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Essay Test 3, 360 M

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Topic: 1. Regulatory institutions in India: white knights or trojan horses?

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good content  
good orientation  
Keep it up

A white knight is the righteous person who selflessly rescues the weak in distress.

A trojan horse, put into fame by the famous Battle of Troy, is refers to a person installed in a particular position to serve the narrow self-interests interests of the installer.

In the context of regulators, a

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white knight regulator would genuinely perform the functions it ~~was~~ <sup>actually</sup> supposed ~~to~~ ~~execute~~ ~~to~~ ~~do~~ its ~~existence~~ ~~or~~ ~~continuation~~. What these functions ~~are~~ we would explore in the next section.

A trojan horse regulator, on the other hand, would be unable to discharge its duties properly, letting some vested interests have their way. These interests may be of the political executive, or the industry players, or some narrow turf wars. To what extent have the regulators turned into trojan horses in India and what are the factors behind it, would be

explored in the subsequent section.

Then in the final part of this essay, we would explore the possible reforms in the regulatory space in India so that we can move these institutions from the Trojan horse to the white knight space.

1. WHY DO WE NEED A REGULATOR / FUNCTIONS OF A WHITE KNIGHT REGULATOR

The primary task of most regulators is the protection of consumer interests.

After the liberalisation reforms, the state has vacated field for private operators in many sectors. When the state was there, it could still be assumed that

it would keep the interests of general public in mind. But the private sector exists for profit. In its pursuit for profits, it may be tempted to pursue short-cuts, leaving the consumers vulnerable. eg. An airlines may try to skip engineering checks of planes to cut costs. But this would put passengers in peril.

Similarly, in most of these sectors, the consumers may be unorganised - the general public - whereas the operators may be organised, or even monopoly. eg. in case of utility services, there is generally a monopoly. In case of broadcasting, the consumers are dispersed while the channels are organised. So

if ~~the~~ all the news channels start showing excessive advertisements simultaneously, there is little a consumer can do.

Then in some cases, the information needed by the consumer to ensure good service quality may be too costly or too technical. eg. in case of drugs, the consumer has no option but to buy whatever drug the doctor has prescribed even though cheaper versions may be available. This is because she has absolutely no knowledge and to learn medicine in order to understand it, may just be too not worth.

Another added layer of complexity in India is that consumers may be poor, illiterate and easy to exploit. The greedy

operators may ~~for~~ stoop to any unethical level for their profits. eg the death of tribal girls in the clinical trials of the HPV vaccine (Parliamentary panel report).

In all the cases above, ~~the~~ a laissez faire approach would lead to market failures and thus we need a regulator in the form of ~~white~~ knight to protect the consumer interests.

Then another reason for the existence of the regulators is to ensure a level playing field. The marketplace may be full of operators who may follow unethical practices

to cut their costs. If a white knight regulator is not there to enforce compliance, a person wanting to operate ethically simply won't be able to stay in the business. eg. this is what the new drug authority & its ethics committee are supposed to do to ensure clinical trials are fair in India.

A further ~~then~~ <sup>another</sup> challenge could be the existence of monopoly or cartels which may make it impossible for a new player to enter the market (apart from its other negatives). Here we need the Competition Commission of India to break these cartels. Similarly TRAI keeps this in mind while recommending policies for spectrum auction.

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The third reason for the need <sup>for</sup> of regulators is to provide a credible, cheap & fast mode for dispute resolution. If this is not there, parties may have to resort to regular courts which are painfully slow and expensive or wait for months and years for mutually acceptable arbitrators to be appointed. That is why this is a very important function of the proposed PPP regulator & the Coal Authority of India.

Additionally the white knight regulator provides a clear & uniform set of rules for all players to play by in order to minimise disputes & distortions. Thus the

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proposed PPP regulator would also standardise the contract documents and the Coal Authority would provide the principles on which coal may be priced.

Finally, in a democracy, ~~even if the~~ service is provided by the ~~politi~~ executive, a regulator should exist independent of it to provide checks and balance. That is why we need an independent nuclear regulator even though the sector is entirely with the govt. That is why we need National Human Rights Commission, Women, Minorities, SC/ST commissions even though the executive is supposed to safeguard them. And, above all, the mother of all regulators is ~~the~~ <sup>an</sup> effective Parliament, which regulates the executive itself.

## 2. STATUS OF REGULATORS IN INDIA

Many of the regulators in India are doing a reasonably fine job within the constraints. The RBI, for instance, has done a mammoth job in protecting the financial system's integrity. Even in the Lehman crisis, when banks after banks were failing globally or needed bailout, that not a single bank in India needed such help, bears testimony to the fine job RBI has done. Even now while giving new banking licenses, it is showing great caution. And yet, no one can accuse it of stifling the sector by over-regulating or the healthy growth & profitability of the sector shows.

Similarly SEBI has turned into a professional nature regulator. ~~After~~ the Indian equity market disclosures, transparency norms are at par with the world. The participation of the retail investors in large number gives an indication of the faith people have in sebi.

Turning to the non financial regulators, the Competition Commission of India and the Patents controller office have been doing a marvellous job. The CCI has been busting many cartels including the high profile cement cartel, thus protecting the sectors as well as consumers. The Patents office, too has been resisting big temptations

and serving public interest by rejecting frivolous patents and enforcing compulsory licensing (eg. against Bayer for the drug Glivec recently).

Turning to political field, the Election Commission has set high standards of electoral conduct now. The parliament, too, has provided effective regulation over the executive on many instances. Many bills are pending for want of consensus (eg. the constitutional amendment bill to ratify the Indo-Bangla Land Boundary Agreement) or had to be amended suitably to get them through parliament (eg. the land acquisition bill initially exempted

even the SEZs!).

However, not everything is fine as above in the Indian regulatory space. Before the liberalisation, most of our regulators were trojan horses in classic sense. They micro-managed, instead of regulate, their respective sectors. Vast discretionary powers were vested in them, and this almost stifled the sector. Thus, the RBI used to literally control the boards of the banks. The rules it framed severely handicapped the private players. The MRTP commission was a dreaded one.

In those days of license raj, this was the general scene in India.

This tendency has ~~reduced~~ <sup>after liberalisation,</sup> but is still very much present. Many of the regulators, are not independent from the

executive and toe its line. ~~Other~~ <sup>The</sup> classic  
 examples of this <sup>are</sup> the CBI (which  
 was recently called the 'caged parrot'),  
 the CVC (which has been largely ineffective  
 since inception), the Atomic Energy Regulation  
 Board (which reports to the Department of  
 Energy secretary himself who it is supposed  
 to regulate), the DGCA (heavily controlled  
 by the aviation ministry), the Railway  
 Board (again heavily controlled by the  
 Railways ministry). The list may go on  
 to include the Lokayuktas of various  
 states, the National Human Rights Commission,  
 the women, minorities, SC/ST commissions  
 what is perhaps common to all

of the above which makes them a  
 tool piece in the hands of the execu-  
 tive is that ~~they~~ lack financial,  
 operational and administrative autonomy.  
 The appointments to ~~these~~ bodies remain  
 largely political (some recent examples  
 being Justice Balakrishnan in NHRC, ~~the~~  
 Railway Board, ~~Ganga~~ ~~Nya~~ in National Women Commission).  
 Transparency and objectivity are not followed  
 and the members can be removed at  
 the ~~sweet will~~ of the govt. where they  
 cannot be removed at ~~sweet will~~ officially,  
 the govt. makes sure it appoints only  
 those people to sensitive roles over which  
 it has background lenses to operate (like  
 threat of an inquiry in <sup>a</sup> corruption matter).

These bodies also don't have control over their staff which is appointed by the govt. The govt also controls their transfers and finances. Thus, it is amply clear they cannot function as neutral agents in the present setup.

The above tendency of politically motivated appointments is not limited to the above mentioned powerful regulators. Even weak regulators like Press Council of India and Censor Board are affected by political patronage.

Sometimes, these regulators fall prey to vested interests and start



working in the interests of the very  
 people they are supposed to regulate.  
 The parliamentary panel's report damning  
 report on the functioning of CDSCO in  
 cases of drugs approval was revealing. It  
 highlighted how corrupt the regulator had  
 become that it approved drugs without  
 trials or that many of the drug recommen-  
 dations it accepted from various doctors  
 were same - word by word. The fake plot  
 licensing scam <sup>ended</sup> ~~ended~~ the whatever little  
 credibility DCA had. The fake doctors  
 scam hit the Medical Council of India in  
 2010. The recent controversy on the clinical  
 trials puts the regulator in bad light  
 again. Every single story is a story

of how all standards of morality were put to the sacrificial altar in the pursuit of greed.

Many of these cases arise due to a conflict of interest. <sup>Even the</sup> ~~for example~~ parliament is not untouched from it. For example, it is common knowledge how the high flying industrialists use their money power to get elected to the parliament - the supreme regulator. Then they get themselves included in the parliamentary committees looking at the matters of their sectors & thus effectively ~~can~~ make laws / regulate the very sector they operate in! Then some of the bills creating regulatory

authorities are pushed despite there being  
a clear ~~conflict~~ of interest for everybody

to see. Thus the Bio technology regulatory

Authority <sup>of India</sup> (BRII) Bill puts the authority

under Ministry of Science - the very ministry

which is supposed to promote bio-technology

How much will this regulator regulate

can thus ~~only~~ be a matter of imagination.

This brings us <sup>next</sup> to the very vital  
issue of what should we do to improve

the regulatory situation in India. How

to convert these brown horses into  
white knights?

### 3. REFORMS: THE WAY FORWARD

In order to change the situation

for better, the executive's apathy towards  
respecting the sanctity of the regulator  
~~must~~ <sup>must</sup> end ~~and this~~ <sup>and this</sup> should begin  
 with ~~the~~ <sup>the</sup> parliament.

The parliamentary rules and conven-  
tions must be changed to ensure that  
all matters of critical importance are by  
convention brought to the parliament  
 A leaf may be sought from the UK  
 where ~~the~~ <sup>the</sup> govt. decided to bring the  
 proposal of ~~an~~ <sup>the</sup> attack on Syria to the  
 House of Commons when it was fully  
 capable of going on its own. Then the  
 departmental committees of ~~the~~ <sup>the</sup> parliament  
 the probe panels ~~must~~ <sup>must</sup> be given

more power. The reports of the NHRC, women, minority, SC/ST commissions are often placed before the parliament, years after they are submitted by the respective commission. By this time they have lost their relevance and often there is no discussion thus eroding the parliament's capacity to regulate the executive. Increasingly bills are passed without discussions & budget provisions gutted. A common excuse given by the executive is that the opposition doesn't let the parliament function. But it is seen that this happens many times before because the govt doesn't want to bring a sensitive issue to the parliament or put it to vote. This

must be changed. Parliament represents people's will and if a certain percentage (say 25%) of members want a discussion and vote on an issue, it should happen.

Close to empowering the parliament further is the recommendation of the Damodaran Committee on regulators. It has recommended that all the regulators must be made to report to the parliament.

Clear guidelines and mandates must be given to them. The process of doing then they should testify before the parliament quarterly or semi-annually.

Regarding appointments, clear guidelines need to be evolved instead of the system

made transparent. Selection must be made by a broad collegium - at least for ~~the~~ systematically important regulators - and a clear set of qualifications laid down (instead of present practice of nominating 'eminent' persons). These regulators should then be given operational and administrative autonomy and their expenses should be charged directly to the consolidated fund of India like the CAG, EC etc. Then the post retirement perks and lures must also be checked for each regulator. Their tenure and service conditions should be guaranteed to ensure their independence.

Equally important is to be very careful <sup>while</sup> ~~about~~ drafting new laws that

the powers and mandate of the regulators are clearly defined and the powers are adequate for them to carry out their mandate. The regulatory loopholes, as exposed in some recent financial scams like Smadha, NSEL, Sahara, need to be plugged. ~~And then~~ these regulators must be brought under RTI, as far as practically possible.

finally, to ensure that <sup>we</sup> ~~there~~ don't reach the other ~~end~~ <sup>end</sup> where the regulators ~~start~~ acting arbitrarily despite the above checks, we must also have dedicated tribunals where the aggrieved can get speedy justice.



Once we create such an environment,  
 we can regulators would surely serve the  
 purpose for which they were originally  
 created i.e. further public interest and  
 ensure good governance.

Cover historical dimension also

pre-1991 situation and post-1991

what is the nature

scope

orientation

why it changed

what are new reforms coming  
 up

\* Malegaon

\* parti-Sarkar showe panel

\* RBI -> Basel-III

incorporation

add some  
 new  
 content  
 which is  
 more  
 contemporary  
 Else  
 you  
 Essay  
 is  
 ok

