Independent Regulatory Commission

Independent Regulatory Commissions are characteristically American device to undertake public regulation of private economic activities. The need for such regulation and control became apparent with the growing industrialization of the country during the nineteenth century. The Independent Regulatory Commissions are peculiar to the constitutional set-up of the United States of America. They are a progeny of the separation of powers and the deep distrust of the Congress in the powers of the American Presidency. The need for such commissions was felt on account of the growing industrialisation and urbanisation of the USA. During the nineteenth century when the government felt it imperative to regulate private economic activities, they launched the IRC for that. The first independent regulatory commission, set up by the Federal Government, was the Inter State Commerce Commission in 1887. At present, there are eleven such commissions in the Federal Government of U.S.A., which are as follows:

- The Inter-State Commerce Commission, 1887.
- The Board of the Governors of the Federal Reserve System, 1913.
- The Federal Communications Commission, 1934.
- The Securities and Exchange Commission, 1934.
- The National Labour Relations Board, 1935.
- The United States Maritime Commission, 1936.
- The Civil Aeronautics Board, 1938 and 1940.
- The Nuclear Regulatory Commission.

Features of Independent Regulatory Commissions:

1. The functions of these commissions are of a mixed nature—administrative, quasi-legislative, and quasi-judicial. That is, they frame rules and regulations, execute these rules and hear appeals against their own decisions. (It is on account of the mixed nature of their functions that they have been called ‘the fourth branch of the government’ for they do not fit into any of the three traditional branches of the government, legislative, executive and judicial).

2. These commissions are staffed by experts and are relatively small.

3. They are collegial in character and consist of a group of men discussing and deciding by majority vote.

4. They are relatively independent of the Chief Executive, i.e., the President. They are neither responsible to him nor report to him. They are set up under a statute passed by the Congress laying down their constitutions and functions.

5. Though the members are appointed by the President with the approval of the Senate, they are not answerable to him. The overlapping or staggered terms of the members strengthen the independence of the members from the President all the more.

6. Though appointed by the President, he cannot remove the members except on grounds specified in the statute creating the commission. It is because of these reasons that these commissions have been described as ‘headless’ for they owe no subordination to the President or any other executive authority.

7. In fact, they are outside the framework of the departmental organisation under the President and have been rightly called ‘Islands of Autonomy’ within the American administrative set-up.
8. The federal administration of the U.S.A. stands ‘disintegrated’ because of the presence of these commissions.

**Independence of these Commissions not Absolute:**
It may, however, be mentioned that the independence of these regulatory commissions is relative and not absolute.

1. Firstly, they are controlled by the Civil Service Commission in personnel administration.
2. Secondly, their budgets are subject to the review of the Bureau of Budget which is a staff agency of the American President.
3. Thirdly, their actions are subject to judicial review and can be declared void. The judiciary examines their actions from three principal aspects. a. In assuring the use of correct procedures in administrative action, b. In preventing action in excess of powers conferred by the legislature, and, c. Where administrative action depends on a factual record, in making sure that the evidence in the record is sufficient.
4. Finally, they are subject to the control of the Congress, which has the power to order an investigation into their working and operations. The Congress can also amend their constitutions, and, even abolish them, although the last step has never been taken. As a matter of fact, the control of the Congress is only of a general character and these commissions are regarded as ‘the arms of the Congress’. On the whole, it can be said that these commissions are largely autonomous.

**Functions of Independent Regulatory Commissions:**
In order to understand their importance in the American administrative setup, it is essential to have a working knowledge of their functions. According to Pfiffner, the functions of the commissions are three:

1. To inform the industry and other regulated groups as to the objectives of public policy in so far as regulation is concerned;
2. To discover and promulgate the rules and regulations which will ensure that this policy is achieved;
3. To enforce such regulations either by adjudicating controversies arising between the public and the interest regulated or by prosecuting acts which violate established policy.

According to Willoughby, “These bodies have two prime functions, to formulate rules and regulations having the force of law in determining the rates and conditions of service of public utility corporations, and to pass upon issues affecting public and private rights arising under such rules and regulations, or the statutes authorizing the formulation and promulgation of such rules and regulations.”

**The main functions of these commissions can be summarized**
Firstly, they set up standards, rules and regulations to govern the behaviour of a particular industry, secondly, they enforce these standards, rules and regulations, and thirdly, they prosecute the defaulters. They, therefore, enjoy both the powers to make administrative legislation and to adjudicate administrative disputes. They regulate the economic activities by three different procedures:

(a) By rule making which means by elaborating and defining the general norms as laid down in the parent Acts,
(b) By administrative methods such as licensing, inspection, publicity, etc.,
(c) By case-by-case decision method which is used on complaints against the violation of the law or the norms laid down.

**Advantages and Disadvantages of Regulatory Commissions:**

**Advantages of Regulatory Commissions:**

- It creates a device which makes it possible to exclude the quasi-legislative and quasi-judicial activities from the hands of bureaucracy.
• It puts the activities of national importance and of a technical nature outside the bane of party politics.
• It is a good device of harmonizing the generalist and specialist administrators’ relationships which are hard to achieve in a Departmental system of organization.
• It brings different shades of opinions and interests together to shoulder a national problem.
• It insulates the process of business from partisan political forces by making it plural-headed.

Disadvantages of Regulatory Commissions:
With all the above advantages of the commissions, they have been subjected to severe and varied criticism.

• It is said that the regulatory commissions owe no responsibility to any constituted authority. They function outside the administrative set-up of the President and have been rightly called as ‘headless’. The President has no power to dismiss any of the members with the result that they can easily stand in the way of effective and integrated administration of the Chief Executive.
• The Commissions combine in themselves the functions of the legislator, prosecutor, and the judge, thereby jeopardizing the rights and liberties of the people. The commissions formulate very important policies in the business and industrial fields and with these combined functions, can easily act arbitrarily.
• Besides, the commissions do not have that impartiality and neutrality which is essential for the performance of judicial work. The big business magnates with whom the commissions have to deal with are very powerful and usually exert pressures to get their work done to their advantage.
• Again, the commissions have their own procedures of hearing appeals and making decisions. They are not bound by the rules of evidence and other procedures normally adopted by the ordinary courts of law. As such, there is no safeguard against the miscarriage of justice.
• As these commissions are outside the control of the President, they have served as a great ‘disintegrating’ force in the federal administration of the U.S.A. They can obstruct effective co-ordination of the national policy by non-cooperating with the other departments of the federal government.
• It is also said that the commissions are unwilling to make use of the auxiliary services such as statistical, economic, legal services, etc., of the other departments. This results in high expenditure and duality of personnel, etc. Perhaps, this is on account of the superiority complex which the commissions want to show off to the other departments.
• It is also argued that these commissions have not served the purpose for which they were established. Neither they have been able to protect the public interest nor they have assured the long-term progress of the industry.
• It is also said that these regulatory commissions suffer from undue laxity and slackness in the performance of their functions. This is on account of the fact that they are neither responsible to the President nor accountable to the Congress in any effective manner.