
THE INDIAN REGULATORY STATE AND THE LIMITS OF ADMINISTRATIVE LAW: JUDICIAL CONTROL OVER STATUTORY REGULATORS

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Introduction

The transformation of India's economic governance since the liberalisation reforms of 1991 has been accompanied by the emergence of a complex regulatory framework administered by specialised statutory authorities. Prior to economic liberalisation, regulation was largely exercised through direct governmental control, extensive licensing mechanisms, and centralized administrative decision-making. As markets expanded and private participation increased across sectors such as telecommunications, electricity, and securities markets, the traditional model of state control proved increasingly inadequate to address the technical and institutional demands of a modern market economy. In response, the Indian state gradually adopted the institutional architecture of the regulatory state, establishing independent regulatory authorities designed to supervise markets, enforce compliance, and promote competition.

These statutory regulators were conceived as expert bodies operating with a degree of autonomy from the executive, and they were entrusted with extensive powers encompassing rule-making, licensing, supervision, and adjudication. The concentration of legislative, executive, and quasi-judicial functions within a single institutional framework, however, raises important questions regarding accountability, transparency, and the limits of delegated authority. While regulatory independence is often justified on the grounds of expertise and efficiency, it simultaneously generates concerns about democratic oversight and the potential for regulatory overreach.

Within this context, judicial review under administrative law has emerged as one of the principal mechanisms through which courts attempt to maintain a balance between regulatory autonomy and legal accountability. Yet the effectiveness of judicial oversight over regulatory

authorities remains uneven. Indian courts have traditionally exercised closer scrutiny over quasi-judicial decisions affecting individual rights, while displaying greater deference toward regulatory rule-making and policy-oriented decisions involving technical expertise. This differential approach raises an important question regarding the extent to which existing administrative law doctrines are capable of meaningfully constraining the broad powers exercised by modern regulatory authorities.

This paper examines the evolution and functioning of statutory regulatory authorities in India through the lens of administrative law and judicial review. By analysing the institutional development of key regulators across sectors and examining significant judicial decisions involving bodies such as the Securities and Exchange Board of India (SEBI) and the Telecom Regulatory Authority of India (TRAI), the paper seeks to assess the extent to which courts have succeeded in ensuring accountability without undermining regulatory autonomy. It argues that while judicial review provides an important procedural safeguard against arbitrary regulatory action, the existing framework of administrative law reveals significant limitations in addressing the structural concentration of power within regulatory institutions. As a result, the Indian regulatory state continues to operate within a delicate and unresolved tension between the imperatives of expert governance and the demands of constitutional accountability.

Evolution of the Regulatory State: Post 1991

The economic liberalization that began in the early 1990s fundamentally altered the structure and operation of the Indian state, marking a definitive break from the post-independence era. This momentous shift revitalized the field of Indian administrative law, moving its focus from a traditional emphasis on judicial review to a new set of questions about the relationship between state institutions, citizens, and business firms in a changed policy environment. The transformation was from a state characterized by centralized intervention to one that was more decentralized and market-oriented.

The impetus for this change had both external and internal roots. The conventional understanding points to the serious economic crisis of March 1991, when dwindling foreign exchange reserves and high external debt forced a newly elected government to approach the International Monetary Fund (IMF), which in turn imposed conditions requiring drastic policy changes. However, a more complex reality was also at play. Internally, a growing consensus had been building for at least a decade within government circles among a technocratic elite

and political leaders who sought to move away from India's disappointing record with policies of import substitution and fiscally unsustainable growth. Coupled with the demise of the Soviet Union, which removed a key geopolitical ally, India's policymakers decided that aligning with the globalizing economic system was a better alternative.

This move was part of a global proliferation of independent regulatory authorities that peaked in the mid-1990s, a period also very significant for regulation in India. The resulting Indian “regulatory state” was characterized by an expanded role for markets, greater private sector participation, and the withdrawal of the state from the direct provision of services.

The principal motivation behind creating these new institutions was the desire for governance that was insulated from daily political pressures and grounded in technical expertise. The hope was to transform what was seen as a hopelessly politicized governance culture into one that was rule-bound, apolitical, and technocratic. However, it quickly became apparent that this objective was unrealistic. Regulatory decisions are deeply embedded in politics, and seeking to depoliticize them proved to be extraordinarily naïve. While the process of liberalization transformed the politics of the old economic institutions, politics itself was not eliminated; instead, the new regulatory bodies became the stage for their own complex politics.

A Sectoral Analysis of the Institutional Design of Regulatory Authorities

Statutory Regulatory Authorities (SRAs) are specialized, autonomous bodies established through Acts of Parliament, a feature that has become prominent in India's governance framework since the 1990s. The legislation that creates these regulators typically outlines their foundational aspects, such as the design of their top decision-making board, their substantive powers, and the mechanisms for accountability like audits and reporting. However, these statutes are often notably lean on specific guidance for how the regulators should conduct their administrative functions, leaving them to operate under the same general principles of administrative law that bind other government agencies.

What distinguishes SRAs from conventional government departments is their unique institutional structure and operational mandate. A key feature is the concentration of powers: they blend functions that are normally separated, acting as rule-makers (legislative), supervisors (executive), and adjudicators (quasi-judicial) all within a single entity. This design is a significant departure from the traditional doctrine of separation of powers. Furthermore,

their role requires them to be highly agile and responsive to dynamic market needs, resulting in a significantly higher frequency and volume of regulation-making compared to a government ministry.

SRAs are designed to have a high degree of autonomy and have, in effect, “exited” the usual administrative framework of government. Their independence is built on several pillars:

1. **Operational Independence:** Their governing statutes grant them the freedom to function independently, with accountability limited to specific requirements laid down in the law.
2. **Organizational Flexibility:** Each regulator is free to design an internal organizational structure that best suits its specific objectives and constraints.
3. **Financial Autonomy:** Unlike government departments that depend on appropriations from the Consolidated Fund of India, many regulators have access to independent funds, giving them greater financial flexibility.
4. **Specialized Review:** The actions of most regulators are subject to review by a dedicated and independent appellate mechanism, created specifically for that sector.

Application of Administrative Law on Regulatory Authorities

Administrative law, as a branch of public law, provides the legal framework that governs the relationship between the state and its citizens and guides the interactions between different parts of the government. Its primary function is to both empower and restrain state actions, ensuring they remain within constitutional boundaries. As agencies of the state, Statutory Regulatory Authorities (SRAs) are fully bound by these principles and must operate within the legal constraints that administrative law imposes.¹

However, the application of administrative law to these bodies is complicated by their unique design, which presents distinct legal challenges. This stems from two key aspects:

1. **Fusion of Functions:** Unlike traditional government departments, SRAs typically

¹ K.P. Krishnan and Anirudh Burman, ‘Statutory Regulatory Authorities: Evolution and Impact’ in Devesh Kapur (ed) and Madhav Khosla (ed), *Regulation of India: Design, Capacity, Performance* (1st edn, Bloomsbury Publishing 2019).

combine legislative (rule-making), executive (supervision), and quasi-judicial (adjudication) powers within a single institution. This concentration of functions challenges the conventional principle of separation of powers.

2. Institutional Autonomy: SRAs enjoy a high degree of independence, which is explicitly guaranteed by law. This allows them significant freedom to design their own internal organization—including staffing, salaries, and hierarchy—and to create their own administrative processes for tasks like inspections and issuing notices.

The core governance concerns for SRAs, namely, achieving efficiency while balancing independence with accountability, are directly mirrored in the central tenets of administrative law. These legal principles manifest in ensuring the proper exercise of delegated legislative authority, upholding reasonableness and non-discrimination in administrative actions, and guaranteeing fairness and natural justice when carrying out quasi-judicial functions.

Prominent examples of such authorities in the Indian context include the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), the Telecom Regulatory Authority of India (TRAI), the Competition Commission of India (CCI), the Reserve Bank of India; the Securities and Exchange Board of India; the Pension Fund Regulation and Development Authority; the Insurance Regulation and Development Authority; the Telecom Regulatory Authority of India; the Petroleum and Natural Gas Regulatory Board; the Central Electricity Regulatory Commission; the Insolvency and Bankruptcy Board of India; the Food Safety and Standards Authority of India; the Airport Economic Regulatory Authority; the Tariff Authority for Major Ports; and the Warehouse Regulation and Development Authority. The following is a sector-by-sector analysis for a few of them:

Sectoral Analysis

1. Telecom Regulatory Authority of India (TRAI)

Prior to the 1990s, India's telecommunications sector was governed by the Indian Telegraph Act of 1885, which established a complete state monopoly. Under this framework, the Department of Telecommunications (DoT) uniquely held all key roles: it was the policymaker, the service provider, and the licensing authority. This concentration of power resulted in a system characteristic of many developing nations at the time, marked by low telephone

penetration, subpar service quality, and an incumbent operator facing persistent financial difficulties.²

The economic reforms of 1991 made this monopolistic structure unsustainable. The National Telecom Policy of 1994 acknowledged that the government lacked the financial resources to expand and modernize the network, making private investment essential. However, for private companies to enter the market, they required assurance that the government—which also owned competing service providers like BSNL and MTNL—would not manipulate the rules to favor its own entities. This inherent conflict of interest made it clear that a neutral, arm's-length regulator was necessary to build investor confidence and ensure fair competition.

Recognizing these structural deficiencies, a high-level committee initiated a major overhaul just three years later. The TRAI Amendment Act of 2000 fundamentally restructured the regulatory landscape by separating the body's functions. TRAI was to continue as the regulatory authority, while a new, separate judicial body—the Telecom Disputes Settlement and Appellate Tribunal (TDSAT), headed by a senior judge was created to handle all dispute adjudications.

The impact of these reforms on the telecom sector is a story of contrasts. On one hand, liberalization has led to undeniable successes: a massive expansion in telephone connections, widespread availability of mobile services, and tariff rates that are among the lowest in the world. On the other hand, the sector has failed to adequately connect rural India, and many of the original promises of privatization have not been met.

Although TRAI was created to function as an autonomous body capable of ensuring fair competition and consumer protection, its operational reality illustrates the persistent influence of the executive in regulatory governance. The Department of Telecommunications continues to retain significant authority over licensing and policy decisions, which often limits TRAI's ability to function as a fully independent regulator. At the same time, the statutory requirement of transparency under the TRAI Act has subjected many of its regulatory decisions to judicial scrutiny, particularly in relation to rule-making and consultation processes. This dual dynamic demonstrates that while institutional autonomy may be formally provided through statutory

² K.P. Krishnan and Anirudh Burman, 'Statutory Regulatory Authorities: Evolution and Impact' in Devesh Kapur (ed) and Madhav Khosla (ed), *Regulation of India: Design, Capacity, Performance* (1st edn, Bloomsbury Publishing 2019).

design, the effective accountability of regulators in practice is frequently shaped by the extent to which administrative law principles—such as transparency, reasonableness, and procedural fairness—are embedded within their governing statutes and enforced through judicial review.

2. State Electricity Boards (SEBs)

The liberalization of India's electricity sector took a distinct path compared to other utilities. Following independence, the sector transitioned from being predominantly private to being under state control through the Electricity Supply Act, 1948. As electricity is a concurrent subject in the Constitution, this led to the formation of State Electricity Boards (SEBs) in each state, which were funded by and operated under their respective state governments, establishing near-monopolies by 1990.

A severe financial crisis emerged from a web of conflicting populist demands: farmers insisted on politically motivated power subsidies, industrialists protested the resulting high tariffs needed to cover these subsidies, and urban consumers were frustrated by the poor service quality that stemmed from the sector's financial collapse. To resolve this crisis, Indian policymakers adopted the prevailing international advice, particularly from the World Bank, which promoted private investment as the solution. The prescribed formula involved “unbundling” the vertically integrated SEBs, introducing private players to create a competitive market, and establishing independent regulatory authorities to provide confidence to foreign investors.

Concerned about a wave of uncoordinated state-level actions, the central government responded by enacting the Central Electricity Regulatory Commissions Act, 1998, followed by the comprehensive Electricity Act of 2003, which established a uniform framework for restructuring and regulation across the country. However, a key objective of this new framework, to depoliticize decision-making and introduce technocratic rationality, has been widely regarded as a spectacular failure. In practice, little changed on the ground. A pattern of accommodation between the new regulators and the executive allowed populist pressures to continue dictating crucial decisions, particularly in moderating tariff hikes. Decades after the reforms began, the electricity sector remains riddled with many of its original problems, and in some cases, has developed new ones.

However, electricity regulation in India remains deeply intertwined with political

considerations, particularly because electricity pricing directly affects large voter constituencies such as farmers and urban consumers. As a result, regulatory commissions often operate within a constrained environment where tariff decisions and subsidy policies are indirectly shaped by executive influence and populist pressures. This dynamic raises important administrative law concerns regarding the actual independence of regulatory bodies and the effectiveness of existing accountability mechanisms. Judicial review in this sector has typically focused on procedural compliance and statutory interpretation rather than broader questions of regulatory autonomy, thereby reinforcing the pattern in which courts intervene only when clear procedural violations occur while leaving substantive policy decisions largely to the regulators and the executive.

3. Securities and Exchange Board of India (SEBI)

Regulation in the securities and financial sector is typically justified on three main grounds: protecting investors from fraudulent practices, establishing fair and efficient markets, and reducing systemic risk to the economy. Before the liberalization era, India's securities markets were governed by a framework of legislation, including the Capital Issues (Control) Act of 1947, with oversight fragmented among various government bodies like the Ministry of Finance and the Reserve Bank of India.

The Securities and Exchange Board of India (SEBI) was created in a two-step process. It was first established in 1988 as an advisory body with a limited mandate to gather information, advise the government, and license certain financial intermediaries. A significant transformation occurred in 1992 when SEBI was converted into a full-fledged statutory body through the SEBI Act, 1992.

As the oldest of India's modern regulatory institutions, SEBI has generally developed a reputation for effective functioning. However, there is a persistent perception that it lacks adequate powers to fully execute its mandate. Scholars argue that effective securities regulation hinges on credible deterrence, which requires the authority to impose substantial fines to discourage fraud. SEBI's perceived inability or reluctance to levy heavy penalties is seen as a significant weakness.

The wide scope of these powers has resulted in frequent litigation before the Securities Appellate Tribunal (SAT) and higher courts, making SEBI a significant site for the

development of administrative law principles in the context of economic regulation. Judicial scrutiny of SEBI’s decisions has played a crucial role in shaping procedural safeguards, particularly in relation to natural justice, the adequacy of show-cause notices, and the requirement of reasoned orders. At the same time, courts and tribunals have generally displayed deference to SEBI’s regulatory expertise, especially in matters involving urgent market intervention or complex financial regulation. This balance between judicial restraint and procedural oversight demonstrates how administrative law attempts to reconcile two competing objectives: allowing regulators sufficient flexibility to protect market stability while ensuring that their expansive powers remain subject to meaningful legal accountability.

Functions of Key Regulatory Authorities in India

The table below outlines the primary powers of the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI), and the Telecom Regulatory Authority of India (TRAI), categorized by their function.

Function	Reserve Bank of India (RBI)	Securities and Exchange Board of India (SEBI)	Telecom Regulatory Authority of India (TRAI)
Legislative (Rule-making)	Can create rules on specific topics without any set procedure being mentioned in the law.	Can create rules on specific topics, which must be presented to Parliament. The law doesn't specify a procedure for making these rules.	Can create rules on specific topics but must ensure its processes are transparent. These rules must also be presented to Parliament.
Executive (Supervision & Licensing)	Has the authority to issue licenses to financial institutions like banks and NBFCs. It can also inspect, audit, and demand information from them at any time.	Can issue licenses to market entities like stock exchanges and brokers. It has the power to inspect, audit, and request	Does not issue new licenses but can cancel existing ones. It can also conduct investigations and audits of telecom companies, which must be done through formal

Function	Reserve Bank of India (RBI)	Securities and Exchange Board of India (SEBI)	Telecom Regulatory Authority of India (TRAI)
		information from these entities.	orders following due process.
Quasi-judicial	Can enforce rules by imposing monetary fines and canceling licenses for non-compliance. Actions like rejecting or canceling a registration must be done through a formal order with a fair hearing. It can also issue binding directions to entities.	Has the power to impose financial penalties for violations specified in the law. Decisions to reject or cancel a registration must be made through a formal order that follows due process.	Can enforce its rules by canceling licenses and imposing penalties on entities that violate its directions. It is also empowered to issue such directions to telecom companies.

Judicial Review of Regulatory Authorities

The enabling statutes for all of these regulatory bodies provide clear procedural requirements for their quasi-judicial functions, that is, actions related to passing orders, conducting inquiries, and imposing penalties. These laws uniformly incorporate the basic principles of due process and natural justice, typically by mandating that a person or entity must be given a fair hearing before any adverse decision is made.

However, there is a significant divergence when it comes to their **legislative (rule-making) functions**. The laws governing the SEBI, and the RBI are notably silent on the process they must follow when creating new regulations. The TRAI stands as a key exception; its statute includes an overarching requirement to ensure transparency in all aspects of its functioning, which extends to its rule-making and executive activities.

There is a clear and consistent pattern in how the judiciary applies administrative law to regulatory authorities, characterized by a general deference to the regulator, a differentiated approach to reviewing its various functions, and a strict reliance on the text of the governing

statute.

A General Stance of Judicial Deference

Across the board, courts and tribunals show significant respect for the functioning of statutory regulatory authorities. Judicial intervention is typically reserved for cases involving a blatant disregard for established procedures. This reluctance to interfere is exemplified by the general acceptance of SEBI's use of post-decisional hearings for its interim orders and the high degree of latitude granted to it in the Shankar Sharma case, despite serious procedural lapses. This approach stems from the judiciary's consistent desire to preserve the regulator's ability to function effectively without being crippled by constant legal challenges.

A Differentiated Approach to Review

Judicial oversight is not applied uniformly to all actions of a regulator; instead, it varies significantly based on the nature of the function being performed.

1. **Quasi-Judicial Functions:** This is the area where judicial review is most frequent and robust. When regulators conduct inquiries, pass orders, or impose penalties, courts actively scrutinize their adherence to administrative law principles. This reflects a clear legislative intent that judicial control is a necessary check on the exercise of these powers.
2. **Legislative and Executive Functions:** In sharp contrast, the rule-making (legislative) and supervisory (executive) actions of regulators are rarely subjected to judicial review.

The reason for this differentiated approach lies in the design of the regulators' enabling statutes. The "thinness" of procedural requirements for rule-making in most of these laws provides courts with very limited grounds for review.

TRAI serves as the key exception that proves this rule. Its rule-making process is reviewed by courts precisely because its statute contains a specific and explicit mandate for transparency, a provision that is absent in the laws governing other authorities like SEBI or CCI. This directly impacts how much constraint a regulator faces. An authority like SEBI, with a wide range of functions, is less impacted by judicial review overall, as only its quasi-judicial activities are consistently scrutinized. TRAI, on the other hand, is an anomaly because its unique statutory

language invites judicial review into its legislative processes, an area where other regulators operate with greater freedom.

This difference in statutory design has directly influenced the nature of judicial oversight. For the SEBI, and RBI, judicial review has been overwhelmingly focused on their quasi-judicial actions, as this is the area where the law provides clear procedural standards for courts to assess. In contrast, TRAI's explicit mandate for transparency has opened its legislative and executive functions to judicial scrutiny as well, making it unique among the four. The volume and nature of these legal challenges vary significantly across the different regulatory authorities, as will be illustrated by an analysis of key judgments, in the following section.

Case Study Analysis of Judicial Review in Regulatory Authorities

The principles of administrative law are actively shaped and enforced by the judiciary through its review of regulatory actions. As highlighted previously, the nature and frequency of these judicial challenges differ significantly from one regulator to another, largely depending on their specific statutory mandates. The following section examines a selection of key judgments involving authorities like the TRAI, CCI, and SEBI. This case-law analysis illustrates how courts and appellate tribunals have interpreted and applied principles of natural justice, due process, and transparency, thereby defining the practical limits of regulatory power in India.

***Cellular Operators Association of India v TRAI and Others*³**

In this landmark case, the Supreme Court of India examined the validity of the Telecom Consumers Protection (Ninth Amendment) Regulations, 2015, which mandated compensation from telecom operators for call drops. The challenge was brought forth by a consortium of service providers on grounds of arbitrariness under Article 14 of the Constitution and a failure to adhere to the statutory transparency requirements under the TRAI Act, 1997.

The Court invalidated the impugned regulation on two primary grounds:

1. **Arbitrariness and Non-Application of Mind:** The Court held that the regulation was arbitrary because TRAI had failed to consider all relevant evidence. Specifically, it did not account for the arguments and data presented by service providers showing that call

³ *Cellular Operators Association of India v TRAI and Others* MANU/SC/O551/2016.

drops can occur due to a variety of reasons beyond their control, including factors related to the consumer. This failure to consider all facets of the issue was deemed a non-application of mind, rendering the regulation unreasonable under Article 14.

2. **Breach of Statutory Transparency:** More significantly, the Court found that TRAI had breached its statutory duty of transparency under Section 11(4) of the TRAI Act. Although TRAI had conducted a formal consultation process by issuing a paper and inviting stakeholder comments, the Court ruled that this was merely a procedural formality. The process was held to be deficient because the final regulation contained no discussion or reasoning to counter the substantive arguments made by the telecom operators. This established a crucial precedent: transparency requires not just holding a consultation, but also meaningfully engaging with the feedback received.

Additionally, the Court made an important clarification regarding the principles of natural justice. It distinguished the act of framing regulations, which is a legislative function, from an administrative or quasi-judicial one. The Court affirmed that while the regulation was invalid on other grounds, the principles of natural justice do not strictly constrain an authority when it is performing a legislative function.

The Supreme Court intervened in this case primarily because TRAI failed to adequately consider stakeholder submissions during its consultation process, resulting in a regulation that the Court found arbitrary under Article 14. The Court also held that TRAI had violated its statutory duty of transparency under the TRAI Act by not meaningfully addressing the objections raised by telecom operators. The decision highlights that while regulators possess delegated legislative authority, they must still comply with procedural obligations imposed by statute. At the same time, the Court preserved regulatory autonomy by clarifying that principles of natural justice do not strictly apply to legislative rule-making. This approach resembles administrative law practices in jurisdictions such as the United States and the United Kingdom, where courts generally defer to regulatory expertise but require agencies to follow transparent procedures and provide reasoned explanations for their regulations.

Vodafone India Ltd and Others v TRAI⁴

This case tested the boundaries of the transparency principles established in the COAI v TRAI

⁴ *Vodafone India Ltd and Others v TRAI* MANU/DE/2883/2017.

judgment. Here, Vodafone challenged an ongoing regulation-making process, arguing that TRAI's refusal to disclose certain specific information during the consultation phase was a breach of its statutory duty of transparency under Section 11(4) of the TRAI Act.

The High Court dismissed the challenge, providing a crucial counterpoint to the COAI decision by emphasizing the need for regulatory efficiency and judicial restraint.

1. **Balancing Transparency with Efficiency:** The Court found that TRAI had fulfilled its duty by conducting a proper consultation process. It reasoned that holding the regulator to the standard demanded by Vodafone would paralyze its functioning. The judgment cautioned that forcing a regulator to conduct a full, court-like "adjudicatory hearing" for every rule would be an unworkable procedure that would "destroy the efficacy of delegated legislation".
2. **The Principle of Judicial Restraint:** The Court established a high threshold for judicial intervention in the regulatory process. It held that courts should be cautious about interfering in an ongoing law-making exercise by a regulator unless there is a "facial or manifest omission of transparency".
3. **Distinguishing Procedural vs. Merits Review:** The judgment highlighted the danger of judicial overreach. It warned that in the absence of a clear procedural lapse, judicial intervention could easily become a premature review of the substance or "merits" of the proposed regulation. Such an action would allow courts to improperly intrude into the specialized decision-making domain of the statutory authority.

In this case, the court declined to intervene because it found that TRAI had substantially complied with its statutory transparency obligations by conducting a consultation process. The petitioners' demand for additional disclosures was rejected on the ground that imposing adjudicatory-style procedures on regulatory rule-making would undermine the efficiency of delegated legislation. The judgment therefore reinforces the principle of judicial restraint and affirms the need to preserve regulatory flexibility in complex sectors such as telecommunications. Similar approaches are observed in jurisdictions like the United Kingdom and the European Union, where courts typically intervene in regulatory rule-making only in cases of clear procedural illegality or irrationality rather than reviewing the merits of policy decisions.

Financial Technologies (India) Ltd v SEBI⁵

This case illustrates a challenge to a SEBI order based on the principles of natural justice and non-application of mind. The issue arose after the Forward Markets Commission (FMC) declared Financial Technologies (India) Ltd (FTIL) as “not fit and proper” to operate in the commodities market. Subsequently, SEBI, relying on the FMC's order, issued a show-cause notice and passed a similar order declaring FTIL as “not fit and proper” for the securities market.

However, SEBI's process was found to have procedural flaws. Its show-cause notice was criticized for lacking sufficient detail and reasoning, which impaired FTIL's ability to formulate a proper reply. Furthermore, SEBI's final order did not independently explain how the circumstances in the commodities market were analogous to the securities market; instead, it relied directly on the conclusion reached by the FMC, rather than on the underlying reasoning of the FMC's decision.

The challenge in this case arose from alleged procedural deficiencies in SEBI's decision, including an inadequate show-cause notice and reliance on findings made by the Forward Markets Commission. Despite these concerns, the Securities Appellate Tribunal upheld SEBI's decision, emphasizing that the standards for determining whether an entity was a “fit and proper person” were similar across regulatory regimes. The ruling reflects a broader tendency of courts and tribunals to defer to the expertise of financial regulators when their decisions are aimed at protecting market integrity. Comparatively, financial regulators in jurisdictions such as the United States also enjoy broad enforcement powers, although their actions are often subject to stricter procedural review under administrative law statutes.

The Tribunal's Ruling

Despite these procedural concerns, the Securities Appellate Tribunal (SAT) ultimately dismissed FTIL's appeal. The tribunal's decision was based on the rationale that the legal criteria for determining a “fit and proper person” were similar for both the FMC and SEBI. Therefore, the SAT held that SEBI was justified in using the conclusion arrived at by the FMC to exclude FTIL from the securities market as well. This judgment is significant as it highlights

⁵ *Financial Technologies (India) Ltd v Securities and Exchange Board of India* (2014) 122 CLA 225 (SAT).

a situation where the similarity of the substantive legal standard was considered sufficient to overcome procedural shortcomings in a regulator's decision-making process.

DLF v SEBI⁶

This case serves as a key example of the tribunal holding SEBI accountable for failing to adhere to due process and its own established procedures. The Securities Appellate Tribunal (SAT) invalidated SEBI's order against DLF after identifying several significant procedural lapses.

The tribunal found that SEBI had blatantly violated its own Prohibition of Fraudulent and Unfair Trade Practices (PFUTP) Regulations on multiple fronts:

1. **Failure to Provide a Hearing:** SEBI did not give DLF a reasonable opportunity to be heard before the adverse order was passed, which is a core tenet of natural justice.
2. **Absence of a Prima Facie Order:** The regulations required the SEBI Board to first form a belief of a violation and record it in a formal “order in writing” before invoking the PFUTP rules. The tribunal noted that no such prerequisite order was produced.
3. **Unjustifiable Delay:** The tribunal also found that an inordinate delay of nearly nine months in writing the final order was “fatal” to the concept of a fair hearing and amounted to a violation of Article 21 of the Constitution.

A distinct but significant area of litigation involves challenges to SEBI's interim orders on the grounds that a fair hearing was not provided before the order was issued. Litigants often argue that a “post-decisional hearing” (a hearing after the interim order is already in effect) does not meet the requirements of natural justice.

However, the SAT has consistently rejected these arguments. The tribunal has established that a post-decisional hearing is an acceptable and valid aspect of the due process framework in certain circumstances. The SAT's rationale is based on two key factors. Firstly, exigency. It recognizes that SEBI often issues interim orders in urgent situations to protect the interests of investors and maintain the integrity of the securities market. Secondly, the tribunal has located

⁶ *DLF Ltd and Others v Securities and Exchange Board of India* MANU/Sb/0006/2015.

the legitimacy of this practice within the broad and expansive powers granted to SEBI under Section 11 of the SEBI Act.

The tribunal intervened in this case because SEBI had failed to comply with essential procedural safeguards, including providing a reasonable opportunity for the affected party to be heard and recording a proper prima facie order before initiating proceedings. These lapses constituted violations of natural justice and justified judicial interference. The decision demonstrates that regulatory independence does not exempt authorities from complying with statutory procedures and principles of fairness. Similar standards operate in jurisdictions such as the United Kingdom, where courts frequently review regulatory decisions to ensure adherence to procedural fairness without questioning the substantive policy authority of regulators.

Structural Challenges and an Accountability Deficit

Conceptual Challenges

The very design of independent regulatory authorities presents several conceptual difficulties that have invited significant criticism and legal scrutiny. At its core, the criticism is that these bodies are entrusted with important state functions that, in an ideal governance structure, they ought not to exercise.

Concentrated Powers: A Constitutional Dilemma

While the separation of powers is a fundamental principle of the Indian Constitution, it is not applied with rigid demarcation. The practical reality is that the lines between legislative, executive, and judicial functions are often indistinct. This is particularly true for the boundary between administrative and quasi-judicial powers, a distinction that courts have noted is becoming increasingly thin and blurred. The judiciary has struggled to provide a precise definition of a “judicial” function, acknowledging that its character depends on the specific context, the nature of the power being exercised, and the consequences of its use.⁷

This functional overlap has far-reaching practical implications. Regulatory bodies are frequently tasked with performing critical quasi-judicial duties that directly affect the rights

⁷ Rupesh Aggarwal, ‘Regulatorization of Indian Administration: Understanding the Challenges and Conundrums of the Indian Regulatory Mechanism’ (2017) 11 NUALS LJ 201.

and liabilities of individuals and businesses, such as revoking licenses or imposing financial penalties. However, despite the adjudicatory nature of these tasks, the inclusion of a member with judicial experience on these boards is often discretionary rather than mandatory. This creates a situation where crucial adjudicatory decisions are made by bodies composed entirely of executive-appointed members who may lack legal or judicial expertise. While some laws, like the PNGRB Act, specifically mandate the presence of a legal member, this is not a uniform standard, highlighting a critical inconsistency in the design of these powerful authorities.

Structural Challenges

The very architecture of India's regulatory bodies, their composition, arrangement, and foundational design, presents acute challenges, particularly in achieving **independence**, **uniformity**, and **accountability**. The current frameworks have failed to resolve several crucial questions at the heart of their administrative structure.

1. The Veneer of Independence

A primary reason for creating independent regulators was to shield technical and policymaking processes from political influence, thereby enhancing transparency. In practice, however, this rationale is often undermined by the regulators' organizational design and their close working relationship with the parent ministry. The Telecom Regulatory Authority of India (TRAI) is a case in point; its recommendations are merely advisory and not legally binding on the government, with the Department of Telecommunication retaining final decision-making power on policy. Furthermore, statutes like the TRAI Act contain provisions that make government directives binding on the regulator, effectively trapping these bodies within the traditional political-administrative framework. This lack of genuine independence is critically compounded by a near-total absence of financial autonomy. While their governing statutes may grant them a degree of functional independence, most regulatory bodies are financially tethered to their respective ministries. They do not have separate sources of funding, and funds from the Consolidated Fund of India are not routed to them directly. This financial dependence significantly curtails their autonomy and makes them susceptible to political interference, allowing them to be used as tools to advance electoral agendas.⁸

⁸ Rupesh Aggarwal, 'Regulatorization of Indian Administration: Understanding the Challenges and Conundrums of the Indian Regulatory Mechanism' (2017) 11 NUALS LJ 201.

2. Regulators as Instruments of Political Legitimacy

Excessive government involvement in the functioning of regulators has led to a distortion of market dynamics and a loss of competitive neutrality. This is clearly visible in the telecom sector, where the government acts as the final authority on licensing while simultaneously owning a major public sector service provider, BSNL. Such political interference is a major obstacle to effective regulation. In sectors like electricity, for example, populist political pressure often prevents necessary tariff increases, forcing regulators to formulate policies that align with the interests of the elected government rather than sound economic principles.

As a result, these authorities are often perceived as acting as “proxies” for their line ministries. Their recommendatory and rule-making powers are skillfully used by the government of the day to lend a veneer of technical legitimacy to what are essentially political decisions, helping ministries navigate their own challenges with public credibility.

3. Excessive Ministerial Interference: A Breeding Ground for Corruption

While it is acknowledged that regulatory bodies cannot be completely isolated from political influence, since a certain degree of political accountability must be maintained, the concern arises when such influence becomes *excessive*. The close alignment of regulatory authorities with their respective ministries, coupled with insufficient parliamentary oversight, has resulted in undue political intervention. This overreach has often paved the way for widespread corruption operating under the guise of regulatory functioning, as seen in scandals like the 2G spectrum case or irregularities in the electricity sector. Misappropriation of public funds under the pretext of technical or scientific development has, unfortunately, become a recurring feature of India’s regulatory environment.

4. Limited Functional Coordination Among Regulatory Bodies

The deep integration of individual regulators with their parent ministries has also weakened inter-regulatory collaboration. Instead of direct coordination between regulators, communication tends to flow through ministerial channels, hampering efficiency and creating administrative overlaps. This fragmentation often leads to jurisdictional ambiguities, as seen in instances where different regulators exercise overlapping powers. Despite the shared mandates, coordination between the two authorities remains minimal, resulting in duplicative procedures

and inconsistent regulatory outcomes. A similar lack of synergy can be observed in environmental regulation, where fragmented authority continues to impede effective governance.

Conclusions and Suggestions

The emergence of statutory regulatory authorities represents one of the most significant institutional developments in India's post-liberalisation governance framework. Designed to regulate complex markets with technical expertise and relative autonomy, these bodies occupy a central position within the contemporary regulatory state. Their institutional design reflects a deliberate departure from traditional bureaucratic administration, concentrating rule-making, supervisory, and adjudicatory powers within specialised authorities tasked with balancing market efficiency, consumer protection, and economic stability.

However, the consolidation of such extensive powers within regulatory institutions inevitably raises concerns regarding accountability and the limits of administrative discretion. The analysis undertaken in this paper demonstrates that judicial review has played a crucial role in shaping the functioning of regulatory authorities by imposing procedural safeguards and ensuring adherence to principles of natural justice. Courts have consistently intervened in situations where regulators have failed to provide adequate hearings, issued orders without sufficient justification, or acted in violation of statutory mandates. In doing so, the judiciary has reaffirmed the continuing relevance of administrative law as a mechanism for maintaining legality and fairness in regulatory decision-making.

At the same time, the case law examined in this paper reveals a clear pattern of judicial restraint in relation to policy-oriented regulatory decisions. Courts have generally avoided substantive interference with regulatory rule-making or technical economic judgments, recognizing the institutional competence and expertise of specialised regulators. While this deferential approach preserves the autonomy necessary for effective regulation, it also exposes an important structural limitation of administrative law: its primary focus on procedural review often leaves broader questions of regulatory power and institutional accountability largely unaddressed.

Consequently, the Indian regulatory state operates within a framework in which judicial review functions as a necessary but incomplete safeguard. Although courts remain capable of

correcting procedural irregularities and preventing arbitrary exercises of authority, the deeper challenges associated with the concentration of regulatory power cannot be fully resolved through judicial oversight alone. Ensuring meaningful accountability within the regulatory state therefore requires a broader institutional framework that includes clearer statutory procedures, stronger legislative oversight, and more transparent mechanisms of regulatory governance.

Ultimately, the evolution of regulatory authorities in India reflects an ongoing attempt to reconcile two competing imperatives: the need for specialised, expert-driven governance in complex economic sectors and the constitutional commitment to legality, transparency, and democratic accountability. The continuing tension between these objectives underscores the need for a more coherent framework of regulatory governance in which autonomy and accountability are not viewed as competing values but as mutually reinforcing principles within a modern administrative state.

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