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Ease of Business Legally

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Abstract

It is considered that the ease of business in India has improved immensely in India during the recent times. This has propelled India from 142nd position in 2014 to 63rd position in 2019 when it comes to ease of doing business. One has to consider that when India became independent in 1947, the dismal state of the economy and the mistrust for Western economic model made India gravitate more towards a publicly controlled approach to production and industry building. This leaned even more towards the socialist approach during the license era that ended only in the 1980s. Even during the 1980s, transitioning towards trade liberalisation was slow. The state of public sector undertakings and the economy though, made India move definitively towards liberalisation in the 1990s. This new spurt towards private sector has seen further push since the central dispensation came under Modi in 2014.

Steps like demonetisation and GST have led to businesses becoming nimbler on their feet. A push towards digitalisation and simplification of business processes has also taken place. The number of legislations and requirements have both seen a reduction. This has made business building an easier exercise in the country. At the same time, there has been an active push towards building infrastructure and an industry that relies upon domestic manufacturing rather than imports. It is considered that this would get even further push as India eyes movement from the fifth to the third largest economy in the World.

At the same time, India would have to bolster regulations related to emerging trends like AI and related emergent technologies. It would also have to ensure sustainability building in businesses. Also, businesses would have to become more inclusive in nature in order to ensure that economic disparity is reduced.

Keywords: *Digitalisation, Sustainability building, Financial Liberation.*

I. Introduction

Businesses are considered to be impacted by internal and external environment. While internal aspects like strengths and weaknesses do play a role in the growth and development constraints related to a business, there are multiple aspects that exist in the environment around any business. So much so, that a PESTEL analysis is considered to be essential for any business to

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understand the grounds where it is operating. A PESTEL analysis is a tool that businesses use to analyse and monitor the macro-environmental factors that impact the organisation or the industry as a whole (Washington State University, 2022). It involves political factors within the region, the economic factors that exist in the economy, the social factors that include demography, technological factors, environmental factors and legal factors. Out of these, the legal factors are linked to other aspects in an intricate manner. Laws are not made in a void without consideration for the social conditions, demography, etc. Factors like the political environment are themselves shaped by the legal environment.

There are certain trends that have emerged in the domain of business environment in the recent times that have required further engagement at the legal level. Business ethics have become more significant and so has corporate governance (Hans, 2018). Hans further states that corporate social responsibility and the engagement of consumers in the business decision making is also becoming more and more important. Environmental considerations and the idea of sustainability is slowly but surely taking the centre stage in business decision making. The idea that business operates within and for the society is becoming more central to the modern-day discourse. It is here that the legal framework for businesses has to adapt and evolve as per the changing definitions and horizons of businesses.

Traditionally, India after independence did not have what could be called a conducive to business growth environment. India did not trust and felt alienated from the Western approaches and ideologies that were prevailing in the United States of America or the United Kingdom at that time (Chibba, 2012). Chibba states that reforms in this India of the 1950s essentially meant planned industrialisation, protectionism, state ownership and providing essential amenities to the people through public provisioning. This continued till the late 1980s and the early 1990s. The economic approach of India pushed the country to the brink of economic collapse. This looming threat led to large scale reforms in the economy with particular emphasis on deregulation and liberalisation of the economy.

This has continued and gained even more momentum post the 2014 elections with the emergence of Modi at the helm of affairs in India. The financial liberalisation process has seen significant renovations as well as reinforcements during this period (Parada, 2021). Parada further suggests that significant old and new challenges have emerged during this process. In addition, domestic and international factors have impacted the business environment immensely by showing and aggravating the fragilities that exist within the Indian economic setup.

In this regard, the present paper aims to examine the transitioning in the legal state of ease of doing business right from independence. Various regulations pertaining to the same would be discussed to analyse how the ease of doing business has actually altered in India. It would also be seen as to what the present condition warrants for future transition and growth of the Indian economy. This is important since it aims to determine up to what extent the estimation by International Monetary Fund that India would become the third largest economy by financial year 2028 (IBEF, 2022), is facilitated by actual policy changes at the ground level. The paper also aims to understand through analysis of cross-checked secondary data available online, the areas where legal changes would have to be brought in to facilitate the ease of doing business.

The approach that has been taken through the paper is longitudinal in nature since the time span across which the ease of business has to be analysed, is a long stretch. In order to understand the industrial and business policies of India better, the timeline has been divided into three parts. This would facilitate gradual understanding of the stages of industrial development and ease of doing business. This would be followed by looking at the Indian business policies vis-à-vis the global economic outlook. Before concluding in a manner that looks at future prospects, notable case laws would also be discussed.

II. State intervention phase

When India attained independence in 1947, it was besotted with a number of challenges in terms of business environment. Considering some of these, as early as 1943-44, the 'Bombay Plan' was published with the inputs from the top industrialists of the country at the time (Paranjape, 1985). This was in the backdrop of the Second World War and it clearly reflected in the provisions that were made in the plan. One of the primary objectives of the plan was to prevent concentration of means of production and hence state involvement in allocation of resources. There were multiple controls that were to be fixed upon businesses. These included fixations of prices, limitation on dividends that could be drawn, prescription related to the wages and salaries of workers, nomination of government directors on management boards of businesses, licensing and efficiency audit as well. In this first plan itself, emphasis was laid on avoiding monopolies to ensure that they are not able to manipulate prices or output levels. This was all in the backdrop of an economy that was in tatters. India's share in the world income which was a high 22.6% in 1700, had gone downhill and was measured in 1952 at just 3.8% (Livemint, 2019). India was carrying the tag of the poorest country in the World in terms of per capita income at this point. This is what prompted the first post-independence resolution in the form of IPR 1948. The Industrial Policy Resolution of 1948 presented the approach to be taken for industrial growth and development (Burange & Yamini, 2011). The policy aimed at making strategic industries like defence the sole prerogative of the public sector. Basic industries like coal and iron where public and private sector could co-exist was also there. Important industries and other industries were to be worked upon by the private and cooperative sector. Burange & Yamini (2011) state that the Industrial Development & Regulation Act of 1951 was aimed at ensuring that industries could set up and expand their working only through obtaining a license. This act also specifically placed a schedule of industries that were subject to licensing.

The emergence of the licensing process gave government full control over capacity of any business, its location, its expansion, manufacture of new products, foreign exchange expenditure in the business and even approval of the terms of foreign collaboration. This can be considered as the beginning of the 'license raj' in the country. At the same time, the socialist model of embracing small industries for their role in providing a more equitable distribution of wealth was also embraced. This led to the Industrial Policy Resolution of 1956. This resolution left basic and strategic industries completely under government control. It left some industries under joint control while the small-scale industries were given to the private sector to develop. Then came the Monopolies and Restrictive Trade Policies Act which controlled only private sector and regulated the concentration of wealth therein. Monopolistic and restrictive policies were curbed under the act and a Monopolies Commission was appointed. For even tighter licensing policy, Industrial Licensing Policy was announced in 1970 followed by a regulation to control foreign investment through the Foreign Exchange Regulation Act of 1973. To promote medium and small enterprises, ventures up to 10 million INR were exempted from licensing requirements through the statement of 1973. Such industries were also promoted particularly in the rural region by the statement of 1977. The approach faltered notably though and paved way for the transition period of the 1980s. The approach faltered on account of the barriers that stifled domestic competition, complete lack of foreign competition, regional disparities in industrial distribution, barriers to exit for industries, administrative hurdles in conduction of business and little to no incentive for upgrading technology (Ahluwalia, 1991). The notable exception to this was the Patents Act of 1970 which allowed domestic pharmaceutical firms to copy drugs made by international companies by changing manufacturing process a bit (Bhattacharjea, 2022). Bhattacharjea states that this could be done because the act allowed for patenting the process but not the product itself.

(A) Transition Period

The transition period of the 80s is sometimes called the "liberalisation by stealth" period on account of the way the reforms were introduced despite the leftist imprint on the establishment (Panagariya, 2004). The Industrial Policy Statement of 1980 can be considered as a significant document in this regard since it placed focus on growing and promoting competition within the domestic market space. It also looked at upgrading the technology available and at modernising the industries that existed. Efforts were put to bring in efficiency even in the public sector undertakings. In 1988, most of the industries except 26 industries were taken out of the licensing control. To ensure that regional disparity in growth is reduced, Growth Centre Scheme was put in place in the same year. It was in 1986 that Modified Value Added Tax was introduced to give credit of the excise duty paid on inputs and hence relieving the manufacturers from the effect of double taxation (Singh, 2009). These were all half-hearted measures though and a directed effort towards liberalisation was yet to come.

(B) Era of Liberalisation

It is clear that in the 1990s, India embarked on a journey that led to steady liberalisation (Shome & Mukhopadhyay, 1998). The New Economic Policy of 1991 was a significant document in this regard. This formed the basis for delicensing of industries which eventually left less than 10% of 3-digit industries under the control of the licensing regime. The MRTP Act was also amended during this period thereby completely removing the restrictions on expansion and merger between firms. Ten out of the 18 firms reserved only for public sector were opened up to private investment. FDI in manufacturing was allowed up to 100% by the end of the decade. Import licensing was done away in 1991 and only a small number of items are now restricted which are linked to grounds like health, safety, morality, or for complying with agreements at the international level. The tariff rates successively went downhill from 355 to 150%. Giving preferential treatments to nations based on tags has led to eventual falling of the collection through tariffs into single digits by 2007-08 (Pathania & Bhattacharjea, 2020).

While it is clear that the impetus towards trade liberalisation and hence ease of conducting business was provided during this period, what can now be looked at is how has the ease of doing business been impacted by recent developments in the policy making side.

III. Recent policy developments

It is clear that in the recent years, the business environment in India has seen a paradigm shift. This can be seen in the fact that India’s Doing Business Rank has improved from 142 in 2014 to 63 in 2019 (Department for Promotion of Industry and Internal Trade, 2021). The department for promotion believes that multiple aspects have to be considered when it comes to making the country more accessible to the needs of businesses. Dealing with construction permits better, easing registry of properties, ensuring enforcement of contracts, resolving issues related to insolvency, facilitating trade across borders and engaging with states & UTs in the spirit of cooperative federalism are all factors that have to be considered. Policies that work on these factors at individual levels, can then build a business ecosystem that facilitates the conduction of business in the country.

There are multiple decisions that have impacted the ease of doing business in India greatly during this period, and it is opined that the upwardly mobile popularity of Modi as a leader in India during this period has been on account of the constant attempt to push the envelope when it comes to laws (Karanjawala, 2022). The 101st amendment of the Constitution of India led to the introduction of Goods and Services Tax in India in 2016. This was a major tax reform. It simplified the taxation system for India. It eliminated various state and union taxes thereby attempting to consolidate the country as a single market. In the same year, the Insolvency and Bankruptcy Code was also enacted. Just as the introduction of GST sought to simplify the taxation system in the country, the IBC sought to consolidate and also amend the laws relating to business insolvency. This code ensures that insolvency cases are resolved within a time bound manner in order to provide the stakeholders with certainty regarding resolution. At the same time, it also attempts to maximise the vale of the assets being considered for insolvency. In a similar vein, 29 existing labour laws were replaced by 4 codes. These codes passed in 2019 and 2020 respectively. The first code regulates industrial relations and dispute resolution. The second code aims at providing social security to the workforce without getting through the complicated web of legislations where definitions and reliefs are spread all over the place. Then there is the code for the management of occupational safety, health and working conditions of individuals being employed. The most important one of these four happens to be the code on wages particularly minimum wages. Setting up a clear wage legislation which is simplified, is considered essential for any economy to attract businesses.

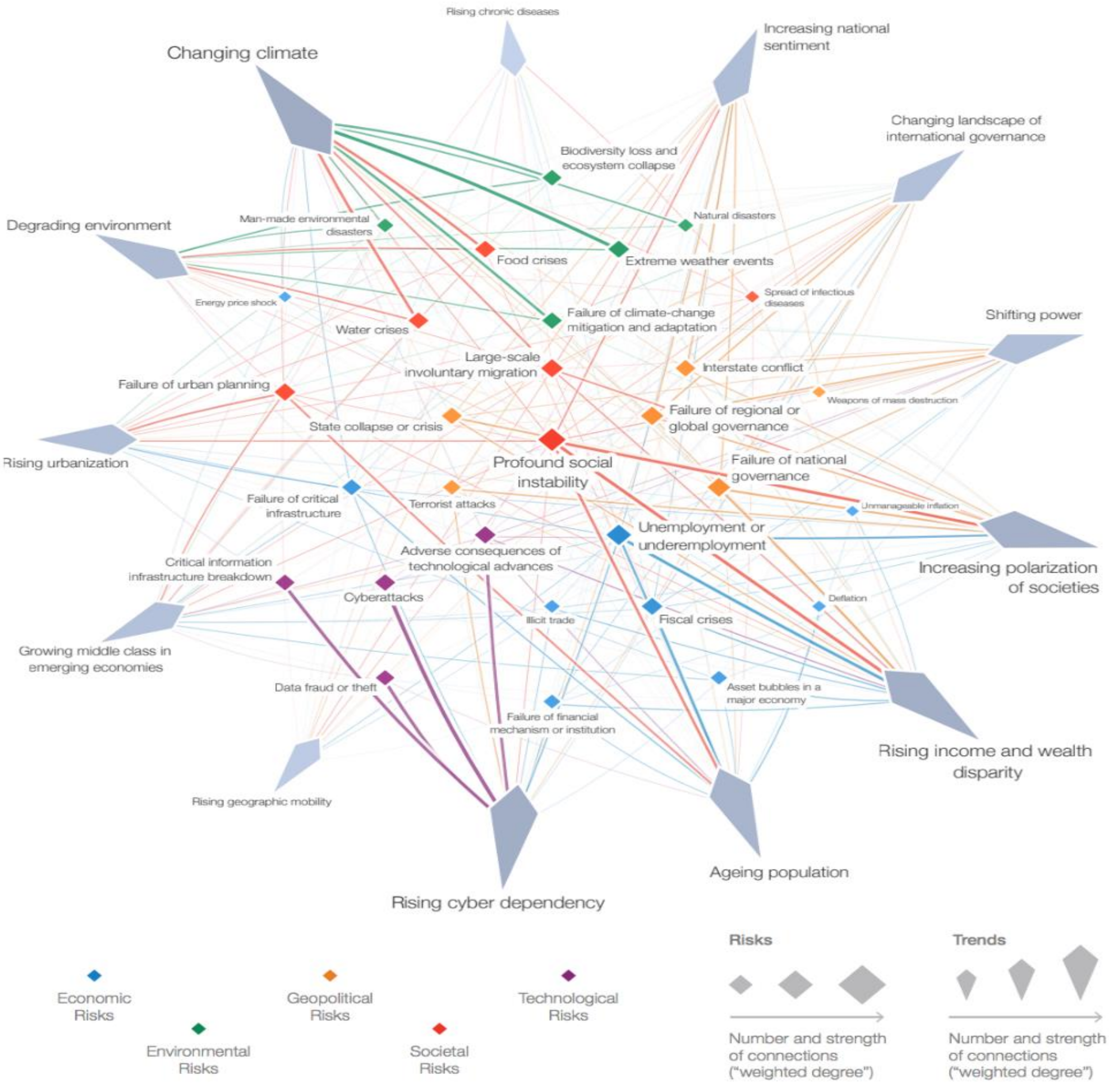
There have been some controversial decisions in the sphere of business during this regime that have at times yielded unexpected results. Demonetisation of high value notes was done in 2016 with an aim to curb black money, corruption and also counterfeit currency (Inamdar & Alluri, 2021). The move led to transient hardships for people and businesses in an economy that was largely unorganised. This coupled up with the introduction of Unified Payment Interface that was introduced in 2016 (Ganti, 2019), in a unique manner. People and businesses started shifting to digital payments. This rapid transaction system grew so much that the total digital payment transactions in India rose up to 2,050 lakh crore INR in 2022 (Paytm, 2022). Another such initiative is Make in India which was launched in 2014 which looks to promote manufacturing and boost exports from India (Inamdar & Alluri, 2021). It attempts to do so by clearing up red tapes and improving infrastructure for conducting business. This is what has also prompted single window clearance for government projects and setting up ventures within the country. Introduction of SPICe+ and AGILE PRO form for company incorporation combining services like PAN/TAN/DIN/GSTN etc. at one place was the step in this direction (GOI, 2021). In the same vein, the corporate taxation rate was reduced from 30% to 25% while new businesses would attract corporate tax at the rate of 15% only (CSIS, 2019). This was done through the Taxation Laws Amendment Ordinance of 2019. The Major Port Authorities Act was passed in 2021. This act decentralised decision making on various ports and allowed them to contract and operate in a professional manner. CSIS also talks about how the government is bringing in efficiency and openness in airline operations in the country by fully privatising Air India. The government further permitted foreign investment of more than fifty percent in defence and insurance. Banks were given the ability to scrutinise cases of defaulters on a case-by-case basis through the Reserve Bank of India Directions 2019. This reduced the burden on National Company Law Tribunal. At the same time, district level business reform action plan was put in place to assess and improve the business environment at the local level while linking this local level to additional borrowing permission for states (Singh, 2020).

While IMF and other bodies confirm this, Modi is banking on his third term to make India the third largest economy by facilitating even more ease of doing business (Jacob, 2023). He further asserts that this has helped the government in bringing more than 10 crore people above the state of poverty. He emphasises upon more than 2000 British era laws that were scrapped in order to facilitate businesses even more. What needs to be seen though, is the kind of policies that the global economic landscape could require.

IV. DISCUSSION

It is clear that the Indian government has been moving in the right direction when it comes to making the Indian economy more conducive to the businesses as of now. The trends of the future become significant though, when one has to consider policy making for the future. When it comes to looking at what sort of policy decision making India would have to undertake to facilitate the ease of doing business even more, one can look at the following figure-

The Risks-Trends Interconnections Map 2018 (Source: World Economic Forum, 2018)



The given figure highlights the risk trends that can make policy decisions imperative in the future. Rising cyber dependency would mean that we would require robust laws for dealing with the challenges of technology including AI. Climate change and rising urbanisation means that planning for businesses would have to be more sustainable. This would mean laws to ensure better space management and for utilisation of cleaner fuels. This challenge is only going to be compounded by more and more people emerging with higher incomes. Income disparities would become even more acute and laws that would be made to facilitate businesses have to be made considering that they are inclusive in nature. Societies that would become more polarised and inward looking, can get disconnected from the global mainstream. This is again an aspect that has to be considered while making legislations for improving businesses within the country.

Considerations on these factors have to be made while making laws to improve the ability to conduct business in the country even more.

V. Conclusion

Looking at the progression of India after its independence, it is clear that India initially had to make a lot of efforts for ensuring that its population was uplifted from the state of abject poverty. At the same time, there was a pervading sense of mistrust for the Western model of economics that had actually pushed India down during the pre-independence era. The public sector driven economic growth led to the strangling of economic and business initiative in the long run. So much so, that in the 80s, policy making saw a transition towards liberalisation that started accelerating during the 1990s. In the present context though, the recent years of Modi rule in India have seen the ease of business improve in India. To a large extent this has been made possible by removing legal obstructions and complex requirements. At the same time, developments such as the UPI have made it possible for businesses to operate in a smoother manner than before.

There are certain considerations for the future like sustainability, AI and inclusiveness. These are aspects that have to be considered by the government for making policies that might facilitate businesses further. Taking this approach, businesses can actually make a transition towards liberalisation without creating an acute divide in terms of wealth and opportunity.

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