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Regulation: A Conceptual Frame

Mintu Mondal

Assistant Professor of Political Science Panchthupi Haripada Gouribala College University of Kalyani, West Bengal, India

Abstract

What is meant by the term regulation? The term regulation is an abstract concept. When an administrative body regulates various institutions in a state system by using the legal imperatives then formally it shapes a material entity. It prescribes conduct, calibrates incentive, or changes preference that brands an institution and properly controls its members. We have two standard theories about regulation: the first one is Public Interest theory and another is Capture theory. Though the two theories consider as normative at this juncture we pursue a different type of theory about regulation is called the theory of Regulation for Legitimacy, which is primarily assumed as the realist theory. All three types of theories about the regulation of the state systems are working and we will address all the variants of the regulation theories that produce a different angle of regulatory systems. The research article has been addressed through qualitative and quantitative methods.

Keywords: Regulation, Public Interest Theory, Capture Theory, Theory of Regulation for Legitimacy, Legal Imperatives.

1. Introduction: The term regulation has been introduced to brands the community in a certain political boundary through the prescribed imperatives conduct by the legitimate administrative body. Regulation is the abstract concept when a state regulates her subjects with imposing legal imperatives then it shapes a material body. It is one of the keywords in the state system that hard to define linearly because it means different things to different people. It is may prescribe conduct, calibrate incentives, or change preferences through which an institution can formally control her subjects and a state runs through the same practice. The instrument of regulation includes controls on market entries, prices, wages, development approvals, pollution effects, employment for certain people in certain industries, standards of production for certain goods, the military forces, and services. The economics of imposing or removing regulations relating to markets is analysed in regulatory economics. Power to regulate should include the power to enforce regulatory

decisions. Monitoring is an important tool used by national regulatory authorities in carrying out the regulated activities¹ (Eraldo Banovac, 2004).

Many an observer makes observation about the regulation that makes it clear as to what the term is. The term regulatory state refers to the expansion in the use of rulemaking, monitoring and enforcement techniques and institutions by the state and to a parallel change in the way its positive functions in society are being carried out²(Levi-Faur, 2011). The idea of the regulatory state is increasingly more attractive for theoreticians of the state with the growth in the use and application of rulemaking, monitoring and enforcement strategies and with the parallel growth of civil regulation and business regulation³ (Ian McLean, 2004). State- mandated regulation is government intervention in the private market in an attempt to implement policy and it can be thought of as providing, distributing, and regulating. They bake cakes, slice them, and proffer pieces as inducements to steer events. Regulation is conceived as that large subset of governance that is about steering the flow of events, as opposed to providing and distributing. Of course, when regulators regulate, they often steer the providing and distributing that regulated actors supply. Governance is a wider set of control activities than government. Students of the state noticed that government has shifted from government of a unitary state to governance in and by networks. But the informal authority of networks in civil society not only supplements but also supplants the formal authority of government⁴. In this backdrop we are trying to understand of a conceptual framework of regulation of the state system in a general sense.

One has predicted the study of regulation is also the study of the limits of control and the overt and covert resistance of rulers and their rules. In the age of governance, regulation is also the study of regulatory regimes in shifting levels, arenas, and spaces of control. As a mode of control, regulation represents an alternative to taxing and spending on the one hand and nationalization and public ownership on the other. As a hybrid model of control, regulation is not only control by the government but also the control over government, control without government, and shared forms of control⁵ (Levi-Faur, 2011). The notion states that the regulation has many fold roles in the state system, on the one hand through a state regulates her subjects or the institutions, on the other hand, it limits the statecraft and moderately controls. As a result, the state is to be more delighted in terms of public policymaking, at the same time the legitimacy of the state system will be ripped because of regulation. Jacob Torfing argues the state, the economy and the civil society neither exist as unified social essences nor do they provide the real structures of social bodies. So, the most important point is that regulation of the state can consolidate the economy and the civil society in a state system in a greater sense. For this very cause, he also argued the politics regulation seeks to direct discourse analysis to the study of the conflictual formation and uneven articulation of the intra-societal spheres of state, economy, and civil society⁶ (Torfing, 1998). But the regulation of the state system not merely helps to articulate scattered compartments of socio-politico-economic affairs simultaneously it helps to maintain the state authority lawfully.

Stigler states that there cannot be many things in man's political history more ancient than the endeavour of governments to direct economic affairs. The need for state action or the need for state withdrawal from action has been a constant and fundamental theme of economics in its much shorter history⁷(Stigler,1975). The need for state action in terms of public policy has been used to maintain economic development which is favouring for the subjects and institutions of a state, on the other hand when the state action loses her authority then the whole regulatory endeavour of the state system will collapse. So, he considered an economist analysis with the aid of economic theory, a specific problem in the policy. If he found that competitive market did not solve the problem efficiently, he recommended that the state take over the solution of the problem with never a serious question on the comparative efficiencies of market and government. If the competitive market solved the problem well the economist suitably lamented the intervention of the state. The idea that minimum wage laws were the expression not of confusing benevolence but the well-informed desires of particular regions and classes of workers were not seriously considered by economists⁸ (Stigler,1975).

2. Objective: We expanded knowledge of regulation and the state system in a general manner from many a commentator. Different authors have manifested their views on regulation and the state system but no one has discussed the contours of regulation and the state system through which we can gain as to how the regulation reshapes the modern state system in terms of legitimation of public policies. So, we can find the void place from the above literature in terms of contours of regulation and the state system in that fashion, and the objective of the research paper is to outline the conceptual framework of the regulation of the state systems.

3. Methodology: Here qualitative and quantitative research methods have been used for scientifically furnishing our research article. The qualitative research method refers to a storytelling technique that is qualified scientifically but is greatly subjective and based on inductive logic. But, on the contrary, quantitative methods emphasize objective measurements and the statistical, mathematical, or numerical analysis of data collected through polls, questionnaires, and surveys, or by manipulating pre-existing statistical data using computational techniques. Quantitative research focuses on gathering numerical data and generalizing it across groups of people or explaining a particular phenomenon⁹. It draws an image of the particular phenomena in an objective manner which is based on deductive logic. So, our article has been drawn a narrative scientifically on the need for political theories to better understanding regulation and the state system.

4. Regulation of the State System: a conceptual frame: Regulation refers to controlling human or societal behaviour by rules or regulations or a rule or order issued by an executive authority or regulatory agency of a government and having the force of law¹⁰. The study of the regulation of the state system as a different discipline has been starting in the recent past. In this case, the main role was played by the Chicago School in the 1970s and 1980s when the School could lay claim to an extraordinary swag of Nobel Prize winners such as

Milton Friedman and George Stigler (1988), and preeminent law and economics scholars such as Richard Posner, who made regulation a central topic in economics¹¹. The United States of the American state system is under the big periphery of regulation despite it is a great free economic state. The foods Americans eat, the cars they drive, the medicines they take, and the financial institutions from which they borrow and to which they lend are all subject to some kind of regulation. For economists, there are two standard theories of regulation: public interest theory and capture theory. The traditional public interest theory argues that government regulation arose to combat market failures, whereas the more recent capture theory claims that producers sought regulation to restrain competition¹² (Levi-Faur, 2011). But another theory of regulation namely regulation for legitimacy has made the state system reshaping in the era of third-millennium socio-political order. The theory of regulation for legitimacy manifests, when a state lies in the purview of the strict regulation, then she shows before the subjects that she is nothing but an institution as like as another institution who is under the regulation then the process of the legitimacy of a state is more settled.

4.i. The models of Regulation of the State System: The expansion of the state nowadays is generally via regulation and less via taxing and spending. The notion of the regulatory state is increasingly more attractive for theoreticians of the state with the growth in the use and application of rulemaking, monitoring, and enforcement strategies and with the parallel growth of civil regulation and business regulation. The rise of the regulatory state in the Industrial Revolution can be traced to network regulation first instituted by William Gladstone in 1844¹³(Giandomenico Majone, 1997. Ian McLean, 2004). The co-expansion of state, civil and business regulation at the domestic and the transnational arenas suggests that the notions of regulatory governance and regulatory capitalism are as usefully theoretically as the notion of the regulatory state. Here we incorporate some specific models of regulation of the state systems which helps to understand the conceptual framework of the regulation and the state systems. It has been divided into three parts: the parts are i) the Occidental Model; ii) the Oriental and Fareast Model and iii) the Latin American Model.

4. ii) The Occidental Model: The Occidental model of regulation of the state system manifests that the different means of coercive power are necessary to formulate regulation for state policy. Marc T. Law and Sukko Kim argue the use of force by the state is at the heart of all regulation, the scale and scope of regulation in America were intimately tied to the nature and form of the state. History shows the early American subjects distrusted the centralized force of regulation but they consider local or regional regulatory authority who effectively used the common law to regulate public safety, trade, space, morality, and public health¹⁴ (Novak, 1996). The constitution of America (1781) made the country without strong centralised regulatory authority.

It has no federal executive, no federal courts, no federal taxes, and no federal coercive authority over states. But they feel the existing constitution is too weak to meet the state system and after a short time, they made a strong Constitution. The newly born constitution

of America (1789) established a more powerful central government by instituting the executive branch, federal taxes, federal courts, and federal powers to regulate foreign and interstate commerce. But the fight over the nature and extent of the federal government powers implied by the new Constitution continued unabated over the next century. But the centralized regulation in the state systems has faced the serious question in terms of the free economic state system and decentralised power blocks in the 1970s in America.

4. iii) The Oriental and Fareast Model: India and China are the main parts of this regulating model of the state system. The regulation covers all activities of private or public behaviour that may be detrimental to societal or governmental interest but its scope varies across countries. It can be operationally defined as taxes and subsidies of all sorts as well as explicit legislative and administrative controls over rates, entry, and other facets of economic activity¹⁵. Post-independence, India experimented with a socialist mixed economy model with the state retaining control over the commanding heights of the economy heavy industries, and utilities. While private sector activity was allowed, the government tried to control it through a web of controls such as licensing and quotas concerning intermediate goods imports and outputs. Such controls were complemented by high tariff walls. Thus, the government was not only a producer and regulator of strategic and important goods and services, but it also exerted direct control over the output, and sometimes even associated prices, of private sector activity. But the scenes were changed in 1990 when India had adopted a free-market economy under the leadership of the then Prime Minister Mr. P. V. Narasimha Rao and it was the water shade incident of Indian regulation of the state system.

Regulation in India can be mapped under three broad categories: a) economic regulation, b) regulation in the public interest, and c) environmental regulation. a) Economic regulation aims at preventing or tackling market failure. This is achieved with rules that proscribe and punish market-distorting behaviour. Examples in the Indian context include The Foreign Trade (Development and Regulation) Act, 1992 for facilitating imports into and augmenting exports from India and the Electricity Act of 2003, which allows State regulators to fix tariffs for power consumption, thus preventing suppliers from taking advantage of natural monopolies¹⁶.

b) Regulation in the public interest covers areas where industries are failing to meet a standard or uphold something of public importance. This is different from market failure. A classic case is of health and safety, where firms can fall short in protecting employees or the general public from harm. Although market competition can make firms more willing to address such issues, the standards adopted may not be adequate or uniform across the industry. In India, there is very little evidence to suggest that competition in its existing form has had a positive impact on quality. The Bureau of Indian Standards (BIS) created by the Bureau of Indian Standards Act, 1986 has been setting quality and safety standards for various products, some of which are mandatory. The existence of authority like BIS helps in laying down rules, especially in a situation of low consumer awareness about

quality. Mandatory standards can help to enhance quality awareness and protect the consumer. A large number of mandatory standards are in force but the desired extent of enforcement has not been facilitated. Generally, business is more partial to standards developed internally—the so-called voluntary standards.

c) The third category is very important to save our blue planet which is environmental regulation in India. The Government of India has enacted various laws to protect the environment through the Environment (Protection) Act, 1986 as the umbrella legislation. These set standards for emissions and discharge; regulation of the location of industries; management of hazardous waste, and protection of public health and welfare. According to the Act the term environment includes water, air, and land and the inter-relationship among and between them. A policy framework to complement the legislative provisions has also been developed. Ministry of Environment and Forests is the nodal agency for environmental legislation. However, several states have also enacted their legislation besides the major ones enacted by the central Ministry. The State Pollution Control Board (SPCB) established in each state, is responsible for implementing these legislations as well as issuing rules and regulations prescribing the standards for a clean environment. The activities of SPCBs are coordinated by the Central Pollution Control Board (CPCB). Environmental clearances for investment projects in India take a huge amount of time, and for certain types of investment projects such as power, the number of approvals required is higher than for others. Environmental issues around any industrial project are highly sensitive and quite often lead to civil society activism. Therefore, this aspect requires careful handling both by the central and state governments. Due to corruption, administrative delays, technical faults, popular protests, etc., such clearances are time-consuming and costly¹⁷. Thus, India made a pathfinding role to the rest of the world in terms of environmental regulation of the state system.

The Chinese regulation of the state system is dependent upon the one political party-dominated state system in which the infusion of key elements of markets into a socialist one-party state has created capitalism with Chinese characteristics¹⁸ (Huang, 2008). The ‘business of governing business’ (Pearson 2005) has followed a distinctive policy process¹⁹ (Heilmann, 2008). In the area of financial services, for example, innovations were introduced by Leninist means to preserve the state’s interests in key sectors of the economy. The ‘rise of regulatory capitalism’ (Levi-Faur and Jordana 2005) has taken a unique turn in the People’s Republic of China (PRC). If the primary theoretical challenge is to identify hybrid forms of regulation that cloud the distinctions between the global and the national, it is still important to understand states in which the market and society are themselves subsumed by an all-pervasive political interest. In such cases, ideas of the independent agency, due process, and market correction act to conceal more than they reveal²⁰ (Levi-Faur, 2011).

iii) The Latin American Model: The Latin American countries have witnessed the complex regulatory structure that emerged in the state system in the 1970s because the

countries have gone through the qualitative transformation in terms of the large-scale process of liberalization, privatization, and democratization. Regulation in the state systems is not new in Latin American countries. The subjects of Latin American countries were witnessed strong regulation everywhere in life in the colonial periods. A new era in the history of the Latin American regulatory state began after the 1920s when many countries introduced regulatory innovations strengthening public intervention in many relevant areas. In the context of the post-First World War era, the export-oriented model of the traditional oligarchies began to break down, and states started to develop more active interventions, relying less on elite 'club' regulation and promoting regulatory institutional innovation among many other administrative reforms. Such innovation occurred first in the financial area, where recurrent banking crisis and a more sophisticated economic organization played a role, but wider state modernization strategies were also of crucial importance in updating other regulatory frameworks. These innovations combined current foreign models, mainly US-based, with those traditional institutional forms inherited from the colonial age that had remained almost unchanged during the nineteenth century. Not surprisingly, when Latin American governments first created 'modern' regulatory institutions, in many cases they named them superintendence's, continuing their local administrative traditions. Thus, the link was established and restored, facilitating the blend of historical models with external influences in institutional design²¹ (Levi-Faur, 2011).

5. Conclusion: Before concluding the research article, we mention some findings and put suggestions that may be helpful for not only the researchers, policymakers but also society as a whole. **Findings:** a) a conceptual frame for regulatory state system have come up from the articles which will make a new dimension of the statecraft; b) The expansion of the state regulation and less via taxing and spending; c) The notion of the regulatory state is increasingly attractive for the researchers in terms of the use and application of rulemaking, monitoring, and enforcement strategies; d) we have got three models and theories of regulation of the state systems: these are, i) the Occidental model; ii) the Oriental and Fareast Model and iii) the Latin American Model and i) public interest theory; ii) capture theory and iii) theory of regulation for legitimacy respectively.

5. b) Suggestions: The study of the regulation of the state system is a recent phenomenon. Scholars have suggested there are two different theories of regulation of the state systems. The theory of Public Interest: The Public Interest theory of Regulation of the state systems explains, in general terms, that regulation seeks the protection and benefit of the public at large. Economists favour the public interest theory of regulation of the state system in terms of public good and the state can provide a wide range of free markets for the competitors. On the other hand, the Capture Theory of Regulation of the state systems provides insight into the close connection that tends to arise between a government regulatory agency and the industry it is charged with regulating. Federal, state, and local governments commonly create agencies designed to oversee and regulate specific industries²². The two theories of regulation of the state systems may be considered as normative theories of regulation but we suggest another type of theory of the regulation of

the state system is the theory of Regulation for Legitimacy. It is not normative but a realist theory of regulation of the state system which states that regulation plays an important role as the safety valve of the state system through which a state can demand she is just another institution of the great society. We conclude with a one-line statement that our study of the regulation of the state system lies in the rudimentary phase where it has ample opportunity to further study but if we inspire others to do work in that area, then we will be happy for that.

References:

1. Banovac, E.2004. Monitoringgrundlagen der kroatischen Regulierungsbehörde für Energie. EW – das Magazin für die Energie Wirtschaft, Vol. 103, No. 1-2, pp. 14 16.
2. Levi-Faur, D. 2011. "The Odyssey of the Regulatory State – Episode One: The Rescue of the WelfareState", Jerusalem Papers in Regulation & Governance, Paper No. 39.
3. McLean, I. 2004. "The History of Regulation in the United Kingdom: three Case Studies in search of a Theory" in J. Jordana and D. Levi-Faur, D. (eds.). 2004. *The Politics of Regulation: institutions and regulatory reforms for the age of governance*, pp. 45-66. Cheltenham: Edward Elgar:
4. <http://www.oxfordhandbooks.com>, accessed at 10:05A.M on 27.04.2019.
5. Levi-Faur, D. (ed).2011. *Handbook on the Politics of Regulation*, p. xvi. Cheltenham: Edward Elgar.
6. Torfing, J.1998. *Politics, Regulation and the Modern Welfare State*, p.1 London:Macmillan Press Ltd.
7. Stigler G. J. 1975.*The Citizen and The State*, p. x. Chicago: The University of Chicago Press.
8. Stigler G. J.1975.*The Citizen and The State*, p. x Chicago: The University of Chicago Press.
9. <http://libguides.usc.edu/writingguide/quantitative> accessed at 6.50 P.M on 26. 01. 2019.
10. Merriam-Webster Online www.merriam-webster.com/dictionary/regulation.
- 11 . <http://www.oxfordhandbooks.com>, accessed at 10:05AM.on 27.04.2019.
12. Marc, T. L and Sukkoo, K. 2011. "The rise of the American regulatory state: a view from the Progressive Era" in Levi-Faur, D. (ed).2011. *Handbook on the Politics of Regulation*, p. 113.Cheltenham: Edward Elgar.
- 13.https://en.wikipedia.org/wiki/Regulatory_state, accessed at 6:15 A.M on 30.04.2019.
14. Novak, W. J. 1996. *The People's Welfare: Law and Regulation in Nineteenth- Century America*, Chapel Hill: University of North Carolina Press.
15. Richard, A .P. 2004. "Theories of Economic Regulation", Working Paper, No. 41, Center for Economic Analysis of Human Behaviour and Social Institutions.
16. <https://www.oecd.org/gov/regulatory-policy>, accessed at 09:10 A.M on 30.04.2019.
17. <https://www.oecd.org/gov/regulatory-policy>, accessed at 09:10 A.M on 30.04.2019.
18. Yasheng, H.2008. *Capitalism with Chinese Characteristics: Entrepreneurship and the State*, London: Cambridge University Press.
19. Heilmann, S. 2008. "From local experiments to national policy: the origins of China's distinctive policy process", *China Journal*, 59(1), 1–30.

20. Neil, C and Jörn- Carsten, G. 2011. “The Chinese model of the regulatory state” in Levi-Faur, D. (ed).2011. *Handbook on the Politics of Regulation*, p.142. Cheltenham: Edward Elgar.
21. Jacint, J. 2011. The institutional development of the Latin American regulatory state in Levi-Faur, D. (ed).2011. *Handbook on the Politics of Regulation*, p.158. Cheltenham: Edward Elgar.
22. <http://www.amosweb.com>, accessed at 09:30 A.M on 30.04.2019.