

# Issues for Parliamentarians

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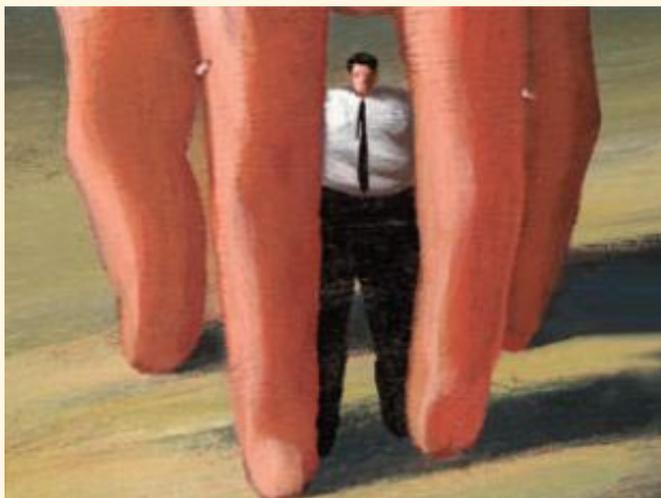


Parliamentarians' Forum on Economic Policy Issues (PAR-FORE)

## Free India, un-free India Inc: Rules and fiats that choke India's business spirit

*Free India will be 65 next week. But India Inc, since reforms began, has seldom felt so shackled. The Economic Times Magazine\* (12-18 August 2012) looks at the maze of rules and fiats that choke India's business spirit and talks to entrepreneurs who share their stories of trying to beat down government doors. Can it all change?*

Pradeep Gidwani, former Carlsberg managing director, quit his job in early 2010 to set up a beer cafe called The Pint Room, a "casual, relaxed meeting space over fine beers", as he describes it. Setting up the business itself was neither relaxed nor an easy process.



"The biggest problem is attitude, the way people look at you... you guys must be doing something wrong," says Gidwani. The first step, incorporating the company (Sweet Water Hospitality), was a breeze, thanks to the ministry of corporate affairs' efforts to digitise registration process. And then Gidwani's hurdles race began.

The hurdles kept coming: a beer serving licence, clearances from municipal and health authorities, a Shop and Establishment Act certificate, a registration number for the VAT and sales tax department and an occupation certificate from the mall in which the beer cafe was located. Some forms ran into 20-30 pages and Gidwani had to make multiple visits to some offices.

Finally, the company which was registered in May 2010 opened its first outlet in December 2010 in a south Delhi mall. In that period, he continued to pay out salaries of

staff he had hired, rent for the premises and therefore began his business in the red.

Some might say, Gidwani had it easy. He opened his first outlet in Delhi, a city where a licence to serve beer comes easier (3-4 months), as compared to Mumbai (4-7 months) or Bangalore. "You need one licence to display alcohol bottles and another licence to pour that alcohol into a glass," says Gaurav Goenka, managing director, Mirah Hospitality, which operates restaurants like Rajdhani, Cafe Mangii and Manchester United Cafe Bar. "The

### \*TV Mahalingam

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restaurant business used to be a fun business to be in. That's not the case anymore," he adds.

That's something most entrepreneurs and companies in India are increasingly talking about: doing business isn't fun. In fact, it's anything but fun. Red tape, antiquated laws, political interference and corruption are shackling enterprises and hampering them from doing what they do best: make money and in that process, create jobs.

Given that India is projected as the land of opportunity, among the few economies in the world growing at over 5%, a good question to ask would be: how free are enterprises in India? And, how easy is to do business in this wonderland called India?

## KABUL'S BETTER

The World Bank has been publishing an annual report called Doing Business for nearly a decade now. The report ranks countries by the ease of doing business. In the 2012 report, India ranks 132 - sandwiched between West Bank & Gaza (131) and Nigeria (133). Even Ethiopia (111), Swaziland (124), Bangladesh (122) and Pakistan (105) fare better.

Bah, aren't these smaller countries which lack the complexity of problems that India faces, the eternal optimists might ask? In that case, let's look at where we stand in the one list we are proud to be in: BRIC countries. Everybody else is ahead: China (91), Brazil (126) and Russia (120).

What does the report arrive at this ranking? It ranks 183 countries based on multiple parameters: how easy is to start a business, how easy is it to get credit, in how many days can you get construction permits, how quickly can you get an electricity connection, how well can you enforce contracts etc.

Simply put: stuff that companies do day in, day out. While India does pretty well in parameters like getting electricity (rank 47 worldwide) and investor protection (46), it's bottom fishing in areas like ease of getting construction permits (181), enforcing contracts (182) and even the ease of starting business (166).

What do these rankings mean? It means that Indian businesses have to bag 34 permits before construction of an office building or godown begins (as compared to just 14 in a developed country). Or that an Indian entrepreneur is likely to spend anywhere between seven and 20 years winding up a failed business.

On the ground, these cold numbers translate to nightmarish realities that companies have to deal with regularly. "The National Manufacturing Policy has pointed out that on an average, a manufacturing unit needs to comply with nearly 70 laws and regulations," says



	Starting a Business – Procedures (number)	Starting a Business – Time (days)	Dealing with Construction Permits – Procedures (number)	Dealing with Construction Permits – Time (days)	Getting Electricity – Procedures (number)	Getting Electricity – Time (days)	Registering Property – Procedures (number)	
<b>India</b>	<b>12</b>	<b>29</b>	<b>34</b>	<b>227</b>	<b>7</b>	<b>67</b>	<b>5</b>	
South Asia	7	23	16	222	6	145	6	
OECD Average	5	12	14	152	5	103	5	
	Registering Property – Time (days)	Paying Taxes – Payments (number per year)	Paying Taxes – Time (hours per year)	Paying Taxes – Profit tax (%)	Paying Taxes – Total tax rate (% profit)	Enforcing Contracts – Time (days)	Enforcing Contracts – Cost (% of claim)	Resolving Insolvency – Time (years)
	<b>44</b>	<b>33</b>	<b>254</b>	<b>24.7</b>	<b>61.8</b>	<b>1,420</b>	<b>39.6</b>	<b>7</b>
	103	28	281	18.6	44.4	1,075	27.2	3.4
	31	13	186	15.4	42.7	518	43	1.7

Rajiv Kumar, secretary general, Federation of Indian Chambers of Commerce and Industry (Ficci). Apart from facing multiple inspections, these units have to file, sometimes, as many as 100 returns in a year.

### BIRTH PANGS

Starting any new business can be painful. Take food and beverages, for instance. In Maharashtra, to open a bar and restaurant, one has to get clearances from 14 different departments. In Chennai, you can't get a liquor licence unless you have a 21-room hotel up and running. In Bangalore, the licences simply aren't given out anymore. So, if you want to start a pub in India's erstwhile pub city, you simply have to buy out an existing licence holder, at a hefty premium.

These problems are not restricted to the alcohol business. "Today to start building a hotel, I need 150 approvals and I need another 100 approvals to open the hotel. I know the number of these approvals have substantially gone up," says Patu Keswani, founder, Lemon Tree. "Think about this - to build the hotel from basement to ground I need an approval. Then again, I need to get another approval to build from ground to second floor. Then after 2nd floor onwards, I need yet another approval," adds Keswani.

Digitalisation of Registrar of Companies offices has made life easier for entrepreneurs when it comes to registering companies. However, glitches remain. For instance, a company located in Noida will have to get its registration process done at Kanpur, 450 km away.

One tiny clerical error and the proprietors are summoned to the Kanpur office. "In Ghaziabad, you may be willing to set up a multi-million-dollar factory but the sub-registrar office is more like a fish market. A clerk sitting under a tree will take your finger prints on the documents while registering your property. What freedom are you talking about?" asks a Sahibabad-based businessman.

In sectors like aviation, the waiting period to start a business can be inordinately long. "It took us two years to get a licence. We applied for a licence in September 2010," says Sandeep Bhatt, chief executive officer, Air Mantra, a startup airline. "I agree aviation is not like any other business because of safety and strategic issues, but the documentation and red tape is really too much. See what is happening to FDI in aviation," adds Bhatt.

The licence raj may be a matter of the past but some of its 'vestiges' (read licence raj-era rules and mentality) still, reign, say entrepreneurs. "The moment you begin to set up your factory, someone or the other from I-T, excise or police will land up at your place to trouble you," says the owner of a Punjab-based furniture-making factory. "If your company is not doing well, get prepared for a volley of questions on why you have failed to make profits, and whether you are hiding your real income," he adds.

## EVEN OUR NEIGHBOURS FARE BETTER THAN US INDIA VS SOUTH ASIA

Rank	Ease of Doing Business Rank	Starting a Business	Dealing with Construction Permits*	Getting Electricity	Registering Property	Getting Credit	Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Resolving Insolvency
1	Maldives	Afghanistan	Maldives	Sri Lanka	Nepal	India	Bangladesh	Maldives	Sri Lanka	Bhutan	Maldives
2	Sri Lanka	Sri Lanka	Bangladesh	India	Bhutan	Nepal & Pakistan	Pakistan	Afghanistan	Pakistan	Maldives	Sri Lanka
3	Pakistan	Maldives	Pakistan	Nepal	India		Sri Lanka & India	Bhutan	India	Sri Lanka	Pakistan
4	Nepal	Bhutan	Sri Lanka	Afghanistan	Pakistan	Sri Lanka & Bangladesh		Nepal	Bangladesh	Nepal	Afghanistan
5	Bangladesh	Bangladesh	Bhutan	Maldives	Maldives		Maldives & Nepal	Bangladesh	Maldives	Pakistan	Bangladesh
6	India	Pakistan	Nepal	Bhutan	Sri Lanka	Bhutan		India	Nepal	Afghanistan	Nepal
7	Bhutan	Nepal	Afghanistan	Pakistan	Afghanistan	Afghanistan	Bhutan	Pakistan	Bhutan	Bangladesh	India
8	Afghanistan	India	India	Bangladesh	Bangladesh	Maldives	Afghanistan	Sri Lanka	Afghanistan	India	Bhutan

\* For Dealing with construction permits, one data point on cost was corrected. Rankings are adjusted once a year with each published report.

SOURCE: DOING BUSINESS 2012 REPORT, WORLD BANK

## LAW SAND FLAWS

And then there are the myriad rule books and laws, most of which were penned when the Union Jack was still fluttering over the Red Fort. “There are at least 35-40 laws to which we have to comply,” says DS Verma, executive director, Indian Industries Association, a chamber of medium, small and micro enterprises in UP.

“If an inspector comes along and wants to really grill the businessman, then he has had it. It can be as trivial as insisting that the canteen in the factory should be located here rather than there, because there is a regulation which says so,” he adds.

Sabbas Joseph, founder-director of event management company Wizcraft, says that to conduct a live event outdoors in India, anywhere between 13-21 permissions have to be obtained from various authorities. In UK, just about 4-5 permissions are required. “Everything is organised and transparent. You know exactly what you have to do,” says Joseph.

In regulated industries like spirits, the levels of controls are mindboggling. “There are excise inspectors stationed at each factory who record number of bottles produced each day as well as ultimate destination,” says VN Raina, director general, All India Distillers’ Association. Alcohol is also a ‘matter of state policy’ which means states formulate their own laws and taxation about the sector.

“It’s like working in 30 different countries. The government controls over 60% of the alcohol business in India,” says Samar Singh Sheikawat, senior vice-president, marketing, United Breweries.

“There are ‘export’ and ‘import’ duties when we move liquor from one state to another - the source state imposes one tax, and the destination state imposes another tax. The level of taxes is so huge, that if you take a bottle of whisky worth Rs 200, the actual cost of the liquor in the bottle is no more than Rs 20,” says Raina.

But the area that causes maximum pain for most industries is labour law. “The Industrial Disputes Act 1947 mandates large industrial units to obtain government approval before firing workers. However, such approvals are never granted in practice. Rather than being able to retrench inefficient workers, the law requires industrial units to retrench workers based on the principle of ‘last in first out,’” explains Bharat Anand, partner at law firm Khaitan & Co.

“This means that retrenching workers based on efficiency is virtually impossible. Businesses have responded by heavily recruiting contract workers,” adds Anand. That, in turns, creates tension between unions and management in factories which often demand that contract workers be ‘regularised.’ A recent example: Maruti’s Manesar plant.

Sixty-two-year-old Kochouseph Chittilappilly, the founder of the Rs 990-crore V-Guard Industries, has fought militant trade unions in his home state, Kerala, since the late 1970s.

“Today, nobody wants to stop you from getting rich because he or she has an ideological opposition to people making money. The rest of the obstacles haven’t really gone away, if you take a close look. Bureaucratic red tape, corruption, utter lack of discipline that unfortunately continues to define major hurdles,” he says

**HOLYMEN AND REGIONAL BOSSES**

Back in 2005, a Rs 5,000-crore conglomerate based out of eastern India decided to diversify into real estate. The group had identified a large parcel of land in a southern India. It was all set to sign the dotted line with the landowner when the founder of the company got a call from a local religious leader who called for a meeting so that he could “bless the deal”.

Intigued, the businessman met the godman who made a simple offer: “Offer me a cut and I shall get you the same land parcel at a 20% discount.” The business tycoon took the next flight back home. “I knew his local political connections and I knew that if I took up his offer, I would be in his pocket for the rest of my life,” the businessman says.

The anecdote illustrates the bizarre variables that have become a part of parcel of doing business in India and the regionalisation of business in India. “Both politics and investment is getting regionalised. Setting up of new units in any sector requires land, cheap financing and a regime free from local authority intervention,” says Anand.

“Political patronage certainly helps to be able to achieve this. Therefore, one is seeing the emergence of certain regional business groups with support from local politicians and strongmen,” he adds.

It explains why Indian politicians across states have investments in “difficult sectors” like education, sugar, infrastructure, real estate, mining etc. It also explains why a Chennai-based business tycoon finds it easy to get a hangar for his private jet while aircraft maintenance companies with 50 planes struggle to get land for a hangar. Occasionally, even pan-India business houses feel the heat of state-level politics.



“When the Shiv Sena split in 2006, almost every large business house which employed a large blue collar workforce in Maharashtra was left tackling with two unions instead of one,” says an executive from the retail business group, which had faced minor labour problems during that period.

This regionalisation of business is not without its pluses. “Chief ministers of proactive states have become more like CEOs of their states,” says Rohan Malik, partner and markets leader for advisory services at Ernst & Young, who believes that once there is buy-in from these stakeholders, things tend to move a lot faster.

## BIG BROTHER CLAWS BACK

However, there’s one disturbing trend that most people ET Magazine spoke to talked about: the increasing role and meddling of government in business. “Rules and regulations have got regressive over the past 5-7 years in the garb of improving inclusiveness. The real concern is that in the name of environment protection, forest control and inclusive policies, leaders have reversed some of the clearances given in the past,” says Ficci’s Kumar.

It’s a point of view even former bureaucrats find merit in. “If a company wants to expand or collaborate with a foreign partner, it’s much easier today as compared to 20 years ago. The new challenges are coming from ever-growing compliances of environmental issues and social causes such as forest and tribal rights, and land use etc,” says former industry secretary Ajay Dua.

The government is also tightening its grip on even autonomous monitoring bodies. “Take the example of the Quality Council of India that monitors quality in various industries, including health,” says the chairman of a leading private hospital chain. “So, far it has been an independent autonomous body headed by a non-serving bureaucrat. Now, there is an attempt to appoint a bureaucrat to head it. If that happens, it won’t be good,” he adds.

Indian businesses, especially large businesses, can shoulder a part of the blame for this trend. Corrupt and questionable practices to bend and break the rules in sectors like mining, telecom and infrastructure have forced the government to re-occupy spaces that it had freed a few decades ago.

Vinayak Chatterjee, chairman of Feedback Infra points out six areas where government is uncomfortable with private sector infrastructure developers. They are - irrational bidding, gold plating of projects, concession agreement gaming, profiteering through arbitration and disputes, revenue diversion and licence cornering by multiple bidding under concealed identity.

So, what’s the road ahead? Reforms, is the simple answer. “Today, companies face various bottlenecks at the local level, whether it is land acquisition or getting electricity connection. The real freedom will come only when such municipality-level interfaces are reduced to bare minimum,” says former cabinet secretary TSR Subramaniam.

That’s something India will have to push for. More transparency, lesser touch points with the government and therefore hopefully, lesser red tape and corruption. “Simplifying forms and bringing about more e-governance to allow online filing of all forms and returns would ease regulatory burden,” says Percival Billimoria, senior partner, AZB & Partners, a law firm. Some of this has happened, with the push towards easing tax payment (by making e-filing mandatory) and setting up an online VAT registration system.

“I know of many entrepreneurs who run smaller companies (Rs 2-3 crore turnover companies) whose children see little or no benefit from entering the family business,” says Rakesh Garg, director of Prakash Group, an Agra-based company with interests in engines, gensets and agri business with a turnover about Rs 60 crore. “They would rather get a good job than run their father’s company where the profits are thin. Plus, there is the freedom from the hassle of having to deal with all the countless problems of business.”

For a country just at the beginning of its entrepreneurial spring, that would be a real tragedy.

*Corrupt practices in sectors like mining and telecom have forced Government to re-occupy spaces it had freed a few decades ago*

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