

Independent Regulators:

Shift in the Role of State

S. SHAJI

GSC COLLECTIVE



Mumbai
2020

Independent Regulators: *Shift in the Role of State*

Debates on independent regulators get underway across wider segments of social sectors and infrastructure. This has a new dimension in the education sector in India with the proposal in place for setting up a National Higher Education Regulatory Authority (NHERA) in India as part of the New Education Policy (NEP), 2020 (Government of India, Ministry of Human Resource Development 2020:47). NHERA is one of the latest additions to independent regulators the government is planning to introduce.

As efforts are still on with regulatory experiments in diverse sectors, we need to look at the context and evolution of regulatory reforms which unfolded since the early 1990s in India. To a large extent, the regulatory reforms in infrastructure and service sector have to be seen in the context of deepening practises of capitalist globalisation across the world since the end of the Cold War. Regulation of a particular sector (industry or services) is a process wherein through legal framework certain decisions of the firms/utilities/services are controlled for larger public interest. Regulatory reforms broadly encompass the introduction of competition and entry of new players. It also implies unbundling the existing single structure (where the government assumes the role of service provider, policy maker and the regulator) into three segments - service provider (both private and governments enteritis), policy maker (government) and regulators (preferably independent regulator). In the economic reforms literature, it is often cited that independent regulation is a substitute for a market with perfect competition. It stresses the premise that market ensures

balancing of the interest of all stakeholders such as consumers, service providers and the government. At the same time these issues would prompt us to look at the role of public policy of states and the transforming nature of state itself.

Regulatory Practices from Global North to Global South

At a conceptual level, the entry of independent regulations was shaped by the ascendancy of the New Public Management (NPM) in governance. NPM model of public sector reform has been widely imitated in developing countries by the process of policy transfer mainly global financial, trade and aid actors (Minogue 2006:74). NPM presumes that States in the developing world have to undergo transformation though there is uncertainty regarding the role of the state or how such a transformation could be achieved. An ambiguity surfaces because of cultural difference, apart from differences in the size and nature of economies, diversities in political systems and so on. The expansion of NPM has prompted the diffusion of regulatory reforms from the OECD countries to non-OECD countries, mostly in the non-western world. According to such theories, there are three modes of diffusion—'top-down' (policy diffusion through international financial, trade, aid bodies to national policy communities), 'bottom-up' (through balancing among various domestic actors and specific leadership and national style) and the third one is a 'contagious process' (cross learning of 'best practises' through the network of policy makers/professionals across the boundaries). The regulatory reforms and introduction of independent regulators that began in the public policies of Europe and United States with the expansion of capitalist economies in the early 20th century, had an effect on the Global South countries in the late seventies and eighties—first in Latin America and later on in Asia (especially when they were going through economic crisis). Against the backdrop of economic crisis, most of the planned economies of Latin America embraced economic reforms, by plunging

into free market economy with minimum interventions from the government which led to the introduction of several independent regulators in various sectors of the economy. To cite an example, Brazil, a prominent country in Latin America, introduced an independent regulator in electricity sector.

Likewise, several Asian countries began to introduce regulatory reforms in the 1980s in response to the economic crisis/governance deficiencies. The Philippines set up regulatory authority through an executive order in 1979, which was turned into a legislative agency in 1995. Sri Lanka introduced an independent regulatory agency for the first time in the telecom sector in 1996. South Africa began to introduce independent regulators in several infrastructure sectors in the 1990s though the country's focus was on restructuring the public sector and retaining substantial stake with the government (CUTS C- CIER 2008-1-5).

Regulatory Reforms in India and the 'Regulatory State'

The practice of bringing in independent regulators under broad regulatory reforms framework in the services/industry utilities became much more pronounced since early 1990s. Several economic and political factors, like the experiences elsewhere, influenced this. Regulatory reforms began with policy initiatives to permit private participation in the power and telecom sectors, and then, in 1995-96, in ports. Subsequently, it spread to other sectors such as insurance, petroleum and so on. Regulatory reforms and the introduction of independent regulators began to change the policy and legal systems around publicly owned government monopolies and regulated the infrastructure services under various laws. Several changes were brought in the legal structure pertaining to regulation in India. For instance, Indian Electricity Act, 1910 and Electricity Supply Act, 1948 were amended in 1998 to bring in Central Electricity Regulatory

Commission; Indian Telegraph Act, 1885 and the Indian Wireless Act, 1933 were amended to unbundle the public sector-oriented telecom sector, which resulted in the opening up of the sector for private players and also bring in independent regulator-Telecom Regulator Authority of India. Similarly, the latest example in the realm of independent regulation can be seen in the petroleum sector and education and health sectors are also marked for the introduction of regulatory reforms and governance. In addition, there has been a huge expansion of issues that independent regulators deal with: from tariff determination to autonomy of the authority, stakeholder participation in decision-making and so on. Of late, the government has also come out with draft bill to provide a common approach and guiding philosophy for independent regulation in India.

In sum, one can draw a few inferences: the introduction of independent regulators has become a new public policy initiative called regulatory reforms in most of the countries, especially in the post-privatisation phase. The spread of regulatory reforms has resulted—at the level of the nation state, a new phenomenon, a transformation into a “Regulatory State” as a new mode of governance. These regulatory institutions are positioned within a web of existing administrative frameworks to address the issues pertaining to an expanded global capitalism. Similarly, regulatory states seem to emphasise rule and standard settings and bring in the use of authority that, in effect, reduces the role of state as the direct service provider as well as extending public support mechanisms such as subsidies. Such trends paint a macro-level picture that the nature of states is slowly shifting into a ‘Regulatory State,’ ‘States in Competition’ etc. which is distinctly different from ‘the Welfare State,’ the idea which was quite prominent in the Global South context. The ‘Developmental State’ that focuses on investments and subsidies and the re-distributive ‘Welfare State’ continues to be in vogue; yet, change advances amidst continuity. Regulatory reforms and subsequent introduction of independent

regulators in various sectors/utilities in India clearly capture this picture.

References

CUTS C- CIER (2008) *Regulatory Framework in Infrastructure Sector: Lessons for India*, Briefing Paper, No 12/2008.

Government of India, Ministry of Human Resource Development (2020): The National Education Policy, 2020, available at http://niepid.nic.in/nep_2020.pdf

Minogue, Martin (2006): “Apples and Oranges: Comparing international Experience in Regulatory Reform,” in Martin Minogue and Ledivina Carino (eds.), *Regulatory Governance in Developing Countries*, Cheltenham Edward Elgar Publishing Limited.

S. Shaji teaches Political Science at the University of Hyderabad, India. Some ideas in this piece are drawn from a write-up that the author contributed to a project at Administrative Staff College of India (ASCI, Hyderabad) and in a module at UGC-MOOC