly improve the governance of regulators.

First, the law typically creates a board governed by a board, an authority by an authority, a council by a council, a commission by a commission, etc. For example, the Securities and Exchange Board of India Act, 1992 establishes a board, namely, the Securities and Exchange Board of India. The general superintendence, direction, and management of the affairs of this board vests in a board of members

Second, it is normally difficult for an entity to take decisions about itself or its working with complete objectivity or hold itself accountable for its conduct or performance. That is why decisions about a company, for example, and process design are placed in the board of directors.

Third, the government typically has a few official nominees on the GBs of regulators. The views of such nominees, being the representatives of the minister who is accountable to the legislature, carry disproportionately more weight in the decision-making process.

Fourth, the independence of a regulator critically rests on the professional strength of the leaders, namely, WTMs (including the chairperson) to withstand the influence of articulate interest groups and the pressures of fear and favour from any quarter.

Fifth, a regulator in India typically performs three functions, namely, quasi-legislative, executive, and quasi-judicial. The statute should envisage a separate organisational unit responsible for each of the distinct types of functions and powers. These units should operate at an arm’s length from one another to act as mutual checks and balances to address public law concerns relating to separation of powers.