Regulatory Responsiveness in India: A Normative and Empirical Framework for Assessment

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Concept of regulatory responsiveness:

- Responsiveness in executive, legislative and quasi-judicial functions of a regulator. (Ayres and Braithwaite (1992), Braithwaite (2006))

Focus of this paper: *Responsiveness in quasi-legislative functions*

Motivation

- India has witnessed the emergence of a "regulatory" state post-liberalisation.
    - 4 regulators in the financial sector
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    - Competition regulator
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- Rationale for responsiveness in quasi-legislative functions:
    1. Avoids regulatory capture
    2. Better information collection
    3. Political ideal of democracy
    4. Increases legitimacy of regulatory standards
- No literature:
    1. measuring responsiveness of these agencies; or
    2. identifying why some regulators are more responsive than others.

Methodology of measurement
Measures of responsiveness

- Rule-based measures: Analysing laws governing regulators (Kauffman and Kraay (2007)).
- Outcome-based measures: Assessing the existence and quality of consultation processes.
  - Developed a baseline of benchmarks of a good consultation process.
  - Tested two Indian regulators - Telecom Regulatory Authority of India (TRAI) and Securities and Exchange Board of India (SEBI) - on the baseline of benchmarks.

Key findings
Rule-based measures

- Indian laws governing regulators do not provide for uniform standards for regulatory responsiveness.

S. No.	Regulator	Legal requirement for consultation
1	Reserve Bank of India	No
2	Securities and Exchange Board of India	No
3	Telecom Regulatory Authority of India	Yes
4	Tariff Authority for Major Ports	No
5	Insurance Regulatory and Development Authority	No
6	Competition Commission of India	No
7	Central Electricity Regulatory Commission	Yes
8	State Electricity Regulatory Commissions	Yes
9	Pension Fund Regulatory and Development Authority	No
10	Food Safety and Standards Authority of India	No
11	Warehousing Development and Regulatory Authority	No
12	Airport Economic Regulatory Authority	Yes
13	Petroleum and Natural Gas Regulatory Board	No

Key findings (contd.)
Outcome-based measures

Variation in quasi-legislative responsiveness amongst Indian
regulators.

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Outcome-based measures

Variation in quasi-legislative responsiveness amongst Indian
regulators.
How?

- Step 1: Developed (a) an index of benchmarks of
  responsiveness; and (b) quantifiable outputs for each
  benchmark.

Key findings (contd.)
Outcome-based measures

- Step 2: Assigned equal scores to the outputs. Where output is partially achieved, assigned a proportionate score.
- Step 3: Applied this framework to TRAI and SEBI for the period January 2014–April 2016.

Consolidated benchmarks
Capacity-building within regulators

S.No.	Benchmark / Measure / Process	Quantifiable output
1	Early engagement with stakeholders through information dissemination	Does the regulator periodically publish an annual *regulatory agenda* in advance?
2	Regular publication of relevant information and datasets	Whether the regulator publishes datasets on the pre and post regulation effect on a market?
3	Systems for public monitoring of information disclosure practices	Whether the regulator has an internal whistle blowing mechanism for undisclosed information?
4	Mechanisms for continuous feedback (formal or informal)	Whether the regulator allows for petitioning for changes to or enactment of new regulations?

Consolidated benchmarks
Capacity-building within regulators (contd.)

S.No.	Benchmark / Measure / Process	Quantifiable output
5	Internal capacity and systems (management tools and processes) for public participation	Whether the regulator has a process manual for conducting a public consultation exercise?
6	Dissemination of information regarding the participatory process	Is the information on the participatory process displayed on the website of the regulator?
7	Dissemination of information regarding the participatory process among targeted groups	Whether the regulator has awareness programmes amongst vulnerable groups and minorities?
8	Build review mechanisms for periodically assessing the quality of the public consultation process	Whether the regulator has a system for conducting periodic surveys and external audits of its consultation processes?

Consolidated benchmarks
Consultation process

S.No.	Benchmark / Measure / Process	Quantifiable output
9	Publication of high quality explanatory documents and data that allow stakeholders to provide informed comments.	Does the regulator publish explanatory documents such as consultation papers/ draft regulations?
10	Effective outreach and consultation with targeted groups as part of the consultative process	Does the regulator proactively communicate with groups most likely to be affected?
11	Multidirectional flow of information between the regulator and the public and the public inter-se	Does the regulator publish comments recieved before issuing the final regulation? Does the regulator provide time for counter-comments? Does the regulator provide a response to the comments? Does the regulator provide more than one method of receiving feedback?

Applying benchmarks to two Indian regulators
Multiplicity of legislative instruments (1st January 2014–30th April 2016)

Instrument	SEBI	TRAI
Regulations	51	22
Circulars	122	0
Orders[1]	0	12
Directions	0	24
Total	173	58

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[1]Orders refers to *orders in rem*.

Applying benchmarks to two Indian regulators
Output 1: Does the agency publish explanatory documents?

Item	SEBI	TRAI
No. of instruments issued	173	58
No. of instruments preceded by public consultation	18	27
Percentage	10.40%	46.55%

Final scores, and Outputs 2-9

No.	Output	SEBI	SEBI's score	TRAI	TRAI' score
1.	Does the agency publish explanatory documents?	10%	0.10	47%	0.47
2.	Does the agency pro-actively communicate with groups most likely to be affected?	No data (No).	0	No data (No).	0
3.	Does the agency publish comments received before issuing the final regulation?	No	0	Yes	1
4.	Does the agency provide time for counter-comments?	No	0	Yes	1
5.	Does the agency provide a response to the comments received?	No	0	No	0
6.	Does the agency provide more than one method of receiving feedback?	No	0	Yes	1

Final scores, and Outputs 2-9

7.	Does the agency publish a statement of when the decisions will be made based on the consultative process?	No	0	No	0
8.	Does the agency publish the name of the individual in charge of the consultative process?	No	0	No	0
9.	Does the agency publish the source of the legal power to issue the proposed regulation?	Yes	1	Yes	1
10.	Does the agency give adequate time for responding to the draft proposed by it?	Average - 20 days.	0	Average - 27.41 days.	0
Total-		1.10	-	4.47	

Applying benchmarks to two Indian regulators
Zooming in on output 10: Time given for responding to comments

Regulator	Minimum	Maximum	Median	Average
SEBI	7	35	21	20
TRAI	15	44	29	27.41

in calendar
days

Applying benchmarks to two Indian regulators
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As an aside, time-lag between close of consultation exercise and
enactment of regulation:

Regulator	Minimum	Maximum	Median	Average
SEBI	55	645	160	250
TRAI	14	246	58	82.26

in calendar
days

Summarised findings of the paper

1. Global benchmarks, when suitably quantified, allow for measurement of legislative responsiveness among Indian regulators.

2. SEBI scores low as per these benchmarks. TRAI does better, though both fail the half-way mark.

3. There is a strong correlation between scores on rule-based measures and outcome-based measures for SEBI and TRAI.

Implications of findings

1. Further work:
    1. Analysis of whether regulatory agencies use comments received.
    2. Regular benchmarking of Indian regulators.
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2. Policy implications:
   1. Feeds into parliamentary and other external oversight of regulators' functioning.
   2. Leads for what needs to change in the law or internal bye-laws of regulators.

Thank you

Ayres I, Braithwaite J (1992). *Responsive Regulation: Transcending the Deregulation Debate*. Kindle edition edition. Oxford University Press.

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