Know Your Regulator

2023

Reforming regulatory governance in India

STATE CAPACITY INITIATIVE
CENTRE FOR POLICY RESEARCH

DESIGNER: Sristi Bhatt, Head of Design, CPR

EDITOR: Shubhangi Karia, Research Associate, CPR

This briefing book is an e-publication of the State Capacity Initiative at the Centre for Policy Research. Our programme of work focuses on the changing roles of the Indian state; institutional design, implementation and administrative capacity at the federal and state-levels; the particular challenges of regulatory and fiscal capacity; and the complex and changing relations between society, politics and state capacity in India.

Contents

‘Know Your Regulator’

In September 2021, the State Capacity Initiative (SCI) at the Centre for Policy Research (CPR) launched a new series in collaboration with the National Council of Applied Economic Research (NCAER), the Forum of Indian Regulators (FOIR) and the Indian Institute of Corporate Affairs (IICA). In this series titled ‘Know Your Regulator’, we spoke to chairpersons of India's regulatory agencies about the regulation of Indian markets and the economy.

Regulation, undertaken by statutory regulatory authorities, as a specialised form of administration is not entirely understood in India. Such authorities, set up at arm's length from executive ministries, are a relatively recent innovation of the Indian state, set up to address the evolving needs of the Indian economy in the decades since the 1990s (with some notable older instances). Unlike government departments which suffer from diffused attention, and bureaucratic and other limitations, arm's length regulatory authorities are typically vested (statutorily) with executive, quasi-legislative, and quasi-judicial powers and functions to undertake quick and specialised interventions in markets. In our conversations with chairpersons of these authorities, we explored the institutional form and benefits of the agency, its features, norms and values, and its framework of decision-making. We also discussed the functional domain and the everyday administration of the regulatory agencies, their staffing, procedures, information systems and operational modalities.

Each sectoral regulatory agency that we engaged with is unique in terms of the design of its regulatory mandate and the nature of the challenges that it is set up to address. In the first phase of this talk series, we had the opportunity to engage with a wide variety of regulators spanning sectors such as food safety, real estate, electricity (both central and state bodies), health, pensions, insurance, and water. The KYR series has been watched with great interest by students of law, development and regulatory studies, practitioners of related fields, and academics interested in institutional design and capacity.

We are very grateful to all the chairpersons who participated in this series and, in doing so, acknowledged the value in communicating to citizens at large — the public nature of regulatory activity.

Know Your Regulator		
Theme	Chairperson/Person in charge	Name of the Regulator/Ministry
Why you should 'Know Your Regulator'	Dr. M.S. Sahoo	Insolvency and Bankruptcy Board of India(IBBI)
Food safety	Ms. Rita Teotia	Food Safety and Standards Authority of India (FSSAI)
Real Estate	Mr. Navreet Singh Kang	Punjab Real Estate Regulatory Authority (Punjab RERA)
Electricity	Mr. P.K. Pujari	Central Electricity Regulatory Commission (CERC)
Pension fund	Mr. Supratim Bandyopadhyay	Pension Fund Regulatory and Development Authority of India (PFRDA)
Water	Mr. K.P. Bakshi	Maharashtra Water Resources Regulatory Authority (MWRRA)
Insurance	Mr. Debashish Panda	Insurance Regulatory and Development Authority of India (IRDAI)
Electricity	Mr. Preman Dinaraj	Kerala State Electricity Regulatory Commission (KSERC)
Electricity	Mr. Sutirtha Bhattacharya	West Bengal Electricity Regulatory Commission (WBERC)
Health	Mr. Rajesh Bhushan, Dr. VG Somani, Dr. Balram Bhargava	Ministry of Health and Family Welfare (MoHFW), Central Drugs Standard Control Organisation (CDSCO), Indian Council of Medical Research (ICMR)

Introduction

Mekhala Krishnamurthy

Mekhala Krishnamurthy is a Senior Fellow at CPR and leads the State Capacity Initiative there. She is also an Associate Professor of Sociology and Anthropology at Ashoka University. Mekhala's work focuses on the institutional dynamics of public systems and bureaucracies. She has also worked extensively on agriculture and agricultural markets.

The **State Capacity Initiative** at CPR is a new interdisciplinary research and practice programme focused on addressing the challenges of the 21st-century Indian state.

Through the Initiative, CPR aims to place the critical challenges of building state capacity at the heart of the field of policy research in India, where it has always belonged but remains surprisingly marginalised. This is in large measure due to the continuous conceptual and empirical separation between *policy* and *implementation*, or the *what* and the *how* of India's public priorities, systems and programmes. In the process, the who of the state, especially the everyday work and life of public institutions and officials, from senior bureaucrats and regulators to field administrators and frontline workers, is almost always systemically ignored. So, too are the interconnections between technical expertise and implementation and the effects of myriad in-sourcing and out-sourcing arrangements for the management of knowledge, people and platforms at various levels.

In practice, of course, questions of capacity are core to the very processes of law-making and policy design. But perhaps even more importantly, law and policy that fails to take into account the translation of organisational purpose and the nitty-gritty aspects of implementation only reproduces a fundamentally flawed and counter-productive narrative: that 'India has good policy but bad implementation.' It also fuels a growing and troubling tension between those arguing for greater administrative flexibility and those pushing for greater public accountability. In public institutions and systems these must not be seen as either/or conditions and constraints. The debate on administrative reforms needs to move beyond these binaries but how to do so is a real and multidimensional problem.

The State Capacity Initiative at CPR therefore starts with first principles and grounds itself in existing realities to deepen and expand our understanding of the challenges and possibilities of building state capacity in democratic and federal India. Our programme focuses on the changing roles of the Indian state; institutional design, implementation and administrative capacity especially at the state-level; the particular challenges of regulatory and fiscal capacity; and the complex and changing relations between society, politics and state capacity in India.

Understanding and engaging constructively with India's complex and evolving regulatory landscape is a vital aspect of this agenda. This is especially important because unlike public service delivery, regulatory work is too often viewed as highly technical and its public value, purpose, and effects recedes into the background except in times of crisis. Yet, across vast and intimate domains of society and economy, the work of regulatory agencies have profound effects on citizens' lives and livelihoods, and is therefore among the most complex and consequential aspects of state policy and practice.

It is this centrality of public purpose and of public interest that animates the Know Your Regulator (KYR) series, conceived by our senior colleague KP Krishnan to signal that essential knowledge of our major regulatory agencies should be a basic and accessible pre-condition of the citizen-state relationship in contemporary India. From its inception therefore the series was conceptualised as a dynamic multi-media public resource that would enable diverse stakeholders to better understand and engage with key features of regulatory history, design and implementation across a wide range of fields, providing critical context and nuanced conversations.

This was made possible through a wonderful partnership with the Forum of Indian Regulators (FOIR) and its Secretariat at the Indian Institute of Corporate Affairs (IICA) and especially through the guidance of MS Sahoo (then Chairperson, FOIR) and throughout the series by Abha Yadav (then at IICA). At CPR, Arkaja Singh anchored the series and gave it both the conceptual clarity and cohesiveness it needed while grounding it in the necessary institutional and technical context required for each regulator and regulatory domain. Our senior colleague Deepak Sanan, and Ashwini Swain and Srinivas Chokkakula contributed their expertise and experience to our engagements with real estate, electricity, and water regulation, respectively. Finally, Amrita Pillai, has played a pivotal intellectual and organisation role throughout the series, all the way through the making of this handbook. Most importantly, it is the Chairpersons of the diverse regulatory agencies who participated in the KYR Series sharing their knowledge and perspectives so openly, who made this such an informative and generative resource for students, scholars and practitioners of regulation and state capacity in India today.

The engagement with the Know Your Regulator series and with the institutional design and practice of statutory regulatory authorities has already generated two important working papers, "India's Regulatory Shift: An Examination of Five Agencies of the Post-Liberalisation Era" by Arkaja Singh; and "Statutory Regulatory Authorities and the Federal System in India" by KP Krishnan, Amrita Pillai and Karan Gulati. This *Handbook* now draws on insights from across the series and from detailed work in the field, in some cases as independent researchers and in others as participants in the evolution of regulatory practice in specific sectors. Each contributor briefly develops a key reform idea with the potential to strengthen regulatory governance in India.

They are offered in the spirit of public and professional engagement with which the original series of Know Your Regulator was conceived and in the hope that they contribute to a growing body of constructive research and debate on strengthening regulatory capacity in India.

Reform Idea #1

Introduce a uniform code on administrative procedure

Reform Idea #2

Enhance parliamentary scrutiny over regulations issued by statutory regulatory authorities

Amrita Pillai

Amrita Pillai is a lawyer and public policy professional. She is currently a researcher at the State Capacity Initiative. Amrita led the core team that undertook research for the first-ever third-party evaluation of a statutory regulatory authority in India. Her interest areas are regulatory governance, state capacity, and judicial reform.

The conduct of statutory regulatory authorities (SRAs), particularly their ability to function in a fair and transparent manner, is inconsistent in India. The statutes that establish them prescribe varying standards for their functioning. Moreover, India continues to lack an overarching administrative law framework that can guide the manner in which regulators exercise their wide-ranging powers and functions.

When the power to write law is vested in a set of un-elected officials, proportionate checks and balances must ensure accountability on such exercise. One such check would be to ensure that regulation-making is done in a transparent manner through meaningful public participation; another would be to subject these regulations to effective parliamentary scrutiny.

The Supreme Court of India has held that all law-making (delegated and primary) has to conform to the fundamental tenets of transparency and openness on the one hand and responsiveness and accountability on the other.[1] In the year 2016, in perhaps one of the most prominent instances of the judiciary taking a closer look at fundamental questions in regulatory functioning, the apex court set aside regulations by the country's telecom regulator on the grounds of arbitrariness.[2] It noted, among other things, that despite conducting public consultations

while framing the regulation, the Telecom Regulatory Authority of India (TRAI) had not given its reasoning for rejecting certain crucial stakeholder comments. While both procedure and merit were found lacking in the previous instance, in the year 2019, the court struck down a Reserve Bank of India (RBI) circular for being ultra vires the primary legislation, namely, the Banking Regulation Act of 1949.[3]

The apex court has also exhorted Parliament to frame a law on the lines of the Administrative Procedure Act in the United States in America ('US APA'). It noted that this was particularly necessary so that all subordinate legislation is subject to a uniform, transparent process, and rule-/regulation-making power is exercised only after due consideration of all stakeholder-submissions, along with an explanatory memorandum which broadly lays down reasons for agreeing/disagreeing with them.[4] The US APA mandates a robust public consultation procedure for all federal agencies before they make regulations. The legislation also enables the courts to reject agency actions that are *"arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law*".[5]

The Indian Parliament should consider enacting a similar legislation that, among other things, codifies common standards of transparency and accountability in regulatory functioning. A uniform legal framework, which operates across sectoral regulators, and mandates a standardised, participatory approach towards regulation-making, is an absent feature in India's ever-swelling regulatory landscape.

Parliamentary scrutiny over regulations issued by SRAs is scant. A recent study[6] of the reports presented by Parliamentary Committees on Subordinate Legislation (over a twenty-three year period between 1999 and 2022) finds that the Lok Sabha committee has reviewed only 13 regulations issued by SRAs whereas the Rajya Sabha committee has reviewed 4 regulations issued by them. As a useful context, just one SRA — the Securities and Exchange Board of India (SEBI) — has passed 661 regulations (including amendments) since its inception in 1992. The Committees on Subordinate Legislation are tasked with scrutinising and reporting whether the power to make regulations, as delegated by Parliament, has been properly exercised by such agencies.[7] While SRAs comply with the statutory requirement to lay regulations before Parliament (an ex-post intimation), effective oversight is necessary. Back in 2009, the Second Administrative Reforms Commission had recommended that SRA-oversight ought to be performed by sector-specific committees and not cross-sectoral ones (like the Committees on Subordinate Legislation).[8] This recommendation continues to hold promise in the year 2023.

We propose two levels of interventions at the parliamentary level — the first in the institutionalising of an accountability framework in the form of a sector-agnostic legislation or Code to govern all regulation-making activity. This is a structural intervention and thus, brings immanent reform. The other is a nudge to Parliament to take its role of a supervisor of regulations more seriously. Both reforms work best, together.

Reform Idea #3

Conduct regulatory performance evaluations[9]

K.P. Krishnan

KP Krishnan is Honorary Research Professor at CPR. He has served in the Indian Administrative Service for close to 37 years and now serves on a few for-profit and a few not-for-profit boards. His core research interests lie at the intersection of economics, public finance and public policy and he teaches courses in these areas in many prestigious institutions.

In many countries, SRAs are now an important organisational mechanism for the state. The departure from the separation of legislative, executive, and adjudicatory branches, by concentrating them in one agency (the SRA), is an important change from the traditional working of the government. While SRAs have added value in many respects, they also face questions of accountability and excessive concentration of power.

When such an unusual organisation is set into motion in the body politic and body economic, it is important to be self-aware about how well it is working. Evaluating SRAs is, however, difficult.

In normal times, regulators are criticised for over-regulation, with calls for a hands-off approach. In difficult times, they are pilloried for under-regulation and for sleeping at the wheel. There is a tendency to extrapolate from one publicised regulatory failure to over-broad claims about the overall performance of the SRA. Officials at SRAs constantly seek more power and have a bias in favour of making excessive claims. They suffer from applause by regulated persons and scepticism from the broader community. The achievements of the SRA that do not make headlines, in terms of laying foundations for economic growth or avoiding crises, tend to get ignored.

In 2001, a Joint Parliamentary Committee (JPC) was set up to investigate the stock market crisis of March/April 2001. The report of the JPC presented to Parliament in December 2002 said that "regulators have been found wanting and they do not instil confidence in the investor". The years from the creation of the Securities and Exchange Board of India (SEBI) in 1992 till 2001 were actually a golden age in terms of momentous reforms and laying the foundations for a modern

financial market system. This did not attract much public attention as it did not visibly impact the life of the average person. The reprimand of the JPC was, however, the stuff of newspaper headlines.

How can the working of SRAs be better assessed, so as to establish feedback loops through which their working can be improved? In 2013, the Financial Sector Legislative Reforms Commission (FSLRC) recommended a formal mechanism to evaluate regulators through a review committee comprising only non-executive members of the regulator's governing board. The Committee on Reforming the Regulatory Environment for Doing Business in India (2013) recommended that each regulator should undertake self-evaluation once in three years, and place its conclusion in the public domain for informed discussion and debate.

Such performance evaluation can be quite complex. Regulators generally do not have much direct output. Their services are inputs to the outputs of regulated entities and markets. Their performance is affected by several external factors, many of which are beyond their control, and their efforts may take years to have visible outcomes. The data required to make the evaluation may not be easily available. The best skills available in the Indian knowledge ecosystem may not have the capacity to evaluate regulators. The domains in which the diverse regulators operate have many unique features. A systematic strategy of regulatory evaluation can be organised around three groups of parameters: Governance, process, and outcomes. And then, we turn to the mechanics. How should this be done? *Nemo judex in causa sua*, or nobody should judge their own cause, applies for state agencies. There is a principal-agent relationship between the legislature and the SRA, and the principal should assess the working of the SRA through mechanisms that are distinct and separate from the SRA. One natural line of attack is performance audits by the Comptroller and Auditor General of India (CAG).

Around 22 years ago, after some attempts to audit the Telecom Regulatory Authority of India (TRAI) and some electricity regulators, the CAG issued guidelines on the audit of regulatory bodies. Essentially the guidelines say that the audit should be within the sphere of the provisions made in the relevant statutes. While the CAG needs to build out the full capabilities to do performance audits of regulators, so far, those capabilities and processes have not emerged. In the present Indian landscape, the natural alternative is to turn to non-partisan research organisations.

For this, a logical option is to establish an assessment cycle where the terms of reference of the evaluation is discussed with the relevant parliamentary standing committee, an external research organisation is given the task of performing the evaluation, and the report is taken back to the parliamentary standing committee. This emphasises the agency relationship between the parliament and the regulator, and feeds into amendments to the law which are required for many reforms of regulators.

One part of the regulatory evaluation consists of examining the actions of the regulator over a stated time period. The second part of evaluation consists of anonymous perception measurement in regulated persons. A private organisation needs to conduct a fully anonymised survey, which measures how regulated persons view the processes and outcomes of the regulator.

The Parliament and regulators have begun to respond to this gap in the evolving landscape for regulation in India. An important milestone here is the law on India's most recent financial sector SRA. The International Financial Services Centres Authority (IFSCA), 2019, requires the authority to constitute a Performance Review Committee to review its performance annually.[10] Similarly, the rules made under the Insolvency and Bankruptcy Code (IBC), governing another young regulator — the Insolvency and Bankruptcy Board of India (IBBI) — have this provision. The rules require that the IBBI carry out an assessment of its effectiveness and efficiency in terms of its objectives and mandate, keeping in view its resources, duties and powers and an assessment of the performance of its Governing Board and publish its evaluation in its annual reports.[11] Over the past year, the IBBI has become the first Indian SRA to have commissioned an independent evaluation of its regulatory role as envisaged in the law. In doing so, it has set a benchmark for other SRAs to commission similar regulatory evaluations by external academic/research bodies. The resulting documents have helped the leadership of IBBI think about its strategic road map for strengthening the IBBI. This constitutes an important milestone in the emergence of state capacity in regulation in India.

Reform Idea #4

Provide specialised and relevant training to regulatory officials

Abha Yadav

Abha Yadav is Assistant Professor at National Law University, Delhi. She has been an Associate Professor and the Head of the School of Competition Law and Market Research at the Indian Institute of Corporate Affairs (IICA). She has also served as the Director of the Forum of Indian Regulators (FOIR) Centre at IICA where she has led several research and capacity building initiatives for Central and State-level regulatory authorities.

Sectoral regulation that was seemingly difficult to carry out through executive ministries is now done through SRAs. For the most part, these authorities have proven to be professionally run and have risen to the challenge of market-correction. However, since the genesis of many regulators was a crisis management exercise, they are seen to typically consist of personnel drawn from a common pool of individuals who are generalists, not specialists. While some learn on the job, some are required to unlearn and combine skills with the expertise they have built over time in their previous job roles.

Most regulators are statutorily vested with wide-ranging powers and functions. The foremost function of a regulator is to set down the conduct expected from regulated entities. This entails issuing subordinate legislation, in this instance, regulations, that govern how regulated entities interact with other market actors including consumers. In the regulation-making exercise, while the mechanism used to issue regulations is important, the competence of officials involved in drafting regulations is also critical to the quality of the instrument. Apart from a standard format and style of drafting that ought to be followed, the content of regulations should be laid out in simple language and unambiguous terms. Further, regulators are empowered to discipline regulated entities when they do not comply with standards as laid down in the law. All quasi-judicial orders passed by a regulator should contain five essential elements: a statement of material facts, issues or questions, arguments of parties, deliberation, and the decision.[12] Personnel who are involved in drafting regulations and who undertake quasi-judicial functions need specialised training in the fields of legal drafting and in drafting reasoned orders that adhere to the principle of natural justice, respectively.

In a globalised world, regulators have to keep abreast with the latest technologies and practices in their field. They must learn and adapt to a heterogenous set of

technological innovations including machine learning, artificial intelligence, fintech, or even biometric identification. Despite all its benefits, however, technology also has the potential to harm. When harm occurs, citizens first turn to regulatory authorities for remedial action. Regulatory personnel need to be trained and oriented to harness new technology that enables them to define risks with precision and implement responses in a timely manner. They must also be trained to use certain technologies for efficient internal functioning of the organisation. Many regulators, especially in the financial sector, already use new technologies to aid their consumer protection and market development functions. Even when armed with technology, people are crucial. Regulators need to consistently upskill personnel who oversee fast evolving markets. In the United Kingdom and Singapore, it is common for regulators to rely on universities who undertake training and research in science, technology and management, for skill-upgradation programmes. Indian regulators may also pursue tie-ups with Indian and foreign universities who offer new and innovative training opportunities. Additionally, batches of regulatory personnel should be sent on visits to observe and engage with regulators of the same field in other jurisdictions.

A crucial intervention that aids capacity building through the exchange of new ideas and experiences is the prevalence of a common platform for regulators working towards a common goal. At present, there are only a handful of common platforms where regulators can engage with each other. These include the Forum of Regulators (FOR), Forum of Indian Regulators (FOIR), and the Financial Stability and Development Council (FSDC). Common platforms such as these have various benefits — they are a useful forum for regulators to discuss emerging issues in regulatory procedures and practices, to evolve common strategies to meet regulatory challenges that are novel to the Indian market, and to share relevant information and experiences. There are two trajectories of regulatory relationships in the context of capacity building. One is the knowledge that regulators must possess vis-a-vis the regulated entities whereas the other is the bridge that the regulators must build between themselves. When regulators sit together to collectively address problems, they have a macro view of the paradigm and will be compelled to identify a spectrum of issues to deliberate upon.

Regulatory capabilities have to be raised in ways that avoid the risk of 'regulatory capture' and avoid information asymmetries in the market. The readiness and alacrity of regulators is always at test. The nature of markets is such that regulators will almost always be playing catch-up. Archaic financial rules and human resource practices should not impede Indian regulators from investing their time and financial resources in building sustainable, specialised and relevant capacity in their personnel.

Reform Idea #5

Enhance awareness and effectiveness of Real Estate Regulatory Authorities

Deepak Sanan

Deepak Sanan is a Senior Visiting Fellow at CPR and previously served in the Indian Administrative Service for 35 years. His interests include public policy in the areas of state capacity, land governance, and public finance. Deepak has been instrumental in the activities of the All India Forum of Real Estate Regulatory Authorities (AIFORERA), a common platform for state-RERAs to meet and discuss challenges, share best practices and build capacities for stakeholders in the real estate sector.

The Real Estate (Regulation and Development) Act 2016 broke new ground in the field of regulation. Regulation has conventionally been viewed as a necessity in the context of natural monopolies, usually in situations where monopoly control over a resource calls for the regulation of pricing of goods or services. Oversight in market economies has also been essential in the context of amalgamations, mergers or cartelisation that can result in the creation of monopolies that stifle competition. The real estate sector with numerous players and countless buyers does not seem to meet either one of these conditions but does have some features that invite concern.

Two factors weighed in the decision to bring in a formal regulatory authority in the sector. The excessive information asymmetry between sellers and buyers and the ability of the former to dictate terms to the latter was a preeminent concern as the number of suffering home buyers grew manifold. But it was not sufficient to redress home buyer grievances in a form that could be addressed by consumer courts. It was necessary to ensure that a sector that involved over 10% of the Indian economy functioned professionally to deliver on its promises and did not imperil the entire financial system as appears to be happening currently in China.

The actual implementation of the regulatory mechanism envisaged by the Act is now in its sixth year. **What has been the experience?** In terms of coverage of the regulatory authorities (RERAs) set up under

the Act, they now encompass all of India barring a few small states. RERAs cover well over 90% of India's urban population. Most major states have functioning websites to enable the regulatory interaction envisaged by the Act. The latest position on the website of the Ministry of Housing and Urban Affairs, Government of India shows that 94,748 projects have been registered with various RERAs and 101083 cases have been disposed of by them.[13] Findings of a survey undertaken to assess stakeholder perception of RERAs across five major states was released by the Boston Consulting Group in 2021. Independent work by a journalist and presented in a webinar also corroborated major findings. The survey revealed positive feedback amongst both developers and home buyers. There is considerable awareness of RERAs especially in the bigger cities. The regulatory authorities are believed to have increased both transparency and consumer confidence, resulted in greater belief in timely completion of projects, and created a preferred forum for grievance redressal. Developers were positive about enhanced credibility and ability to secure financial closure.

Though, there are areas that are not so positive. Awareness of RERA was lower in smaller towns. The issues that RERA can address were also not well understood. Amongst those who have approached RERA, the level of satisfaction with the outcomes was not too high. While obtaining a favourable order from RERA was not considered difficult, execution of the order was time consuming and even uncertain. RERAs are expected to function largely through their websites. The level of satisfaction with the websites amongst both home buyers and developers was quite low. Developers, especially, expressed concern about securing responses on websites, information on compliances, access, and navigability issues.

Regulators have, in the initial years, faced several dilemmas. Swamped by pent up grievances of home buyers against recalcitrant developers, they have to somehow also keep a focus on completion of projects beset with difficulties. The initial years have also seen many legal challenges to their interpretation of the law by developers facing adverse consequences. In this situation the dilemma has revolved around whether to stretch the legal boundaries or restrict themselves to a narrow interpretation of their powers. Most regulators are former civil servants — both cautious in their approach and unwilling to commit to more than the letter of the law. Transparency and making more information available is not an easy transition for those schooled in the traditional culture of the bureaucracy. Movement in the direction of proactive information collection and sharing is, therefore, often slow and hesitant.

What are the portents for RERA functioning in the future?

Some broad generalisations are possible even as the position in specific RERAs will depend on the individuals who occupy the critical positions in them. Awareness and registrations will increase over time. Protocols for more efficient functioning

and grievance redressal will become more prevalent. Once the complaint backlog created by past projects is tackled, future grievance burden will reduce. Judicial pronouncements will clarify the remaining grey areas that currently impact decisions and leave scope for litigation. While this should make available time for further emphasis on creating a more professional sector, it is likely that new issues will arise that need to be tackled. At least two related examples can be cited. It is often difficult to form associations of home buyers to effectively take over project maintenance and some allottees are always reluctant to contribute their share. Tackling these issues is a practical problem. Another issue relates to new kinds of contracts between developers and home buyers that attempt to overcome these problems. Thus, developers are building into the sale price, a contractual undertaking of long term maintenance of project property and facilities. Should this be allowed? Will it be feasible for the real estate regulators to address any disputes in relation to these agreements?

In other words, the regulators cannot sit back and expect to have an easy time. The real estate sector is dynamic and will evolve in tune with cultural changes and trends in urban living created by factors like demography and migration patterns. Meanwhile one focus that regulators can keep squarely in their sights is a continuous improvement in websites. On the one hand, websites need to assist developers to register and update information about their projects. On the other hand, they need to secure and present data that is able to consistently reduce the information asymmetry that works against home buyers in order to enable more informed decisions by them.

Reform Idea #6

Enhance regulatory effectiveness using a proactive and sustainable approach

Arkaja Singh

Arkaja Singh is a Fellow at CPR and part of the State Capacity Initiative. Her current work focuses on the regulation of markets. She has several other areas of interest that include municipal government, informal settlements, land, water and sanitation (especially the issues around sanitation labour and manual scavenging), and the interface of law and the Indian administrative state.

The Indian statutory regulatory agencies are endowed with relatively high levels of administrative capacity and a unique concentration of power, which potentially allows them to be quite proactive, collaborative, and to take a relatively longer view of regulatory interventions. This is complex, dependent on numerous intangible and external factors, and perhaps for this reason, difficult to prescribe.

The example of MWRRA and its role in encouraging the reuse of treated wastewater in the state of Maharashtra is useful to explain what a proactive approach could look like. In 2020, a group of farmers in Zalta village in a drought-prone region in Maharashtra signed an MOU with Aurangabad Municipal Corporation for the reuse of treated wastewater for farming operations.

A brief description of the context of water management in the state puts a perspective on the regulatory intervention that was undertaken here. Maharashtra is a water scarce state which had already taken several steps to improve its management of water, and was the first state to set up a regulatory authority for the purpose.

All the water in water bodies such as rivers, lakes, storage reservoirs and canals in the state are vested with the Water Resources Department of the state, which makes allocations to user entities, including municipal corporations, based on principles laid down through state policy and MWRRA regulations. Water consuming entities pay for this water in accordance with rates prescribed by MWRRA. There are different rate slabs for different types of entities based on social and economic considerations, and there is a system for levy and payment of these rates.

However, there is considerable loss in the treatment and management of wastewater generated through human consumption. By law, it is meant to be treated in sewage treatment plants (and onsite facilities and effluent treatment plants, as the case may

be) before it is released back into rivers, lakes and water bodies. It is the responsibility of pollution generating entities, municipal corporations, and water boards to ensure that they treat wastewater before it is discharged.

Once released into water bodies, the remaining water is once more the property of the Water Resources Department. In practice, however, much of it is released without treatment. The state pollution control boards have limited capacity to monitor and enforce wastewater treatment, and there are numerous court cases related to the pollution caused from municipal wastewater. It is estimated that two-thirds of wastewater generated in India is discharged without treatment. Not only does this pollute the environment, but also results in loss of water that could otherwise have been reused.

In 2017, MWRRA framed regulations (issued in January 2018) that put some restrictions on municipalities regarding discharge of used water, while at the same time making a provision for them to sell treated wastewater directly to other users in the region. This provided an additional incentive to the municipalities to do what they were already mandated to in terms of environmental law. In these regulations, MWRRA stipulated that when the body sells it to a farmer it shouldn't exceed 65% of the freshwater cost. This is because, if the treated water was priced the same as freshwater, the user would not be incentivised to buy the former. For industries, the MWRRA permitted local bodies and the industry to mutually decide the cost of the treated water; there was no cap. If the industry finds that taking freshwater from a distant reservoir is more expensive than taking treated water from the local corporation, it will prefer the latter.

This regulation has formed the basis of the present arrangement between Aurangabad and Zalta. It is also worth noting that these arrangements rely on a pre-existing regulatory framework through which the system of allocations and differential tariffs for different kinds of users has been established. But even so, the implementation of this project took more than the regulation itself, as it was also actively supported and facilitated by the 2030 Water Resources Group, a multi-agency partnership that was set up by the World Bank to achieve sustainable water management. MWRRA worked closely with this group, and the chairperson of MWRRA also concurrently headed the state's counterpart platform for the 2030 group. The Aurangabad Municipal Corporation and state's Urban Department have also played their part in bringing about the arrangement — what might be considered a demonstration project that will, hopefully, be followed by many more in similar vein.

There is also more that remains to be done, which depends on the continuing support of the state government and several government agencies. The transport of treated wastewater from treatment facilities to be placed where it can be reused requires infrastructure investments, including construction of pipelines and pumping systems. Additional investments in water treatment might also

need to be made, by both public and private agencies. This requires stable and long-term wastewater reuse agreements that have provisions for future uncertainties. These agreements are not currently in the regulatory purview of MWRRA, but it might be helpful to bring them within a regulatory framework. There are also discussions in the state, and between states, about setting up databases of potential wastewater users in any given area, and to make it mandatory for industrial units that are within reach of municipal wastewater treatment systems to first consider using treated wastewater for their requirements.

In sum, while this case highlights a regulatory good practice, it also points to the fact that outcomes take a long time to come about, and require the continued support and coordination of several agencies. They also require regulators, and their line ministries and departments, to participate in relatively long view policy imperatives and transitioning processes.

End Notes

1. Global Energy Ltd. v. Central Electricity Regulatory Commission (2009) 15 SCC 570
2. Cellular Operators Association of India v. Telecom Regulatory Authority of India (2016) 7 SCC 703
3. Dharani Sugars and Chemicals Limited v. Union of India and Ors. (2019) 5 SCC 480
4. n.1
5. 5 USC § 706(2)(A)
6. This study has been undertaken and published as part of a Working Paper Series on Cooperative Federalism in India, for a research program jointly managed by the Centre for Policy Research and the Carnegie Endowment for International Peace; Krishnan, K.P., Amrita Pillai, and Karan Gulati. "Statutory Regulatory Authorities and the Federal System in India." State Capacity Initiative Working Paper No. 2023-1. Centre for Policy Research, February 2023.
7. Rule 204 (Committee on Subordinate Legislation), Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)
8. Second Administrative Reforms Commission, Organisational Structure of Government of India, 3th Report (New Delhi: Government of India, 2009)
9. This writing by Dr. KP Krishnan was first published in the Business Standard on June 20, 2022. It is re-produced for this publication with permission from Business Standard.
10. Section 17(1), The International Financial Services Centres Authority Act, 2019
11. Annex Form, Rule 3, Insolvency and Bankruptcy Board of India (Annual Report) Rules, 2018
12. Justice Oliver Wendell Holmes, Path of the Law, Boston L School Magazine 1 (1896)
13. Figures as of 15.10.2022.

www.cprindia.org

CENTRE FOR
POLICY
RESEARCH