

RIGHTS OF AN ENTREPRENEUR IN INDIA

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ABSTRACT

Search engines like Google, Yahoo & Bing; Law Journals like Indiankanoon, iPleaders, and JusCorpus; Books of Law, Legality & Constitutions; social media like Twitter, Facebook & LinkedIn all filled with topics like Rights and protections of Labour, employees, freelancer, delivery boy, hawkers, vendors, etc. But even after looking for days and months, I have not been able to find a single Law that protects and strengthens the rights of an entrepreneur or employer. When a factory, office, or industry shuts, whatever an employee loses is his job, which he gets the next door, the next day. But the entrepreneur loses his asset, his income source, and his hard work for life. Yet, all we discuss is the job losses of laborers, not the business losses of entrepreneurs. It's a sad part of our Indian capital market that it's a fashionable trend to criticize and abuse our wealth creators. We're second to none when it comes to taking credit when our Indian-origin stalwarts become head honchos of large conglomerates like Twitter, Google, Pepsi, Mastercard, Microsoft, etc. But at the same time when our entrepreneurs strive to become a conglomerate themselves, we leave no stone unturned to find the faults and blame them like they have made this empire by only exploiting and doing black marketing. Here we will see the Rights that our entrepreneurs and businessmen get in our own country.

Keywords: Entrepreneurs, Ease of Doing Business (EoDB), Labour, Employers, Employees, Policy Paralysis.

INTRODUCTION

If you're an entrepreneur or businessman in India just remember that there are more than **26,000 ways an entrepreneur can land in jail**¹. An interesting fact is that most of these reasons are compliance issues. While most of the compliance is not in the hand or direct control of an

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¹ The Bureau, "Over 26,000 ways an entrepreneur can land in jail for non-compliance of business laws" (The Hindu, Business Line, 10 Feb 2022)

<https://www.thehindubusinessline.com/economy/over-26000-ways-an-entrepreneur-can-land-in-jail-for-non-compliance-of-business-laws/article64999953.ece> accessed on 9th April 2023

entrepreneur. Still, you will have to bear the brunt of the socialistic mindset of our lawmakers in India. Here are some of the most important rights that an entrepreneur can enjoy:

Right to start a business:² Every individual has the right to start a business or engage in any lawful occupation or trade of their choice, subject to certain regulations and licenses required by law.

Right to property:³ An entrepreneur has the right to own and dispose of property related to their business, such as land, buildings, machinery, and equipment. Well, this is a fundamental right bestowed upon every citizen in India through our constitution.

Right to contract:⁴ An entrepreneur has the right to enter contracts with other individuals or businesses on mutually agreed-upon terms and conditions.

Right to intellectual property:⁵ An entrepreneur has the right to register and protect their intellectual property, including trademarks, copyrights, and patents.

Right to privacy:⁶ Entrepreneur has the right to privacy of their personal and business information, subject to certain exceptions such as disclosure requirements under tax and regulatory laws.

Right to the fair competition:⁷ An entrepreneur has the right to engage in fair competition with other businesses and individuals, without being subject to unfair practices such as price fixing, monopolies, or anti-competitive behaviour.

Right to freedom of expression:⁸ Entrepreneur has the right to express their opinions and ideas related to their business, subject to certain restrictions such as defamation laws⁹.

It is important to note that these rights are subject to certain limitations and regulations imposed by law, in the interest of public policy, health, safety, or morality. It is advisable for

² Article 19 (1)(g) in The Constitution of India 1949

³ Article 300A of Constitutional Right 1978 (44th Amendment.)

⁴ [n2]

⁵ [n2]

⁶ [n2]

⁷ Article 14 in The Constitution of India 1949

⁸ Article 19(1)(a) in The Constitution of India 1949

⁹ Sections 501 and 502 of the Indian Penal Code, 1860

entrepreneurs to consult with legal professionals to understand their rights and obligations under Indian law.

These are the so-called rights that an entrepreneur is said to have from our constitution but when we observe them closely, we will know that they're acting as an obligation to entrepreneurs to protect the employees. Additionally, entrepreneurs need to be aware of certain labor laws such as:

- Minimum Wages Act, 1948;
- Payment of Wages Act, 1936;
- Payment of Bonus Act, 1965;
- Payment of Gratuity Act, 1972;
- The Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and
- The Employees' State Insurance Act, 1948.

Going a step further our government is making a *NAP (National Action Plan)*¹⁰ for making businesses responsible, sustainable, and more dedicated to already over-protected basic human rights. Govt. is also making plans to accommodate a long list of *labor laws in India*¹¹ in four simplified labor codes i.e. (wages, social security, industrial relations, safety, health, and working conditions of workmen) and will help in covering all the major issues thereby.

EASE OF DOING BUSINESS?

The Ease of doing business index was an index created jointly by *Simeon Djankov*¹², *Michael Klein*¹³, and *Caralee McLiesh*¹⁴, three leading economists at the World Bank Group¹⁵, following the release of the *World Development Report 2002*¹⁶. Among the listed members of the World Bank, roughly 190 countries are presently active members. In that long list, India had never performed well due to various internal¹⁷ and external reasons. Policy paralysis¹⁷ was

¹⁰ Indian Institute of Corporate Affairs, <https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf>

¹¹ Ministry of Labour & Employment, <<https://labour.gov.in/labour-law-reforms>>

¹² Simeon Djankov, Bulgaria, Born July 13, 1970 <https://en.wikipedia.org/wiki/Simeon_Djankov>

¹³ Michael Klein, Germany, <[https://en.wikipedia.org/wiki/Michael_Klein_\(World_Bank_official\)](https://en.wikipedia.org/wiki/Michael_Klein_(World_Bank_official))>

¹⁴ Caralee McLiesh, Australia, <https://en.wikipedia.org/wiki/Caralee_McLiesh>

¹⁵ World Bank, <<https://www.worldbank.org/en/home>>

¹⁶ Banerji, Arup Cull, [2001/09/01] <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/850161468336075630/world-development-report-2002-building-institutions-for-markets>>

¹⁷ SPS Pannu, India Today, (Published 28 Jan 2014), Accessed on 9th April 2023, <<https://www.indiatoday.in/india/north/story/india-manmohan-singh-upa-scams-policy-paralysis-gdp-growth-rate-economy-178631-2014-01-27>>

not a disease but rather a behavior of the Indian Government. In fact, the last majority government that came into power was *Congress led by Rajeev Gandhi in 1984*¹⁸. Since then, it's always been about CMP (Common Minimum Programme)¹⁹ between different parties to reap the benefits as per the strength. Foreign policy or international stand was never a matter of debate for Indian citizens, what they all ever wanted was *Roti, Kapra aur Makaan*. As per the official stamen of the then *Defence minister*²⁰, “We never had enough money to buy Bulletproof Armour vests for our Soldiers”. The only debate topic that was streamed on TV was corruption, that's it!

But in 2014 everything changed and changed for good. After 4 decades we got a government with a full majority. Now it was all about action and actionable moves. Our *Ease of Doing Business ranking*²¹ was 142 among 190 countries in 2014. Our government knew it was action time and in the next 6 years we jumped, and we jumped big. Our ranking was 130 in 2016 and 63 in 2020 as per the World Bank Report. It raised many eyebrows about the sudden rise of ranking and efforts that were being seen both internally and externally. Several programs and law reforms were launched, and most of the program represents a great deal of effort to create a more business-friendly environment. India was one of the top 10 improvers, for the 3rd time in a row, with an improvement of 67 ranks in 3 years. India has emerged as one of the most attractive destinations not only for investments but also for doing business. India jumps 79 positions from 142nd (2014) to 63rd (2019) in *The World Bank's Ease of Doing Business Ranking 2020*²².

To further enhance the ease of doing business in the country more than **39,000 compliances**²³ have been reduced and more than 3,400 legal provisions have been decriminalized. Several other steps have also been taken for improving the results, naming a few of them:

¹⁸ General Election of India, Lok Sabha 1984, Wikipedia Report
<https://en.wikipedia.org/wiki/1984_Indian_general_election> accessed 9th April 2023

¹⁹ UPA Govt Program, <https://en.wikipedia.org/wiki/Common_minimum_programme#:~:text=The%20Common%20Minimum%20Programme%20is,be%20the%20norm%20in%20India.> Accessed on 9th April 2023

²⁰ Kalyan Ray, Deccan Herald, <<https://www.deccanherald.com/content/330580/bullet-proof-jackets-still-dream.html>> Accessed on 9th April 2023

²¹ Ease of doing Business, <<https://www.makeinindia.com/eodb#:~:text=India%20jumps%2079%20positions%20from,of%20Doing%20Business%20Ranking%202020'.&text=To%20further%20enhance%20the%20ease,legal%20provisions%20have%20been%20decriminalized.>> Accessed on 9th April 2023

²² World Bank Report <https://www.worldbank.org/en/news/feature/2019/10/24/doing-business-2020-sustaining-the-pace-of-reforms> Accessed on 9th April 2023

²³ TNN, Times of India, <https://timesofindia.indiatimes.com/business/budget/39k-compliances-reduced-3400-legal-provisions-decriminalised/articleshow/97538910.cms?from=mdr> Accessed on 9th April 2023

Simplification of procedures: The Indian government has simplified and streamlined many of the regulatory procedures required for starting and running a business, such as obtaining licenses and permits, registering property, getting electricity, filing taxes, and getting all the necessary compliances done properly.

Digitization of processes: The Indian government has implemented several initiatives to digitize various processes, such as the online registration of companies, digital signatures, and electronic filing of tax returns which reduces paperwork.

Fostering entrepreneurship: The Indian government has launched several schemes to encourage entrepreneurship, such as the Startup India initiative, which provides various benefits and incentives to startups.

Labor reforms: The Indian government has undertaken labor reforms aimed at improving flexibility in hiring and firing, simplifying compliance requirements, and increasing social security benefits for workers.

Infrastructure development: The Indian government has invested heavily in infrastructure development, such as highways, airports, rail networks, dedicated freight corridors, and ports, to improve the logistics and transportation sector.

Despite these improvements, some challenges remain, such as bureaucratic delays, inadequate infrastructure in some areas, and difficulty in accessing finance for small businesses. However, overall, the ease of doing business in India has improved significantly in recent years, making it an attractive destination for investors and entrepreneurs. Positive changes have led to this impressive improvement in India's ranking in the EoDB index. Promoting trust-based governance at all levels, Hon'ble Finance Minister Nirmala Sitharaman introduced the *Jan Vishwas Bill*²⁴ to amend 42 Central Acts. An integrated system of unified filing processes at the central and state-level departments will be set up to avoid repeated submission of documents, ensure the authenticity of the same and lead to quicker processing of requests.

²⁴ THE JAN VISHWAS (AMENDMENT OF PROVISIONS) BILL, 2022

INDIA'S MAJOR ACHIEVEMENT IS SUMMARISED HERE

Construction Permits²⁵: India's ranking on this parameter has improved from 184 in 2014 to 27 in 2019. This improvement has been mainly on account of a decrease in the amount of time taken for procedures & formalities for obtaining construction permits in India.

Getting Electricity: India's ranking on this parameter has improved from 137 in 2014 to 22 in 2019. It takes just 53 days and 4 procedures for a business to get an electricity connection.

Apart from these significant improvements, among the 190 economies, India ranks 13th in Protecting Minority Investors and 25th in Getting Credit.

WHY IS EODB RANKING SO IMPORTANT?

Ease of doing business ranking is important because it measures the regulatory environment in a country for starting and operating a business. It assesses various factors such as the ease of starting a business, obtaining permits, getting electricity, registering property, obtaining credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, and resolving insolvency. A higher ranking indicates a more favorable regulatory environment and a better business climate for entrepreneurs and investors, which can lead to increased foreign investment, job creation, and economic growth. It also helps governments identify areas where reforms are needed to make their country more attractive to businesses and investors. Overall, ease of doing business ranking is an important indicator of a country's competitiveness in the global market and its ability to attract foreign investment and create jobs.

HOW IS CHINA HELPING ITS BUSINESSES? REMEMBER CHINA IS A SOCIALIST COUNTRY RUN BY COMMUNISTS.

China being a socialist country primarily is helping its business in all ways, it has been implementing various policies and measures to support its businesses, both domestic and foreign. It's been evident in the fact that *China is the world's production ground²⁶*. China has

²⁵ Press Information Bureau, Ministry of Commerce & Industry, <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=184513>> Accessed on 9th April 2023

²⁶ Felix Richter, China is the world's manufacturing superpower (Statista), Published on May 4, 2021 <<https://www.statista.com/chart/20858/top-10-countries-by-share-of-global-manufacturing-output/#:~:text=According%20to%20data%20published%20by,China%20overtook%20it%20in%202010.>>> Accessed on 9th April 2023

been producing almost everything for the entire world. Here are some ways in which China is supporting its businesses:

Tax incentives: China has introduced various tax incentives to support businesses, including reductions in corporate income tax rates and value-added tax (VAT) rates for certain industries and businesses.

Investment funds: The Chinese government has established several investment funds to support small and medium-sized enterprises (SMEs) and startups, such as the National Small and Medium-sized Enterprise Development Fund and the National Venture Capital Fund.

Innovation policies: China has implemented policies to promote innovation, including the "*Made in China 2025*"²⁷ initiative, which aims to upgrade China's manufacturing capabilities, and the "Internet Plus" action plan, which seeks to integrate the Internet with traditional industries.

Infrastructure development: China is investing heavily in infrastructure development, such as high-speed rail networks, highways, ports, and airports, which can help businesses transport goods and services more efficiently.

Foreign investment policies²⁸: China has relaxed restrictions on foreign investment in certain industries, such as telecommunications, internet services, and finance, which can help foreign businesses operate more easily in China. Overall, these policies and measures are aimed at creating a more business-friendly environment in China and are helping to support the country's economic growth and development.

AMERICA THE CAPITALIST COUNTRY HAS THE MOST FAVOURABLE LAWS FOR BUSINESS AROUND THE GLOBE

It is arguably easy to prove this, but the United States has the most favorable laws for business around the globe, as business-friendly policies can vary depending on the specific industry and sector. However, the United States is often considered to be a very business-friendly country for a variety of reasons.

²⁷ Wikipedia, <https://en.wikipedia.org/wiki/Made_in_China_2025> Accessed on 9th April 2023

²⁸ Santander, <<https://santandertrade.com/en/portal/establish-overseas/china/foreign-investment>> Accessed on 9th April 2023

Firstly, the United States has a relatively low *corporate tax rate*²⁹ compared to many other developed countries. As of 2021, the federal corporate tax rate in the US is 21%, which is lower than the rates in many other countries, such as *France (31%)*³⁰, *Germany (30%)*³¹, and *Japan (30%)*³².

Secondly, the US has a relatively deregulated business environment, which makes it easier for companies to operate without being subject to excessive regulations. The US has a relatively free market economy, which allows businesses to compete more freely and innovate more easily.

Thirdly, the US has a well-developed legal system that protects the rights of businesses and investors. The country's legal system is generally considered to be impartial and transparent, which makes it easier for companies to conduct business with confidence.

Finally, the US has a large and relatively stable economy, which provides many opportunities for businesses to grow and expand. The country also has a highly educated workforce, which can be a significant advantage for companies that require skilled workers.

Of course, there are also challenges and drawbacks to doing business in the US, such as high healthcare costs and an increasingly competitive global marketplace. However, overall, the United States is often considered to be a very business-friendly country with relatively favorable laws and policies for companies, it also has a complex legal and regulatory framework that can be challenging for businesses to navigate. In addition, tax rates and other economic factors can vary significantly between states within the U.S. There are other countries, such as Singapore, Hong Kong, and New Zealand that are often cited as having business-friendly environments with low taxes, streamlined regulations, and efficient government services. However, each country's approach to supporting businesses depends on a variety of factors, including their political, economic, and social conditions. Ultimately, the

²⁹ Corporate Tax rates of USA, <https://en.wikipedia.org/wiki/Corporate_tax_in_the_United_States> Accessed on 9th April 2023

³⁰ Corporate Tax rates of France, <https://en.wikipedia.org/wiki/Corporation_tax_in_France> Accessed on 9th April 2023

³¹ KPMG, Germany Company Profile-2021, <<https://kpmg.com/xx/en/home/insights/2018/06/european-tax-germany-country-profile.html>> Accessed on 9th April 2023

³² Deloitte, International Tax Japan Highlights 2020, <<https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-japanhighlights-2020.pdf?nc=1>> Accessed on 9th April 2023

most favorable laws for business will depend on a range of factors, including the type of business, its size and stage of development, and its industry.

EASE OF DOING BUSINESS IN INDIA? A BIG JOKE WHEN WE HAVE OVER 26,000 LAWS TO PUT A BUSINESSMAN BEHIND BARS

Imagine the challenging situation for entrepreneurs when they are at risk of being imprisoned. Although the central and state governments are making efforts to reduce regulations in doing business, a report from “**Teamlease RegTech and Observer Research Foundation (ORF)**”³³ called “Jailed for Doing Business” reveals that there are still over 26,000 clauses that could result in imprisonment for entrepreneurs. For instance, in Punjab, entrepreneurs are subject to 31 Acts, 1,427 compliances, and 1,273 imprisonment clauses. Other states are also in the race.

6.1. CLEAN THE TOILETS OR THE BOSS WILL BE JAILED³⁴!

The Factories Act of 1948, in sections 92 and 93, stipulates a maximum punishment of imprisonment for up to two years or a fine of Rs 1 lakh or both. Similarly, Section 94 of the Act allows for a punishment of imprisonment up to three years or a fine of up to Rs 2 lakh or both, *for failing to clean toilets*. Yes, you read that right! But do not worry our government has been very generous on other conditions Failure to whitewash and segregate washrooms for male and female employees can invite warnings but certainly not a Jail term!

In a similar manner, if an individual fails to provide monthly information about inward supplies in *GSTR-2*³⁵ forms under the Goods and Services Tax Act, 2017, they may face imprisonment ranging from one to five years, which is equivalent to the punishment for *committing an assault on a woman*³⁶ under Section 354 of the Indian Penal Code (IPC).

6.2. NEW CODES - BUT OLD RULES!

Regrettably, entrepreneurs are still not guaranteed freedom from imprisonment, even under the four new codes - the Wage Code, Social Security Code, Occupational Safety, Health and Working Conditions Code, and Industrial Relations Code. For instance, Section 54 (I) (b) of

³³ Gautam Chikermane and Rishi Agarwal, (Jailed for Doing Business in India), <<https://www.orfonline.org/jailed-for-doing-business/>> accessed on 9th April 2023

³⁴ Section 92 & 93 of The Factories Act of 1948

³⁵ Team Taxaj, < https://support.taxaj.com/portal/en/kb/articles/reconciliation-gstr-2a#2_Why_is_it_important_to_reconcile_under_GST> Accessed on 10th April 2023

³⁶ Section 354 of Indian Penal Code

the Code on Wages specifies that "an employer who has been convicted of an offense under clause (a) and is found guilty of a similar offense under this clause within five years from the date of the first or subsequent offense, can be punished with imprisonment for up to three months, or a fine up to one lakh rupees, or both."

While we are not against much-needed labor welfare reforms in the country, we should not compromise a conducive and thriving business environment for entrepreneurs, workers, and the government. Freedom from the 'Inspector Raj' is beneficial to the country's economy, which is a multi-stakeholder proposition. Presently, the total number of workers, including both organized and unorganized sectors, is over 50 crores. The multiplicity of labor laws has been consolidated into four codes. However, entrepreneurs are still at risk, and the double-edged swords always hang over them despite the assimilation of 44 central labor laws with over 1,200 sections into four new codes.

BUSINESSMEN HATE TO GROW AS MSME

India is fortunate to have around 6.4 crore Micro, Small, and Medium Enterprises (MSME³⁷) that provide employment to over 11 crore individuals. However, many entrepreneurs do not prefer to be classified under the MSME category because of the numerous compliances they must meet. The total number of interlinked compliances for central and state governments for small, medium, and large-sized entrepreneurs are 669, 3,109, and 5,796, respectively. Over 98% of entrepreneurs prefer to remain small by choice, as the moment they aim for growth and join the formal economy, they will have to comply with over 400 compliances annually. The primary challenge for small entrepreneurs is to deal with excessively restrictive regulations and multiple regulators. It is crucial to have a system in place to simplify the ease of doing business. However, the most significant obstacle is ensuring that small entrepreneurs can manage so many compliances. Therefore, entrepreneurs require new policies that provide minimum compliances where a procedural error is considered a 'civil wrong' rather than a crime.

CURE THAT IS URGENT

Some argue that a committee should be established within the *Law Commission of India*³⁸ to stop criminalizing compliance procedures. *NITI Aayog*³⁹, a federal think tank, is collaborating

³⁷ MSME, <https://msme.gov.in/> Accessed on 10th April 2023

³⁸ Law Commission of India, <<https://lawcommissionofindia.nic.in/>> Accessed on 10th April 2023

³⁹ Niti Aayog, <<https://niti.gov.in/>> Accessed on 10th April 2023

with states to improve the ease of doing business and ease of living for entrepreneurs. Here are four possible elements of the plan:

- Instead of criminalizing non-compliance, it should be treated as a procedural error and result in fines or temporary suspension of operations.
- Imprisonment should only be applicable for deliberate acts of environmental destruction, safety negligence towards workers, tax evasion, and loan defaults.
- Entrepreneurs should be required to submit a self-declaration regarding their compliance at the end of each financial year, which can be verified by the relevant authorities.
- All reforms should be consolidated under a single overarching legislation, which would give entrepreneurs and job creators more respect.
- Most important of all, People should see them as heroes! They're the ones who are earning and handing over to the government that gets spent on us in the form of infrastructure, subsidy, public servant's salary, etc. They deserve respect and dignity, above all!

