

# 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.
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- Rationale for responsiveness in quasi-legislative functions:
  - 1 Avoids regulatory capture
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  - 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.

# 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

# Methodology for measuring outcome-based responsiveness

- Step 1: Developed (a) an index of benchmarks of responsiveness; and (b) quantifiable outputs for each benchmark.
- Step 2: Assigned equal scores to the outputs. Where output is partially achieved, assigned a proportionate score.
- Step 3: Applied this framework to four regulators, SEBI, RBI, TRAI and AERA for January 2014-April 2016.

## Some benchmarks used

- Does the regulator publish explanatory documents such as consultation papers/ draft regulations?
- Does the regulator proactively communicate with groups most likely to be affected?
- Does the regulator publish comments received 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?

# Key findings: Outcome based measures

Finding 1: Multiplicity of legislative instruments (1st January 2014-30th April 2016)

<b>Instrument</b>	<b>SEBI</b>	<b>RBI</b>	<b>TRAI</b>	<b>AERA</b>
<b>Regulations</b>	51	48	22	0
Circulars	122	1016	0	0
Orders	1	0	12	69
Directions	0	0	14	1
Guidelines	1	0	0	0
<b>Total</b>	<b>175</b>	<b>1064</b>	<b>48</b>	<b>70</b>

## Key findings: Outcome based measures

Finding 2: How many legislative instruments were preceded by a public consultation process? (1st January 2014-30th April 2016)

<b>Item</b>	<b>SEBI</b>	<b>RBI</b>	<b>TRAI</b>	<b>AERA</b>
No. of instruments issued	175	1064	48	70
No. of instruments preceded by public consultation	18	14	27	29
Percentage	10.28%	1.39%	56.55%	41.42%

# Final scores

No.	Output	SEBI	RBI	TRAI	AERA
1.	Does the agency publish explanatory documents?	0.1	0.02	0.57	0.41
2.	Does the agency pro-actively communicate with groups most likely to be affected?	0	0	0	0
3.	Does the agency publish comments received before issuing the final regulation?	0	0	1	1
4.	Does the agency provide time for counter-comments?	0	0	1	0
5.	Does the agency provide a response to the comments received?	0	0	0	0
6.	Does the agency provide more than one method of receiving feedback?	0	0	1	0



# 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?	0	0	0	0
8.	Does the agency publish the name of the individual in charge of the consultative process?	0	0	0	0
9.	Does the agency publish the source of the legal power to issue the proposed regulation?	1	0	1	1
10.	Does the agency give adequate time for responding to the draft proposed by it?	0	0	0	0
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	Total	1.10	0.2	4.57	2.41

# Applying benchmarks to two Indian regulators

Zooming in on output 10: Time given for responding to comments

<b>Regulator</b>	<b>Minimum</b>	<b>Maximum</b>	<b>Median</b>	<b>Average</b>
SEBI	7	35	21	20
RBI	7	46	30.5	29.6
TRAI	15	44	29	27.41
AERA	5	44	14	17.72

in calendar  
days

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As an aside, time-lag between close of consultation exercise and enactment of regulation:

<b>Regulator</b>	<b>Minimum</b>	<b>Maximum</b>	<b>Median</b>	<b>Average</b>
SEBI	55	645	160	250
RBI	24	2232	658	1128
TRAI	14	246	58	82.26
AERA	4	1197	218.5	349.75

in calendar  
days

# Summarised findings of the paper

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

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- 1 Global benchmarks, when suitably quantified, allow for measurement of legislative responsiveness among Indian regulators.
- 2 Infrastructure regulators do relatively better than financial sector regulators, though all of them fail the half-way mark.
- 3 There is a strong correlation between scores on rule-based measures and outcome-based measures for the four regulators.

# Implications of findings

- 1 Further work:
  - 1 Analysis of whether regulatory agencies use comments received.
  - 2 Regular benchmarking of Indian regulators.
  - 3 Benchmarking regulatory capacity required for greater responsiveness.

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  - ① Analysis of whether regulatory agencies use comments received.
  - ② Regular benchmarking of Indian regulators.
  - ③ Benchmarking regulatory capacity required for greater responsiveness.
- 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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- Kauffman D, Kraay A (2007). "Governance Indicators: Where Are We, Where Should We Be Going?" *World Bank Research Observer*.