Business Standard 26-6-2014

The difficulty of making business easier to do

Antiquated laws, poor dispute resolution and a social dimension have contributed to the poor dynamic between business and bureaucracy in India

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It is an abiding irony that a country as rich in entrepreneurial talent as India is also a notoriously difficult place for doing business. The challenge of making life easier for Indian business is more complex than we are willing to admit. It will involve much more than changing a few laws and creating a "single window" for approvals.

Recent focus on the issue typically focuses on issues of the type embedded in the World Bank's "Ease of Doing Business Index". This measure is not perfect but it does provide a useful starting point. India's position slipped in 2014 to 134 out of 189 in the aggregate World Bank rankings. Of the various aspects of doing business that this survey covers, India's ranking is particularly disgraceful when it comes to "starting a business", where we are ranked 179th. It is not just that it takes much longer to start a business in India than most other countries, but the cost, adjusted for income levels, of setting up and getting permits in India is extremely high.

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A more recent study conducted by CII-KPMG throws up complementary results. It finds that in addition to construction permits, there are a range of permits and non-objection certificates or NOCs required from various government departments that make starting a business into a veritable obstacle course. Environmental permits feature prominently in this list. But getting all the requisite permissions is not the only challenge faced by new businesses. Gaining access to essential services notably water, sewerage and electricity is also, for the most part, not easy. Particularly difficult, however, is gaining access to land. More than 80 per cent of businesses polled in the study picked the high cost of land acquisition, the complexity of the bureaucracy involved in the land allocation and land conversion process, and the uncertainty arising from insecure land titles to be major obstacles to their growth.

While access to land and essential services and the "Permit Raj" are the bane of start-up businesses, the "Inspector Raj" is suffocating operating businesses. Anecdotally, the average small business in Mumbai is subject to more than 15 inspections a year from a variety of departments, including labour, health and sanitation, fire safety, pollution control, to name just a few. By all accounts, it seems that the last-mile government machinery has become systematically predatory in its dealings with the private sector. Almost 90 per cent of respondents in the CII-KPMG survey identified corruption as a "moderate to major obstacle" to doing business. And the legislative activism of the outgoing United Progressive Alliance government has only made matters worse. Take the case of the Right to Education Act. This statute and its accompanying administrative regulations are prescriptive in the extreme. The remit of the law goes way beyond fixing fees and norms for mandatory access to the poor. Schools that do not have brick and mortar boundary walls, for example, are technically in violation of this law. This has opened the door to large-scale harassment by block-level education department inspectors raising the "operating expenses" of private schools, or forcing a growing number of them out of the education business altogether.

In the tyranny of our Inspector Raj, the interface of businesses large and small with the direct and indirect tax authorities of the central, as well as the state and municipal governments, is hugely problematic. For more than half of

the respondents to the CII-KPMG study, tax refunds were found to be delayed by seven months or more, with 13 per cent of respondents having to wait more than three years for their tax refunds. Aside from the tardiness of tax refunds, taxation-related disputes are a source of great anxiety for Indian businesses and their resolution hugely time consuming.

Then there are our labour laws. There is no doubt that the Factories Act of 1948, is quite pernicious in that it focuses disproportionately on protecting the interests of those already employed at the expense of those seeking new jobs. It is true that by making exit very difficult in the organised sector workplace, this Act has encouraged informality in labour markets and has made it harder for large-scale manufacturing to take-off. But the Factories Act is only one aspect of the problem. The reality is that there are many bits of labour-related legislation beyond this Act, both at the central and state level, that have a deleterious impact on the ease of doing business. The Shops and Establishments Act, for example, imposes all manner of restrictions on working hours that undermine the effective functioning of the BPO industry. The point is that tinkering with one law is unlikely to yield the results we want.

Too many of our laws are antiquated. To this, we have added onerously prescriptive new statutes of dubious quality. This legal/regulatory culture and legacy serves as rich fodder for intrusive and predatory bureaucratic intervention. In a country where the rule of law is supposedly a core strength, we have created a system where we have the laws alright, and we have heavy-handed administration. But we have very poor dispute resolution and, therefore, also precious little order.

How and why did we get here? The explanation probably lies in the historical proclivities of our dominant political class, the heritage of our administrative system, and our traditional social biases. The Nehruvian consensus that has so dominated our political discourse coalesced around a model of state-led capitalism. Facilitating private enterprise did not really feature in the consciousness of lawmakers, at least not until relatively recently. As to the steel frame that is our bureaucracy, its world view and structure were inherited from the British. It was never in the interest of the colonial administration to see Indian business thrive. The purpose of the administrative machinery was to collect revenues and to enforce order. Hence, the Collectorate and the Magistrate became the twin pillars of our administrative system. The impact of this legacy has been deep and remarkably persistent. It defines the dominant mindset of our bureaucracy from the *tehsil*, all the way to New Delhi to this day. It explains why the bureaucracy does not see it as their role to be supportive of business. Add to this toxic mix, our traditional social biases. The upper castes did not engage in business. They have traditionally sought in bureaucracy. In a modernising India, affirmative action for government jobs provided an opportunity for upward social mobility to the Scheduled Castes and Scheduled Tribes communities. I do not have the data at hand, but I would hypothesise that the Other Backward Class communities, traditionally associated with business, are systematically under-represented in government. I suspect that this social dimension has also contributed to the poor dynamic between business and bureaucracy.

The regulatory cum administrative malaise in our country is deep and widespread. Larger businesses with clout are better able to protect their interests. It's the small businesses that create the most number of jobs that suffer most. The good news is that the social attitudes towards business are changing rapidly. The dynamism of our traditional business communities is increasingly recognised and respected. And new communities, including the Dalits, are taking to entrepreneurship. The recently elected government perhaps also reflects an emerging pro-business mindset of our political class. The time is right to attack this multi-layered problem of an anti-business bias. But it will require sustained effort to improve the quality of our laws and change the mindset of our bureaucracy.

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