

The art of regulation

G.V. Ramakrishna, the late chairman of SEBI, achieved a fine balance between discipline and adaptability



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The passing away of G.V. Ramakrishna (GVR), the first Chairman of the Securities and Exchange Board of India (SEBI) in its statutory avatar, is not an occasion to mourn, but to celebrate a life of public service that was exemplary in its sweep and its incisiveness. It is also a good occasion to reflect on regulatory philosophy and temperament.

At the outset, it is necessary to look at the objective of regulation. In an unregulated space, physical, intellectual or financial muscle often enables stronger elements to claim a disproportionately large territory of activity and influence. The level playing field that regulators are tasked to maintain is the best enabler that an ordinary person has.

It is important for regulatory organisations to understand ground-level realities, and to respect the view that they are, at best, important supporting actors in the theatre of wealth creation and distribution. Provisions that exist in law and regulations must be enforced in an appropriate manner and at an appropriate time to send out signals to the rest of the regulated universe that transgressions will not be tolerated.

At this juncture, it is useful to reflect on GVR's approach. In its early days, SEBI did not have the powers that are now vested in it. At the same time, GVR had to get the broking universe to behave in a manner that did not disrupt markets but discouraged rogue elements. It is widely believed that he persuaded brokers to believe that SEBI had powers that it actually did not have, and the fear that he would be exercising these (non-existent) powers kept them largely within the confines of good conduct and behaviour. It follows that good intentions can be enforced, even when legislative backing does not exist.

Fast forward to the period between 2005 and 2007 – SEBI, though fully conscious that it did not have express powers of disgorgement, ordered the disgorgement of ill-gotten gains on the principle that a regulator should not countenance the existence of unjust enrichment. Similarly, in the absence of any specific provision in law, the regulator introduced the 'consent' scheme, based on the 'settlement' scheme in the United States, to clear the pipeline of relatively minor and often technical violations, so that the manpower and expertise available within the organi-

sation could focus on systemically important large cases. Underlying this approach was the firm belief that between what is prescribed and what is proscribed, there is a wide space within which well-intentioned persons can intervene.

Fear and respect

Persons in regulatory organisations are often in the position of judges, having to decide on matters on the basis of evidence produced before them. In this exercise, natural justice as manifested in the *audi alteram partem* (hear the other side) principle is a non-negotiable requirement. SEBI, over the years, has passed orders suspending persons from participating in the market with immediate effect. The penalty kicks in before a person who has been found guilty has had an opportunity to appeal against the impugned order. One such case, which came to the notice of the then Chairman, was the order passed by SEBI in the IPO scam matter of 2003-05. That order, running into more than 100 pages, was shown to the Chairman before it was put up on the website. Two material corrections were made after reading only the last (operative) part of the order. In one correction, the direction to "change the management of the depository" was reworded as "revamp the management". The second, and more important change, was to build into the order an immediate post-decisional hearing by giving the affected party the opportunity to appeal within 15 days of the order. This led to a few review applications, and SEBI itself overturning the order, in regard to those cases, in a matter of a few days, thus avoiding severe punishment such as suspension from the market to persons who were not in default.

It is normal for a regulator at the commencement of their term to seek to evoke fear in the community, so that it is clear whose writ runs in the market. Over time, the attempts to balance conflicts in public interest and find appropriate solutions should move the response from fear to respect. When persons heading regulatory organisations leave, the affection that they carry with them is the proverbial icing on the cake.

When looking for persons to head senior positions in regulatory organisations, the essential attributes should be impartiality, objectivity, autonomy (as distinct from independence), and the ability to operate without fear or favour. G.V. Ramakrishna must have walked out of SEBI decades ago knowing that the icing on the cake would not melt for several years.

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