

Constructing high performance agencies

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(Views are personal)

Structure of presentation

- Agencies?
- Indian experience
- Recent effort at agency construction
- Way forward

Agencies or NDPB

- Sir Leo Pliatsky coined the term Non-departmental public bodies (NDPB) to describe these in his 1980 report to the UK government
- A body which has a role in the processes of (national) government, but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers

Indian experience

- A proliferation of such bodies
 - SEBI/IRDA/PFRDA/CCI/WDRA
 - UIDAI/NATGRID/FIU/NSDA
 - Appellate authorities under PML Act & others
- Many of them are still born
- A litany of problems with staffing/funds/operational autonomy/reporting structure

Depersonalized competent institutions

- The average civil servant in Australia is not particularly superior to the average civil servant in India
- Remarkable governance outcomes are about the systems and procedures, not about the individuals
- Our objective in India is to build sound institutions, which work correctly and deliver results, regardless of staffing

“Get the right person”

- *“The only thing that matters is getting the right person for the job”*
- But our emphasis on the appointments process is the flip side of our failure on building depersonalized institutions
- When the individual matters so much, we get more political pressures on the appointments process and are more likely to get the wrong answer!

Principal and agent

- Departments of government are run by the political authority
- They are good for dealing with political questions
- They face acute problems of capacity
- Many times, it is efficient to contract-out work to an external agency
- Either by executive order or by law

When is a NDPB the answer?

- If the function needs to be carried out at arm's length from ministers e.g. regulatory functions, decisions on funding
- When expert advice is required by ministers on technical/specialized issues
- If a body needs to be set up to deal with appeals
- When a body is required to carry out a range of commercial activities where board members need a degree of independence

The role of the department

- Make political decisions
- Identify sub-problems that can be contracted out
- Design contracts
- Exercise governance on the working of the agent
- Continually modify the work allocation and the contracts based on results

The Contract

- The law or the executive order is the contract between principal and agent
- The critical components:
 - Objectives
 - Powers given to the agent and
 - Accountability mechanisms and governance arrangements
- Too many existing laws and executive orders lack these three components

S. 11b of one of SEBI Act

... “if after making or causing to be made an enquiry, the Board is satisfied that it is necessary, - (i) in the interest of investors, or orderly development of securities market; or (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; ... it may issue such directions, - (a) to any person or class of persons referred to in section 12, or associated with the securities market; or (b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market”

The problems with this

- SEBI has been given powers to pursue a vague objective (“the interest of investors”).
- Public choice theory predicts this will be used!
- And guess what?
- SEBI has vigorously used 11B for writing regulations and orders
- In fact it is the source of the largest number of SEBI orders

An example of vague powers

- Power to issue directions under the Payments and Settlement Systems Act: *“to perform such acts as may be necessary, in the opinion of the Reserve Bank, to remedy the situation “*
- This can become unlimited power
- In the limit, vague objectives + vague powers.

Clarity of purpose

- When the agent has multiple objectives, this muddies the waters
- The agent will claim that Objective 1 was somehow the priority of the day so we failed on Objective 2
- Things are worse when Objective 1 directly clashes with Objective 2
- Let's achieve clarity of purpose

Political functions

- Whether there should be FDI in retail is a political question
- It makes sense to place this in a department of government
- The central bank should be a technical person who is given power (the policy rate) and is held accountable (inflation target)

The two key requirements

- Information + processing = decisions
- The agency must possess sound formal and institutional mechanisms to obtain information
- The agency must possess sound formal and institutional mechanisms for processing this information and arriving at decisions

The critical components

- Organization design
- Physical facilities and office infrastructure
- HR process
- Process manuals for all key functions
- Translation of all processes into a single IT system

The question of independence

- To politicians, the case for independence has not been made
- The question of independence is really about the principal-agent problem
- If the principal meddles, the agent gets an excuse for failure
- That is the main case for independence
- Independence as an integral part of the package of setting up objectives, powers, accountability + governance.

An example

- The Indian Financial Code constructs seven agencies through this formal approach of objectives, powers, accountability mechanisms + governance arrangements
- It shifts political functions to MOF
- It places functions at agencies which agencies can be held accountable for

Constructing agency landscape

- MOF has setup four task forces for creating agencies envisaged under the Indian Financial Code
 - Resolution Corporation
 - Financial Data Management Centre
 - Public Debt Management Agency
 - Financial Sector Appellate Tribunal
- Create State capacity in a short time, utilising private consulting firms and IT companies to build the full machinery of these agencies in a short time

Looking forward

- A general 'Executive Agency Framework', as in the UK, which is a method for setting up organizations through executive orders.
- Across government, undertake an array of policy projects: redrafting laws, setting up public bodies through laws / executive orders, and making those organizations work well

UK experience

- Whether the service needs to be delivered at all?
- Is the function assigned to some one?
- Whether a PPP would be the best option?
- Whether the work could be done by a VO?
- Whether it can be done by existing agency?
- Now create an NDPB
- Obtain a classification decision (ONS/HMT/CO)
- Consultation/Creation

Taxonomy of NDPBs

- Executive NDPBs
- Advisory NDPBs
- Tribunal NDPBs
- Independent monitoring boards of penal establishments
- Public Corporations
- Public Broadcasting Authority
- Central Bank
- Nationalized industry
- National Health Service Bodies

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Thank you