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Barriers in Indian Laws to the Internationalisation of Businesses

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ABSTRACT

India has become an important player in the global economy, but there are some legal obstacles or restrictions imposed on the businesses that still make it hard for them to expand their businesses into international markets. Although the country has made progress in simplifying regulations, issues related to compliance, taxes, intellectual property rights, and trade policies, it still creates challenges for companies that want to operate globally. Various laws, including foreign exchange regulations, corporate governance norms, and sector-specific restrictions, create hurdles that can slow down international expansion.

Judicial interpretations and policy changes over time have attempted to address some of these issues, but many legal constraints remain. This paper aims to analyse the key barriers in Indian laws that affect businesses' global expansion, how these challenges have evolved, and the possible reforms needed to facilitate smoother international trade and investment. By examining case studies and legal frameworks, this paper will provide information about the evolving legal landscape and its impact on India's position in the global market.

Keywords*: trade barrier, internationalisation, indian laws.*

I. INTRODUCTION

Whenever a new business is being started there are various barriers that one has to face to start the business, which include financial, legal, cultural, linguistic, technological, or political barriers. Though all the other barriers are present in a business the important barrier that could not be avoided in any business is the legal barrier. Whether it is a local business or a multinational business, every company has to abide by the rules and regulations of the government. In certain countries, these rules may be favourable to the businesses and are easier to adopt in their companies. However, certain countries impose extensive regulations that are to be followed by the companies which act as a barrier to entering the market such regulations may include heavy taxes, customs duty, more paperwork etc. This paper talks about the various legal barriers that are imposed in India specifically for businesses that endeavour to enter into

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the global market. It analyses the regulations and policies that hinder the internationalisation of businesses and their impact on businesses that have been internationalized. It also explores the current position of the regulations when compared to the previous restrictive regulations.

II. India's position in international trade

As of 2023, according to the Observatory of Economic Complexity (OEC), India is in the 12th position in total exports and 7th in total imports and it is the 39th most complex economy according to the Economic Complexity Index (ECI).[3] India is considered to be the seventh largest exporter of commercial services globally, holding a significant share of 4.6% in global services trade, making it a major player in the international trade landscape. It also ranks 17th among the top world's merchandise exporters.

India though after globalisation in 1991, has reduced certain restrictions in international businesses, still has much more control or restriction over the international trade. India imposes various international trade barriers, including tariff barriers, non-tariff barriers, voluntary export restraints (VERs), anti-dumping duties, mandatory licensing, and much more. India used to be a protectionist state for a long time, but the country has become progressively more open to international trade. According to the Ministry of Commerce, in the 2023-24 FY, exports were led by jewellery (7.5%), pharmaceutical products (5.1%), mineral fuels and oils (20.0%), electrical machinery and equipment (7.9%), pearls, precious stones, and nuclear reactors, boilers, and machinery (6.9%), vehicles and parts (4.8%), and organic chemicals (4.6%); whereas imports comprised chiefly of plastic and articles (3.2%), iron and steel (2.7%), nuclear reactors, boilers, and machinery (8.5%), mineral fuels and oils (32.3%), electrical machinery and equipment (11.7%), pearls, precious stones, and jewellery (11.6%) and organic chemicals (3.9%).[4]

III. Trade barriers

Any restriction imposed on the free flow of trade is a trade barrier. Trade barriers can either be tariff barriers (the levy of customs duties) or non-tariff barriers, which are any trade barriers other than tariff barriers. Such barriers include the FDI regulations, mandatory licensing, certifications, anti-dumping duties, taxation policies, poor dispute resolution systems etc. Let us explore the various regulations that are imposed in India that hinder the internationalisation of businesses.[5]

[3] THE OBSERVATORY OF ECONOMIC COMPLEXITY, https://oec.world/en/profile/country/ind.
[4] SANTANDER, https://santandertrade.com/en/portal/analyse-markets/india/foreign-trade-in-figures.
[5] INDIA FILINGS, https://www.indiafilings.com/learn/trade-barriers-in-india/.

(A) FDI regulations:

Foreign Direct Investment (FDI) in India is challenging for businesses seeking internationalization. As it involves various restrictions and requires compliance with heavy procedures. India has several legal barriers to FDI that restrict businesses from entering global markets. These regulations are governed mainly by the Foreign Exchange Management Act, 1999 (FEMA), the FDI Policy issued by the Department for Promotion of Industry and Internal Trade (DPIIT)and Sector-specific laws and restrictions. Indian laws allow for FDI in two ways viz. government route and automatic route. Where after a specific percentage of FDI, the companies have to follow the government route which is heavily procedural and needs various approval from the government.

The FDI regime in India is still quite restrictive. Foreign ownership of between 51 and 100 percent of equity still requires a long procedure of governmental approval. India’s tariff rates are still among the highest in the world and continue to block India’s attractiveness as an export platform as India is ranked 59th out of 59 countries on average tariff rate in the 1999 GCR (Global Competitiveness Report). India's reforms in FDI are mostly controlled by the central, limiting the state government's role. Granting states more autonomy would enhance competition and accelerate reforms. The major disadvantage of these is that FDI caps make it harder for Indian companies to collaborate with global firms. Regulatory complexities discourage foreign investment, making it difficult for Indian businesses to attract capital. Strict conditions on FDI make market entry difficult, affecting global expansion strategies.[6]

(B) Sector-specific restrictions:

Indian legal system imposes sector-specific restrictions on foreign direct investments that affect industries like e-commerce, retail, banking, telecom, and media. In the e-commerce sector, foreign players like Amazon cannot hold inventory or sell their products, while multi-brand retail (Walmart, Carrefour) faces an FDI cap of 51%, requiring government approval. The insurance sector has now increased the cap to 100% FDI from the previous 74% as per the union budget of 2025. In telecom, 100% FDI is permitted, but security clearances are mandatory. Broadcasting content services have an FDI cap of 49% beyond which the government route is mandatory. In the case of public sector banking, FDI is limited only to 20% under the government route. These regulatory barriers though are favourable to Indian businesses, they increase compliance burdens, delay foreign investments, and create hesitation for foreign

[6] WORLD TRADE CENTER MUMBAI, https://www.wtcmumbai.org/pdf/report-presentiton/2016/Barriers%20to%20FDI%20in%20India.pdf.

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companies looking to expand in India's market.

IV. Tariff and non-tariff barriers in India

India imposes heavy tariff rates and import duties, which rank among the highest globally. India ranks 59th position on average tariff rate which is the highest in the 1999 GCR. Furthermore, anti-dumping duties imposed to protect domestic industries increase costs for foreign entrants. Compliance with complex procedures discourages foreign investors as it increases trade costs. In addition to tariffs, the country suffers bureaucratic red tape that leads to lengthy customs clearance processes. Frequent changes in the policies create uncertainty for exporters and importers. Also, the lack of uniformity in state-level trade policies adds to the complexity. Non-tariff barriers, such as stringent standards and certification requirements, delay the entry of foreign goods into the market, and local compliance, including BIS (Bureau of Indian Standards) certification, is mandatory. India's limited free trade agreements (FTAs) reduce trade competitiveness compared to countries with stronger trade alliances, and the withdrawal from the Regional Comprehensive Economic Partnership (RCEP) hinders access to global markets. This preference for protectionist policies over liberalization significantly affects participation in global trade. All these factors leave Indian businesses less integrated into global supply chains.

Case Study: India's Withdrawal from RCEP

India withdrew from the Regional Comprehensive Economic Partnership (RCEP) in 2019 due to concerns about cheap imports, especially from China. This decision isolated Indian businesses from a major trade bloc, leading to higher tariffs on Indian exports and reduced global market access. As a result, countries like Vietnam attracted more foreign investment, while Indian exporters faced tougher competition. The lack of FTAs with key markets made it harder for Indian products to compete globally, limiting India's participation in international trade.

Case Study: High Tariffs on Apple and Xiaomi Smartphones

India imposes high import duties on electronic goods, affecting global brands like Apple and Xiaomi. Apple faced 22% import duty on iPhones, making them more expensive in India than in other countries. To cut costs, Apple had to set up local assembly plants, but tariffs on components still raised prices. Similarly, Xiaomi had to shift production to India to avoid import duties but still relied on importing some parts, keeping costs high. These barriers discourage foreign investment and make India less competitive as a global manufacturing hub.

V. TAXATION AND COMPLIANCE ISSUES IN INDIA

India's complex and heavy tax structure and regulatory compliance act as a significant barrier for businesses entering global markets. High corporate taxes and compliance make it challenging for foreign investors and domestic businesses to expand internationally. India previously had a corporate tax of 30& for domestic companies and 40% for foreign companies which is the highest among various countries. However, it is now reduced to 25% for domestic companies and 35% for foreign companies effective from AY 2024-25. In addition to this heavy corporate tax, a complicated Goods and Services Tax (GST) system, which has multiple tax slabs, is being taxed which results in compliance difficulties and classification disputes. Foreign businesses face double taxation risks due to India's tax policies, despite Double Taxation Avoidance Agreements (DTAAs) with many countries. India’s past retrospective taxation policies which were abolished in 2021 created disputes with various companies which include companies such as Vodafone, Cairn Energy etc. These tax policies discourage global businesses from entering into Indian markets. Apart from paying hefty taxes, the companies had to file multiple tax returns, reports and audits which increases the administrative costs and also face bureaucratic delays, making these compliances burdensome. Ultimately, these factors reduce competitiveness and deter both foreign investment and Indian companies looking to expand internationally.

Case Study: Tesla’s Delayed Entry into India

Tesla’s delayed entry into the Indian market is a great example of the taxation barrier. The high import duty of 110% on electric vehicles (EVs) on cars above $40,000 and 60% on lower priced models made Tesla cars too expensive for Indian consumers. Additionally, Tesla requested import duty reductions to test the market before committing to local production, but the Indian government insisted on manufacturing within India under the "Make in India" initiative. In addition to this, tesla faced challenges of lack of charging infrastructure and complex regulations. In 2024, India introduced new EV policies, offering tariff reductions for companies investing in local manufacturing. Tesla is now planning to set up a factory in India, benefiting from lower tariffs, government incentives, and a growing EV market.

(A) Poor dispute resolution in India:

India's dispute resolution system itself is a significant barrier for businesses that are aiming to internationalise. It is due to the delayed court processes, inconsistent enforcement of contracts, arbitration challenges, and uncertain regulations. These issues make it difficult for both domestic and foreign companies to operate smoothly and enter global markets. As per the economic survey of 2018 – 19, on average, commercial disputes take around 4.5 years to be settled. According to the National Judicial Data Grid (NJDG), there are still 44,14,651 civil cases pending before the High Courts and 63524 civil cases in the Supreme Court alone. Though India has jumped from the 142nd (2014) position to the 63rd position in the Ease of Doing Business report in 2020 which was released by the World Bank, it is still known for its lengthy legal process that affects the interest of the foreign investors. [7]

Case Study: Vodafone vs. Government of India

In 2007, Vodafone acquired 67% of Hutchison Essar for 11.1 billion dollars through an offshore deal. Indian tax authorities demanded ₹22,500 crore as capital gains tax and withholding tax, but Vodafone argued that Indian tax laws did not apply to foreign transactions. In 2012, the Supreme Court ruled in Vodafone's favour, but the government changed tax laws retrospectively, reviving the tax demand. Vodafone then filed for international arbitration under the India-Netherlands BIT before the Permanent Court of Arbitration (PCA).

In 2020, The Hague arbitration court ruled against India, stating the tax violated fair investment protections. The case took over a decade, damaging investor confidence. In 2021, India scrapped retrospective taxation to restore trust. This case highlights legal uncertainty, policy unpredictability, and slow dispute resolution, making India less attractive for foreign investors.

However, India is moving towards modern-day alternative dispute resolution systems such as arbitration, mediation, and conciliation. The Indian Arbitration and Conciliation Act of 1996 was amended in 2015, 2019 and 2020 which allows businesses to opt for the ADR methods for speedy redressal of disputes.

Additionally, the supportive approach of Indian courts towards arbitration has improved the positive effects of these changes, which can be seen in the recent case of PASL Wind Solutions v. GE Power where the court stated that two Indian parties can select an ADR method such as arbitration beyond India to resolve its dispute. Also, with the recently approved Mediation Bill 2021, organised commercial mediation in India is set to take off.[8]

(B) Intellectual property rights issues:

Every business or brand has its trademark which helps the business to grow. Most brands that aim to internationalise their business, often leverage their trademark to position their product or service. Though the IPR laws are robust in India, counterfeiting and piracy are major challenges

[7] WHITE & CASE, https://www.whitecase.com/insight-our-thinking/investing-india-legal-reform-dispute.
[8] WILMERHALE, https://www.wilmerhale.com/en/insights/blogs/international-arbitration-legal-developments/20210525-pasl-wind-solutions-pvt-ltd-v-ge-power-conversion-india-pvt-ltd.

for businesses. These illegal activities not only harm businesses but also mislead consumers. Many products, especially in fashion and technology, are often copied and sold at lower prices. This creates unfair competition and can damage the reputation of original brands. According to the ASPA (Authentication Solution Providers' Association) report, at present counterfeiting of products across various industries causes around Rs 1.05 lakh crore losses to India per annum. If counterfeiting is curbed by 50% through proper implementation of authentication solutions, enforcement, awareness and monitoring, it can save more than Rs 50,000 crore per annum.[9] This is due to the inadequate enforcement mechanisms and complex legal processes that are hard to navigate. Also, the costs involved in litigation are very high. Many small businesses and individual inventors could not be able to afford legal battles. In addition to it, the legal process takes very long time, leading to delays in resolving disputes. This discourages many investors from expanding their businesses in India.

Case Study: Amazon's Trademark Infringement – Beverly Hills Polo Club

In 2020, Lifestyle Equities, owner of the Beverly Hills Polo Club (BHPC) trademark, sued Amazon India for selling products with similar logos, leading to consumer confusion. The Delhi High Court ruled in favour of BHPC, stating that Amazon should have been aware of BHPC's exclusive rights and in February 2025, the court ordered Amazon to pay $39 million in damages. This case highlights the importance of trademark infringements, and the complex, lengthy process required to resolve the dispute.[10]

(C) Rigid labour laws that affect the internationalisation:

India's **rigid labour laws** make it challenging for foreign companies to expand in the country. The **Industrial Disputes Act of 1947**, requires firms with **300+ employees** to get government approval before layoffs, making exit difficult. Companies had to comply with **over 40 labour laws** to function in India. These labour laws though beneficial for the Indian labourers impose High social security costs, including Provident Fund (PF) and Employee State Insurance (ESI), adding to the financial and procedural burden. Strong labour unions often lead to strikes, like the Maruti Suzuki 2012 strike where around 2,000 workers stayed inside the factory for nearly two weeks. The strike led to the postponement of the production of 13,200 cars and caused a loss of about 6 billion rupees. However, to improve the ease of doing business, India introduced four new labour codes in 2020 comprising 29 labour laws, but full implementation is still

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[9] THE ECONOMIC TIMES, https://economictimes.indiatimes.com/news/politics-and-nation/counterfeit-products-cause-over-rs-1-lakh-crore-loss-annually-in-india-aspa/articleshow/70628912.cms?from=mdr.

[10] THE HINDU, https://www.thehindu.com/business/Industry/delhi-hc-orders-amazon-to-pay-39-million-in-damages-in-beverly-hills-polo-club-case/article69269096.ece.

pending. While reforms are in progress, strict labour laws continue to be a challenge for foreign investors.[11]

VI. CONCLUSION

Indian businesses seeking to enter the global market and foreign investors face various legal barriers. These include mandatory compliance of regulations, heavy taxes, lengthy legal processes, inadequate dispute resolution mechanisms, bureaucratic difficulties and more. These challenges largely affect the Indian businesses' global expansion and discourage foreign investment. However, India has been reforming its legal system by introducing changes like the new Mediation Bill, consolidated labour codes, and relaxation of Foreign Direct Investment (FDI) rules. While India may not currently attract significant foreign investment, ongoing reforms will likely attract more global trade in the future.

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[11] THE ECONOMIC TIMES, https://economictimes.indiatimes.com/workers-strike-thrice-in-five-months-how-maruti-suzuki-lost-connect-with-them/articleshow/10382885.cms?from=mdr.