

Chapter 6 - Process Reforms

Indian administration system suffers from over regulation. For example, for a company to undergo voluntary liquidation in India, even when there is no dispute/ litigation and all paperwork is complete, it takes 1570 days to be stuck off from the Registrar of Companies. Over-regulation affects Ease of Doing business. Out of the total time taken, about 1035 days are taken for clearances by Income Tax, Provident Fund, GST departments and in taking back security refunds from various departments.

If we compare internationally, voluntary liquidation takes about 12 months in Singapore, 12- 24 months in Germany and 15 months in UK. In Germany, for very large and active companies, it takes 2-4 years.

Simple regulation need to be combined with transparent decision-making. In case where government needs to act in discretion, decision making must combine with three things, transparency, systems of ex-ante accountability (such as bank boards) and ex-post resolution mechanisms.

It is believed that India's regulatory problems are due to the lack of regulatory standards and poor compliance to process. However, International comparisons show that India ranks better than its peers on having regulatory standards in place and compliance to process. The real issue seems to be effectiveness of regulations caused by undue delays, rent seeking, complex regulations and quality of regulation. It is evident from the 'World Rule of Law Index' published by the World Justice Project provides cross country comparison on various aspects of regulatory enforcement.

India's rank in different categories

category	India's rank in 2020
Due process is respected in administrative proceedings'(proxy for following due process)	45 th out of 128 countries
Government regulations are effectively enforced'(proxy for regulatory quality/effectiveness),	104 th
Administrative Proceedings are conducted without unreasonable delay (proxy for timeliness)	89 th
Administrative Proceedings are applied and enforced without improper influence (proxy rent seeking).	107 th

World Bank's Ease of Doing Business (EoDB) Report (2020) shows that despite making laudable progress in the overall Ease of Doing Business rank, India still lags behind in the sub-categories 'Starting a business' and 'Registering Property' where the country's rank is 136 and 154 respectively. The report points out that this is due to the high number of procedures required to legally start and formally operate a company as well as the time and cost consumed to complete each procedure.

Large sample evidence across Indian states supporting the thesis that discretion increases with the amount of regulation. For example, stringency of labour regulation (measured as fine for violation of minimum wage) correlates negatively with the intensity of its enforcement (measured as average medium imprisonment for the same). They argue that countries with more stringent labour codes are less likely to enforce them.

WAY FORWARD

First, there is need to create simple regulation and complement the same by providing flexibility and discretion to the supervisor. For example, Government e Marketplace (GeM portal) has increased the transparency in pricing in government procurement. This has not only reduced the cost of procurement but has also made it easier for the honest government official to make prompt decisions.

Secondly, Ex-ante accountability need to be strengthened where the decision maker is hold responsible for decisions, Unlike Ex-post accountability where the decision maker is being holds them responsible for the outcome of the decision.

Thirdly, ex-post resolution mechanism need to be improved. For this, there is a need for efficient legal systems (i.e., courts and institutions) such as Insolvency and Bankruptcy Code (IBC), Debt Recovery Tribunals etc. The Judiciary is the most important institution for ex-post resolution. However, World Bank's Ease of Doing Business Report and World Justice Report focuses on Our incompetency in 'Enforcement of Contracts' and Dispute resolution.

World Banks' Ease of Doing Business Index makes following observations,

Time taken for Resolving a commercial Contract		
India	OECD high income countries	Singapore
1445 Days	589.6 Days	120 Days
Cost of Litigation		
India	OECD Countries	Bhutan
31 per cent of the claim value	21 per cent	0.1 Percent

Our poor performance in 'enforcement of contracts' is further supported by our rank in the World Rule of Law Index published by World Justice Project.

Particulars	India's rank in 2020
World Rule of Law Index	69 th out of 128 countries
People can Access and Afford Civil Justice	115
Civil Justice is not subject to unreasonable delay ⁷	123
Civil Justice is effectively enforced	102
Alternative dispute resolution mechanism is accessible	88

Government has taken some steps to solve the problem

- 1) Labour Reform: There were over 100 state and 40 central laws regulating various aspects of labour. To rectify this, Government merged the existing 29 central labour laws into 4 labour codes. Namely, (1) Code on wages, (2) Industrial Relations Code (3) Code on Occupational Safety, Health & Working Conditions Bill, and (4) Social Security Code.
- 2) e, to reduce the compliance burden of the BPO industry, government announced new guidelines on OSPs on 5th November 2020. Under the new regulations, the registration requirement for OSPs has been done away with altogether and the BPO industry engaged in data-related work has been taken out of the ambit of OSP regulations.
- 3) Similarly, several other requirements, which prevented companies from adopting 'Work from Home' and 'Work from Anywhere' policies have also been removed. This has significantly liberalized the regulation for the BPO sector

- 4) Minimum Government and Maximum Governance
 - a. Several autonomous organizations such as All India Handloom Board, All India Handicrafts Board, Cotton Advisory Board and Jute Advisory Board have been closed
 - b. Approved merger of four of Central Government's film media units, namely Films Division, Directorate of Film Festivals, National Film Archives of India, and Children's Film Society, India into the National Film Development Corporation (NFDC) Ltd.

SUGGESTION

To enact Transparency of Rules Act:

Often a citizen has to follow a long paper trail of circulars and notifications to know the current requirement, the problem increases due to frequent changes in rules.

Under this act, all government departments will need to mandatorily place all citizen-facing rules on their website. Officials will not be able to impose any rule not explicitly mentioned on the website clearly. Further, all laws, rules and regulations will have to be presented as an updated, unified whole at all times.

This will bring transparency and simplify the understanding of regulations.