

Discussion: How the Indian communication policy-regulatory process works

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Discussion, not lecture

- I will seed the discussion with what I know, telecom
- You will contribute by describing policy and regulatory processes in your knowledge areas, especially,
 - Electronic media
 - Print media

Policy and its implementation

- Insulation from day-to-day interference by politicians is basic element of good public administration practice
 - Political accountability for policy setting, within the parameters set by the Constitution and Laws
 - Exemplified by questions in Parliament, and
 - Electoral processes
 - Administrative/legal accountability for implementation
 - Exemplified by grounds for writs
 - Ultra vires
 - Contrary to natural justice

Regulation

- Is the implementation of policy
 - Not the making of policy, though it does happen
- Includes the exercise of discretion, including quasi judicial functions in some cases
 - Though this is not limited to regulation, but could be found in day-to-day operations of executive agencies

“Independent” regulation

- Because of lack of trust in government officials and their independence from political authorities, there has been a tendency to create “independent” regulatory agencies, defined as entities which have a role in the processes of national government, but are not government departments or parts of one, and which accordingly operate to a greater or lesser extent at arm's length from Ministers

What used to be

- As in most countries, in India, operations, policy and regulation were fully integrated in Ministry
 - Department of Telecom (DoT) was the sole supplier of telecom services
 - It also set policy
 - What little “regulation” there was (e.g., who could use equipment that used radio spectrum) was also done by DoT

Trifurcation, more or less

- Since performance was poor, the functions were separated (more or less)
 - Department of Telecom continues to be a supplier of telecom services, though under different names
 - Significance of Indian Telecom Service
 - It continued to set policy
 - Correctly, the law provides for articulation of policy and regulation through the requirement that TRAI provides recommendations at DoT's request
 - Some regulatory functions were handed over to TRAI
 - But retained control over spectrum and licensing, somewhat problematically
 - Also kept universal service directly under it, contrary to recommendations to set up an independent unit

Mandate to consult

- In Westminster Model that India follows, there should be Parliamentary accountability for all actions by executive arm
 - When the TRAI was created, it was understood that TRAI would be an exception
 - Therefore, law imposed specific consultation mandates such the requirement of publishing consultation papers and holding of open houses
- However, ideal public administration includes consultation, e.g., White Papers
 - DoT has directly solicited comments for National Telecom Policy, but otherwise consults through TRAI