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Regulatory Roadblock to Ease of Doing Business

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This article is based on **“How easy is it to do business, after all?”** that appeared in The Hindustan Times on 12 September 2019. It talks about the lacunae in the Indian regulatory framework, affecting India's ease of doing business.

Recently, **the World Bank’s Ease of Doing Business 2019 report ranked India 77th among 190 countries**, apart from it India is counted as **one of the world’s most attractive investment destinations**.

However, in order to **become a \$5 trillion economy by 2024-25**, India certainly needs to improve more on ease of doing the business front.

Legislations and Challenges to Ease of Doing Business in India

- According to experts, there are structural reasons for India, **the regulatory framework being the biggest challenge in it**.
- Certain laws and their enforcement, act big impediments to ease of doing business in India.
 - **A plethora of regulatory and compliance requirement.**
 - **Overreach by enforcing agencies** in the execution of direct and indirect tax laws, also known as **“tax terrorism”**.
 - For instance, the Income-Tax (I-T) Act, the Goods and Services Tax (GST) Act, the Prevention of Money Laundering Act (PMLA), the Prohibition of Benami Property Transactions Act and even the laws governing corporate social responsibility (CSR).

- **Issues related to these laws:**

- **Overlapping laws:** The Companies Act, 2013 and the Foreign Exchange Management Act (FEMA), 1999, have overlapping provisions, which act as deterrents to the ease of doing business in India.
- **Disproportionate criminal penalties:** The risk of being charged with fraud in the running of a company is at par with the risk of being charged with drug running.
- **Lack of coherence in policymaking:** Barring matters related to CSR, all other laws are in the administrative domain of the revenue department in the finance ministry.

CSR is part of the Companies Act under the administrative control of the ministry of corporate affairs (MCA).

- **Subjective interpretation of the law:** Tax laws are prone to the subjective interpretation of tax officers which causes undue hardships to taxpayers and leaves **scope for corruption.**
- **Legislation losing its way:** PMLA was originally conceived as a law that would essentially address global concerns over money laundering offences such as drug trafficking, human trafficking and terror.
However, with the consequent amendments in the PMLA, the act now also focuses on trivial issues pertaining to corporate governance.
- **Inability to fulfil the compliance requirement:** GST sought to implement the **concept of one nation, one tax.**
However, numerous rate and law changes and a less-than-efficient technology platform, complex and cumbersome compliance with the GST laws have made GST as one of the biggest areas of concern to the trade.
- **Retrospective nature of law:** The Benami law, aimed at punishing the common practice under which a property is held by proxies for the real owners. However, the retrospective nature of the law causes lots of difficulties to genuine people as administrators are indiscriminately applying these provisions.
Further, assets get attached and redressal in Indian legal system takes an unduly long time.

- All these factors create a situation of mistrust in the market, proving to be a hindrance to the concept of ease of doing business.

Way Forward

- Companies Act should be reviewed in order to minimise criminalisation of violations.
- Taxation laws should be made simpler and tax administration should be impersonal. Direct Tax Code (DTC) will be the right step in this direction.

- Human interface between tax officers and taxpayer should be reduced while automating the tax machinery (Fintech).
This coupled with uniform guidelines to facilitate compliance will be instrumental in mitigating tax terrorism.
- The GST law should be stabilised and the technology backbone should be strengthened rather than making more changes.

The implementation of laws should not lead to harassment of genuine/honest citizens.

India's tryst to ease of doing business lies in Napoleon's notion of law i.e. law should be so succinct that it can be carried in the pocket of the coat and it should be so simple that it can be understood by a peasant.

Drishti Input

India's regulatory framework pertaining to corporate governance is the biggest challenge in India's pursuit of improving ease of doing business. Comment.