CONSTITUTIONAL LIMITS ON REGULATORY FEE-MAKING UNDER DELEGATED LEGISLATION: A COMPARATIVE STUDY OF SEBI, RBI, TRAI AND CERC

Sara Kashikar, Symbiosis Law School Pune

ABSTRACT

With an increasing regulatory state in India, there is also a growing requirement for specialized statutory regulators to monitor complex sectors such as banking, securities, telecommunication, and electricity. Regulatory bodies such as SEBI, RBI, TRAI, and CERC have the power to levy fines and charges by virtue of delegated legislation [1] along with their role as regulatory authorities. Although such fees are usually considered regulatory fees and not taxes, yet there are grave constitutional questions involved regarding their compulsory aspect.

The constitutional limits on the imposition of regulatory fees have been analyzed in this essay, taking into account the excessive delegation[2] principle as well as Articles 14, 19(1)(g), and 265 of the Constitution. The issue is discussed whether or not a statutory regulator with vast regulatory or rulemaking power can determine the amount and form of the fee. The discussion of the principles of law concerning regulatory fees, quid pro quo, undue delegation, and statutory powers, laid down by the Supreme Court in B.S.E. Brokers Forum v. SEBI[3], Delhi Race Club Ltd. v. Union of India, and most recently in Gaurav Kumar v. Union of India is the main subject of the article. Finally, a comparative analysis of the regulation of SEBI, RBI, TRAI, and CERC has been made.

The article presents a case that regulators do not receive unlimited budgetary power once strict quid pro quo regulations are relaxed. Statutory empowerment, legislative policy, regulation link, proportionality, and process responsibility will still have to be the basis of regulatory fees.

Keywords: Delegated Legislation; Regulatory Fees; Excessive Delegation; Article 265.

[1] Securities and Exchange Board of India Act, 1992, §§ 11, 12, 30 (India); Reserve Bank of India Act, 1934, § 58 (India); Telecom Regulatory Authority of India Act, 1997, § 36 (India); Electricity Act, 2003, § 178 (India).
[2] INDIA CONST. arts. 14, 19, cl. 1(g), 265.
[3] *B.S.E. Brokers' Forum, Bombay v. Securities & Exchange Board of India*, (2001) 3 SCC 482, 492–94 (India)

REVIEW OF LITERATURE

Traditionally, the distinction between tax and fee[4] was made to evaluate the constitutionality of regulatory fees. Quid Pro Quo, which demanded the relationship between the payment and the service, was extensively discussed in the earlier jurisprudence. With the evolution of regulatory governance, this distinction underwent some changes.

The judgement of B.S.E. Brokers' Forum v. Securities & Exchange Board[5] of India by the Supreme Court is necessary for understanding regulatory fees. It recognized that because regulations could benefit the entire industry as a whole, a regulatory fee did not necessarily have to relate to a specific service to the payer. But it asserted that the tax should not be very heavy.

The doctrine has been further developed in the case of Delhi Race Club Ltd. v. Union of India[6]. In the Supreme Court of India, it was held that strict quid pro quo was unnecessary and regulatory fees were to be distinguished from compensatory fees. At the same time, it made a broad connection between the fee and the regulatory expense.A notable constitutional element has been introduced through the decision of the latest case of Gaurav Kumar v. Union of India[7]. In this case, it was held that the fee is an impost which needs to be authorized by a proper law, that the power to levy a fee cannot be inferred, and that the enabling Act should specifically delegate the power.

RESEARCH QUESTIONS

Primary Research Question

How far may SEBI, RBI, TRAI, and CERC use delegated legislation to set and enforce regulatory fees without going against the constitution's restrictions on such authority?

Secondary Research questions

1. Is there a lack of limits on regulatory fee-making if there is no strict quid pro quo?
2. What limitations are placed on regulatory fee-making under Articles 14, 19(1)(g), and 265, along with the doctrine of excessive delegation?
3. Are there any distinctions in terms of legislative guidance to make the fees in case of SEBI, RBI, TRAI, and CERC?

[4] *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282, 295–96 (India).
[5] *B.S.E. Brokers' Forum, Bombay v. Securities & Exchange Board of India*, (2001) 3 SCC 482, 492–94 (India)
[6] *Delhi Race Club Ltd. v. Union of India*, (2012) 8 SCC 680, 696–97 (India)
[7] *Gaurav Kumar v. Union of India*, 2024 SCC OnLine SC 1841, ¶¶ 79–83, 108 (India)

4. Has the Supreme Court judgment in Gaurav Kumar v. Union of India made the requirement of statutory authorization of regulatory fees necessary?

RESEARCH OBJECTIVES

This paper seeks to:

- Study the constitutional principles which regulate the imposition of regulatory fees by delegated legislation.
- Study the difference between regulatory fees and taxes in the post-strict quid pro quo context.
- Analyse the case-law of the Supreme Court on regulatory fees, legislation and excessive delegation.
- Study the regulatory fee-making power of SEBI, RBI, TRAI and CERC.
- Find out whether sufficient constitutional checks have been put in place against excessive fiscal discretion in regulating agencies.
- Suggest a constitutional mechanism to maintain this balance.

INTRODUCTION

Delegated legislation is essential for the operation of the contemporary regulatory state. The legislature sets out general legal frameworks, whereas specialized agencies draft particular rules that can be adjusted to meet new technical and economic requirements. Nevertheless, the process of delegating regulatory powers acquires constitutional sensitivity where such delegation leads to the imposition[8] of obligatory payments.

The problem is especially acute since the regulatory payment is not only an administrative procedure but also an economic burden for the party subject to regulation. In case the amount is set by a regulator and not by the legislature, questions arise in respect of the legitimacy of delegated powers and safeguards against abuse.

[8] *In re Delhi Laws Act, 1912*, AIR 1951 SC 332, 349–50 (India)

No tax can be imposed and/or levied unless it is done so by virtue of the provisions of any law[9], in accordance with Article 265 of the Constitution. It is well-established by the Supreme Court that a fee is a form of imposition that cannot be levied without the proper legal basis, notwithstanding the fact that it differs doctrinally from taxes[10]. In Gaurav Kumar, the Supreme Court held that there cannot be an implied grant of authority to levy a fee.

In any case, a very rigid application of the principle of quid pro quo [11] is not applicable when determining regulatory charges. Financial market regulations, banking regulations, telecommunication regulations, and electrical regulations together provide benefits. This means that it would not be easy to identify a corresponding service for every rupee paid by one regulated firm.

The search for a compromise, therefore, would be the constitutional challenge. While regulators have to have some freedom to establish fee structures on a technical basis, they do not have the right to seek fiscal powers through the backdoor of delegated legislation.

JUDICIAL PRONOUNCEMENTS

A. *B.S.E. Brokers' Forum v. Securities & Exchange Board of India*

In B.S.E. Brokers' Forum v. SEBI[12], the validity of SEBI's levy of fee from the stockbrokers came before the Supreme Court. The primary issue was whether the levy[13] was unconstitutional since there is no element of strict quid pro quo.

The concept of a regulation fee was recognized by the Court, and it was mentioned that "the benefit of the fee may itself be regulation." Since SEBI is responsible for the regulation, inspection, enforcement, and regulation of the market, it would be impossible to expect each stockbroker to do some specific

[9] INDIA CONST. art. 265
[10] *Gaurav Kumar v. Union of India*, 2024 SCC OnLine SC 1841, ¶¶ 79–83 (India)
[11] *B.S.E. Brokers' Forum, Bombay v. Securities & Exchange Board of India*, (2001) 3 SCC 482, 492–94 (India).
[12] *B.S.E. Brokers' Forum, Bombay v. Securities & Exchange Board of India*, (2001) 3 SCC 482 (India
[13] *Id.* at 492–94

service equivalent to what he pays. Thus, the Court stated that regulation fee cannot be excessive[14] despite the absence of strict quid pro quo.
This case created an important precedent that a regulatory charge does not automatically become a tax if there is no delivery of services.

B. *Delhi Race Club Ltd. v. Union of India*

Delhi Race Club [15] questioned the legality of the licensing fees charged for regulating the horse racing. Among the issues raised in the case was that of delegation that was too much for the determination of such fee.

In view of the Supreme Court, the regulatory fee is not supposed to conform to any quid pro quo principle[16]. However, there should be sufficient nexus between the fee and the regulatory object. After consideration of the legislation, it was concluded by the Court that the Act has sufficient purpose and policy to support the delegation.

The judgment is important in making a link between the validity of the fee and both delegation and regulatory objects[17].

C. *V.T. Khanzode v. Reserve Bank of India*

In V.T. Khanzode v. Reserve Bank of India[18], the issue before the Supreme Court was the ambit of the RBI's power to make regulations under Section 58 of the RBI Act. This decision continues to be relevant for delegated legislation since it clearly states that regulations formulated by any statutory body need to be in accordance with the parent act, although in this case the main issue had to do with service regulations.

This case highlights the general principle that the law made through delegation cannot operate independent of the parent act because it derives its force from the parent act.

[14] *Id.* at 494–95
[15] *Delhi Race Club Ltd. v. Union of India*, (2012) 8 SCC 680, 695–97 (India)
[16] *Id.* at 696–97
[17] *Id.* at 697.
[18] *V.T. Khanzode v. Reserve Bank of India*, (1982) 1 SCC 264, 273–75 (India)

D. *Gaurav Kumar v. Union of India*

The most convincing interpretation of the law in recent times is in the judgment of the Supreme Court of India in Gaurav Kumar (2024)[19]. According to this judgment, a fee is an impost, the word "tax" in Article 265 of the Constitution of India also encompasses imposts such as fees, fee-making power cannot be implied but must be expressly provided for in the parent Act, and it must allow the delegation of such fee-making power[20].

The judgment is of special significance to regulatory authorities because it rejects the argument that wide regulatory powers necessarily confer unfettered financial imposition powers.[21]

COMPARATIVE STUDY/ANALYTICAL STUDY

The statutory frameworks of SEBI, RBI, TRAI and CERC demonstrate varying degrees of legislative specificity.

Regulator	Statutory Framework	Fee-making position	Constitutional assessment
SEBI	SEBI Act, 1992[22]	Express powers concerning fees and charges	Strong statutory basis; broad regulatory discretion
RBI	RBI Act, 1934 and sectoral banking legislation	Fee-making powers must be traced to specific statutory provisions	Greater need to identify precise source of authority
TRAI	TRAI Act, 1997	Section 36 expressly contemplates levy of fees and charges	Clear statutory nexus
CERC	Electricity Act, 2003	Section 178 expressly provides for levy and collection of fees and charges	Detailed legislative authorisation

[19] *Gaurav Kumar v. Union of India*, 2024 SCC OnLine SC 1841, ¶¶ 79–83, 108 (India)
[20] *Id.* ¶¶ 79–83
[21] *Id.* ¶¶ 82–83, 108
[22] Securities and Exchange Board of India Act, 1992, §§ 11(2)(k), 12(2) (India)

SEBI

According to the SEBI Act, there is an inseparable relationship between the regulatory function of SEBI and its fee collection power. Registration and regulatory functions fees have been acknowledged by the legal framework. The Supreme Court of India has reaffirmed this principle in B.S.E. Brokers[23] Forum by emphasizing the benefit for everybody from securities regulation.

RBI

Its regulatory jurisdiction being dispersed among several legislations, the RBI has a special status [24] . Its wide powers of regulation do not imply that it has comprehensive financial powers. Thus, the issue of whether the specific monetary charge can be connected with the power granted under the particular section of the statute arises.

TRAI

A fairly clear legislative precedent is provided by TRAI. Section 36 of the TRAI[25] Act explicitly speaks about levying of fees and other charges and provides for rules that conform with the Act." Delegated fee making has a fairly strong constitutional basis because of the above-mentioned statutory wording.

CERC

The Electricity Act provides an even more specific framework. Clause 178(2)(h) empowers legislation for the imposition and recovery of fees and charges from generating companies, transmission companies, and licensees[26].

CERC is thus an example of where Parliament has reserved for itself the legislative decision regarding the authority to impose fees[27] but left the technical decision of how to do so to an expert regulator[28].

[23] *B.S.E. Brokers' Forum, Bombay v. Securities & Exchange Board of India*, (2001) 3 SCC 482, 492–95 (India).
[24] Reserve Bank of India Act, 1934, §§ 17–18, 45JA, 45L, 58 (India); Banking Regulation Act, 1949, §§ 21, 35A (India).
[25] Telecom Regulatory Authority of India Act, 1997, § 36(1)–(2) (India)
[26] Electricity Act, 2003, § 178 (India)
[27] *Id.* § 178(2)(v)
[28] *Id.* § 178(2)(h)

CRITICAL ANALYSIS

From the comparison above, one can conclude that the core constitutional question is not whether the regulators have the right to impose charges, but what form this right takes.

First of all, there is the limitation of statutory powers. As Gaurav Kumar[29] notes, the regulatory body cannot imply fiscal powers on the basis of the regulatory clause. The parent Act should provide the necessary legal base for the charge.

Second of all, there is the limitation of legislative guidance. The principle of non-delegation does not mean that Parliament cannot allow regulators to define the technical issues[30]. But the policy and purpose in which such discretion takes place should be set by Parliament. The Supreme Court insists on this issue.

The regulatory nexus forms the third element. The link between the charge and the regulatory objective should not be entirely abandoned in case of rejection of the rigorous quid pro quo requirement. As observed by the Delhi Race Club, there is a substantial nexus[31].

Finally, proportionality and excessiveness should still be open to judicial review. While technical expertise is found within regulatory agencies, that does not protect a scheme of charges from being unconstitutional. An otherwise legitimate regulatory charge can cease to be so when it becomes obviously disproportionate or serves mainly as a source of revenue.

Finally, an important provision in relation to anti-arbitrariness comes in the form of Article 14[32]. various types of regulated entities can legally be subjected to different charging regimes, but the classification must be sensible in view of the purpose of regulation. If excessive regulatory charges severely hamper the ability to pursue a legitimate business or occupation, Article 19(1)(g)[33] is also relevant.

[29] *Gaurav Kumar v. Union of India*, 2024 SCC OnLine SC 1841, ¶¶ 79–83, 108 (India).
[30] *In re Delhi Laws Act, 1912*, AIR 1951 SC 332, 349–50 (India
[31] *Delhi Race Club Ltd. v. Union of India*, (2012) 8 SCC 680, 696–97 (India).
[32] INDIA CONST. art. 14
[33] INDIA CONST. art. 19, cl. 1(g); *Gaurav Kumar v. Union of India*, 2024 SCC OnLine SC 1841, ¶¶ 108–10 (India).

In a comparative perspective, SEBI has benefited from a substantial degree of judicial acknowledgment of its regulatory powers, while CERC and TRAI have especially explicit textual powers. RBI represents an example of why it is important to draw a distinction between specific fee-making powers and regulatory powers.

Thus, the move from quid pro quo to statutory legitimacy and proportionality represents the more important constitutional development.

CONCLUSION AND SUGGESTIONS

In the modern-day regulatory state in India, regulatory charges become an indispensable part of the situation. Without adequate resources necessary for registration, inspection, monitoring, and enforcement, specific institutions cannot exercise control over the complex markets. Thus, it would not make sense to have the Parliament determine the amount of each fee.

However, administrative necessity cannot replace constitutional mandate. While technical expertise does not provide a regulator with any legal mandate, legal underpinning for the authority has to be laid through legislation. Moreover, this legislation has to provide sufficient guidance for the exercise of the authority.

It is clear from the jurisprudence of the Supreme Court that quid pro quo is not the controlling test for regulatory fees. However, there are three essential tests: statutory power, regulatory nexus, and reasonableness. Gaurav Kumar enhances the first essential test through an express rejection of implied fee-making power. B.S.E. Brokers' Forum and Delhi Race Club prove that even if regulatory fees do not provide a direct service, it would be sustainable only if it bears regulatory nexus and is reasonable.

SUGGESTIONS

Firstly, instead of implication, parent legislation needs to be clear about the power to levy regulatory charges.

Secondly, a variety of factors such as regulatory expenditures, type of oversight and type of firms being regulated need to be decided upon by the Parliament so as to calculate fees.

Thirdly, authorities should disclose the rationale behind large fee adjustments.

Fourthly, regulatory fees need to be periodically reviewed in order to ensure that they remain connected with the regulatory function and do not become hidden sources of income.

Lastly, instead of demanding equivalency through mathematics, courts need to look at the process of analysis using statutory authorization, legislative direction, connection to regulations, proportionality, and procedural propriety.

This means that the purpose of the constitution must be aimed at preventing the delegated regulation from being delegated taxation and not banning the delegated fees. In such a situation where one is used in accordance with the other, autonomy and constitutional responsibility can coexist.

BIBLOGRAPHY

A. Constitutional and Statutory Sources

Constitution of India, arts. 14, 19(1)(g), 265, 366(28).

Electricity Act, 2003, No. 36 of 2003, §§ 28, 178.

Reserve Bank of India Act, 1934, No. 2 of 1934, § 58.

Securities and Exchange Board of India Act, 1992, No. 15 of 1992, §§ 11, 12, 30.

Telecom Regulatory Authority of India Act, 1997, No. 24 of 1997, §§ 11, 36.

B. Cases

B.S.E. Brokers' Forum, Bombay v. Securities & Exchange Board of India, (2001) 3 SCC 482.

Delhi Race Club Ltd. v. Union of India, (2012) 8 SCC 680.

Gaurav Kumar v. Union of India, (2025) 1 SCC 641.

V.T. Khanzode v. Reserve Bank of India, (1982) 2 SCC 7.

Vam Organic Chemicals Ltd. v. State of U.P., (1997) 2 SCC 715.

Devi Das Gopal Krishnan v. State of Punjab, AIR 1967 SC 1895.

C. Regulatory Materials

Securities and Exchange Board of India, SEBI Regulations and Circulars relating to fees payable by securities-market intermediaries.

Telecom Regulatory Authority of India, TRAI (Levy of Fees and Other Charges for Tariff Plans) Regulation, 2002.

Central Electricity Regulatory Commission, CERC (Payment of Fees) Regulations, 2008.

Central Electricity Regulatory Commission, CERC (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2024.