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ATMA NIRBHAR BHARAT

PROMOTION, PROTECTION & STANDARDIZATION

SAIRAM BHAT



Under the project *“Evaluating the Legal & Policy Framework on Promotion, Standardization and Protection of Indian Businesses: Towards Effective Implementation of the Atma Nirbhar Bharat Mission”* Granted by the Indian Council of Social Science Research, New Delhi, India

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ABSTRACT

The *Atma Nirbhar Bharat Abhiyan* (Self-Reliant India Campaign) was launched in 2020 through a clarion call raised by the Hon'ble Prime Minister of India Shri Narendra Modi during the COVID-19 Pandemic with the aim to make the “*country and its citizens independent and self-reliant in all senses*” and bolster the pandemic struck economy. It not only signaled India's renewed commitment and modern reiteration of its long standing and historical pursuit of self-reliance, but it also emerged as a strategic initiative to reshape India's economic, legal, and institutional apparatus to address the vulnerabilities associated with globalization that were exposed by disruptions in global supply chains during the pandemic. Structured around **five key pillars**: economy, infrastructure, system, demography, and demand, *Atma Nirbhar Bharat Abhiyan* not only encompasses government's vision for India to become more efficient, competitive, and resilient, while expanding its role in the global economy but also serves as an **umbrella concept** to initiate, introduce and pursue a host of policy measures and legal reforms across various sectors. It is important to highlight that *Atma Nirbharta* is not 'self-sufficiency' but 'self-reliance'. It does not imply disassociation from the world economy but rather a readiness to associate and willingness to participate even more. *Atma Nirbhar Bharat Abhiyan* recognizes global interconnectedness as exemplified by the celebrated Sanskrit phrase '*Vasudhaiva Kutumbakam*'. Thus far from advocating for economic isolation or protectionist autarky, ANB campaign is about upscaling growth of Indian industry, skill of its people and capability as a nation, to make the economy more resilient, less vulnerable to shocks and more integrated with global supply chains. To this end, the Government of India has undertaken an array of important decisions and reform measures such as pursuing Make in India in a dynamic and aggressive manner through Public Private Partnership (PPP) initiatives and reforms in laws and policies across several sectors.

However, despite several flagship schemes such as the Make in India initiative, Production-Linked Incentive (PLI) schemes, issues such as regulatory fragmentation, procedural delays, and enforcement challenges continue to impede India's industrial growth. One of the key issues is that flagship schemes such as the PLI scheme and Make in India initiative are currently not backed by legislation so as to provide consistency and clarity and also to make them binding in terms of long term strategy. Hence, realizing the vision of *Atma Nirbhar Bharat* will not only require a coherent, dynamic, facilitative and future-ready legal framework and removal of structural bottlenecks that permeates in areas critical to entrepreneurial activity, but will also require strengthening of schemes and programmes into legally binding instruments for boosting long term ease of doing business and investor confidence while at the same time carefully navigating through international trade law commitments. In this context, the present study was undertaken by the Centre for Environmental Law, Education, Research and Advocacy (CEERA), National Law School of India University (NLSIU), Bengaluru under the aegis of Indian Council of Social Science Research (ICSSR), to evaluate the existing legal and policy frameworks governing the promotion, protection, and standardization of Indian businesses.

The study was motivated by the need to critically evaluate whether India's legal framework can effectively support the aspirations of self-reliance in key domains such as: MSMEs and startups; intellectual property (IP); space, defence and energy sectors etc. Curated across five parts, the present publication provides a comprehensive roadmap for strengthening India's legal and policy foundation for self-reliance by focusing on promotion, protection, and standardization of Indian businesses. The present study highlights the imperative for legal clarity, regulatory efficiency and institutional strengthening that can facilitate the achievement of self-reliant vision.

EXECUTIVE SUMMARY

As the pandemic prompted structural changes, a significant moment occurred in May 2020, leading to a widespread recognition of the need for self-reliance across the country. This culminated in the launch of the Atmanirbhar Bharat Abhiyan, or Self-Reliance Scheme. This initiative was not about self-isolation or protectionism but was viewed as an endeavour to enhance national capabilities in multiple sectors. Importantly, the goal of becoming self-reliant is rooted in the profound philosophy of Vasudhaiva Kutumbakam, which means “The world is one family.”

Thus, the Atmanirbhar Bharat Abhiyan is not merely a prerogative for self-sufficiency; it posits Sustainable Development and represents the interests of the Global South. The Hon’ble Prime Minister announced the scheme on May 12, 2020, during the initial wave of the global Pandemic, which resulted in significant disruptions to supply chains. This initiative was reinforced by a substantial stimulus package of INR 20 lakh crores, approximately 306 billion dollars. The purpose of this package was to revitalise various industries adversely affected by the pandemic. It aimed to enhance domestic production, establishing a more cohesive supply chain free from further disruptions.

In the same light, during the pandemic, the need for self-sufficiency became evident in critical sectors like healthcare and pharmaceuticals. Since, historically, India has sought to reduce reliance on foreign healthcare infrastructure and has passed laws to restrict pharmaceutical patents to processes rather than products (Patents Act 1970). India has also engaged with international agreements like TRIPS to ensure accessible healthcare and support public health infrastructure. These initiatives made Indian generic medicines available, earning India the title of the “Pharmacy of the World.” This was highlighted during the COVID-19 pandemic, as Indian vaccines like Covishield and Covaxin played a key role in achieving self-reliance. These vaccines were extensively exported, supporting humanitarian efforts in developing countries. Vaccine Maitri resulted in over 16.2 crore doses sent to 96 countries. This illustrates India's commitment to self-reliance while promoting global assistance, especially during significant challenges.

Yet, this concept of Self-Reliance is not entirely novel; it is in fact deeply rooted in India's philosophical, ideological, political and social history. This intellectual lineage could be traced back to the philosophy of Autarky. However, Atmanirbhar Bharat Abhiyan distinguishes itself by pragmatically focusing on international trade rather than advocating for protectionist Autarky. The idea of Atmanirbhar Bharat Abhiyan resonated through the socio-political history of Indian Freedom struggles through movements like Swaraj, Swadeshi, Khadi Movement, and Sarvodaya. Furthermore, the modern tenets of Atmanirbhar Bharat strongly emphasise ambiguous and transformative economic initiatives. The scheme is primarily attributed to the five key pillars:

1. Economy,
2. Infrastructure,
3. System,
4. Demography, and
5. Demand

This represents more than just a small policy change; it is a significant transformation in domestic industrial growth and reduced reliance on foreign products. The effects of the Atmanirbhar Bharat Abhiyan in the Defence sector were evident during Operation Sindoor in May 2025, where the Indian Defence weaponry was used extensively, marking a military success and demonstrating India's military prowess on the global stage and making a mark for its indigenous developed equipment and systems. This concept of 'Aatmanirbharta', achieved widespread recognition, being named the "Oxford Hindi Word of the Year 2020", which gained traction both domestically and internationally, rallying a nationwide call to action.

This comprehensive research project "Evaluating the Legal & Policy Framework on Promotion, Standardization and Protection of Indian Businesses: Towards Effective Implementation of the Atma Nirbhar Bharat Mission" a publication stemming from a collaborative endeavour of the Centre for Environmental Law, Education, Research & Advocacy (CEERA) at the National Law School of India University, Bengaluru (NLSIU), and the Indian Council of Social Science Research (ICSSR). This project was initiated in response to global disruptions and the vulnerable reliance on external suppliers. Aatmanirbharta as a vision primarily fosters the idea of self-reliance by transforming hurdles and challenges into prospects

and fortifying indigenous and industrial research capabilities. This comprehensive work is fundamentally structured around a tripartite structure, as follows

- (a) **Promotion of Make in India,**
- (b) **Protection of Indian enterprises**
- (c) **The Standardisation of Indian products**

These three aspects serve as indispensable and cohesive vectors in realising India's ambition of self-reliance. The project focuses on the historical trajectory of self-reliance and facilitation for businesses by focusing on various aspects like investments, labour regulation, intellectual protection, contract negotiations and dispute resolution. The integration is derived from academic research and policy deliberations, and this publication critically analyses the existing legal frameworks and policy landscape. The core research by the CEERA team is structured across multiple chapters, including the theoretical and historical background of the initiative. The key findings and recommendations are summarized as follows:

Historical and Theoretical Basis for Atma Nirbhar Bharat

While we look at history, it is imperative to understand the origin of self-reliance through Swaraj and Swadeshi initiatives in the context of the freedom struggle; this concept is deeply rooted in India's philosophical, ideological, political, and social background. As a concept of economic development, the idea stems from the philosophical principle of Autarky, which is defined as a self-sufficient economy, i.e. the nation strives to produce the goods it needs. Still, this theory has been regarded as impractical in the 21st-century globalised world, as connectivity and interconnectedness are integral to international cooperation. Meanwhile, Atmanirbhar Bharat, while advocating for reduced foreign dependence and fostering domestic production and capacity, does not advocate for a protectionist autarky.

Additionally, movements such as Khilafat, Non-Cooperation, Sarvodaya, Khadi (the prohibition against self-rule), Bhoodan and Quit India each emphasised the importance of independence. Gandhi sought to decrease British economic power, making Swadeshi a crucial means of self-rule for the Non-Cooperation Movement. This movement was successful. The Sarvodaya Movement and the Khadi movement built upon these foundations: the former emphasised the importance of self-reliance and social welfare for all. At the same time, the latter promoted economic independence by promoting handmade cloth. These nationalist uprisings

emphasised self-reliance as a means of political liberation and an opportunity for economic and social progress. The ideals of Swaraj and Swadeshi were reinterpreted to promote nation-building after gaining independence. The Industrial Policy Resolution 1948 and the Five-Year Plans are key policy documents emphasising self-sufficiency.

Atma Nirbhar Bharat Abhiyan: Genesis, Strategic Vision, and Foundational Pillars

Atma Nirbhar Bharat Abhiyan (ANBA) was launched in May 2020. Its origin is significantly influenced by the economic disruptions caused by the first wave of the COVID-19 pandemic. On May 12, 2020, Prime Minister Narendra Modi issued a clear call to "convert the crisis into an opportunity" to increase the epidemic-process economy.

- The need for the initiative was further accentuated as the pandemic exposed nationalities to significant challenges arising from excessive reliance on international markets for basic national requirements. The launch was supported by a massive economic package of INR 2 million crore,. ANBA's ambitious and revolutionary economic endeavour aims to revive India's economy and accelerate its development path significantly. It seeks to strengthen homegrown sectors, lessen reliance on imports, and transform the country into an adaptable and self-sufficient economic powerhouse by stimulating economic growth.
- The campaign aims to achieve self-sufficiency in all sectors of the economy, from manufacturing to supply and even demand. Importantly, this vision is not one of separatism or protectionist autocrats. It is clearly stated that it is not advocating a self-centred system, but an inclusive international community based on cooperation and peace. It is a contemporary reminder of India's long-standing pursuit of self-reliance.
- The ANBA is viewed as more than simply an economic stimulus plan; it is a comprehensive plan that calls for multiple transformations. Its guiding principle is to transform the "disaster into opportunity" ("Aapada mein avsar") by encouraging a shift in perspective from one that is reliant on subsidies to one that is driven by incentives. The goal of promoting financial inclusion for all citizens and fostering their confidence through various programs is also expressly included in the vision. Referred to as the "Amrit Kaal," the ANBA philosophy aims to be the foundation and guiding light for India's development over the next 25 years, with an economic agenda focused on providing an array of prospects for the nation, providing a strong impetus to growth and job creation, and so strengthening macro-economic stability.

Legal and Regulatory Framework for Self-Reliance

A conducive legal system and regulatory framework is critical to facilitating a 'Self-Reliant India' or Atma Nirbhar Bharat. The aim is to understand how conducive the current legal system and regulatory framework are, identify challenges, and propose solutions to achieve this vision. Realizing the vision of Atma Nirbhar Bharat requires a multifaceted approach involving strategic policy design, legal reforms, targeted sectoral interventions, robust domestic capacity building, and effective stakeholder engagement. Elaborating on how policy design should be strategic to create a competitive and self-reliant economic ecosystem, the highlight several key aspects are :

- **Balancing Self-Reliance with Global Engagement:** The vision of Atma Nirbhar Bharat is not a return to import substitution or isolation. Instead, it aims to make India a larger and more significant aspect of the worldwide economy by revitalising local industries to create its own space within the global trade landscape. Strategic policy design entails balancing self-reliance with global engagement, pursuing a calibrated approach to reduce critical dependencies while maintaining global engagement. India's self-reliance is described as not advocating a self-centred system, but one concerned with the world's happiness, cooperation, and peace.
- **Focus on Key Pillars and Reforms:** The ANBA rests on five key pillars: Economy, Infrastructure, System, Vibrant Demography, and Demand. Strategic policy design involves meticulously pursuing these pillars. This includes introducing fiscal reforms, building new infrastructure, enhancing human resources, employing modern technology, and developing resilient supply chains. Specific measures involve supply chain reforms for agriculture, rational tax systems, simple and clear laws, capable human resources, and a strong financial system.
- **Enhancing Ease of Doing Business:** Strategic policy must focus on promoting and protecting Indian enterprises and improving the ease of doing business. This requires exploring laws, schemes, and policies concerning central business tenets like contract negotiation, investment, taxation, IP protection, labour regulation, and dispute resolution. Implementing reforms in both substantive and procedural laws is considered crucial for enhancing India's ranking in the 'Ease of Doing Business' index and fostering a conducive environment.

- **Promoting Domestic Manufacturing and Innovation:** A core aspect is boosting domestic manufacturing capabilities and reducing reliance on imports. Initiatives like 'Make in India' are central to this. Policy should foster entrepreneurship and encourage innovation through wise and strategic use of resources, creating a balanced ecosystem. Strategic policy should aim to position India as a global manufacturing hub and encourage innovation-led manufacturing.
- **Targeted Sectoral Interventions:** Self-reliance is proposed to be achieved in various sectors. Strategic policy design involves identifying and selecting regions and goods for local manufacturing growth. Strategic recommendations include indigenizing the defence sector, strengthening MSMEs and startups, and developing sectors like semiconductors, energy (especially renewable), and airport ground handling services.
- **Leveraging FDI as a Catalyst:** Strategic policy views Foreign Direct Investment (FDI) as a valuable path for resource governance and a potential catalyst for self-reliance. FDI can facilitate access to finance and technology, but clear guidelines and reforms are needed.
- **Ensuring Fair Competition:** A robust national competition law and dispute resolution regime is important for self-reliance. Effective and modern competition law is vital for economic efficiency, optimal resource allocation, and equitable outcomes. Strategic policy must ensure that the push for self-reliance does not stifle competition.
- **Addressing Legal and Regulatory Challenges:** Policy design must tackle challenges such as navigating international legal obligations (especially WTO rules), inefficient patent ecosystems, fragmented standardization frameworks, complexities in specific sectors like defence procurement, and the need for policy simplification. A strategic recommendation is to reform schemes like the Production-Linked Incentive (PLI) scheme to align with global trade frameworks.
- **Institutionalizing Cooperative Federalism:** Achieving self-reliance across key sectors requires coordinated and empowered engagement between the Centre and States. Strategic policy should institutionalize a formal model of cooperative federalism with legally backed mechanisms for Centre-State coordination in policy design, resource allocation, and implementation.

- **Developing a Robust Legal Framework:** Realizing the vision requires a coherent, dynamic, and future-ready legal framework that supports the promotion, protection, and growth of domestic businesses while navigating India's obligations under international law and commitment towards international cooperation. This includes enacting specific laws where needed, and strengthening laws governing entrepreneurship and businesses.
- **The promotion of Indian businesses**, particularly Micro, Small, and Medium Enterprises (MSMEs), is a critical component of the 'Self-Reliant India' or Atma Nirbhar Bharat vision.
- The **Make in India Initiative**, launched in 2014, is closely related to the aim of self-sufficiency. It is identified as **central to the vision of propelling India into a global manufacturing hub** by instilling confidence in India's capabilities among potential domestic and foreign investors and projecting India as a global design and manufacturing hub. This initiative aims to boost domestic output, reduce import dependency, and stimulate the development of export-oriented industries.
- However, Micro, Small, and Medium Enterprises (MSMEs) face significant challenges. One main problem is procuring finance, stemming from a lack of credit history, insufficient awareness of Government Schemes, and limited access to modern financial regulations. MSMEs encounter extrinsic bottlenecks and barriers in credit markets due to their lack of track record compared to large businesses, making it challenging to obtain loans.
- **Credit Guarantee Schemes (CGS)** are significant for mobilizing finance for MSMEs from various lending institutions, including banks and Non-Banking Financial Companies (NBFCs). Schemes such as the Credit Guarantee Scheme for Micro and Small Enterprises, aiming to provide collateral/third-party guarantee-free loans, and initiatives like the Emergency Credit Line Guarantee Scheme (ECLGS) and MSME Competitiveness – A Post-COVID Resilience and Recovery Programme (MCRRP) have been introduced. ECLGS provides a 100% guarantee cover to lenders on loans to eligible borrowers to mitigate the economic impact.
- Despite some regulatory advancements, schemes like the TReDS system have not been as effective as they should have been, and challenges to implementing schemes like ECLGS and MCRRP have mounted, impacting the interests of MSMEs.

To address these challenges and bolster the viability of MSMEs, several **recommendations** are made:

- (a) Launching **targeted financial literacy and digital empowerment campaigns**, especially in rural and semi-urban MSME clusters.
- (b) Encouraging the use of **digital financing tools** which could boost MSMEs' access to finance, increase productivity, and lower expenses.
- (c) Becoming part of the **global value chain** is crucial for MSMEs to remain competitive and advance technologically and digitally.
- (d) Simplifying compliance by developing platforms similar to Colombia's Unique Business Database (VUE) is suggested.
- (e) Implementing the recommendations of the Expert Committee on MSME can stimulate an enabling environment.

A persistent gap exists between scheme formulation and actual implementation at the grassroots level for Micro, Small, and Medium Enterprises (MSMEs). The core issues contributing to this gap include delayed payments, financial illiteracy, limited digital integration, liquidity constraints, fragmented regulatory support, and underutilization of factoring and Treds. In order to address the issue of delayed payments, and to ensure both timely payments and digital integration, proposed legislative changes recommend the introduction of a new section, 14A, into Chapter V of the Micro, Small and Medium Enterprises Development Act, 2006. This proposed section would impose a mandate that every buyer procuring goods or services exceeding five lakh rupees from a micro or small enterprise must ensure that the invoice is generated on a centralized digital platform, as notified by the Central Government. Non-disclosure of such invoices would incur a penalty and could potentially disqualify the buyer from participating in government procurement schemes.

Protection of Indian Enterprises and Addressing Trade Implications:

Another key research objective was to propose a plan to **protect Indian enterprises**. This focus stems from the broader vision of 'Self-Reliant India' or Atma Nirbhar Bharat, which seeks to empower the country and its citizens.

- India currently faces an apparent dilemma in its trade policy. On one hand, there is a need to boost domestic production and reduce reliance on imports, particularly highlighted during global disruptions like the pandemic and geopolitical events. On the other hand, India is bound by its **obligations under international trade law**, notably under WTO agreements. These obligations mandate non-discriminatory treatment for products based on their country of origin and generally discourage the erection of trade barriers that could isolate India or hinder trade agreements with other nations.
- Therefore, ensuring **WTO compliance in industrial schemes** is a recommended targeted measure to align the Atma Nirbhar Bharat vision with international trade obligations while promoting domestic industry. It is recommended that PLI Schemes should be restructured to remove mandatory or quantitative domestic content conditions.
- Consequently, a key challenge identified in the pursuit of Atma Nirbhar Bharat involves **striking the right balance between pursuing self-reliance and adhering to international legal obligations**, particularly concerning trade policies and potential inconsistencies with WTO principles.
- While deemed necessary post-COVID, India's push for self-sufficiency risks being perceived as protectionist if it does not align with non-discriminatory principles. Measures such as unilateral trade restrictions, unchecked subsidies, or opaque export controls could invite international disputes and harm India's global reputation.
- The **Production Linked Incentive (PLI) Schemes** are specifically examined through the lens of international trade law. The potential inconsistencies with WTO agreements such as the General Agreement on Tariffs and Trade (GATT) 1994 (specifically the National Treatment principle under Article III), the Agreement on Trade-Related Investment Measures (TRIMS) 1995 (Article 2), and the Agreement on Subsidies and Countervailing Measures (SCM) 1994 (Article 3).
- While PLI Schemes officially base eligibility for incentives on incremental sales of goods manufactured in India and may not explicitly mandate local content, a closer scrutiny of the scheme guidelines for different sectors suggests otherwise. The PLI schemes are suggested to **indirectly stipulate the use of domestic goods as a mandate for receiving incentives**.

- Examples include encouraging sourcing from domestic markets in the solar goods scheme, requiring a "plan for domestic value addition" in the electronic goods and white goods sector, and specifying domestic value addition percentages in the pharmaceutical sector. Such stipulations for incentives based on the extent or percentage of domestically sourced content could potentially contravene **Article III (5) of GATT**, which prohibits internal quantitative regulations requiring specified proportions of products to be supplied domestically.
- Furthermore, measures incentivizing businesses conditional upon sourcing local goods and services are considered "Trade Related Investment Measures" (TRIMs). PLI Schemes that make benefits conditional on meeting local content requirements **fall squarely within the ambit of a TRIM and are inconsistent with Article 2 of the TRIMS Agreement**.
- WTO decisions have clarified that a measure should not be explicitly categorized as an 'investment measure' to be scrutinized under TRIMS; any legislative measure conferring benefits contingent on meeting local content requirements contravenes Article 2. Establishing inconsistency with the National Treatment obligation under GATT can often make a separate analysis under TRIMS avoidable, as a measure inconsistent with GATT Article III is also inconsistent with TRIMS Article 2.
- Further, regarding subsidies, the SCM Agreement prohibits subsidies granted subject to the condition that domestic goods are used in place of imported goods. Overtly granting incentives conditional on the usage of domestic content over imported goods **attracts Article 3.1(b) of the SCM Agreement**. While mere production subsidies to local manufacturers might be acceptable, making them contingent on using domestic content instead of imports is likely to violate the SCM Agreement.
- Thus, the **revised model** should instead rely on performance-based criteria such as incremental sales, R&D expenditure, or employment generation. Local products may be recognised as a **preferential but non-mandatory scoring criterion** to rank beneficiaries, thus avoiding violating WTO rules. A dedicated WTO Compliance Review Committee under DPIIT is also suggested to vet future industrial policies for legal risks. India should also **proactively participate in WTO reform dialogues** to advocate for developing countries' interests.

Standardization of Indian Products

Another research aspect was proposing a plan to standardise Indian products. This is part of the broader goal to promote, protect, and standardise under the Atma Nirbhar Bharat initiative.

- A robust standardisation strategy is underscored as **essential for integrating Indian products into global value chains**. Standards are seen as vital for fostering technological advancement, industrial development, and societal well-being. They significantly enhance the competitiveness of domestic industries and support local manufacturing while ensuring access to international markets. Standardization has historically driven economies by ensuring greater productivity, minimizing wastage, promoting efficiency, and fostering competition and trade globally. Without clear quality benchmarks, many Indian industries face impediments to export and diminished competitiveness.
- The **Indian National Standardization Strategy (INSS)** is noted as facilitating this integration by fostering harmonization, interoperability, conformity assessment, and stakeholder engagement. The INSS is described as the backbone of India's efforts to become a global manufacturing hub under the Make in India initiative, providing a structured approach to developing a mature standards ecosystem that aligns India's framework with global technological, social, and economic developments. Its objectives include positioning standards as key drivers of economic activities, enhancing the competitiveness of Indian goods and services in global markets, adopting best practices, and aligning with national policies related to trade, industry, consumers, and the environment. The INSS emphasizes aligning India's standards with international norms as a strategic imperative for global credibility and marketability.
- The **Bureau of Indian Standards (BIS)**, India's designated National Standards Body, plays a central role in implementing the INSS and the **Standards National Action Plan (SNAP)**. BIS is responsible for harmonizing standard development, certification, and testing to ensure goods meet national and international standards. SNAP aims to synchronize national standardization activities with India's priorities, ensuring products meet and excel global standards.

The specific efforts and recommendations in relation to standardisation include:

- (a) BIS has developed SNAP to align national standardisation activities with India's technological, economic, and social priorities.
- (b) BIS extensively consulted with key stakeholders, including industry associations, government agencies, and academics, to develop SNAP. Regular engagement with stakeholders is planned.
- (c) BIS is expanding technology use and establishing online platforms. While the query mentions online platforms for public feedback on draft standards, it specifically suggests digitisation should be scaled through XML-based publishing of standards, public commenting portals, and e-consultation platforms, in turn leveraging technology to enhance standardisation.
- (d) SNAP includes a strategy to enhance India's involvement in international standardization organizations such as ISO and IEC, aiming to identify strategic sectors where India can contribute and lead initiatives.
- (e) BIS has prioritized sectors based on economic impact and growth potential for standard development, such as agriculture, automotive, healthcare, IT, and renewable energy.
- (f) Ensuring **WTO compliance in industrial schemes** is a recommended targeted measure.
- (g) Empowering BIS to coordinate all standard development organizations (SDOs) and establishing a National Standardization Council are suggested.
- (h) Mandating standardization cells in key ministries and industry associations should be provided legally.
- (i) Developing sector-specific incentives under schemes like PLI and SPECS is suggested to reward compliance with Indian and international standards.
- (j) Prioritizing capacity-building through training, R&D linkages, and collaboration with academic institutions is recommended.
- (k) Public procurement policy must mandate adherence to Indian standards and promote innovation-linked procurement, especially in defence and infrastructure.

Therefore, by fostering harmonization, interoperability, conformity assessment, and stakeholder engagement, the INSS aims to create a structured roadmap for integrating India's diverse industries into global value chains. Making standardisation **central to industrial policy**

can build a globally competitive quality infrastructure that fosters trust, efficiency, and market expansion. A robust and dynamic standardisation system, as envisioned by the INSS, is seen not only as a driver of India's economic growth but also as a way to establish the country as a leader in the global manufacturing sector.

Strengthening the Indian Patent System and IP Protection

Strengthening the Indian Patent System and Intellectual Property (IP) Protection is considered crucial for **unlocking innovation in the era of Atma Nirbhar Bharat**. The patent regime is seen as having a **critical role** in achieving the objectives of self-reliance by fostering innovation, rewarding creators, and attracting investment.

- Despite its importance, India **underperforms in patent applications filed and patents granted** compared to global peers. India **lags in processing time** compared to global best practices, with average disposal times extending to 51 months, although this is an improvement. Historically, the **share of resident filings has been low compared to non-resident filings**, though this trend has recently shifted, with **52.28% of patents filed by Indian applicants** according to a 2023 report.
- Efforts are actively being made to **rectify issues within the patent system**, including initiatives under **Atma Nirbhar Bharat**, by analyzing its symbiotic relationship with India's patent ecosystem. These efforts encompass reforms in the Patents Act and Rules, procedural upgrades at the Indian Patent Office, and various policy initiatives.
- Specific initiatives are also in place to support innovation and IP protection. For instance, the **Scheme for Facilitating Startups Intellectual Property Protection (SIPP)** provides **financial support to startups** for filing patents, trademarks, and designs, making the process more cost-effective. The National Intellectual Property Rights Policy 2016 also serves as a roadmap for the future of IPR in India, guiding legislative and procedural improvements.
- Therefore, to further strengthen the system and promote domestic innovation, particularly among smaller entities, recommendations include **fast-tracking patent approvals for MSMEs** to ensure processing and grant within a specified timeframe.
- Additionally, it is recommended that **preferences and incentives** should be provided to MSMEs and startups holding patents in government procurement processes, such as

tenders and Production Linked Incentive (PLI) schemes, to tangibly reward patent ownership and reinforce the economic value of innovation.

The Atma Nirbhar Bharat Abhiyan necessitates targeted reforms that address existing challenges across various key sectors of the Indian economy. Legal and policy reforms are critical to realising the vision of self-reliance. Therefore, the need for reforms and addressing challenges in the specific sectors are as follows:

- (a) Streamlining procurement and reducing import dependency in the **Defence Sector**: The **critical role of defence acquisition** in promoting Atma Nirbhar Bharat through indigenisation, innovation, and self-reliant defence manufacturing. Recent policy initiatives are discussed, including **Positive Indigenisation Lists, FDI reforms, offset obligations, and procedural simplifications** to boost domestic defence production. The **Defence Acquisition Procedure (DAP) 2020** aims for self-reliance where innovation and indigenisation are facilitated, providing impetus to MSMEs and startups. Initiatives like 'Make in India' and 'Strategic Partnership' are noted as part of the Atmanirbhar Bharat scheme in defence, promoting domestic manufacturing and encouraging increased indigenous content. However, challenges remain, including legal and structural gaps, persistent dependence on foreign imports, procedural complexities, lack of coordination, weak contractual protections, and inadequate export governance mechanisms hindering sustainable indigenisation. Issues with private sector involvement, offset fulfilment, and Inter-Governmental Agreements (IGAs) lacking uniform legal standards are also noted. The absence of a centralised legal cell within the Ministry of Defence is highlighted. To address these, it is strongly recommended to have a dedicated **legislative framework for defence procurement and exports**, akin to the Arms Export Control Act in the U.S. Such a law should govern contract terms, offset obligations, export promotion, private sector partnerships, and technology transfers. It is also recommended that a legal cell within the Ministry of Defence be instituted. The advent of a **new legal framework that consolidates all Atmanirbhar projects for the defence sector into one, with a dedicated committee to oversee its functioning**. Recommendations include revitalising private sector participation and emphasizing indigenous scientific knowledge ("know-why") through long-term R&D investments.

- (b) Regulating private participation and developing regulatory framework through national legislation in the **Space Sector**: The space sector is identified as a critical sector for Atma Nirbhar Bharat. This sector has an untapped potential in advancing the vision and discussing efforts to open it up for private investments, such as establishing the Indian National Space Promotion and Authorisation Centre (IN-SPACe) and New Space India Limited (NSIL). However, the critics point out the **absence of a dedicated national space law**. This lack of statutory backing creates legal uncertainty and deters investment.
- (c) Sustainable and inclusive governance in the **Ports Sector**: Ports are important for economic activities, employment, and tourism. critically analyzing the **new legislation**, the Major Ports Authorities Act, 2021. Concerns are raised that this Act could dilute and encroach on the powers of State governments regarding minor ports and enable privatization. Environmentalists are of the opinion that the **Major Port Authorities Act, 2021, is a draconian law** that would eliminate the source of livelihood of fishermen. It is also seen as potentially acting as a hurdle to tourism, toddy tappers, and other coastal residents. The article aims to critically analyze this new legislation and verify to what extent Atma Nirbhar Bharat schemes are brought to the public with special reference to ports. While the issues with the *new* Act and concerns about its impact on livelihoods, they do not explicitly describe the *current* legal regime as fragmented or failing to comprehensively address environmental protection and dispute resolution, though the critical analysis of the new law suggests potential issues in related areas.
- (d) Adopt an integrated policy and investment framework in the **Clean Energy Sector**: The transition towards clean energy is discussed within India's growing energy demand and the impetus provided by the Atma Nirbhar Bharat scheme towards green energy. Achieving energy ambitions requires a strong policy push and investment reform. However, several **regulatory and policy barriers need to be addressed**. These include a **lack of clarity in regulations, insufficient incentives for private investment**, inadequate support for decentralized energy solutions, financial distress among DISCOMs, and inadequate grid infrastructure. Addressing these underlying causes requires a comprehensive and integrated approach.
- (e) Targeted policy to build a resilient, innovation-driven semiconductor ecosystem: The semiconductor sector is crucial for achieving Aatmanirbhar Bharat and the foundation of

the digital economy. India has a strategic vision to enhance semiconductor manufacturing and position itself as a global hub, aiming to reduce import reliance and drive economic growth. Policies are being developed to address prevailing challenges and draw insights from successful manufacturing countries. Focusing on manufacturing chips for specific sectors like defence and automobile industries is suggested as potentially beneficial. Challenges include tensions in trade relationships affecting critical components and the need to balance self-sufficiency with global trade relationships. There is also a challenge regarding the low number of patents filed in India in Semiconductor Innovation compared to other countries. Policies facilitated by R&D, funding, infrastructure, and skill development are needed to promote innovation and address skill deficiencies.

This entire work on "Atma Nirbhar Bharat: Promotion, Protection & Standardization" examines the multifaceted initiative aimed at fostering a self-reliant India through focused legal and policy reforms across critical sectors. The core objective of this research was to propose a comprehensive plan and policy framework centred on the promotion, protection, and standardisation of Indian businesses and products, ultimately contributing to the achievement of the Atma Nirbhar Bharat vision.

Further, the cross-cutting challenges such as regulatory and policy barriers in the transition to clean energy, the need for a strategic vision and policies in the semiconductor sector, information asymmetry, and the imperative of human capital development are also highlighted as areas requiring focused attention. The concept of an 'Aatmanirbhar Index' is proposed as a tool to track progress towards self-sufficiency across sectors effectively.

Therefore, the journey towards a truly Atma Nirbhar Bharat is a complex and dynamic process that requires continuous legal and policy reforms. While significant steps have been taken to promote, protect, and standardize Indian businesses and products, addressing the identified challenges through a comprehensive, integrated, and adaptable approach is crucial for realizing the vision of self-reliance and contributing to India's prosperity and standing globally. The recommendations presented in this report aim to contribute to the literature and provide a roadmap for navigating the path forward.

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LIST OF ABBREVIATIONS

ABRY	:	Atma Nirbhar Bharat Rojgar Yojana
ADR	:	Alternate Dispute Resolution
ANB	:	Atma Nirbhar Bharat
ANBA	:	Atma Nirbhar Bharat Abhiyan
APIs	:	Active Pharmaceutical Ingredients
ARVs	:	Antiretrovirals
ASPIRE	:	A Scheme for Promotion of Innovation, Rural Industries and Entrepreneurship
ATAGS	:	Advanced Towed Artillery Gun System
BIS	:	Bureau of Indian Standards
BRICS	:	Brazil Russia India China South Africa
CAG	:	Comptroller and Auditor General of India
CAROTAR	:	Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020
CEERA	:	Centre for Environmental Law, Education, Research & Advocacy
CGS	:	Credit Guarantee Scheme
CGSSD	:	Credit Guarantee Scheme for Subordinate Debt
CIPAM	:	Cell for IPR Promotion and Management
CLCSS	:	Credit Linked Capital Subsidy for Technology Upgrading
DAP	:	Defence Acquisition Procedure
DIs	:	Drug Intermediates
DISCOM	:	Distribution Company
DOS	:	Department of Space
DPAP	:	Draught Prone Area Programme
DPIIT	:	Department for Promotion of Industry and Internal Trade
DPSU	:	Defence Public Sector Undertakings
DRDO	:	Defence Research and Development Organization
ECLGS	:	Emergency Credit Line Guarantee Scheme
EPFO	:	Employees' Provident Fund Organization
FDI	:	Foreign Direct Investment
FTAs	:	Free Trade Agreements
GATT	:	General Agreement on Tariffs and Trade
GDP	:	Gross Domestic Product
GHS	:	Ground Handling Services
GIFT City	:	Gujarat International Finance Tec-City
GII	:	Global Innovation Index
GST	:	Goods and Services Tax

HEIs	:	Higher Educational Institutions
HIV/AIDS	:	Human Immunodeficiency Virus / Acquired Immune Deficiency Syndrome
ICSSR	:	Indian Council of Social Science Research
IFSC	:	International Financial Services Centre
IGAs	:	Inter-Governmental Agreements
IIT	:	Indian Institute of Technology
IN-SPACE	:	Indian National Space Promotion and Authorization Center
INCOSPAR	:	Indian National Committee for Space Research
InPASS	:	India Patent Advanced Search System
INSS	:	Indian National Strategy for Standardization
IP	:	Intellectual Property
IPR	:	Intellectual Property Rights
IRDA	:	Insurance Regulatory and Development Authority
ISRO	:	Indian Space Research Organization
IT	:	Information Technology
KAPILA	:	Kalam Program for IP Literacy and Awareness
KSMs	:	Key Starting Materials
KVIC	:	Khadi and Village Industries Commission
LPG	:	Liberalization Privatization Globalization
MCRRP	:	MSME Competitiveness – A Post COVID Resilience and Recovery Programme
MEIS	:	Merchandise Exports from India Scheme
MFN	:	Most Favoured Nation
MLIs	:	Member Lending Institutions
MNP	:	Minimum Needs Programme
MSMED Act	:	The Micro, Small and Medium Enterprises Development Act, 2006
MSMEs	:	Micro, Small and Medium Enterprises
NBFC	:	Non-Banking Financial Company
NBFC P2P	:	Non-Banking Financial Company – Peer to Peer
NDCs	:	Nationally Determined Contributions
NDDDB	:	National Daily Development Board
NGE	:	Non-Government Entities
NIPAM	:	National Intellectual Property Awareness Mission
NIRF	:	National Institutional Ranking Framework
NLSIU	:	National Law School of India University
NSDC	:	National Skill Development Corporation (mentioned contextually)
NSIL	:	New Space India Limited
ODR	:	Online Dispute Resolution
PCI	:	Planning Commission of India
PCT	:	Patent Cooperation Treaty
PLI	:	Production Linked Incentive

PPE	:	Personal Protective Equipment
PPP	:	Public Private Partnership
QUAD	:	Quadrilateral Security Dialogue
R&D	:	Research and Development
RBI	:	Reserve Bank of India
RCEP	:	Regional Comprehensive Economic Partnership
RGNIIPM	:	Rajiv Gandhi National Institute for Intellectual Property Management
ROO	:	Rules of Origin
RTAs	:	Regional Trade Agreements
SARFAESI Act	:	Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act
SCM	:	Agreement on Subsidies and Countervailing Measures
SEBI	:	Securities and Exchange Board of India
SECI	:	Solar Energy Corporation of India
SIPP	:	Start-ups Intellectual Property Protection
SNAP	:	Standards National Action Plan
SPECS	:	Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors.
SPRIHA	:	Scheme for Pedagogy & Research in IPRs for Holistic Education & Academia
SVCs	:	Single Vendor Cases
TBT	:	Technical Barriers to Trade
TReDS	:	Trade Receivables Discounting System
TRIMS	:	Trade-Related Investment Measures
TRIPS	:	Trade-Related Aspects of Intellectual Property Rights
TWS	:	True Wireless Stereo
UID	:	Unique Identification Number
UN	:	United Nations
VGf	:	Viability Gap Funding
VUE	:	Unique Business Database
WIPO	:	World Intellectual Property Organization
WTO	:	World Trade Organization
ZED	:	Zero Defect Zero Effect

PART A

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

The Atma Nirbhar Bharat Abhiyaan launched in May 2020 envisions a self-reliant India,¹ with specific emphasis on the five pillars, namely, Economy, Infrastructure, System, Vibrant Demography and Demand. Several bold schemes and reforms have been launched by the Government in the sphere of business, finance, agriculture and banking to enable the citizens and businesses achieve this vision of independence and self-reliance. The vision of Atmanirbhar Bharat is not to return to import substitution or isolation but to make significant improvements to the country's economy by introducing fiscal reforms, building new infrastructure, enhancing human resources, employing modern technology, and developing resilient global supply chains.² Several measures in the form of supply chain reforms for agriculture, rational tax systems, simple and clear laws, capable human resource and strong financial system have already been introduced.

Another initiative of the Government closely related to this aim of self-sufficiency has been the Make in India Initiative launched in 2014 to instill confidence in India's capabilities amongst potential domestic and foreign investors³ to project India as a global design and manufacturing hub and to attract investments to 25 of its key industrial sectors. Many laws favouring the labours and land acquisition are being implemented so that it is easier for the foreign investors to start their business in India.⁴ Spearheaded by the Department for Promotion of Industry and Internal Trade⁵ (DPIIT), this Initiative has opened-up various sectors for Foreign Direct Investment (FDI) such as defence manufacturing, railways, space,

¹ *Overview: Atmanirbhar Bharat Abhiyaan*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited May 20, 2024).

² Vaishali Jain & Somvir Gill, *Atmanirbhar Bharat: India's Quest for Self-reliance in Post-COVID-19 World*, 14(2) JOURNAL OF POLITY AND SOCIETY 110 (2022).

³ *About Us*, MAKE IN INDIA, <https://www.makeinindia.com/about> (last visited May 20, 2024).

⁴ Yash Mehta & A. John Rajan, *Manufacturing Sectors in India: Outlook and Challenges*, 174 PROCEEDIA ENGINEERING 91 (2017).

⁵ DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE, USER MANUAL (GETTING STARTED WITH DPIIT) (2021), https://services.dpiit.gov.in/dipp/js/DPIIT_User_Manual_Applicant.pdf.

single brand retail, etc. To improve the ease of doing business, the regulatory policies have also been relaxed to facilitate more investments.

The present study conducted by CEERA-NLSIU aimed to explore the possibilities of tying in these two Governmental schemes of Atma Nirbhar Bharat and Make in India to boost indigenous businesses and enterprises. The specific emphasis of this research was to propose a Plan to Promote (Make in India), Protect (Indian enterprises) and Standardize (Indian products) and prepare a Policy on Promotion, Protection and Standardization of the Make in India Initiative towards the achievement of Atma Nirbhar Bharat. The research examined policy initiatives that were geared towards the promotion, protection and ease of doing business for local businesses and MSME's. To achieve the goal of self-reliance, through the Make in India initiative and to improve the ease of doing business, the research laid emphasis on exploring the laws, schemes and policies concerning six central tenets of business which are the *sine qua non* for the success of the Atma Nirbhar Bharat and the Make in India initiative. Accordingly, the research has laid stress on understanding the legal and policy ecosystem prevalent in the country in the five core areas of contract negotiation, investment, taxation, IP protection, labour regulation and dispute resolution.

1.2 OBJECTIVES OF THE STUDY

The present study had the following objectives:

- To understand how conducive the current legal system and regulatory framework is in facilitating a 'Self-Reliant India' / Atma Nirbhar Bharat.
- To identify the legal challenges to the vision of Atma Nirbhar Bharat and propose solutions to them.
- To draft a Policy on Promotion, Protection, and Standardization of Atma Nirbhar Bharat.

1.3 FOCUSED RESEARCH AREAS

1.3.1 Historical Evolution of Self-Reliance: Theory & Policies

The idea of making India self-reliant,⁶ is a concept having deep philosophical, ideological, political and historical roots. In its philosophical and ideological context, as a model of economic development, the idea of self-reliance stems from the philosophy of Autarky,⁷ the negation, unpopularity & rejection of this philosophy (in the wake of globalization & liberalization),⁸ and its subsequent reinterpretation in the contemporary economic breakdown.⁹ In its historical context in India, the notions of self-reliance, self-sufficiency, and indigenization can be traced to the 20th-century Swaraj and Swadeshi Movement.¹⁰ It was initially discussed by Dadabhai Naoroji in 1905¹¹ and gained prominence after the Partition of Bengal.¹²

Self-reliance was emphasized by Indian nationalists and freedom fighters who wished to end British colonial control. During its freedom struggle, India experienced a drive for political and economic self-reliance in ‘Swaraj’ and ‘Swadeshi’, respectively.¹³ One of the most important movements of the time, the *Swadeshi Movement*¹⁴ stressed self-reliance by rejecting foreign items and promoting local Indian industries and products. Post-Independence, the mixed economic models adopted by India also echoed the ideal of “self-reliance” in some form or other in the Industrial Policy Resolution of 1948, Five-Year Plans (1951 – 2014) and various other policy initiatives. India’s Green Revolution and White Revolution, set the path

⁶ Sanjeev Sanyal, *Self-Reliance is About resilience and Decentralisation, not Isolationism*, THE INDIAN EXPRESS (June 6, 2020), <https://indianexpress.com/article/opinion/columns/atmanirbhar-bharat-narendra-modi-covid-19-sanjeev-sanyal-6444642/>.

⁷ See Evgeny Torkanvoshiy, *In Defence of Autarky as a Modern Way of National Economic Development*, 9 INTERNATIONAL ECONOMIC INSIGHTS 157 (2019).

⁸ Dariusz Pienkowski & Wojciech Zbaraszewski, *Sustainable Energy Autarky and the Evolution of German Bioenergy Villages*, 11 SUSTAINABILITY 4996 (2019).

⁹ *Id.*

¹⁰ Nitin Rai, *Swadeshi, and Atma Nirbhar Bharat: Reinventing Nationalism*, LIVE HISTORY INDIA (Apr. 02, 2021).

¹¹ Manu Goswami, *From Swadeshi to Swaraj: Nation, Economy, Territory in Colonial South Asia, 1870 to 1907*, 40 COMPARATIVE STUDIES IN SOCIETY AND HISTORY 609 (1998).

¹² A.K. Biswas, *Paradox of Anti-Partition Agitation and Swadesh Movement in Bengal (1905)*, 23 SOCIAL SCIENTIST 38 (1995).

¹³ Jain & Gill, *supra* note 2.

¹⁴ Debosmita Paul, *Through the looking glass: An Analysis of Swadeshi Movement through the ‘indigenous’ Thakurmar Jhuli*, 59 INDIAN LITERATURE 153, (2015).

for India towards becoming self-reliant and a global leader in producing numerous agricultural goods such as milk and tea.¹⁵

Thus, it is pertinent to examine and analyses the historical and philosophical foundations of self-reliance. This includes *firstly*, the theory of autarky, its various facets, reasons for its negation, unpopularity and subsequent re-emergence especially in the context of neo-globalization and neo-liberalization. *Secondly*, it is also important to trace the evolution of 'self-reliance' in India from Swaraj and Swadeshi movements in the national independence movement till Independence. *Thirdly*, it is also imperative to canvass the various attempts made to achieve self-reliance from Independence till 2014 by analyzing the various schemes, and policies of the Government to achieve self-reliance.

1.3.2 Ease of Contract Negotiation

In a bid to promote local self-reliance under the Atma Nirbhar Bharat Abhiyan, relooking the public procurement norms and procedures is an imperative step. It aimed to make India self-reliant in terms of manufacturing goods and providing services at home using indigenous technologies in various sectors critical to our nation's development while also meeting global needs.¹⁶ Equally important is the need to revisit public procurement contracts and their clauses, which are key to scaling up of domestic sectors.

One such category of contractual clauses is the offset clause. Offset clauses can be vital tools in the development of strategic sectors of industry and for the creation of additional economic value in the procuring country.¹⁷ They facilitate the induction of technology and innovation, thereby giving impetus for domestic industries to enhance their capacities. Especially in core sectors such as defence, telecommunication, transportation and clean energy, offset clauses carry benefits ranging from technology transfer and collaborative information exchange to generation of jobs, labour training, and safeguarding the base exchange. In terms of enhancing the local industry base and making Indian self-reliant, offset clauses in public

¹⁵ Brijesh Kumar Tiwari, *Changing Scenario of Indian Economy: 1947-2020*, The Pioneer (Aug. 16, 2020), <https://www.dailypioneer.com/2020/sunday-edition/changing-scenario-of-indian-economy--1947-2020.html>.

¹⁶ Moushumi Das Gupta & Remya Nair, *Modi Announces Rs 20-lakh Crore Package to Revive Economy and a 'New Look' Lockdown 4*, The Print (May 12, 2020), <https://theprint.in/india/modi-announces-rs-20-lakh-crore-package-to-revive-economy-and-a-new-look-lockdown-4/420036/>.

¹⁷ INTERNATIONAL CHAMBER OF COMMERCE, *ICC-ECCO GUIDE TO INTERNATIONAL OFFSET CONTRACTS* (2019).

procurement contracts bear advantages which *inter alia* include allowing a system of limited reservation in certain categories of products or services for Indian vendors; developing the industrial base and increasing exports; encouraging and boosting indigenous content and providing long-term support to local businesses and manufacturers. In the long run, such clauses will enable major sectors to develop the expertise in terms of technology and R&D and become self-sufficient. The Ministry of Defence has come up with the Defence Offset Guidelines which provides leverage to the capital acquisitions in the development of defence in India.¹⁸

While offset clauses or offset contracts bring to the fore many added benefits, on the other hand, they present some inefficiencies that impede the negotiation of contracts as well as enforcement. Some of the challenges that pervade these clauses may include the following:

- The time taken in negotiating and formulating contracts dissuades parties from incorporating such clauses. As offset clauses or offset contracts typically vary in their terms and conditions, contracting parties invest a significant amount of time and resources in negotiating these clauses, which may prove cost-ineffective for the parties.
- As public procurement contracts typically involve the government as a party, contractual offsets pose certain regulatory risks such as corruption or money laundering. Particularly in the context of indirect offsets, gaps in the contractual clauses pave way for increased regulatory risks.
- Contractual offsets also face compliance risks. As offsets are structured along varying and unconventional monetary terms, they may lead to compliance challenges especially in terms of statutory financial reporting and audits.
- Overall, the unique nature of offset clauses, make them difficult to comply with and implement, despite the benefits they carry. Protracted negotiations, fear of non-compliance, lack of clarity in terms of the clauses lead to contractual delays.

In light of the objective of strengthening the ease of contract negotiation and the above-mentioned challenges, the research has delved into the role of offset clauses in public procurement contracts with specific reference to the following: **(i)** How can offset clauses be

¹⁸ Ministry of Defence, Defence Offset Guidelines (2020), <https://www.mod.gov.in/dod/sites/default/files/Offguid300720.pdf>.

framed/drafted to avoid ambiguities in compliance and contract enforcement? **(ii)** What strategies can be adopted to minimize the transaction costs in negotiating offset clauses? **(iii)** How can offset clauses be strictly enforced to avoid breach of contractual terms?

1.3.3 Ease of Investment

Prime Minister Narendra Modi outlined his vision of “Atma Nirbhar Bharat,” or “Self-Reliant India” in his inaugural address to India Global Week 2020 on July 9, saying that this idea “merges domestic production and consumption with global supply chains” without being “self-contained or closed to the world.” He went on to say that “the country needed to focus on ‘efficiency, equality, and resilience to enable self-sustaining and self-generating growth’.”¹⁹ Finance is the lifeline of every business. Businesses derive their finance from alternative sources of funding. The nature of business activity and the cost of capital required for each business determine the sources of funds. The industry comprising of Financial Institutions including Banks, Leading Business Houses, Private Equity, Venture Capitalists, Alternate Investment Funds, etc. (Hereinafter, Investor Entity) are the leading sources of funding that is approached to by businesses. The regulations applicable to each entity are diverse, and no two kinds of Investor Entity has a common set of regulatory policy, thereby creating a complex and ambiguous regulatory framework in India relating to Investment Frameworks.

The investment is the foremost and basic criteria for self-sufficiency and economic growth.²⁰ Credit Sector has seen a development with the introduction of Non-Banking Financial Company – Peer to Peer (NBFC P2P) entities, the promotion of which is seen to be on the rise, however, the regulatory challenge to the Credit Sector is still left to the interdependence on Government-led schemes such as the Emergency Credit Line Guarantee Scheme (ECLGS),²¹ whereas Private Participation in credit-line guarantees is still to see the dawn. The true effect of Atma Nirbhar Bharat, towards going Vocal for Local may be realised only by increased private participation in sectors that require a higher capital dependency.

¹⁹ Jagannath Panda, *Modi’s ‘Self-Reliant India’ has Key Foreign Policy Aspects*, ASIA TIMES (July 13, 2020), <https://asiatimes.com/2020/07/modis-self-reliant-india-has-key-foreign-policy-aspects/>.

²⁰ Dr. Sunita Pooniya, *Transformation of Indian Economy through Atamanirbhar Bharat*, 20 NEURO QUANTOLOGY 716 (2022).

²¹ Ministry of Micro, Small & Medium Enterprises, *Emergency Credit Line Guarantee Scheme*, PRESS INFORMATION BUREAU (Aug. 05, 2021), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1742684>.

Hence, it is imperative to focus on the various innovative policy measures that can be adopted in the Indian “Atma Nirbhar Bharat Schemes” that can allow for a unified robust framework for creation of pools of funds that allow for greater autonomy in governance, better accountability of actions, increased transparency and faster mobility of funds. In this regard, the Research has focused on the implementation strategy for Atma Nirbhar Bharat in light of the Principles of Non-Discrimination and National Treatment,²² obligations that India subscribed to under the World Trade Organization (WTO)²³ Regime. In this context the International Financial Services Centre in the GIFT City at Gandhinagar, Gujarat²⁴ established in 2015 have been studied to understand the manner in which it can pave way for increased funding opportunities for businesses. The research has also studied and analysed the various policies that pertain to the ease of funding for Credit Businesses across India with a prime focus on Financial Institutions and their regulation, while meting out India’s International Obligations. A step up in public spending and investment aimed at promoting welfare and raising the investment rate for the masses²⁵ will help strengthen the economy of a country. It will lead to growth and prosperity.

1.3.4 Ease of Labour Regulation

Under the Make in India’ initiative, the government has a target to achieve growth of 12-14% per annum in the manufacturing sector, create ten crore additional manufacturing jobs in the economy by 2022, and reform policies to expedite ‘ease of doing business.’ Despite these efforts, in post-pandemic India, the manufacturing sector continues to grapple with challenges. In 2020, the government announced the ‘Atma Nirbhar Bharat Abhiyan (or Self-reliant India Mission)’ to cope with the effects of the pandemic and abate the crippling economy with an economic stimulus of 20 lakh crores. It is necessary to understand how India can be ‘truly’ self-reliant, by highlighting the critical issues in the recently introduced Occupational Safety, Health and Working Conditions Code, 2020 to dissipate potential hurdles. Hence, the Atma Nirbhar Bharat Rojgar Yojana was launched with effect from 1st October 2020 as part of Atma Nirbhar Bharat package 3.0 to incentivize employers for creation of new employment along with social

²² Peter M. Gerhart & Michael S. Baron, *Understanding Treatment: The Participatory Vision of WTO*, 14 INDIANA INTERNATIONAL & COMPARATIVE LAW REVIEW 505 (2004).

²³ *Principles of the Trading System*, World Trade Organization, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited May 20, 2024).

²⁴ *About IFSCA*, <http://ifsc.gov.in/Pages/Contents/AboutIFSCA> (last visited May 20, 2024).

²⁵ *Credit Line Scheme*, *supra* note 21.

security benefits and restoration of loss of employment during Covid-19 pandemic.²⁶ Under ABRY benefits are provided to every establishment registered with EPFO and their new employees (earning wage less than Rs. 15,000/- per month) if the establishments take new employees on or after 1.10.2020 and up to 30th June 2021 or those who lost jobs between 01.03.2020 to 30.09.2020.²⁷ Approximately 71.8 Lakh employees are likely to get benefited during the scheme period.²⁸

Labor Law Reforms introduced in 2019 seeks to replace 29 existing labor laws with four Codes, namely, the Code on Wages, the Occupational Safety, Health and Working Conditions Code, Industrial Relations Code, and the Code on Social Security.²⁹ The primary objective of these Codes is to simplify and modernize labor regulation. Some of the challenges that are broadly similar across the codes are:

- Most labor laws apply to establishments over a specific size; these size-based thresholds may help firms reduce the compliance burden. However, one could argue that basic protections related to wages, social security,³⁰ and working conditions would still apply to all establishments.
- Establishments hiring 100 or more workers³¹ need government permission for closure, layoffs, or retrenchments. It has been argued that this has created an exit barrier for firms and affected their ability to adjust their workforce to production demands.
- The multiplicity of labor laws has resulted in distinct compliances, increasing the compliance burden on firms. On the other hand, the labor enforcement machinery has been ineffective because of poor enforcement, inadequate penalties, and the rent-seeking behavior of inspectors. These Codes remain in their nascent stage and merely touch the surface of these aspects.

²⁶ *Brief Note on ABRY*, MINISTRY OF LABOUR & EMPLOYMENT, <https://labour.gov.in/brief-note-abry> (last visited May 20, 2024).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Ministry of Labour & Employment, *New Labour Code*, PRESS INFORMATION BUREAU (Dec. 12, 2022), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1882845>.

³⁰ *General Overview*, MINISTRY OF LABOUR & EMPLOYMENT, <https://labour.gov.in/general-overview> (last visited May 20, 2024).

³¹ Ministry of Labour & Employment, *Union Labour Allays Apprehension About Labour Codes as Misfounded*, PRESS INFORMATION BUREAU (Sep. 28, 2020), <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1659736>.

- Labour compliances and economic considerations have resulted in increased use of contract labor. However, contract labor has been denied basic protections such as assured wages. These Codes fail to touch upon these critical issues.³²
- Several registered trade unions have no criteria to ‘recognize’ unions that can formally negotiate with employers. Additionally, the Industrial Relations Code, 2020³³ introduces a new form of short-term labor – fixed-term employment, which may not be ‘recognized’ as official unions.
- The Codes simplify labor laws to a large extent but fall short in some respects. Further, the Code on Social Security creates enabling provisions to notify schemes for ‘gig’ and ‘platform’ workers;³⁴ however, these definitions lack clarity.
- Lastly, the Codes leave several critical aspects concerning the applicability of social security schemes and health and safety standards to rule-making. The question of whether these should be determined by the legislature or be delegated to the government remains to be seen.

Government of India is promoting the Start-up ecosystem in the country to incentivize the entrepreneurs in setting up new start-up ventures³⁵ and thus developed the unified Web Portal 'Shram Suvidha', catering to four major organisations under its aegis: Office of Chief Labour Commissioner (Central); Directorate General of Mines Safety; Employees' Provident Fund Organization; and Employees' State Insurance Corporation.³⁶

Despite the many shortcomings, these ‘labor law reforms’ seek to improve and increase the ease of doing business in India. But, to realize this goal in practice, labor law reforms should be aligned towards easing labor regulations, improving working conditions, speedy settlement of labour disputes and fluid conduction of entrepreneurial ventures to attract more investments in labour intensive businesses in India towards attaining the larger goal of self-reliant India.

³² Marriene Bertand et al., *Contract Labour and Firm Growth in India* 6 (National Bureau of Economic Research, Working Paper 29151, 2021).

³³ The Industrial Relations Code, 2020.

³⁴ NITI AAYOG, INDIA'S BOOMING GIG AND PLATFORM ECONOMY: PERSPECTIVES AND RECOMMENDATIONS ON THE FUTURE OF WORK (2022), https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf.

³⁵ *Self Declaration by Startup*, SHRAM SUVIDHA, <https://shramsuvudha.gov.in/startUp.action> (last visited May 20, 2024).

³⁶ *Shram Suvidha Portal*, MINISTRY OF LABOUR & EMPLOYMENT, <https://labour.gov.in/shram-suvudha-portal> (last visited May 20, 2024).

1.3.5 Ease of IP Protection

One of the primary objectives of the ‘Make in India’ campaign (campaign) is to protect intellectual property of the country.³⁷ The campaign is based on ‘four pillars’ such as New Processes, New Infrastructure, New Sector and New Mindset.³⁸ These pillars are identified to boost entrepreneurship in India focusing not only on manufacturing but also on other sectors.³⁹ Under the New Infrastructure segment of this initiative the need to strengthening the existing infrastructure through fast paced registration system has been identified. Accordingly, India had started the process of upgrading the intellectual property rights (IPR) registration for inventions and innovations in the country. But the campaign was started in 2014, and the last Intellectual Property Rights Policy was made in 2016. Ideally the policy is to be reviewed by the government every five years, which makes 2021 the year to review the IPR policy⁴⁰ that was approved by the Union cabinet on May 12, 2016.

In this globalized world it is obvious how a country’s IP ecosystem affects the industries of the country and also the global Transnational Corporations⁴¹ who are looking to invest and operate here. These Transnational Corporations would ideally prefer a country that has a competent, fair and fast IPR ecosystem. India is a country that has a global image of being peace loving, trustworthy and cooperative developing country. True to its name many Transnational Corporations have invested in India post the Make in India Campaign and the 2016 IPR policy.⁴² The 2016 policy has made tremendous changes to the previously existing IPR regime in India. To start with the 2016 policy is more compliant with the WTOs Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),⁴³ the time to grant patents in India has been reduced from 6 years to 2 to 3 years, trademark registration

³⁷ *Major Initiatives*, PMINDIA, https://www.pmindia.gov.in/en/major_initiatives/make-in-india/ (last visited May 20, 2024).

³⁸ Ministry of Commerce & Industry, ‘*Make in India*’ Programme, PRESS INFORMATION BUREAU (Feb. 27, 2015), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=116091>.

³⁹ *Id.*

⁴⁰ PARLIAMENT OF INDIA, RAJYA SABHA, DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON COMMENCE, REP. NO. 106, REVIEW OF THE INTELLECTUAL PROPERTY RIGHTS REGIME IN INDIA (2021), https://files.lbr.cloud/public/2021-07/161_2021_7_15.pdf?VersionId=S01fCQEC5DzDqKNymsGgXal6YXmJbUwM.

⁴¹ *Case Study - Development in an Emerging Country - India - Edexcel*, BBC <https://www.bbc.co.uk/bitesize/guides/zc72frd/revision/4> (last visited May 20, 2024).

⁴² Ministry of Commerce & Industry, *Initiatives under ‘Make in India’ and ‘Startup’ Programme*, PRESS INFORMATION BUREAU (Jul 23, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1738170>.

⁴³ *TRIPS - Trade-Related Aspects of Intellectual Property Rights*, WORLD TRADE ORGANIZATION https://www.wto.org/english/tratop_e/trips_e/trips_e.htm (last visited May 20, 2024).

and examination is to be done in a span of one month, the 2019 amendment⁴⁴ to the policy fast-tracked the patent examination of women innovators thereby setting a precedent to the rest of the world. The process of digitizing IP processes and providing special incentives to MSMEs and start-ups under the policy was a pioneering move that has also quintupled the number of IP applications and tripled the number of IP grants in India.

However, domestic filing as compared to total patent application is still low in India. Industries in India still have issues in calculation of impact of IPRs to their businesses and in turn their profits. The concerns of international entities in term of scrutiny of examination of IP applications in India are also present; and despite the 2016 policy mainstream enterprises in India are hardly impressed by it and still prefer other jurisdictions and rely on foreign IPRs registrations. The National Institutional Ranking Framework⁴⁵ assigns a minute weightage to IP filings as it is currently based on 'Peer Perception' criteria instead of taking into consideration the IP granted per faculty. Despite the country being a preferred destination by global companies for IPR ecosystem and to harness local talent India's investment in R&D is still below 2% and private R&D investment⁴⁶ is no better making the local companies shy away from capitalizing the IPR ecosystems. Encouragement to large and small industries for delivering rich IP portfolios at a national platform is missing. The flair is in improving and encouraging the local industries with an improved IP ecosystem in meeting the full potential of the Make in India campaign and additionally promote the Indian enterprises achieve their global aspirations. The IP regime in India should be further strengthened to encourage brand building, easing trademark registrations for the startup market and make in India ventures, with special emphasis to the protection of indigenous products and processes. IP protection should also be enhanced for patent protection afforded to R&D generated in Indian institutions.

1.3.6 Ease of Dispute Resolution

The Make in India initiative should also enhance the trust and confidence of the stakeholders in the judicial system of the country. India is promoted as a hub of Alternate Dispute Resolution

⁴⁴ The Patents (Amendment) Rules, 2019.

⁴⁵ *Overview*, NATIONAL INSTITUTIONAL RANKING FRAMEWORK, <https://www.nirfindia.org/About> (last visited May 20, 2024).

⁴⁶ Swetha Murali, *Research and Development in India – An Overview*, INVEST INDIA (June 05, 2019), <https://www.investindia.gov.in/team-india-blogs/research-and-development-india-overview>.

(ADR), however, the issue of speedier resolution and enforcement could be a bottleneck that affects the economic growth of the country. The successful implementation of the ideas of “Atma Nirbhar Bharat” and “Make in India” will require a robust dispute resolution mechanism. The Make in India Program has led to an increase in international contracts entered by the parties which will require strengthening of contractual enforcement mechanism in India.

Information Technology (IT) has revolutionized dispute resolution as well. The impact of IT on legal system became evident during the COVID-19 pandemic with the court functioning shifting to online mode of hearings and adjudication. Before the pandemic, attempts were made to implement “Online Dispute Resolution⁴⁷” in the country. The pandemic has shown the effectiveness, feasibility and efficiency of the Online Dispute Resolution Mode (ODR).⁴⁸ To facilitate speedier resolution of disputes, the ODR Mode of dispute resolution is one area that requires a legislative backing. Despite the wide-ranging implications that dispute resolution has for the effective functioning of different businesses, several challenges persist which are as follows:

- Contract Enforcement⁴⁹ in India is very time consuming and costly as compared to other economies as evident from India’s poor performance in the contract enforcement parameter of the Ease of Doing Business Ranking.⁵⁰
- ODR mechanism⁵¹ lacks a proper legal framework. During the COVID-19 pandemic its usage increased out of necessity. Though the pandemic provided impetus for ODR, to facilitate its further growth a proper legal framework will be required.

⁴⁷ Nitia Aayog, *Niti Aayog Pushes for Online Dispute Resolution for Speedy Access to Justice*, PRESS INFORMATION BUREAU (Nov. 29, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1776202>.

⁴⁸ NITI AAYOG, *DESIGNING THE FUTURE OF DISPUTE RESOLUTION: THE ODR POLICY PLAN OF INDIA (2021)*, <https://www.niti.gov.in/sites/default/files/2021-11/odr-report-29-11-2021.pdf>.

⁴⁹ Ministry of Law and Justice, *Justice Department Launches “Enforcing Contracts Portal”*, PRESS INFORMATION BUREAU (June 29, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1731090>.

⁵⁰ *About Enforcing Contracts*, EASE OF DOING BUSINESS, <https://dashboard.doj.gov.in/eodb/> (last visited May 20, 2024).

⁵¹ *About Online Dispute Resolution (ODR) Mechanism*, NATIONAL INSTITUTE OF SECURITIES MARKETS, <https://www.nism.ac.in/online-dispute-resolution-odr-mechanism/> (last visited May 20, 2024).

- Pre-Institution Mediation⁵² often suffers due to the dis-interest of the parties in participating in the process.
- Digitization of judicial services through e-courts processes⁵³ and systems will also entail challenges to data security and data sovereignty of judicial records. This may create further challenges related to right to privacy for the stakeholders involved.

Hence, it is imperative to explore the various measures that should be incorporated to reduce the time and cost associated with dispute resolution in India, including strengthening the Pre-Institution Litigation Provisions⁵⁴. Equally important are the necessary reforms that can be taken to formalize the ODR Mechanism in India and to facilitate online mediation in commercial disputes.

1.4 RESEARCH WORK, SEMINARS, CONFERENCE, COMPETITIONS AND PAPER PRESENTATIONS UNDER THE PROJECT

1.4.1 Conducting Research on Identified Thematic Areas

CEERA-Team has conducted focused research on legal and policy aspects of Atma Nirbhar Bharat along the lines of identified focused areas. The research is consolidated and structured across 7 Chapters in Part A of the publication. The chapters are (i) Introduction; (ii) Theoretical and Historical Background of the Atma Nirbhar Bharat; (iii) Promotion of Indian Business – Schemes, Programmes, and Possibilities; (iv) Protection of Indian Businesses – International Trade Law Perspective and Practices; (v) Unlocking Innovation: Strengthening the Indian Patent System in the Era of Atma Nirbhar Bharat; (vi) Standardization for Indian Businesses: Strengthening the INSS for Make in India Initiative; and (vii) The Way Forward.

⁵² *Pre-Institution Mediation in Commercial Matters*, NATIONAL LEGAL SERVICES AUTHORITY, <https://nalsa.gov.in/services/mediation/pre-instituion-meditation-in-commercial-matters> (last visited May 20, 2024).

⁵³ *E- Courts – About Us*, ECOURTS SERVICES, https://ecourts.gov.in/ecourts_home/static/about-us.php (last visited May 20, 2024).

⁵⁴ Aparna Gaur & Aarushi Jain, *Pre-Institution Mediation under the Indian Commercial Courts Act: A Strategic Advantage*, IP WATCHDOG (May 04, 2019), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/NDA%20In%20The%20Media/News%20Articles/190506_A_Pre_Institution_Mediation_Under_the_Indian_Commercial_Courts_Act.pdf.

1.4.2 Organization of a Two-Day International Conference on Self-Reliance

A Two-Day International Conference on “**Self-Reliance in Trade and Development: Redefining the Contours of Law and Policy**” was organized by CEERA-NLSIU on 20-21 January 2023. During the Conference 7 domain experts were invited to present papers during the plenary session. The Domain experts included Prof. (Dr.) Sandeepa Bhat, Prof. (Dr.) Shaber Ali G, Prof. (Dr.) Ravindra Kumar Singh, Prof. (Dr.) Uday Shankar, Prof. (Dr.) Vijay Kumar Singh, (Dr.) Bishwa Kalyan Dash, Mr. Harsha N & Ms. Kajal Garg. Another invited contribution is from Mr. Vijay Tyagi & Mr. Gaurav Kumar, who although were not part of the Conference but have jointly contributed a research paper for of the project. The research papers of the six of the above mentioned experts have been incorporated in Part B of the present publication. Along with the domain experts the members of CEERA-Team also presented their respective research papers and received feedback on the research from the experts. The conference also witnessed 53 paper presentations from various research scholars, legal practitioners and students. Out of which 7 best papers have been finally selected for publication and have been incorporated along with CEERA-Team papers in Part C of the present publication.

1.4.3 Organization of Policy Hackathon 2023 Competition

The Policy Hackathon 2023 was a policy making competition launched under the Project. It aimed to provide a platform for policymakers, innovators, and other interested stakeholders to convene, address and tackle the challenges that the present Aatma Nirbhar Bharat scheme entails. The competition was launched in August 2023 and concluded on November 25, 2023. 17 teams across the country took part in the competition. Teams were given a problem statement based on which they required to design innovative policy solutions to counter subsisting issues followed by workshop and roundtable discussion. During the workshop and roundtable discussion the participants and academicians in the field deliberated on the problem, discussed possible policy measures and gave guidance to the participants on drafting a robust policy framework. Out of the policies submitted by the Participants, 9 (Nine) Policies were shortlisted and awards to best 3 (three) Policies were distributed. The best policies awards were received by (i) School of Law Christ (Deemed to be University), Bengaluru, (ii) National University of Study and Research in Law, Ranchi; and (iii) Narsee Monjee Institute of

Management Studies, School of Law, Bengaluru. The policies of these three institutions are appended in Part E of this publication.

1.4.4 Organization of Round Table Conference on Atma Nirbhar Bharat

A **Roundtable Conference on Atma Nirbhar Bharat** was organized by CEERA-NLSIU in association with ICSSR and the Department of Justice, Government of India on 5th October 2023. The Conference was organized in pursuance of the Policy Hackathon, 2023 and was attended by all teams of the Competition.

1.4.5 Research Paper Presentations and Publications

As part of the deliverables under the Project, Prof. (Dr.) Sairam Bhat, Mr. Rohith Kamath, Ms. Aparna Sojan, and Ms. Anuja Shah have attended Conferences, presented and published Research Papers. The paper presented and published are as follows:

- (i) Sairam Bhat, Rohith Kamath & Aparna S, *Rethinking Technical Barriers to Trade in Bilateral Trade Between India and China for Achieving Self-Reliance*. The paper was presented at the **National Seminar on Atmanirbhar Bharat: The Challenges Posed by the Economy of China** organized by Sangam University, Bhilwara under the aegis of ICSSR held on 3rd-4th May 2022.
- (ii) Sairam Bhat, Rohith Kamath & Anuja Shah, *Interphase of Credit Guarantee Schemes and MSMEs: Strengthening the Framework of Aatma Nirbhar Bharat*. The Paper was presented at the **Second International Conference on Building Social Entrepreneurship Ecosystem for a more Sustainable and Resilient Society** organized by Centre for Law and Society, Gujarat National Law University (GNLU) from 29th-30th July 2022.
- (iii) Sairam Bhat & Aparana S, *Start-ups for a Self-Reliant India*, published in *Startup India - Socio-Economic Opportunities and Challenges: A Legal Perspective* (a publication by Shri Dharamasthala Manjunatheshwara Law College Centre for Post Graduate Studies & Research in Law).
- (iv) Aparna S, *Evaluating India's Foreign Trade Policy vis-à-vis Aatma Nirbhar Bharat Abhiyan*, published in *8 Journal of Law & Public Policy* 81 (2022-23).

1.5 STRUCTURE OF THE PUBLICATION AND SUMMARY OF THE CHAPTERS

The present publication is divided into Five parts. Part A comprising of the core research work of the CEERA team spans across 7 chapters, including the present introductory chapter. The next chapter titled *Theoretical and Historical Background of the Atma Nirbhar Bharat Abhiyan*, presents a comprehensive and scholarly analysis of the philosophical, historical, and ideological underpinnings of the *Atma Nirbhar Bharat* Abhiyan. It situates *Atma Nirbhar Bharat* Abhiyan within the broader tradition of India's quest for self-reliance, tracing its intellectual lineage to the philosophy of autarky and India's historical movements such as Swadeshi, Sarvodaya, and Khadi. The chapter emphasizes that *Atma Nirbhar Bharat* Abhiyan, while advocating for reduced import dependency and enhanced domestic capacity, does not subscribe to protectionist autarky but rather aims at strategic autonomy within a globally interconnected economy. It explores the distinctions and parallels between autarky and ANB, underscoring ANB's pragmatic engagement with international trade. Further, the chapter critically examines India's historical journey toward self-reliance, from colonial resistance to post-independence economic planning. It highlights the evolution of national policies and economic models that culminated in the contemporary self-reliance initiative. Lastly, the chapter provides an overview of various pillars of *Atma Nirbhar Bharat* including its key challenges.

The third chapter titled *Promotion of Indian Businesses – Schemes, Programmes and Possibilities* provides a comprehensive overview of India's current legal and policy framework that seeks to promote Micro, Small and Medium Enterprises (MSMEs) which are the backbone of *Atma Nirbhar Bharat* vision. This chapter details out numerous schemes and regulatory initiatives that supports the MSME sector such as the Credit Guarantee Scheme, ASPIRE, MSME Sustainable ZED Certification, Khadi and Gramodyog Vikas Yojana, and others. It also reviews key enabling laws such as the MSME Development Act, 2006 and Factoring Regulation Act, 2011. The chapter critically assesses the effectiveness of schemes, identifies regulatory gaps and addresses operational inefficiencies such as delayed payments, limited financial literacy, and digital exclusion. It also draws upon comparative insights from jurisdictions such as the United States, Colombia, Malaysia, Mexico and Brazil. It emphasizes the importance of strengthening implementation mechanisms, enhancing financial inclusion, and fostering innovation and global integration to ensure the sustainable growth of MSMEs.

Chapter four, *Protection of Indian Businesses – International Trade Law Perspective*, critically examines the Atma Nirbhar Bharat Abhiyan and its flagship Production-Linked Incentive (PLI) Scheme from the standpoint of international trade law, especially in relation to India's obligation under WTO agreements such as the General Agreement on Tariffs and Trade (GATT), 1994, the Agreement on Subsidies and Countervailing Measures (SCM), 1994, and the Agreement on Trade-Related Investment Measures (TRIMS), 1995. This chapter highlights how policies incentivizing domestic production, especially those that directly or indirectly mandate local content requirements, may contravene WTO principles like the Most Favoured Nation (MFN) and National Treatment Obligations and their exceptions. Drawing parallels from a host of past WTO disputes concerning violations of these obligations the chapter concludes that while promoting domestic industries is legitimate, law, policy and scheme promoting Atma Nirbhar Bharat must be carefully crafted to avoid being labeled as protectionist, which could invite international legal challenges.

Chapter five, titled *Unlocking Innovation – Strengthening the Indian Patent System in the Era of Atma Nirbhar Bharat*, explores the critical and instrumental role of India's patent regime in realizing the objectives of Atma Nirbhar Bharat. It emphasizes the symbiotic relationship between innovation and self-reliance. By analyzing key reforms in the Patent regime in India, such as the amendments in the Patents Act and Rules (from 2016 to 2024), procedural upgrades in the Indian Patent Office, and policy initiatives such as the SIPP, KAPILA, and the National IPR Policy, the chapter illustrates how targeted support to start-ups, HEIs, and women entrepreneurs has increased patent filings, particularly from Indian residents. However, the chapter also highlights India's shortcomings in global rankings, citing low R&D spending, processing delays, limited enforcement, and underutilization of working patent provisions. The chapter concludes that to make India a global innovation leader, systemic and cultural shifts are essential in patent awareness, enforcement, academic incentives, and administrative capacity.

The sixth chapter, *Standardization for Indian Businesses: Strengthening the Indian National Standardization Strategy (INSS) for Make in India Initiative*, examines the critical role of standardization in promoting Indian businesses and supporting the Make in India initiative. It undertakes a detailed analysis of the Indian National Strategy for Standardization (INSS) and the Standards National Action Plan (SNAP). The chapter emphasizes how standardization can

enhance competitiveness, facilitate foreign direct investment (FDI), ensure product quality, and align domestic outputs with international benchmarks. Through sector-specific strategies and alignment with global practices, the Bureau of Indian Standards (BIS) can play a central role in transforming India's standardization ecosystem. The chapter also highlights how tools like offset clauses in defence procurement and public procurement innovation can support self-reliance. By fostering harmonization, interoperability, conformity assessment, and stakeholder engagement, the INSS can create a structured roadmap for integrating India's diverse industries into global value chains.

The seventh and last chapter of Part A is *The Way Forward*. It synthesizes the various recommendations contained in various chapters and research papers across all parts of the present publication and outlines a comprehensive legal and policy roadmap to achieve the vision of Atma Nirbhar Bharat. The chapter recommends targeted measures like fast-tracking patent approvals for MSMEs, enacting a national space law, restructuring defence procurement policies, declaring energy access a fundamental right, ensuring WTO compliance in industrial schemes, and strengthening the standardization ecosystem. It also calls for institutionalizing cooperative federalism through formal Centre-State coordination and creating mechanisms like a National Council for Self-Reliance to drive unified policy implementation and balanced regional development.

Part B comprises of 6 research papers contributed by invited scholars from prestigious institutions across India. The first research paper by Prof. (Dr.) Ravindra Kumar Singh titled, *Fostering Indigenisation vis-à-vis Defence Acquisition Policy of India: A Legal Perspective*, offers a comprehensive legal and policy-oriented evaluation of India's Defence Acquisition Procedure (DAP) 2020. Dr. Singh underscores the critical role of defence acquisition in promoting *Atma Nirbhar Bharat* through indigenisation, innovation, and self-reliant defence manufacturing. It highlights recent policy initiatives such as the Positive Indigenisation Lists, FDI reforms, offset obligations, and procedural simplifications aimed at boosting domestic defence production. The paper argues that while these measures represent significant progress, legal and structural gaps still inhibit full realisation of India's defence self-reliance goals.

The second paper by Prof. (Dr.) Vijay Kumar Singh on *Promoting Aatmanirbhar Bharat in International Trade for Fair Competition and Greater Good of the World* explores the interface between *Atma Nirbhar Bharat*, India's international trade commitments, and domestic

competition law, arguing for a balanced model of self-reliance that promotes fair competition without slipping into inefficient protectionism. Prof. Singh emphasizes that India's self-reliance must align with WTO principles, foster global competitiveness, and uphold the philosophy of *Vasudhaiva Kutumbakam*. The paper also highlights legal, policy, and structural reforms in trade, investment, dispute resolution, and competition law as essential levers for India to emerge as a responsible, competitive, and inclusive global economic actor.

The third paper by (Dr.) Saber Ali & (Dr.) Kim Couto titled *Norms Regulating and Controlling Port, Infrastructure and Tourism* explores the critical role of ports in India's trade, tourism, infrastructure, and employment generation within the framework of *Atma Nirbhar Bharat*. The authors in this paper reviews the historical development of Indian ports, evaluates their socio-economic relevance, and critiques existing legal frameworks – including the Major Port Authorities Act, 2021 and the draft Indian Ports Bill, 2022. The authors argue that the current legal regime remains fragmented and fails to address vital concerns like environmental protection, dispute resolution, and coastal community livelihoods, making a comprehensive and integrated ports law essential for sustainable and inclusive port development.

The next paper is by (Dr.) Bishwa Kallyan Dash on *Redefining Energy Rights Through Atma-Nirbhar Bharat Scheme: A Tool Boosting India's March Towards a Green Energy Nation* examines India's transition toward clean energy in the framework of *Atma Nirbhar Bharat*, arguing that access to energy must be treated as a fundamental right. The paper highlights the rapid shift from fossil fuels to renewable sources, government schemes promoting energy convergence, and legal recognition of the right to energy. Dr. Dash contends that India's green energy ambitions, particularly in solar, green hydrogen, and energy efficiency, require a strong policy push, investment reform, and a rights-based framework to ensure inclusive and sustainable development.

The fifth paper by Harsha N & Kajal Garg titled *Ground Handling Services at Indian Airports: A Challenge to the Atma Nirbhar Bharat Vision?*, evaluates the legal, policy, and institutional challenges surrounding ground handling services (GHS) at Indian airports in the context of *Atma Nirbhar Bharat*. The authors examine the regulatory framework under the Airports Authority of India (Ground Handling Services) Regulations, 2018, and the sector's dependence on foreign players. The authors question whether India's current GHS ecosystem, including FDI rules, labour regulations, and tender practices, truly supports self-reliance. The

authors call for reforms that balance national interest, service efficiency, and global competitiveness.

The sixth and last paper of Part B by Vijay Tyagi & Gaurav Kumar on *Role of Cooperative Federalism in India: A Catalyst for Achieving Atmanirbhar Bharat* explores how cooperative federalism in India should function as a foundational pillar in realizing the vision of *Atmanirbhar Bharat*. The authors argue that India's self-reliance goals across key sectors such as manufacturing, agriculture, infrastructure, and healthcare can only be achieved through coordinated and empowered engagement between the Centre and States. The authors highlight the need for decentralised decision-making, intergovernmental policy alignment, and shared infrastructure development to build a sustainable and inclusive framework for national self-sufficiency.

Part C of the present publication comprises of the research papers presented by CEERA Team members and other selected papers presented during the Two Day conference “**Self-Reliance in Trade and Development: Re-defining the Contours of Law and Policy**”. The first paper is by Ms. Anuja Shah & Mr. Kartik Kalra on *A Critical Appraisal of DAP 202: The Dilution and Resuscitation of India's Defence Offset Policy*. The authors in this paper critically examines the changes brought by the Defence Acquisition Procedure (DAP), 2020, particularly the removal of defence offset obligations in Single Vendor Cases (SVCs). The authors argue that this policy shift, often seen as a dilution, actually marks a rational recalibration of India's offset policy by aligning it with economic and market realities. By retaining offsets only in competitive tendering, the authors argue, DAP-2020 breathes new life into a mechanism long criticized for inefficiency, especially in negotiated contracts.

The second paper by Mr. Jaibatraka Mohanta titled *Analysing Indian Startups Through the Prism of Innovation and Investment: The Way Forward* critically examines the Indian startup ecosystem through the twin lenses of innovation and investment. It explores key institutional and regulatory bottlenecks that hinder scalability and sustainability of Indian startups. The paper also assesses the role of incubators, funding mechanisms, information asymmetries, and intellectual property rights, while drawing comparative lessons from international models like the U.S. SBIR program. The paper emphasizes the need for a supportive ecosystem that fosters collaboration, ensures funding access, protects IP, and commercializes knowledge to promote long-term startup success under the *Atma Nirbhar Bharat* framework.

The third paper *Foreign Direct Investment in Strategic Sectors for Governance of Sovereign Resources* by Ms. Gayathri Gireesh & Swati Mohapatra focuses on India's strategic sector regulation approaches and the significance of FDI in infrastructures and manufacturing under Make in India and programs such as PLI. *Firstly*, it overviews how FDI effects resource utilization; *secondly*, it showcases that FDI is relevant in dissemination of technology, and assessment and management of climate change, and, *thirdly*, FDI's role in data management. This way, the authors examine the positive role of FDI in terms of economic development, creation, and innovations essential for sustainable growth. On the policy front, the paper argues that policies should be well-defined to safeguard the nation's security as well as to support the MSMEs sector and to manage energy requirements.

The fourth paper by (Dr.) C Thilakanandan & Sreddha Gopakumar Krishan on *Export-oriented Eco-friendly Products of Hereditary Artisans and the Need to Promote their Craftsmanship*, underscores the significance of hereditary and traditional artisans in Indian society, noting their untapped potential for economic development despite existing governmental initiatives. It calls for focused efforts to integrate these artisans into mainstream economic activities through education, training, and financial support. Emphasizing the need for a dedicated Ministry for Artisan Affairs, the paper proposes a nationwide empirical study to address socio-economic disparities and enhance entrepreneurial skills among these communities. Ultimately, the authors argue for inclusive growth by empowering artisans to contribute effectively to India's socio-economic fabric.

The fifth paper by Mr. Prateek. A & Mr. Aadit Shah, titled *A Comparative Analysis of the Atmanirbhar Bharat Policy with WTO Policies in International Trade*, critically examines India's Atmanirbhar Bharat policy, focusing on its implementation challenges and its alignment with WTO principles in international trade. It identifies shortcomings in policy integration with global trade frameworks and proposes legislative and non-legislative enhancements to foster genuine economic self-reliance. By analysing the five tranches of the policy and contrasting them with international trade norms, the authors aim to offer strategic recommendations for optimizing India's self-sufficiency goals while navigating the complexities of global economic interdependence.

The sixth paper by Prof. (Dr.) D. Mukhopadhyay & Akhilesh Kumar on *FDI as a Catalyst of Self-Reliance: An Indian Perspective* elucidates the liberalization of FDI in India

in the nineties, particularly since the 1991-92 when FDI reformed. The paper examines how FDI has assisted India to transform from a developing to an emerging economy with significant forex reserves. Expanding on the self-reliance agenda encapsulated in FDI, the papers includes changes from the so-called Make in India program to post-Covid-19 economic strategies. The authors also focus upon obtaining the optimum level of FDI across various regions of India which requires balanced regional development and better business environments in India, though sometimes it faces several constraints including global recession and geo-political factors affecting on FDI.

The seventh paper titled *Indigenisation of Defence Sector towards Self-Reliant India: Role of Law and Trade* by M.K. Mrudula focuses on how laws play a key role in India's drive towards self-sufficiency in the defence industry by indigenizing it and adopting strategies based on international trade. Some of the present-day problems include continued dependence on foreign arms even though there is capacity to produce large amounts of defence equipment locally. According to the author the ways forward include having an effective national legislation system when it comes to purchasing, making sure we follow global best practices as well as creating a separate body which will be responsible for monitoring every stage of acquisition process.

The next paper by Ms. Sharon Singh, titled *Self-Reliance: The Cornerstone of Geopolitics and Geo-economics A Traverse through BRICS and QUAD*, examines the evolution of the Indian concept of self-reliance from its colonial roots to its contemporary relevance amid global economic shifts. It examines how globalization and geopolitical changes have affected India's economic policies, particularly liberalization after 1991. Amidst challenges such as the COVID-19 pandemic and global trade tensions, India is seeking strategic autonomy while navigating a multipolar world. The analysis underscores the interplay between geopolitics and geoeconomics in shaping India's path to self-sufficiency and highlights the need for a balanced approach amid global economic uncertainties.

The ninth paper by (Dr.) Preetha S & Kamalkshy Kylasanath on *Challenges to Atmanirbhar Bharat Abhiyan in the Defence Sector*, examines India's defense resilience amid historical challenges and contemporary policy changes. It analyzes the challenges faced by the Defense Research and Development Organization (DRDO) and the Defense Public Sector Sector (DPSU), emphasizing technological capabilities, foreign direct investment (FDI)

policies and the impact of arms export initiatives. The paper highlights the need to increase private sector activities, accelerate R&D activities and coordinate among stakeholders to strengthen India's defense manufacturing. Achieving independence remains crucial for India's strategic autonomy and national security amid geopolitical tensions such as the Russia-Ukraine conflict.

The tenth paper by and final paper of part B by Smruti Mohanty, titled *Indigenous Businesses in India and Conflicts with International Trade Law and Policy*, examines how global economic law relates to the challenges faced by local businesses in India, focusing on cultural rights and economic inequality in the context of globalization. It discusses international frameworks such as the UN Declaration on the Rights of Indigenous Peoples and criticizes the failure of current legal structures to protect indigenous knowledge and cultural heritage in trade agreements. Research supports inclusive policies that support local economic development and protect their rights during global economic integration, highlighting the need for international legal protection and fair-trade practices.

The next part, Part D, of the present publication comprises of four research papers presented and published by the CEERA-Team members in conferences and journals during the course of the research. The first paper by Prof. (Dr.) Sairam Bhat, Rohith Kamath & Aparna S, titled *Rethinking Technical Barriers to Trade in Bilateral Trade between India and China for Achieving Self-Reliance*, explores India's bilateral trade dynamics with China, highlighting the escalating trade deficit and its implications for India's self-reliance agenda under Atmanirbhar Bharat. It advocates for reevaluating Technical Barriers to Trade (TBT) to bolster domestic manufacturing, reduce import dependence, and mitigate economic vulnerabilities exacerbated by global disruptions. Emphasizing the need for strategic policy shifts amidst strained diplomatic ties, the authors propose leveraging WTO-compliant measures like TBTs to safeguard India's economic interests while fostering indigenous production capabilities and enhancing global competitiveness.

The second paper titled *Interphase of Credit Guarantee Scheme and MSMEs: Strengthening the Fraemwork of Atmanirbhar Bharat* by Prof. (Dr.) Sairam Bhat, Rohith Kamath & Anuja Shah, delve into the key role of Credit Guarantee Schemes (CGS) in empowering MSMEs under Atmanirbhar Bharat. The authors discuss the interplay between CGS, the SARFAESI Act and the challenges posed by the pandemic, emphasizing that CGS is more of a safeguard for

financial institutions than a loan waiver. They highlight schemes like ECLGS and MCRRP and underline the need for greater awareness and nuanced understanding among MSMEs. Their analysis urges a balanced approach to sustain MSME growth amid regulatory frameworks, ensuring economic resilience and financial stability in the Indian business environment.

The third paper by Prof. (Dr.) Sairam Bhat and Aparna S, titled *Startups for a Self-Reliant India*, analyses the role of startups in India's quest for self-reliance under the Aatmanirbhar Bharat Abhiyan. The authors examine the historical context of 'Vocal for Local' and assess how initiatives such as the Startup India Scheme contribute to the promotion of domestic entrepreneurship. This paper identifies challenges such as dependence on foreign funding and bureaucratic hurdles, advocating rational policies and cooperative federalism between the Center and the states to cultivate an enabling ecosystem for startups that is critical to achieving sustainable economic autonomy.

The fourth and last paper of Part D by Aparna S, titled *Evaluating India's Foreign Trade Policy vis-à-vis Atmanirbhar Bharat Abhiyan*, examines India's trade law policy through the lens of *Atma Nirbhar Bharat Abhiyan*. The paper focuses on building domestic manufacturing capabilities considering global disruptions such as the pandemic or geo-political tensions. The paper highlights how protectionist measures are required to be balanced against WTO commitments and trade agreements. It brings out very cogently the import dependence and, therefore, the strategic reforms, that need to be undertaken in policies like incentive schemes related to the production phase, so they remain oriented toward self-sufficiency with open trade for sustainable and important country growth for global integration out of which India's ambitions of being a manufacturing hub becomes also intertwined.

Part E of present publication comprises of 3 selected policies as the result of the Policy Hackathon 2023, a policy making competition organized by CEERA-NLSIU. The first policy titled *Aatmanirbhar Bharat's Digital Revolution: Semiconductors and Self Reliance* outlines India's strategic vision to enhance semiconductor manufacturing, crucial for achieving Aatmanirbhar Bharat goals. It underscores semiconductors' pivotal role across sectors and proposes measures to reduce import reliance while promoting domestic industry growth through incentives and regulatory support. Emphasizing fairness and global competitiveness, the policy integrates technological advancements and sectoral collaboration. Stakeholder consultations enrich its feasibility and strategic alignment with India's strengths. However, it acknowledges the

necessity of international collaboration in the hyper-globalized semiconductor industry for sustained innovation and development.

The second policy *Atma Nirbhar Bharat Abhiyan Policy Framework* aims to position India as a global semiconductor manufacturing hub under the Atmanirbhar Bharat initiative. By drawing comparative lessons from successful models like Taiwan and the United States, it advocates for a robust policy framework including financial incentives, regulatory reforms, and infrastructure development. Emphasis on R&D, skill development, and partnerships with international players underscores its strategy. By fostering innovation, ensuring environmental sustainability, and promoting collaborations, India seeks to achieve self-sufficiency in semiconductors, contributing to economic growth and technological advancement aligned with global standards.

Lastly, the third policy framework titled *Semi-conductor Policy: Making India Atmanirbhar in Technology & Allied Sectors* aims to bolster India's manufacturing sector, foster innovation, promote entrepreneurship, and uphold ethical corporate practices under the Atmanirbhar Bharat initiative. It emphasizes sustainability, environmental conservation, and economic growth across various sectors. Implementation strategies stress transparency, adaptability, and collaboration among government, corporations, nonprofits, and communities. By boosting local production, encouraging innovation, and reducing dependency on imports, India aims to enhance its economic resilience and global competitiveness. These efforts signify India's commitment to achieving self-sufficiency, creating jobs, and advancing technological capabilities in a socially responsible manner.

CHAPTER 2: THEORETICAL AND HISTORICAL BACKGROUND OF THE ATMA NIRBHAR BHARAT ABHIYAN

2.1 INTRODUCTION

Atma Nirbhart Bharat Abhiyan (ANBA) (Self-Reliant India Campaign) was initiated amidst the first wave of COVID-19 pandemic through a clarion call issued by the Hon'ble Prime Minister of India on May 12, 2020¹ to turn 'crisis into opportunity' in order to bolster the pandemic struck economy.² Since then, it has become a popular captivating catchphrase for many governmental activities and policy decision making. ANBA encapsulates Government of India's vision for economy and economic development and is used as an **umbrella concept** to initiate, introduce and pursue a host of policy measures that intend to promote efficiency, equity, competitiveness and resilience in the economy.³ Further, ANBA strives to transform India into a 'self-sustaining' and 'self-generating' economy.⁴ It is pertinent to note that ANBA does not aim to pursue protectionist, exclusionist, or isolationist policy measures but rather envisions a larger and more involved role for India in the world economy.⁵ The campaign was supported by a massive package of INR 20 Lakh Crores to stimulate various economic activities

¹ *Atmanirbhar Bharat Abhiyan: Self Reliant India*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited Oct. 04, 2023).

² Asit Ranjan Mishra, *Turn Crisis into an Opportunity: PM Modi to India Inc*, LIVE MINT (June 12, 2020), <https://www.livemint.com/news/india/turn-crisis-into-an-opportunity-pm-modi-to-india-inc-11591901676915.html>.

³ *Atmanirbhar Bharat not About Being Self-Contained, Closed: PM Modi*, THE QUINT (July 09, 2020), <https://www.thequint.com/news/india/pm-narendra-modi-address-india-global-week-economy-vaccine-covid-19>; See also *Atmanirbhar Bharat not Self-Containment: PM assures investors*, OUTLOOK INDIA (July 09, 2020).

⁴ *Id.*

⁵ Amit Chaturvedi, *'To Spur Growth': Nirmala Sitharaman on PM Modi's Atmanirbhar Bharat Abhiyan*, HINDUSTAN TIMES (May 13, 2020), <https://www.hindustantimes.com/india-news/to-spur-growth-nirmala-on-pm-modi-s-atmanirbhar-bharat-abhiyan/story-s71j5O0ZG21QY4qsTsUnTP.html>.

halted by the pandemic.⁶ The mission rests on five key pillars, namely – ‘Economy’, ‘Infrastructure’, ‘System’, ‘Vibrant Demography’ and ‘Demand’.⁷

Thus, ANBA is an ambitious transformative economic initiative launched by the Government of India and stands as a pivotal moment in the history of India’s economic development and quest for self-sufficiency. However, it is imperative to underscore that mission of making India *atmanirbhar* did not emerge in vacuum. Rather, the idea of making India self-reliant,⁸ is a concept having deep philosophical, ideological, political and historical roots. In its philosophical & ideological context, as a model of economic development, the idea of self-reliance stems from the philosophy of Autarky,⁹ the negation, unpopularity & rejection of this philosophy (in the wake of globalization & liberalization),¹⁰ and its subsequent re-interpretation in the contemporary economic breakdown.¹¹ In its historical context in India, the notions of self-reliance, self-sufficiency, and indigenization can be traced to the 20th century Swaraj and Swadeshi Movements.¹² The concept of self-reliance in these movements was first discussed by Dadabhai Naoroji in 1905¹³ and gained prominence after the Partition of Bengal.¹⁴

Later on the idea of self-reliance was emphasized and taken further by Indian nationalists and freedom fighters to end the British colonial control over Indian economy. The Swadeshi¹⁵ was of the most prominent movement of this time that advocated achieving self-reliance by rejecting foreign items and promoting local Indian industries and products. Other

⁶ *Atmanirbhar Bharat Abhiyan: Self Reliant India*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited Oct. 04, 2023).

⁷ Ashok Panigrahi, Vijay Joshi & Manish Pitke, *Vision of “Atma Nirbhar Bharat” Role and Significance of MSME*, 55 THE MANAGEMENT ACCOUNTANT 44 (Dec. 2020); See also *AatmaNirbharBharat Abhiyan*, <https://aatmanirbharbharat.mygov.in/> (last visited Oct. 04, 2023).

⁸ Sanjeev Sanyal, *Self-Reliance is About resilience and Decentralisation, not Isolationism*, THE INDIAN EXPRESS (June 06, 2020), <https://indianexpress.com/article/opinion/columns/atmanirbhar-bharat-narendra-modi-covid-19-sanjeev-sanyal-6444642/>.

⁹ See Evgeny Torkanvoshiy, *In Defence of Autarky as a Modern Way of National Economic Development*, 9 INTERNATIONAL ECONOMIC INSIGHTS 157 (2019).

¹⁰ Dariusz Pienkowski & Wojciech Zbaraszewski, *Sustainable Energy Autarky and the Evolution of German Bioenergy Villages*, 11 SUSTAINABILITY 4996 (2019).

¹¹ *Id.*

¹² Nitin Rai, *Swadeshi, and Atma Nirbhar Bharat: Reinventing Nationalism*, LIVE HISTORY INDIA (02 April 2021).

¹³ Manu Goswami, *From Swadeshi to Swaraj: Nation, Economy, Territory in Colonial South Asia, 1870 to 1907*, 40 COMPARATIVE STUDIES IN SOCIETY AND HISTORY 609, 609-638 (1998).

¹⁴ A.K. Biswas, *Paradox of Anti-Partition Agitation and Swadesh Movement in Bengal (1905)*, 23 SOCIAL SCIENTIST 38 (1995).

¹⁵ Debosmita Paul, *Through the Looking Glass: An Analysis of Swadeshi Movement through the ‘Indigenous’ Thakurmar Jhuli*, 59 INDIAN LITERATURE 153, (2015).

movements such as the *Khilafat* Movement, Non-Cooperation Movement, *Sarvodaya & Khadi* Movement, Bhoodan and Quit India Movements etc. also recognized the importance of achieving self-reliance. Post-Independence, India's economic development was marked by dichotomy and divergence between Nehruvian Model and Gandhian Ideals on the idea of self-reliance.¹⁶ Still, the Mixed economic models adopted by India echoed the ideal of "self-reliance" in some form or other in the Industrial Policy Resolution of 1948,¹⁷ Fiver Year Plans (1951-2014) and various other policy initiatives.¹⁸

Rooted in this rich philosophical and historical tradition, ANBA is an ambitious endeavour that seeks to further the mission of achieving self-reliance in India. This initiative seeks to transform the nation into a self-reliant and resilient economic powerhouse by bolstering domestic industries, reducing dependency on foreign imports, and stimulating economic growth. Hence, in order to understand the ANBA holistically it is imperative to undertake a comprehensive analysis of the philosophical foundations, the rich history of self-reliance during the independence movement and the various schemes, funds and policies that have paved the way for ANBA.

The present chapter is structured as follows: Firstly, it examines and analysis the ideas of autarky, its various facets, its pros and cons, and the similarity and differences between Autarky and ANBA. Secondly, the chapter traces the evolution and emphasis on 'self-reliance' during the pre-independence era nationalist movements. Thirdly, it canvasses the attempts made to achieve self-reliance from Independence till 2014 by discussing the various schemes, funds, policies and initiatives of Government of India. Fourthly, it elucidates the objectives, and components of ANBA and the various sectors in which self-reliance is sought to be achieved.

¹⁶ See generally Sugata Bose, *A History of the Indian Economy in Asian and Global Contexts, 1810s-2010s*, in TAKASHI SHIRAISHI & TETUSHI SONOBE (EDS), *EMERGING STATES AND ECONOMICS: THEIR ORIGINS, DRIVERS, AND CHALLENGES AHEAD (EMERGING-ECONOMY STATE AND INTERNATIONAL POLICY STUDIES)* 139 (2019); Chanchal Kumar Sharma, *Rise and Demise of Nehruvian Consensus: A Historical Review*, 15(1) *SOUTH ASIAN JOURNAL FOR SOCIO-POLITICAL STUDIES* 16 (2014); Laveesh Bhandari, *Individualist Gandhi versus Statist Nehru*, *LIVE MINT* (Dec 09, 2016), <https://www.livemint.com/Opinion/fH0FLdalb1YQnzFE3kzCEL/Individualist-Gandhi-versus-statist-Nehru.html>; Niranjana Rajadhyaksha, *The Economics of Jawaharlal Nehru*, *LIVE MINT* (May 29, 2014), <https://www.livemint.com/Opinion/TMk7svMznR8sJHayMAXW1M/The-economics-of-Jawaharlal-Nehru.html>.

¹⁷ See generally H T Parekh, *Industrial Policy and Employment*, *THE ECONOMIC WEEKLY* (Oct 26, 1954), https://www.epw.in/system/files/pdf/1954_6/43-44/industrial_policy_and_employment.pdf; Sanjaya Baru, *Self-Reliance to Dependence in Indian Economic Development*, 11(11) *SOCIAL SCIENTIST* 34 (1983).

¹⁸ Such as Green Revolution, White Revolution, Indian Space Program (through ISRO), Pharmaceutical Sector initiatives under the Patents Act, 1970, National Solar Mission etc.

Lastly, the chapter outlines some of the issues and challenges that must be addressed in order to achieve the goals of self-reliance in India and make ANBA a successful endeavour.

2.2 PHILOSOPHICAL AND IDEOLOGICAL FOUNDATION OF SELF-RELIANCE: AUTARKY

To understand ANBA holistically, it is essential to delve into the philosophical and ideological foundations of Self-Reliance & Self-Sufficiency.¹⁹ Hence, it is essential to explore and elucidate the concept of **Autarky** – a state of economic self-sufficiency²⁰ – and understand how Autarky and Atma Nirbhar Bharat intersect and diverge in the context of India’s economic goals. This section of the chapter focuses on the concept of autarky, some of its historical examples, its key principles, Pros and Cons of Autarky and the concept of limited autarky, and the similarities and difference between autarky and Atma Nirbhar Bharat.

2.2.1 Elucidating Autarky with Few Historical & Contemporary Examples

Autarky is a concept in economic and political theory that refers to a state of economic self-sufficiency,²¹ where a nation or entity pursues policies that strives to produce all the goods and services it needs without relying on external sources or international trade,²² or with very little reliance on external sources.²³ Etymologically, the term “autarky” has its roots in the Greek work “**autárkēs**” meaning self-sufficient.²⁴ As a concept, autarky stands in complete contrast to the theory of free trade,²⁵ based on liberal economic systems, which encourage the free flow of goods and services.²⁶ Further, it is imperative to underscore that “**autarky**” **should not be**

¹⁹ See Eric Helleiner, *The Return of National Self-Sufficiency? Excavating Autarkic Thought in a De-Globalizing Era*, 23(3) INTERNATIONAL STUDIES REVIEW 933 (2021).

²⁰ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/autarky> (last visited Oct. 06, 2023);

²¹ See David Evans, *Autarky*, in *The New Palgrave Dictionary of Economics* (1987).

²² See generally Jennifer Clapp, *Food Self-Sufficiency: Making Sense of It, and When It Makes Sense*, 66 FOOD POLICY 88 (2017); CFI Team, *Autarky: The Independent Operation of a Country*, Corporate Finance Institute (Nov. 17, 2019), <https://corporatefinanceinstitute.com/resources/economics/autarky/> (updated Jan. 19, 2023);

²³ Alternatively, autarky has been defined as “an economic policy that aims at reducing the dependency on imports to a very low level” and Self-sufficiency has been defined as “a very limited dependence on imports and is the result of autarkic economic policies”. See Heribert Dieter & Johanna Biedermann, *The New Advocacy for Autarky: Self-Sufficiency is Now Once Again Becoming Popular for Geopolitical Reasons*, 19(2) DE GRUYTER ECONST VOICE 125 (2022).

²⁴ *Autarky*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/autarky> (last visited Oct. 06, 2023).

²⁵ Jeffrey A. Tucker, *The Economics of Autarky*, American Institute of Economic Research (Sept. 11, 2018), <https://www.aier.org/article/the-economics-of-autarky/>.

²⁶ Peter Bondarenko, *Autarky*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/money/autarky> (last visited Oct. 7, 2023).

confused with “autarchy”, the former is an economic model, while the latter is an entirely separate political concept.²⁷

While the idea of self-sufficiency has been pursued by various societies throughout history,²⁸ ancient Sparta is often cited as an introductory example and model of a society that pursued autarky.²⁹ The Spartans aimed to be self-sufficiency in agriculture³⁰ and discouraged trade,³¹ believing that economic independence would make their city-state resilient in times of conflict.³² It was a state where politics took precedence over economics.³³ In fact, trade was considered as a threat to social mobility.³⁴ There was a strict regulation on commerce and it was left in the hands of ‘minor people’ who posed no political threat or ambition.³⁵ Further, Spartans pursued a custom of *xenelasia* (expulsion of aliens)³⁶ due to which Sparta as a society did not depend on ‘foreign trade’, and it used to live on the produce of conquered territories.³⁷ “Nobody might come there with merchandise or any manufactured goods”.³⁸ And hence, overseas trade in ancient Sparta remain relatively insignificant.³⁹

²⁷ See Mary McMahon, *In Economics, What is Autarky*, SMART CAPITAL MIND (Aug 29, 2023), https://www.smartcapitalmind.com/in-economics-what-is-autarky.htm?expand_article=1.

²⁸ See generally V. Velikrossov et al., *Transformation of the Economic Model of Development of the Russian Federation and Autarky in the History of the Ancient World*, 2023 (1) APPLIED ECONOMIC RESEARCH 101; Rodolfo G. Campos et al., *Autarky in Franco’s Spain: The Costs of a closed Economy*, 76(4) THE ECONOMIC HISTORY REVIEW 1259 (2023) (discussing autarky in Spain); Caglar Kurc, *Between Defence Autarky and Dependency: The Dynamics of Turkish Defence Industrialization*, 17(3) DEFENCE STUDIES 260 (2017) (discussing autarky in Turkish defence sector).

²⁹ See V. Velikrossov et al., *Transformation of the Economic Model of Development of the Russian Federation and Autarky in the History of the Ancient World*, 2023 (1) APPLIED ECONOMIC RESEARCH 101; George E. Halkos et al., *Tracing the Optimal Level of Political and Social Change under Risks and Uncertainties Some Lessons from Ancient Sparta & Athens*, 15(9) JOURNAL OF RISKS AND FINANCIAL MANAGEMENT 416 (2022); Thomas F. Scanlon, *Echoes of Herodotus in Thucydides: Self Sufficiency, Administration, and Law*, HIROTIA: ZEITSCHRIFT FUR ALTE GESCHICHTE 143 (1994); A.J. Festugiere, *Autarky and Community in Ancient Greece*, in FREEDOM AND CIVILIZATION AMONG THE GREEKS (1947).

³⁰ Agriculture was carried out by *Helots* (subjugated people); See MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³¹ Or any sort of economic activity. They emphasized military. See MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³² MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³³ Alvin H. Bernstein, *Soviet Defence Spending: The Spartan Analogy* (1989).

³⁴ MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³⁵ MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³⁶ Thomas J. Figueira, *Xenelasia and Social Control in Classical Sparta*, 53(1) CLASSICAL QUARTERLY 44 (2003).

³⁷ MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³⁸ MARIA BROUWER, GOVERNANCE AND INNOVATION: A HISTORICAL VIEW 166 (2008).

³⁹ Alvin H. Bernstein, *Soviet Defence Spending: The Spartan Analogy* (1989).

Such extremely closed societies are relatively rare in the modern world. However, Albania under Enver Hoxha,⁴⁰ Francoist Spain,⁴¹ have pursued extreme autarkic policies in the 20th Century. Under the leadership of Enver Hoxha, Albania (after 1972) pursued a policy of extreme autarky during the mid-20th century. The country isolated itself from the rest of the world and implemented the strategy of “socialist construction based on the principle of self-reliance”.⁴² The measures taken in pursuit of this strategy included: (i) banning the government from taking loans or credit from a capitalist source; (ii) increasing export of oil, chromite, copper & electric power (Albania’s major source of hard currency income); (iii) decreasing dependence on food imports by mandating each district to become self-sufficient in food production; etc.⁴³ Similarly, Spain under Francisco Franco also pursued a variety of economic policies that hindered international trade and established a closed autarkic economy.⁴⁴ General Franco in 1938 proclaimed: “*Spain is a privileged country which can be completely self-reliant. We have everything necessary to live and our production is sufficiently abundant to ensure our subsistence. We have no need to import anything.*”⁴⁵ The policies made during 1939-1959 had an explicit objective of attaining a self-sufficient economy, and international trade was subjected to strict barriers such as quotas, licensing, bans, permits, and prior import authorization requirements.⁴⁶ However, such extreme policies proved counterproductive and unsuccessful and ultimately lead to economic stagnation and isolation of both the countries.⁴⁷

In contemporary times, North Korea stands out as a prime example of countries that has been described as a “near autarky”.⁴⁸ The country pursues an extreme rigid ideology of

⁴⁰ See Berit Backer, *Self-Reliance under Socialism: The Case of Albania*, 19(4) JOURNAL OF PEACE RESEARCH 355 (1982); *Isolation and Autarky*, in RAYMOND ZICKEL & WALTER R. IWASKIW (EDS.), ALBANIA: A COUNTRY STUDY (1994).

⁴¹ See Rodolfo G. Campos et al., *Autarky in Franco’s Spain: The Costs of a closed Economy*, 76(4) THE ECONOMIC HISTORY REVIEW 1259 (2023) (discussing autarky in Spain);

⁴² *Isolation and Autarky*, in RAYMOND ZICKEL & WALTER R. IWASKIW (EDS.), ALBANIA: A COUNTRY STUDY (1994); See also Dorianna Matraku Dervishi & Marianne Johnson, *Isolation in Albanian Economic Thought*, in 38B RESEARCH IN THE HISTORY OF ECONOMIC THOUGHT AND METHODOLOGY: INCLUDING A SYMPOSIUM OF ECONOMISTS AND AUTHORITARIAN REGIMES IN THE 20TH CENTURY 111 (2020).

⁴³ *Isolation and Autarky*, in RAYMOND ZICKEL & WALTER R. IWASKIW (EDS.), ALBANIA: A COUNTRY STUDY (1994).

⁴⁴ Rodolfo G. Campos et al., *Autarky in Franco’s Spain: The Costs of a closed Economy*, 76(4) THE ECONOMIC HISTORY REVIEW 1259 (2023).

⁴⁵ Carlos Barciela, *The Disasters of Leviathan: The Economic Crisis of Autarky in Spain (1939-1959)*, 3 THE JOURNAL OF EUROPEAN ECONOMIC HISTORY 175, 185 (2015).

⁴⁶ Rodolfo G. Campos et al., *Thick Borders in Franco’s Spain: The Costs of a Closed Economy* (Branco De Espana, Working Paper 2209, 2022).

⁴⁷ *Isolation and Autarky*, in RAYMOND ZICKEL & WALTER R. IWASKIW (EDS.), ALBANIA: A COUNTRY STUDY (1994).

⁴⁸ See Mi Young Ho, *Implications of Near-Autarky for North Korean Economy*, 28(2) Journal of Economic Theory and Econometrics 112 (2017); Grace Lee, *The Political Philosophy of Juche*, 3(1) STANFORD JOURNAL OF EAST ASIAN AFFAIRS 105 (2003).

chuch'e (or *Juche*) which connotes a combination of nationalism and autarky⁴⁹ characterized by self-isolation⁵⁰ and state-controlled centrally-planned economy.⁵¹ Similar to ancient Sparta, and some 20th century dictatorial regimes, it follows “military-first politics” that gives precedence to military might than to raising standard of living.⁵² The country limits international trade⁵³ and aims to produce most of its necessities domestically. Some of the measures included: self-sufficiency in raw material production, food production,⁵⁴ import substitution in light industry (cable, talc, TVs etc.) to meet consumer needs, strive towards achieving self-sufficiency in Medium and Heavy industry especially tractors & trucks, etc.⁵⁵ Further, international trade in North Korea is regulated to such an extent that even international trade statistics are regarded by the North Korean regime as a state secret.⁵⁶ However, a sharp decline in trade and sudden termination of foreign aid in 1990s (following the demise of soviet union) dented the myth of ‘self-reliance’ and exposed its tremendous dependency on foreign trade and led to resurgence of market economy and private sector, albeit, in a heavily controlled manner.⁵⁷

Another extreme self-sufficient, self-reliant isolationist autarkic society in the contemporary world, even more extreme than ancient Sparta, is the North Sentinel Island, in the Andaman and Nicobar archipelago. The Andaman and Nicobar Islands Protection of

⁴⁹ Hy-Sang Lee, *North Korea's Closed Economy: The Hidden Opening*, 28(12) ASIAN SURVEY 1264, 1265 (1988); See also Benjamin Katzeff Silberstein, *How Global is the North Korean Economy?*, 38 North (Apr. 15, 2022), <https://www.38north.org/2022/04/how-global-is-the-north-korean-economy/> (describing North Korea as “most autarkic economies in the world”).

⁵⁰ Thomas F. Cargill, *Book Review, The Cleanest Race: How North Koreans See Themselves and Why it Matters* by B.R. Myers, 84(2) PACIFIC AFFAIRS 371 (2011).

⁵¹ Spezza Gianluca, *Understanding North Korea's Resilience through Economy, Laws and Governance: A Review of Introductory Sources and Essential Monographs*, 8(1) The Northeast Asian Economic Review 17 (2023).

⁵² INDEPENDENT TASK FORCE REPORT, NORTH KOREA INSIDE OUT: THE CASE FOR ECONOMIC ENGAGEMENT (2009).

⁵³ Sang T. Choe, et al., *North Korea's Foreign Trade: An Indicator of Political Dynamics*, 2(1) NORTH KOREAN REVIEW 27 (2006); See also Soo-Bin Park, *The North Korean Economy: Current Issues and Prospects* (Carleton University, Ottawa K1S 5B6).

⁵⁴ However, It still relies on some imports and food assistance for a portion of its domestic food. See Jennifer Clapp, *Food Self-Sufficiency and International Trade: A False Dichotomy* in FAO, THE STATE OF AGRICULTURAL COMMODITY MARKETS IN DEPTH 2 (2015).

⁵⁵ Gordon White, *North Korean Chuch'e: The Political Economy of Independence*, 7(2) BULLETIN OF CONCERNED ASIAN SCHOLARS 44 (1975).

⁵⁶ Stephan Haggard & Marcus Noland, *North Korea's Foreign Economic Relations*, 8(2) INTERNATIONAL RELATIONS OF THE ASIA-PACIFIC (2008); See also NICHOLAS EBERSTADT, THE NORTH KOREAN ECONOMY BETWEEN CRISIS AND CATASTROPHE (2007); Marcus Noland, *Between Collapse and Revival: A Reinterpretation of the North Korean Economy*, PETERSON INSTITUTE OF INTERNATIONAL ECONOMICS (Mar 15, 2001), <https://www.piie.com/commentary/speeches-papers/between-collapse-and-revival-reinterpretation-north-korean-economy>.

⁵⁷ ANDREI LANKOV, THE RESURGENCE OF A MARKET ECONOMY IN NORTH KOREA (2016).

Aboriginal Tribes Act, 1956 not only prohibits travel to the island but also prohibits any approach closer than 5 nautical miles.⁵⁸ The Island is inhabited by the Sentinelese which is an indigenous Scheduled Tribal community who have chosen voluntary isolation.⁵⁹ They still practice hunting and gathering mode of living⁶⁰ using bows and arrows⁶¹ and rely on seafood and terrestrial wildlife,⁶² and live completely self-sufficient lives. Any form of outside contact, even for tourism, is heavily resisted by the Sentinelese community, to the extent that if an outsider is killed no prosecution for the offence of murder is initiated and the community enjoys immunity in this regard.⁶³ In the aftermath of 2004 Tsunami, when a Indian Coast Guard helicopter flew over the island to check their well-being, the community attacked it with their weapons.⁶⁴

2.2.2 Key Pillars of Autarkic Economic Model

An autarkic economic model is built on several key pillars centred around the “desire to achieve self-sufficiency”. These principles includes -

- (i) ***Principle of Self-Sufficiency*** – The central principle of any autarkic economic model is the principle of “*sufficiencia sui*”⁶⁵ i.e. self-sufficiency which effectively means to produce essential goods and services domestically in so far as it is possible without relying on imports from other countries.⁶⁶ This principle is driven by the desire for economic independence and reduced dependence on foreign nations.⁶⁷ It includes promotion of

⁵⁸ The Andaman and Nicobar Islands Protection of Aboriginal Tribes Act, 1956,

⁵⁹ Precious Rongmei, *Why Does India’s North Sentinel Island Stay Closed for Outsiders*, Times of India (July 13, 2022), <https://timesofindia.indiatimes.com/travel/destinations/why-does-indias-north-sentinel-island-stay-closed-for-outsiders/articleshow/92839882.cms>.

⁶⁰ Ministry of Home Affairs, Government of India, *Sentinelese Tribe*, PRESS INFORMATION BUREAU (Feb. 05, 2019), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1562728>.

⁶¹ Kiona N Smith, *Everything We Know About the Isolated Sentinelese People of North Sentinel Island*, Forbes (Nov. 30, 2018), <https://www.forbes.com/sites/kionasmith/2018/11/30/everything-we-know-about-the-isolated-sentinelese-people-of-north-sentinel-island/?sh=3036f7f035a0>.

⁶² Anthropological Survey of India, *The Sentinelese of Andaman & Nicobar Islands*, in THE PARTICULARLY VULNERABLE TRIBAL GROUPS IN INDIA: PRIVILEGES AND PREDICAMENTS 659 (2016).

⁶³ Prabhaskar K Dutta, *Beyond Killing of American National: Sovereign Citizens of India*, India Today (Nov 21, 2018), <https://www.indiatoday.in/india/story/beyond-killing-of-american-national-sovereign-citizens-of-india-1393188-2018-11-21>.

⁶⁴ *The Sentinelese*, Survival International, <https://www.survivalinternational.org/tribes/sentinelese> (last visited Oct. 06, 2023).

⁶⁵ Hans Derks, *Autarkeia in Greek Theory and Practice*, in 2 THE MARKET AND THE OIKOS 92 (2022).

⁶⁶ Jeffrey A. Tucker, *The Economics of Autarky*, AMERICAN INSTITUTE OF ECONOMIC RESEARCH (Sep. 11, 2018), <https://www.aier.org/article/the-economics-of-autarky/>.

⁶⁷ Ian Michael Ferguson, *The Principles and Rhetoric of Autarky: Debate and Decision-Making in the Early Colonial Kenya* (Graduate Theses, Dissertations, and Problem Reports, Research Repository, WVU 2018).

diversification of production across various industries to ensure a broad range of essential needs can be met domestically.⁶⁸

- (ii) **Resource Allocation & Goods Production by Central Planning** – Two key factors critical for autarky as a model is planned development and effective occupation (or in a sense distribution) of resources.⁶⁹ Thus, resource allocation, production targets, and economic planning are often centralized and directed by government or a central authority.⁷⁰ The root of Central Planning,⁷¹ and autarky itself, emerges from the Hegelian Philosophy for a strong state that overrides individual decision making.⁷² “History must drive towards centralized power under great man and their intellectual advisors” and hence, “the interest of individuals” must be “subordinated to those of the nation”.⁷³
- (iii) **Limited or Controlled International Trade** – Every autarky established either engages in nor foreign trade (complete autarky) or very limited and heavily regulated foreign trade.⁷⁴ It can include implementing protectionist policy measures such as tariffs, import restrictions, and trade barriers to limit international trade and protect domestic industries from foreign competition.⁷⁵ However, this doesn’t mean that every country that puts restrictions or barriers on free flow of trade becomes autarkic. For instance the United States continue to implement trade barriers (including tariffs and non-tariff barriers)⁷⁶ but is widely regard as a liberalised economy.
- (iv) **National Security and Economic Stability** – Pursuing self-sufficiency in strategic sectors (e.g. defence, energy)⁷⁷ is perceived not only as a critical for national security but also

⁶⁸ Ian Michael Ferguson, *The Principles and Rhetoric of Autarky: Debate and Decision-Making in the Early Colonial Kenya* (Graduate Theses, Dissertations, and Problem Reports, Research Repository, WVU 2018).

⁶⁹ Ian Michael Ferguson, *The Principles and Rhetoric of Autarky: Debate and Decision-Making in the Early Colonial Kenya* (Graduate Theses, Dissertations, and Problem Reports, Research Repository, WVU 2018).

⁷⁰ This can be seen in the form of Planning Commissions, or Five Year Plans etc.

⁷¹ See Adam Broner, *Autarky in Centrally Planned Economies*, 5(1) JOURNAL OF COMMON MARKET STUDIES 42 (1976).

⁷² See Ahmad Nasrudin, *Autarky: Examples, Pros, and Cons*, PENOPIN (Aug 29, 2023), <https://penpoin.com/autarky/>.

⁷³ Jeffrey A. Tucker, *The Economics of Autarky*, AMERICAN INSTITUTE OF ECONOMIC RESEARCH (Sep. 11, 2018), <https://www.aier.org/article/the-economics-of-autarky/>.

⁷⁴ See Eric Helleiner, *The Return of National Self-Sufficiency? Excavating Autarkic Through in a De-Globalizing Era*, 23(3) INTERNATIONAL STUDIES REVIEW 933 (2021).

⁷⁵ *Id.*; See also Johan Galtung, *Trade or Development: Some Reflections on Self-Reliance*, 11 ECONOMIC AND POLITICAL WEEKLY (1976).

⁷⁶ Heribert Dieter & Johanna Biedermann, *The New Advocacy of Autarky: Self-Sufficiency is Now Once Again Becoming Popular for Geopolitical Reasons*, 19 (2) THE ECONOMISTS’ VOICE 125 (2022).

⁷⁷ See Caglar Kurc, *Between Defence Autarky and Dependency: The Dynamics of Turkish Defence Industrialization*, 17(3) DEFENCE STUDIES 260 (2017) (discussing autarky in Turkish defence sector); Dariusz Pienkowski &

imperative to reduce vulnerability to external disruptions.⁷⁸ It also includes seeking economic stability⁷⁹ by reducing exposure to global economic fluctuations and crisis, leading to predictable economic conditions.

2.2.3 Pros and Cons of Autarky and “Limited Autarky”

As an economic and governance model, Autarky, comes with both advantages and disadvantages. Firstly as a concept, it plays a crucial role in economic theory. In theoretical economic models, the concept of autarky serves a simplifying assumption that helps economists analyse and understand the fundamental impacts of trade and interdependence.⁸⁰ By considering a scenario in which a nation or entity is entirely self-sufficient, economists can isolate and study the effects of international trade, specialization and comparative advantage.⁸¹ This theoretical approach provides valuable insights into the dynamics of international economics, demonstrating how countries can benefit from trade and cooperation while highlighting the potential risks and inefficiencies associated with isolationist policies.⁸²

On the positive side, the concept of autarky has several benefits. Firstly, it allows a nation to reduce its dependence on external sources,⁸³ making it less vulnerable to international

Wojciech Zbaraszewski, *Sustainable Energy Autarky and the Evolution of German Bioenergy Villages*, 11(18) SUSTAINABILITY 4996 (2019).

⁷⁸ Ghamz E Ali Siyal, *Recovering from the Pandemic: South Asian Economies Need Greater Self-Sufficiency*, London School of Economics (May 9, 2022), <https://blogs.lse.ac.uk/southasia/2022/05/09/recovering-from-the-pandemic-south-asian-economies-need-greater-self-sufficiency/>.

⁷⁹ *Economic Recovery: The Role of Hjalmar Schacht*, The Holocaust Explained, <https://www.theholocaustexplained.org/life-in-nazi-occupied-europe/economic-policy/economic-recovery/> (last visited Oct. 7, 2023).

⁸⁰ See e.g., Fabien Candau et al., *Moving to Autarky, Trade Creation and Home Market Effect: An Exhaustive Analysis of Regional Trade Agreements in Africa*, 51(30) APPLIED ECONOMICS 3293 (2019).

⁸¹ See e.g. Steve Suranovic, *The Ricardian Theory of Comparative Advantage*, in INTERNATIONAL TRADE: THEORY AND POLICY (2010); Dainel M. Bernhofen & John C. Brown, *A Direct Test of the Theory of Comparative Advantage: The Case of Japan*, 112(1) JOURNAL OF POLITICAL ECONOMY 48 (2004); Fernando A. Broner & Jaume Ventura, *Rethinking the Effects of Financial Liberalization* (Conference Paper, 9th Jacques Polak Annual Research Conference, hosted by International Monetary Fund, Nov. 13-14, 2008), <https://www.imf.org/external/np/res/seminars/2008/arc/pdf/bv.pdf>; Alan V. Deardorff, *Exploring the Limits of Comparative Advantage*, 130 WELTWIRTSCHAFTLICHES ARCHIV 1 (1994); Assaf Razin, *Pros and Cons of Globalization: Income-Based Attitudes* (National Bureau of Economic Research Working Paper 30713, 2022); Jonathan Heathcote & Fabrizio Perri, *Financial Autarky and International Business Cycles*, 49(3) JOURNAL OF MONETARY ECONOMICS 601 (2002); Alberto Bisin & Thierry Verdier, *Trade and Cultural Diversity*, in 2 HANDBOOK OF THE ECONOMICS OF ART AND CULTURE 439 (2014).

⁸² See e.g., Fabien Candau et al., *Moving to Autarky, Trade Creation and Home Market Effect: An Exhaustive Analysis of Regional Trade Agreements in Africa*, 51(30) APPLIED ECONOMICS 3293 (2019).

⁸³ Tim Trondle, *Home-Made or Imported: On the Possibility for Renewable Electricity Autarky on all Scales in Europe*, 26 ENERGY STRATEGY REVIEWS 100388 (2019).

economic fluctuations and supply disruptions, ensuring greater economic stability.⁸⁴ Secondly, autarky grants a nation substantial control over its resources, allowing for strategic utilization to promote national development.⁸⁵ This control can be crucial for countries with valuable natural resources (such as oil, minerals, etc.).⁸⁶ Additionally, economic self-sufficiency, achieved by autarky, can significantly enhance national security by decreasing vulnerabilities related to critical imports, ensuring the nation's vital needs are met even during challenging times.⁸⁷ Lastly, autarky can serve as shield to protect domestic industries from foreign competition, enabling them to flourish, develop, and contribute to the nation's economic growth and stability.⁸⁸

However, autarky, also carried notable disadvantages that must be carefully considered. One of the major disadvantages of autarky is that is that is nearly impossible to satisfy all the needs and requirements of the population solely by domestic production.⁸⁹ Another major drawback is the potential for economic inefficiency.⁹⁰ Self-sufficiency may lead to inefficiencies in production,⁹¹ as nations might not produce all goods and services as efficiently as specialized trading partners could. This can result in higher costs,⁹² lower productivity, and a decreased standard of living for citizens.⁹³ Furthermore, autarky can limit a nation's access to foreign innovation, technology and investment (including Foreign Direct Investment),⁹⁴ hindering its

⁸⁴ Ahmad Nasrudin, *Autarky: Examples, Pros, and Cons*, PENOPIN (Aug 29, 2023), <https://penpoin.com/autarky/>.

⁸⁵ Ahmad Nasrudin, *Autarky: Examples, Pros, and Cons*, PENOPIN (Aug 29, 2023), <https://penpoin.com/autarky/>; Mary McMahon, *In Economics, What is Autarky*, SMART CAPITAL MIND (Aug 29, 2023), https://www.smartcapitalmind.com/in-economics-what-is-autarky.htm?expand_article=1.

⁸⁶ Dale C. Copeland, *Economic Interdependence and War: A Theory of Trade Expectations*, 20(4) INTERNATIONAL SECURITY 5 (1996).

⁸⁷ See Mary McMahon, *In Economics, What is Autarky*, SMART CAPITAL MIND (Aug 29, 2023), https://www.smartcapitalmind.com/in-economics-what-is-autarky.htm?expand_article=1.

⁸⁸ See Steve Suranovic, *The Ricardian Theory of Comparative Advantage*, in INTERNATIONAL TRADE: THEORY AND POLICY (2010).

⁸⁹ Obutu Agape Oguche, *Autarky in Economics: Definition and Examples*, FINANCIAL FALCONET (June 28, 2023), <https://www.financialfalconet.com/autarky-in-economics-definition-examples/>.

⁹⁰ See Mary McMahon, *In Economics, What is Autarky*, SMART CAPITAL MIND (Aug 29, 2023), https://www.smartcapitalmind.com/in-economics-what-is-autarky.htm?expand_article=1.

⁹¹ Obutu Agape Oguche, *Autarky in Economics: Definition and Examples*, FINANCIAL FALCONET (June 28, 2023), <https://www.financialfalconet.com/autarky-in-economics-definition-examples/>.

⁹² Obutu Agape Oguche, *Autarky in Economics: Definition and Examples*, FINANCIAL FALCONET (June 28, 2023), <https://www.financialfalconet.com/autarky-in-economics-definition-examples/>.

⁹³ Ricardo Godoya, et al. *How Poor are People in Autarky? On the Measure of Income in Autarky* (Tsimane' Amazonian Panel Study Working Paper #23).

⁹⁴ Milkos Szanyi, *Experiences with Foreign Direct Investment in Eastern Europe: Advantages and Disadvantages*, 36(3) EASTERN EUROPEAN ECONOMICS 28 (1998).

overall progress and development.⁹⁵ A lack of international exchange of ideas and knowledge can stifle innovation and technological advancements, which are often spurred by cross-border collaboration.⁹⁶ Additionally, self-reliance can lead to reduced variety and lower quality of goods⁹⁷ and services for consumers, as the absence of international trade limits their choices and access to higher-quality products. Lastly, embracing extreme autarky can result in isolationism, causing nations to withdraw from international diplomacy and cooperation,⁹⁸ which may lead to strained diplomatic relations and hinder opportunities for global collaboration and mutual benefit.⁹⁹

Due to these reasons, complete autarky in practice is predominantly viewed as neither a viable nor a desirable goal.¹⁰⁰ Hence, most nations engage in international trade to varying degrees.¹⁰¹ However, they do tend to pursue limited autarky by strategically selecting specific industries or resources in which they aim for self-sufficiency while actively participating in international trade for other goods and services.¹⁰² This approach allows countries to benefit from advantages of specialization and access resources, goods, and services they cannot efficiently produce domestically, ultimately leading to economic growth and improved standard of living.¹⁰³ Thus in essence, limited sectoral autarky strikes can strike relatively acceptable

⁹⁵ See Xiaokai Yang, et al., *Trade Pattern and Economic Development when Endogenous and Exogenous Comparative Advantages Co-exist* (Centre for International Development Working Paper 03A, 1999).

⁹⁶ See Mary McMahon, *In Economics, What is Autarky*, SMART CAPITAL MIND (Aug 29, 2023), https://www.smartcapitalmind.com/in-economics-what-is-autarky.htm?expand_article=1.

⁹⁷ See Andrew Moraveisk, *Arms and Autarky in Modern European History*, 120(4) DAEDALUS 23 (1991).

⁹⁸ Muhammad Wajahat Sultan, *How Autarky can Fuel Conflict*, THE EXPRESS TRIBUNE (Apr. 22, 2023), <https://tribune.com.pk/story/2413197/how-autarky-can-fuel-conflict>.

⁹⁹ See Heribert Dieter, *Robert Habeck's Dangerous Flirt with Autarky*, Australian Institute of International Affairs (Feb 01, 2022), <https://www.internationalaffairs.org.au/australianoutlook/robert-habecks-dangerous-flirt-with-autarky/>; Obutu Agape Oguiche, *Autarky in Economics: Definition and Examples*, FINANCIAL FALCONET (June 28, 2023), <https://www.financialfalconet.com/autarky-in-economics-definition-examples/>.

¹⁰⁰ Obutu Agape Oguiche, *Autarky in Economics: Definition and Examples*, FINANCIAL FALCONET (June 28, 2023), <https://www.financialfalconet.com/autarky-in-economics-definition-examples/>.

¹⁰¹ See Heribert Dieter & Johanna Biedermann, *The New Advocacy for Autarky: Self-Sufficiency is Now Once Again Becoming Popular for Geopolitical Reasons*, 19(2) DE GRUYTER ECONST VOICE 125 (2022); Eric Helleiner, *The Return of National Self-Sufficiency? Excavating Autarkic Thought in a De-Globalizing Era*, 23(3) INTERNATIONAL STUDIES REVIEW 933 (2021).

¹⁰² See David Brewster, *India Heads towards Economic Autarky*, THE INTERPRETER (Nov. 20, 2020), <https://www.lowyinstitute.org/the-interpreter/india-heads-towards-economic-autarky>; Scott Malcomson, *The New Age of Autarky*, Foreign Affairs (Apr. 26, 2021), <https://www.foreignaffairs.com/articles/united-states/2021-04-26/new-age-autarky>.

¹⁰³ See generally DANI RODRIK, *THE GLOBALIZATION PARADOX: DEMOCRACY AND THE FUTURE OF WORLD ECONOMY* (2011) (where some of the autarkic policies of developing countries were allowed to ensure development).

balances between economic self-sufficiency and the pragmatic recognition of the benefits of global interdependence.

2.2.4 Atma Nirbhar Bharat & Autarky – Similarities & Differences

Table 2.1 Commonalities & Differences between ANB & Autarky	
Commonalities	Differences
<ul style="list-style-type: none"> ■ Emphasis on Self-Reliance ■ Optimum utilization of domestic resources ■ Protection of National Interest 	<ul style="list-style-type: none"> ■ Degree of Self-Sufficiency ■ Economic Pragmatism ■ Innovation and Growth ■ Recognition of Interconnected World & <i>Vasudhaiva Kutumbakam</i>

The announcement of ANBA by Prime Minister Narendra Modi raised alarms and concerns that India will now pursue the path of Autarky and become a closed economy.¹⁰⁴ This apprehension emanates from some of the commonalities shared by both ANBA and autarky. However, it is important to underscore that, ANBA distinguishes itself from autarky in several ways. Firstly, as stated earlier, Autarky prioritize self-reliance as a fundamental principles of economic and national development.¹⁰⁵ It advocates for reducing dependence on external sources, whether in the form of imports, foreign aid,¹⁰⁶ or thereby building a nation’s resilience to withstand economic shocks and external pressures. At the outset, it will appear that ANBA also intends to the same, however, that is not the case. Although, ANBA does aims to reduce the dependency on imports, but, it does not intends to stop or prohibit imports,¹⁰⁷ rather it is

¹⁰⁴ See e.g. Heribert Dieter & Johanna Biedermann, *The New Advocacy for Autarky: Self-Sufficiency is Now Once Again Becoming Popular for Geopolitical Reasons*, 19(2) DE GRUYTER ECONST VOICE 125 (2022); Arvind Panagariya, *Our Love of Self-Reliance and the Perils of Autarky*, LIVE MINT (Mar 03, 2021), <https://www.livemint.com/opinion/online-views/our-love-of-self-reliance-and-the-perils-of-autarky-11614786433278.html>; Dhruv Jaishankar, *For India, Autarky is not an Option*, OBSERVER RESEARCH FOUNDATION (Dec. 04, 2020), <https://www.orfonline.org/expert-speak/for-india-autarky-is-not-an-option/>; David Brewster, *India Heads Towards Economic Autarky*, THE INTERPRETER (Nov. 20, 2020), <https://www.lowyinstitute.org/the-interpreter/india-heads-towards-economic-autarky>; Surbhi Arora, *India’s Drive to ‘Go Local’*, MAGZTER (June 2020), <https://www.magzter.com/stories/News/Extraordinary-and-Plenipotentiary-Diplomatist/INDIAS-DRIVE-TO-GO-LOCAL>; Rubin Tavenier, *Russian-Indian Arms Trade: Between Autarky and Interdependence*, Global Risk Insights (Dec. 14, 2020), <https://globalriskinsights.com/2020/12/russian-indian-arms-trade-between-autarky-and-interdependence/>; Krzysztof Iwanek, *No, The ‘Self-Reliant India Campaign’ is not About Protectionism*, The Diplomat (June 23, 2020), <https://thediplomat.com/2020/06/no-the-self-reliant-india-campaign-is-not-about-protectionism/>.

¹⁰⁵ *AtmaNirbharBharat Abhiyan*, <https://atmanirbharbharat.mygov.in/> (last visited Oct. 10, 2023); *Atmanirbhar Bharat Abhiyan*, Invest India, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited Oct. 10, 2023),

¹⁰⁶ See generally WILLIAM A.T. LOGAN, *A TECHNOLOGICAL HISTORY OF COLD-WAR INDIA (1947-1969): AUTARKY AND FOREIGN AID* (2022).

¹⁰⁷ Manoj Sharma, *Atmanirbhar Bharat not to stop imports but to Boost Manufacturing: FM*, BUSINESS TODAY (Mar 22, 2021), <https://www.businesstoday.in/latest/economy-politics/story/atmanirbhar-bharat-move-not-to-stop-imports-but-to-boost-manufacturing-capabilities-fm-291409-2021-03-21>.

to boost India's manufacturing and thereby reduce the deficit gap.¹⁰⁸ Further, similarity between autarky and ANBA include: (i) both concepts emphasize the efficient utilization of domestic resources including natural resources, human capital, and technological capabilities to meet its essential needs.¹⁰⁹ (ii) Both concepts place a premium on safeguarding national interests and economic sovereignty.¹¹⁰

While these two similarities exist, it is imperative to highlight that one of the fundamental aspect in which ANBA distinguishes itself from autarky is through its economic pragmatism which accords recognition to the benefits of international trade and cooperation.¹¹¹ India is actively engaging in new trade deals and international commitments.¹¹² It aims to strike a balance between self-reliance and global engagement by emphasizing strategic self-sufficiency in key sectors¹¹³ while actively participating in the globally economy.¹¹⁴ Hence, despite the similarities, ANBA is substantially different from a closed Autarkic system and reflects India's desire to secure its economic independence and protect its interest in an increasingly interconnected world.

2.3 INDIA'S TRYST WITH SELF-RELIANCE – A HISTORICAL GLANCE

ANBA did not emerge in vacuum. Rather, it draws from and builds upon India's historical quest for economic autonomy and self-sufficiency. This drive for self-reliance can be traced back to

¹⁰⁸ Manoj Sharma, *Atmanirbhar Bharat not to stop imports but to Boost Manufacturing: FM*, BUSINESS TODAY (Mar 22, 2021), <https://www.businesstoday.in/latest/economy-politics/story/atmanirbhar-bharat-move-not-to-stop-imports-but-to-boost-manufacturing-capabilities-fm-291409-2021-03-21>.

¹⁰⁹ Asraful Alam, *A Review of Resource Management and Self-Reliance for Sustainable Development of India under Covid-19 Scenario*, 21(4) JOURNAL OF PUBLIC AFFAIRS (2021).

¹¹⁰ Aditya Prakash, *Atmanirbhar Bharat – What it Should Ideally Mean*, ADITYA PRAKASH BLOG (May 21, 2022), <https://adityapraakashshankar.medium.com/atmanirbhar-bharat-what-it-should-ideally-mean-853fc2ef4798>.

¹¹¹ The recently concluded G20 in India is a prime example of India's continuing international engagement and role; *About G20 Presidency*, G20 INDIA, <https://g20.mygov.in/> (last visited Oct. 10, 2023); See also RIS & MINISTRY OF EXTERNAL AFFAIRS, *THE GRAND SUCCESS OF G20 BHARAT PRESIDENCY: VISIONARY LEADERSHIP AND INCLUSIVE APPROACH* (2023).

¹¹² *PM's Interview with the Economic Times*, EMBASSY OF INDIA, MOSCOW, PRESS RELEASE <https://indianembassy-moscow.gov.in/press-releases-31-10-2020-1.php> (last visited Oct. 10, 2023).

¹¹³ N Madhava, *What Exactly is Atmanirbhar Bharat?* THE HINDU BUSINESS LINE (Apr. 15, 2021), <https://www.thehindubusinessline.com/opinion/what-exactly-is-atmanirbhar-bharat/article34328520.ece> (highlighting electronics as a key sector for ANB).

¹¹⁴ See Kirtika Suneja, *20 Sectors Identified where India can Become Supplier to the World: Piyush Goyal*, ECONOMIC TIMES (July 23, 2020), <https://economictimes.indiatimes.com/news/economy/foreign-trade/20-sectors-identified-where-india-can-become-supplier-to-the-world-piyush-goyal/articleshow/77123183.cms>; PTI, *Identified 20 Sectors where India can become Global Supplier*, LIVE MINT (July 23, 2020), <https://www.livemint.com/news/india/identified-20-sectors-where-india-can-become-global-supplier-goyal-11595495297257.html>.

India's pre and post-independence era initiatives, marked by several policies and nationalization of key industries. This section of the chapter explores the rich tradition of self-reliance that permeates throughout Indian history, tracing its evolution from pre-independence movements to post-independence policies.

2.3.1 Self-Reliance in Indian Nationalism and Independence Movement

Self-reliance has been a foundational principle in Indian nationalism and the struggle for independence.¹¹⁵ It emerged as a guiding philosophy, shaping India's quest for sovereignty, social justice, and economic progress. Several nationalist and independence movements in pre-independence India emphasized the importance of self-reliance as a means to achieve political sovereignty and economic independence¹¹⁶. These movements sought to reduce dependence on British colonial rule and promote self-sufficiency in various aspects of Indian Life.¹¹⁷ Some notable movements and initiative include:

(i) *Swadeshi Movement (1905-1908)*: The Swadeshi Movement,¹¹⁸ which emerged as a response to the partition of Bengal, was a significant pre-independence movement that promoted self-reliance.¹¹⁹ It sought to overhaul collective and individual patterns of consumption and production in order to both transform entrenched structures and habits of feeling and perception and create an autonomous national space and economy.¹²⁰ It was a powerful manifestation of self-reliance in India's struggle against British colonialism. Led by leaders like Dadabhai Navroji, Bal Ganagadhar Tilak, Bipin Chandra Pal, and Lala Lajpat Rai, and taken further by Mahatma Gandhi,¹²¹ it encouraged the use of indigenous products and the boycott of British goods. This movement aimed to revitalize Indian industries, promote

¹¹⁵ Sundar Sarukkai, *Self-Reliant India: Self of a Nation or a National Self?*, 23(Suppl 2) JOURNAL OF SOCIO ECONOMIC DEVELOPMENT 357 (2020).

¹¹⁶ Bisheshwar Prasad, *Indian Nationalism: An Interpretation*, 26 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 232 (1964).

¹¹⁷ See Bipin Chandra, *The Swadeshi Movement*, in INDIA'S STRUGGLE FOR INDEPENDENCE (1857-1947) 102 (2000).

¹¹⁸ BIPIN CHANDRA, INDIA'S STRUGGLE FOR INDEPENDENCE (1857-1947) (2000).

¹¹⁹ See e.g., Manu Goswami, *From Swadeshi to Swaraj: Nation, Economy, Territory in Colonial South Asia, 1870 to 1907*, 40 COMPARATIVE STUDIES IN SOCIETY AND HISTORY 609 (1998); Natasha Eaton, "Swadeshi" Color: Artistic Production and Indian Nationalism, 95 THE ART BULLETIN 623 (2013).

¹²⁰ Natasha Eaton, "Swadeshi" Color: Artistic Production and Indian Nationalism, 95 THE ART BULLETIN 623 (2013).

¹²¹ Prasad Fadnavis, *Theme and Background of Atma Nirbhar Bharati*, NEWSBHARATI (Aug 08, 2020), <https://www.news Bharati.com/Encyc/2020/8/18/Theme-background-of-Atmanirbhar-Bharat.html>.

self-sufficiency and reduce economic dependence on British imports.¹²² Bal Gangadhar Tilak, for instance, encouraged Indians to establish industries which would in turn limit the import of foreign goods and rejuvenate the economy of the country.¹²³ Further, the Swadeshi Movement intended to instil a sense of pride among Bengalis for their "illustrious history."¹²⁴ There is no surprise that the call for Self-reliance through ANBA has been linked and paralleled¹²⁵ with the Swadeshi Movement.¹²⁶

However, while swadeshi emerged as a response to colonial exploitation and a critique of western-style capitalism,¹²⁷ ANBA represents India's quest to establish its rightful position in an ever-changing global landscape.¹²⁸ Like the Swadeshi movement, ANBA opposes uncritical adoption of western ideologies, culture and economic models but welcomes technological advancement, advocating for modernization without unchecked westernization.¹²⁹ Further, the "Vocal for Local" initiative¹³⁰ should be viewed as a proactive response to the anticipated shifts in the post-covid geopolitical order.¹³¹ The pandemic underscored the shortcomings of multilateral and regional institutions, and the limitations of trade barriers and isolated economic models. Thus the ANBA Mission, also termed as, "new

¹²² Richa Raj, *Of Swadeshi, Self-Reliance and Self-Help: A Study of the Arya Samaj in Colonial Punjab, 1890 – 1920s*, 62 MOVING THE SOCIAL 51 (2019).

¹²³ Abha Chauhan Khimta, *Swaraj: Relevance of Tilak's and Gandhi's Views in the Present Time*, 73(4) THE INDIAN JOURNAL OF POLITICAL SCIENCE 649 (2012).

¹²⁴ A.K. Biswas, *Paradox of Anti- Partition Agitation and Swadeshi movement in Bengal*, 23 SOCIAL SCIENTIST 38, 38-57 (1995).

¹²⁵ The Capital Net, *Atma Nirbhar Bharat v. Swadeshi Movement: The Parallels*, MEDIUM (Sep. 01, 2020), <https://medium.com/thecapitalnet/atma-nirbhar-bharat-vs-swadeshi-movement-the-parallels-c2eda0643b22>.

¹²⁶ See Anirban Ganguly, *Forerunner of Self-Reliance*, MILLENNIUM POST (July 19, 2022), <https://www.millenniumpost.in/opinion/forerunner-of-self-reliance-486443?infinite-scroll=1>.

¹²⁷ Asha Kaushik, *Swadeshi, Self-Reliance and Globalization*, M K GANDHI, https://www.mkgandhi.org/articles/swadeshi_selfreliance_globalization.html (last visited Oct. 10, 2023).

¹²⁸ See MINISTRY OF COMMUNICATIONS, BHARAT 6G VISION, <https://dot.gov.in/sites/default/files/Bharat%206G%20Vision%20Statement%20-%20full.pdf> (last visited Oct. 11, 2023).

¹²⁹ Praveen Kumar, *Atmanirbhar Bharat vis-à-vis Anti-Globalization Conundrum: A Perspective*, ETE ENERGY WORLD (Jan 04, 2023), <https://energy.economicstimes.indiatimes.com/news/oil-and-gas/atmanirbhar-bharat-vis-vis-anti-globalization-conundrum-a-perspective/96724496>; Rahul Oberoi, *Atmanirbhar Bharat is not Anti-Globalization*, CEO, Niti Aayog, THE ECONOMIC TIMES (July 07, 2020), <https://economicstimes.indiatimes.com/markets/stocks/news/atmanirbhar-bharat-is-not-anti-globalisation-ceo-niti-aayog/articleshow/76831739.cms?from=mdr>.

¹³⁰ Nitin Pai, *Swadeshi and Atma Nirbhar Bharat: Reinventing Nationalism*, Peepul Tree (Apr. 02, 2021), <https://www.peepulree.world/livehistoryindia/story/eras/swadeshi>.

¹³¹ Shashi Bhushan, *PM Modi says 'New India' is Moving with Proactive Policies*, DECCAN HERALD (Apr. 12, 2023), <https://www.deccanchronicle.com/nation/current-affairs/130423/prime-minister-narendra-modi-says-new-india-is-moving-with-proactive.html>.

Swadeshi” paradigm¹³² aims to revitalize local industries, enabling them to seamlessly integrate into the ever-evolving global trade landscape, fostering a concept known as ‘glocalization’¹³³ that caters to both local and global markets. During the COVID-19 crisis, glimpses of this transformation emerged as India solidified its position as the ‘pharmacy of the developing world’.¹³⁴

(ii) Khilafat Movement (1919-1924): The Khilafat Movement is another major pre-independence movement that is noteworthy for its Hindu-Muslim unity and emphasis on self-reliance.¹³⁵ It was supported by Mahatma Gandhi¹³⁶ and led by the Ali brothers¹³⁷ and primarily focused on political and religious issues (especially pertaining to the Muslim autonomy and sanctions placed on the Ottoman Empire after the First World War) but it also had economic aspects.¹³⁸ It furthered the cause of *swadeshi* and called for the promotion of Indian-made goods and boycott of British products,¹³⁹ thus somewhat aligning with the principles of self-reliance.

¹³² Raj Chengappa, *Modi’s New Swadeshi Deal*, INDIA TODAY (May 25, 2020), <https://www.indiatoday.in/magazine/cover-story/story/20200525-modi-rsquo-s-new-1678687-2020-05-16>.

¹³³ Siddharth Varma, *Implementing Atma Nirbhar Bharat: A Project Management Approach*, in *TRANSITIONING FROM GLOBALIZED TO LOCALIZED AND SELF-RELIANT ECONOMICS* (2022).

¹³⁴ See Ministry of Health and Family Welfare, *Indian Pharma Should Strive to Maintain the Reputation of India as the ‘Pharmacy of the World’: Dr. Mansukh Mandaviya*, PRESS INFORMATION BUREAU (Jun 23, 2023), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1934892>, Jagjit Kaur Plahe & Don McArthur, *After TRIPS: Can India Remain ‘the Pharmacy of the Developing World’?*, 44(6) JOURNAL OF SOUTH ASIAN STUDIES 1167 (2021); *During Covid, India Truly Established Itself as ‘Pharmacy’ of the World: EAM Jaishankar*, ET HEALTH WORLD (Apr. 28, 2023), <https://health.economictimes.indiatimes.com/news/policy/during-covid-india-truly-established-itself-as-pharmacy-of-the-world-eam-jaishankar/99833527>.

¹³⁵ See SHABNUM TEJANI, *INDIAN SECULARISM: A SOCIAL AND INTELLECTUAL HISTORY, 1980-1950*, 145 (2021).

¹³⁶ Shabnum Tejani, *Re-considering Chronologies of Nationalism and Communalism: The Khilafat Movement in Sind and its Aftermath, 1919-1927*, 27(3) SOUTH ASIA RESEARCH 249 (2007). See also Satish Viswanathan, *A Great Blunder of a ‘Great Soul’: A Hundred Years of the Khilafat Movement*, SWARAJYA (May 18, 2019), <https://swarajyamag.com/politics/a-great-blunder-of-a-great-soul-a-hundred-years-of-the-khilafat-movement>.

¹³⁷ Shaikat Ali & Muhammad Ali (and by Abul Kalam Azad); See *Khilafat Movement*, ENCYCLOPEDIA BRITANNICA (Sept. 15, 2023), <https://www.britannica.com/event/Khilafat-movement>.

¹³⁸ See A. C. NIEMEIJER, *THE KHILAFAT MOVEMENT IN INDIA 1919-1924* (1974).

¹³⁹ Gopal Krishna, *The Khilafat Movement in India: The First Phase (September 1919 – August 1920)*, 1(2) THE JOURNAL OF THE ROYAL ASIATIC SOCIETY OF GREAT BRITAIN AND IRELAND 37 (1968).

(iii) Non-Cooperation Movement (1920-1922)¹⁴⁰: The Non-Cooperation movement was the first, large-scale and sustained non-violent satyagraha (civil disobedience) campaign¹⁴¹ launched as a nationwide protest in the aftermath of the Jallianwala Bagh massacre that took place on 13 April 1919.¹⁴² Under the leadership of Mahatma Gandhi, the non-cooperation movement called for the boycott of British educational and government Institutions,¹⁴³ goods,¹⁴⁴ clothes,¹⁴⁵ and demanded ‘Self-Rule’ in India.¹⁴⁶ The Non-Cooperation Resolution drafted by Mahatma Gandhi expressly stated “*There can be no contentment in India ... without the establishment of Swarajya*”.¹⁴⁷ The Resolution further encouraged the people to adopt *Swadeshi*.¹⁴⁸ Thus, it further carried the seeds of self-reliance¹⁴⁹ sown by the *Swadeshi Movement* and made the aim of swadeshi a “Jan-andolan”. By advocating for self-reliance and the use of indigenous resources, Gandhiji aimed to diminish British economic control and promote self-sufficiency. His dream was that “Free India would usher in that millennium by adopting swadeshi and inspiring the rest of the world to follow its example. That is the way to save humankind from collective destruction”.¹⁵⁰ His definition of swadeshi was “that spirit in use

¹⁴⁰ Trivia or Correlation? - The Non-Cooperation Movement was launched after the Spanish Flu (1918-20), a global pandemic that killed an estimated 50 million people worldwide. It is a striking parallel that the AtmaNirbhar Bharat was also launched during the Covid-19 Pandemic. Highlighting that such pandemics and the need for self-sufficiency in economies is somewhat co-related. See Binu S Thomas, *100 Years after the Non-Cooperation Movement, It is Time for a New Consumer Movement*, MONEY LIFE (Dec. 03, 2020), <https://www.moneylife.in/article/100-years-after-the-non-cooperation-movement-it-is-time-for-a-new-consumer-movement/62256.html>.

¹⁴¹ *Non-Cooperation Movement*, Britannica Encyclopedia (Aug. 14, 2023), <https://www.britannica.com/event/noncooperation-movement>.

¹⁴² Ritwija Darbari, *Remembering the Legacies of Mahatma & Madiba Through the Struggles and Triumphs of their People*, Invest India (Apr. 17, 2018), <https://www.investindia.gov.in/team-india-blogs/remembering-legacies-mahatma-madiba-through-struggles-and-triumphs-their-people>.

¹⁴³ *Samavedam Satyanarayan Murty and the Non-Cooperation Movement*, AMRIT MAHOTSAV (Feb. 16, 2023), <https://amritmahotsav.nic.in/district-repository-detail.htm?13389>.

¹⁴⁴ Shaukat Ali Khan, *Aspects of the Non-Cooperation Movement In Bihar (1921-22) as Gleaned from the Confidential Government Files*, 58 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 623 (1997).

¹⁴⁵ *The Non-Cooperation Resolution drafted by Mahatma Gandhi*, AMRIT MAHOTSAV (Jan. 23, 2023), <https://amritmahotsav.nic.in/district-repository-detail.htm?11711>.

¹⁴⁶ *Non-Cooperation in Muzaffarpur*, AMRIT MAHOTSAV (Mar. 14, 2023), <https://amritmahotsav.nic.in/district-repository-detail.htm?14547>.

¹⁴⁷ *The Non-Cooperation Resolution drafted by Mahatma Gandhi*, AMRIT MAHOTSAV (Jan. 23, 2023), <https://amritmahotsav.nic.in/district-repository-detail.htm?11711>.

¹⁴⁸ *The Non-Cooperation Resolution drafted by Mahatma Gandhi*, AMRIT MAHOTSAV (Jan. 23, 2023), <https://amritmahotsav.nic.in/district-repository-detail.htm?11711>.

¹⁴⁹ PMO, *English Rendering of PM's Address in 15th Episode of 'Mann Ki Baat 2.0' on 30.08.2020*, PRESS INFORMATION BUREAU (Aug. 30, 2020), <https://www.pib.gov.in/PressReleaseDetail.aspx?PRID=1649711>.

¹⁵⁰ Sudhir Chandra, *Gandhi's Swadeshi and Our Civilizational Pandemic*, The Wire (Oct. 02, 2020), <https://thewire.in/rights/mahatma-gandhi-swadeshi-atmanirbhar-bharat-covid-19-civilisation-pandemic>.

which restricts us to the use and service of our immediate surroundings to the exclusion of the more remote”¹⁵¹

Translated to the realm of economics, *swadeshi* would mean “I should use only things that are produced by my immediate neighbours and serve those industries by making them efficient and complete where they might be found wanting.”¹⁵² However, it is pertinent to note that Non-Cooperation Movement only meant non-collaboration with evils of British Rule (civilization).¹⁵³ Though the movement was eventually called off, it left an indelible mark on India’s independence struggle, and the pursuit for self-governance, self-reliance and fostering of national identity.¹⁵⁴

(iv) Sarvodaya, Village Industries and Khadi Movement: Two other prominent pre-independence movements that have further developed and built upon the foundation laid down by *swadeshi* for self-reliant India, were the *Sarvodaya* and *Khadi* Movements. *Swadeshi* & *Sarvodaya* were two of the four key pillars¹⁵⁵ of Mahatma Gandhi’s Philosophy in *Hind Swaraj*.¹⁵⁶ Inspired by John Ruskin’s acclaimed critical economic work *Unto This Last*,¹⁵⁷ Mahatma Gandhi’s developed, practiced and advocated the philosophy of *Sarvodaya*, meaning “Welfare of All”,¹⁵⁸ which underlined the importance of upliftment, and *inter alia*, self-reliance at the grassroots level.¹⁵⁹ One of the objective of the *Sarvodaya* movement was the establishment of a whole network of **self-supporting village communities**, *inter alia*, by eliminating

¹⁵¹ Sudhir Chandra, *Gandhi’s Swadeshi and Our Civilizational Pandemic*, The Wire (Oct. 02, 2020), <https://thewire.in/rights/mahatma-gandhi-swadeshi-atmanirbhar-bharat-covid-19-civilisation-pandemic>.

¹⁵² Sudhir Chandra, *Gandhi’s Swadeshi and Our Civilizational Pandemic*, The Wire (Oct. 02, 2020), <https://thewire.in/rights/mahatma-gandhi-swadeshi-atmanirbhar-bharat-covid-19-civilisation-pandemic>.

¹⁵³ S K Chaube, *Gandhi and the Indian Freedom Movement*, 46(4) THE INDIAN JOURNAL OF POLITICAL SCIENCE 430 (1985) (highlighting that the NC Movement was relaxed to the extent that Indians were allowed to enter into legislature. However, it forbid them to assume office).

¹⁵⁴ Akshat Lakhotiya, *Non-Cooperation Movement and Its Effect*, FAIRGAZE (June 01, 2023), <https://fairgaze.com/educationnews/non-cooperation-movement-and-its-effect.html>.

¹⁵⁵ The other two pillars are *Swaraj* and Non-violence (Ahimsa).

¹⁵⁶ Shubhangi Rathi, *Gandhian Philosophy of Sarvodaya and its Principles*, M K GANDHI, https://www.mkgandhi.org/articles/gandhi_sarvodaya.html (last visited Oct. 11, 2023).

¹⁵⁷ JOHN RUSKIN, UNTO THIS LAST (1862) (reprinted, Fq Classics 2007).

¹⁵⁸ Gansesh Prasad, *Sarvodaya – A Critical Study*, 21(1) THE INDIAN JOURNAL OF POLITICAL SCIENCE 38 (1960).

¹⁵⁹ Ishwar C. Harris, *Sarvodaya in Crisis: The Gandhian Movement in India Today*, 27(9) ASIAN SURVEY 1036 (1987).

distinctions and discrimination,¹⁶⁰ promoting planned agriculture, and development of cottage industries.¹⁶¹

Thus, Mahatma Gandhi's emphasis on village industries and the promotion of *Khadi* (hand-spun and handwoven cloth) epitomized inclusive development, village self-sufficiency¹⁶² and the revival of traditional Indian handicrafts¹⁶³ and cottage industries.¹⁶⁴ Gandhi ji was a strong proponent of decentralized commodity production i.e. production by masses as opposite to mass production.¹⁶⁵ He believed that empowering villages to produce their own necessities would contribute to economic independence and over all self-sufficiency.¹⁶⁶ The *Sarvodaya* moment was taken forward post-independence by leaders such as Acharya Vinoba Bhave and Jay Prakash Narayan through the *Bhoodan* (land donation)¹⁶⁷ and *Gramdan* (village donation)¹⁶⁸ movements that encouraged land reforms and equitable distribution of resources at the village level.¹⁶⁹ Described as "*bloodless revolution*" these movements aimed to reduce dependency on landlords and promote self-sufficiency in rural communities by encouraging donations of lands from the rich zamindars or landlords to the landless or land-poor people.¹⁷⁰

¹⁶⁰ Elimination of distinctions and discrimination based on race, creed, caste, language etc., See Shubhangi Rathi, *Gandhian Philosophy of Sarvodaya and its Principles*, M K GANDHI, https://www.mkgandhi.org/articles/gandhi_sarvodaya.html (last visited Oct. 11, 2023).

¹⁶¹ Shubhangi Rathi, *Gandhian Philosophy of Sarvodaya and its Principles*, M K GANDHI, https://www.mkgandhi.org/articles/gandhi_sarvodaya.html (last visited Oct. 11, 2023).

¹⁶² *Furthering Gandhi's Vision of Making Khadi the Great Indian Fabric*, CII BLOG (Oct. 01, 2022), <https://www.ciiblog.in/furthering-gandhis-vision-of-making-khadi-the-great-indian-fabric/>.

¹⁶³ Vellore Bharata Lakshmi & Pachipala Gayathri, *Mahatma Gandhi's Views on Cottage Industries*, 5(Spl. 2) JOURNAL OF ENGLISH LANGUAGE AND LITERATURE 39 (2018).

¹⁶⁴ M. Madhumati, *Mahatma Gandhi in the Context of Enhancement of Cottage Industry in the Development of India*, 1(2) INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS 50 (2011).

¹⁶⁵ T Krishna Murthy, *Khadi and Village Industries - The Only Solution*, M. K. GANDHI, <https://www.mkgandhi.org/articles/khadivillageindustries.htm> (last visited Oct. 11, 2023).

¹⁶⁶ See Leslie Hempson, *The Social Life of Khadi: Gandhi's Experiments with the Indian Economy, 1915-1965* (PhD Dissertation submitted to University of Michigan, 2018).

¹⁶⁷ See R. H. Leela, *Significance of Sarvodaya*, 19(4) THE INDIAN JOURNAL OF POLITICAL SCIENCE 365 (1968); PTI, *India's Concept of Self-Reliance is About Becoming More Significant Partner in Global Welfare: Naidu*, THE ECONOMIC TIMES (Aug. 27, 2020), <https://economictimes.indiatimes.com/news/politics-and-nation/indias-concept-of-self-reliance-is-about-becoming-more-significant-partner-in-global-welfare-naidu/articleshow/77782755.cms?from=mdr>.

¹⁶⁸ Hubb Sanders, *The Sarvodaya Movement in India in the 1950s* (International Institute of Social History, Amsterdam, 1997).

¹⁶⁹ See VIJAY MAHAJAN, *BHOODAN AND GRAMDAN: ARE THEY RELEVANT TODAY?* (2020).

¹⁷⁰ Anushka Dalal & Harsha Pareek, *A Bloodless Revolution*, IDR ONLINE, <https://idronline.org/ground-up-stories/bhoodan-movement-a-bloodless-revolution-odisha-advansi/> (last visited Oct. 11, 2023).

Post-Independence, these movements were carried forward by Central and State Government through abolition of zamindari system and enactment of various Constitutional amendments and state legislations on land reforms.¹⁷¹ In the contemporary times, *Khadi* movement is of immense relevance for the ANBA. As Stated by Prime Minister Shri Narendra Modi “*Khadi is not just a piece of clothing but also a weapon for those with self-respect, who is proud of the nation, and who dreams of ‘Atmanirbhar Bharat’.*”¹⁷² Lastly, the ANBA, through the **Unnat Bharat Abhiyan**, that aims to build self-sufficient “village republics”¹⁷³ and the recently launched **One District One Product Approach**,¹⁷⁴ that aims at specialised products in districts, carries the *Sarvodaya* Legacy forward by achieving a rural renaissance¹⁷⁵ and local self-reliance.¹⁷⁶

(vi) Quit India Movement (1942-44): The last major Pre-independence movement that resonate with the idea of a self-reliant India is the Quit India Movement. It was launched in the backdrop of World War II,¹⁷⁷ and was the final mass civil disobedience campaign against British Rule.¹⁷⁸ Led by Mahatma Gandhi and the Indian National Congress, with the “Do or die” Slogan, the Quit India Movement demanded complete independence (*Poorna Swaraj*).¹⁷⁹ Indians were called upon all strata of the society to quit all cooperation with the British government till freedom is granted. This included quitting government jobs, educational

¹⁷¹ See Ministry of Rural Development, Government of India, *Land Reforms*, in Annual Report (2007-2008), at 166, https://rural.nic.in/sites/default/files/anualreport0708_eng.pdf.

¹⁷² Rajeev Jayaswal, *Khadi not just a Piece of Cloth but also Weapon for those with Self Respect: PM Modi*, The Hindustan Times (Aug. 07, 2023), <https://www.hindustantimes.com/india-news/pm-modi-highlights-growth-of-handloom-industry-urges-quit-india-movement-against-corruption-and-dynasty-rule-101691406864235.html>.

¹⁷³ *Unnat Bharat Abhiyan*, INDIA GOVERNMENT, <https://www.india.gov.in/spotlight/unnat-bharat-abhiyan-promoting-self-sufficient-village-republics> (last visited Oct. 11, 2023).

¹⁷⁴ *One District One Product*, MINISTRY OF FOOD PROCESSING INDUSTRIES, <https://mofpi.gov.in/pmfmf/one-district-one-product> (last visited Oct. 11, 2023).

¹⁷⁵ PTI, *Self-Governing, Self-Reliant Village Society Key to Ending Rural Poverty: Experts*, THE PRINT (July 19, 2023), <https://theprint.in/india/self-governing-self-reliant-village-society-key-to-ending-rural-poverty-experts/1676866/>.

¹⁷⁶ TNN, *Self-Reliant Villages Key to 5 Trillion Economy*, THE TIMES OF INDIA (Jun 13, 2022), <https://timesofindia.indiatimes.com/city/vadodara/self-reliant-villages-key-to-5-trillion-economy/articleshow/92167860.cms>.

¹⁷⁷ The then Viceroy of India, Lord Linlithgow, declared India to be at war with Nazi Germany without any prior consultation between the British authorities and Indian political leaders; Sarah Ansari, *An Introduction to the Quit India Movement*, VOICES OF PARTITION BRITISH LIBRARY (Nov. 07, 2022), <https://www.bl.uk/voices-of-partition/articles/introduction-to-the-quit-india-movement>.

¹⁷⁸ Sarah Ansari, *An Introduction to the Quit India Movement*, VOICES OF PARTITION BRITISH LIBRARY (Nov. 07, 2022), <https://www.bl.uk/voices-of-partition/articles/introduction-to-the-quit-india-movement>.

¹⁷⁹ Aaditya Tiwari, *Quit India Movement*, PRESS INFORMATION BUREAU (Aug. 05, 2017), <https://pib.gov.in/newsite/printrelease.aspx?relid=169670>.

institutions, and British-made goods.¹⁸⁰ Apart from asserting India's independence, the movement, *inter alia*, also intended to promote self-reliance,¹⁸¹ by emphasising on *swadeshi*.¹⁸² The Quit India Movement holds immense value for self-rule and self-reliance, with the clarion call of ANBA given by PM Modi being paralleled with the 'Do and Die' slogan given by Mahatma Gandhi.¹⁸³

Another parallel between Quit India Movement and ANBA relates to the perceived role of India vis-à-vis the world. It is imperative to highlight that Quit India movement, did not deny India's participation in World War II on the allied side, as was feared by world leaders and scholars of the time, but rather emphasised a greater role of Free National Government of India in the allied war effort, if necessary.¹⁸⁴ Similarly, the ANBA does not mean isolation of India from world, as is being alarmed by experts and economists now, but it rather emphasises a greater role of a self-reliant India in the world economy.¹⁸⁵

Thus, these nationalist movements, highlights the rich history of emphasis on self-reliance during the independence struggle. They not only underscore the significance of self-reliance as a means to achieve political sovereignty, but also as a model for economic and social empowerment. These movements encouraged Indians to take control of their economic destiny, reduce their dependence on British colonialism, and promote the idea of self-sufficiency in various aspects of life, from daily consumer choices to community level development.

¹⁸⁰ *The 'Quit India' Speeches*, PRESS INFORMATION BUREAU, <https://archive.pib.gov.in/quitindia75/vignettes/QIMSpeech.pdf> (last visited Oct. 11, 2023).

¹⁸¹ *Quit India is A Classic Example of Mass Movement Urging for Self-Rule and Self Reliance*, PRESS INFORMATION BUREAU (Aug. 08, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1644369>.

¹⁸² Ministry of Culture, *The Quit India Speech of Mahatma Gandhi*, INDIAN CULTURE, <https://indianculture.gov.in/node/2832062> (last visited Oct. 11, 2023).

¹⁸³ *Quit India is A Classic Example of Mass Movement Urging for Self-Rule and Self Reliance*, PRESS INFORMATION BUREAU (Aug. 08, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1644369>.

¹⁸⁴ M.S. Venkataramani & B.K. Shrivastava, *The United States and the "Quit India" Movement*, 20(2) INDIA QUARTERLY 101 1964.

¹⁸⁵ Amit Chaturvedi, 'To Spur Growth': Nirmala Sitharaman on PM Modi's Atamanirbhar Bharat Abhiyan, HINDUSTAN TIMES (May 13, 2020), <https://www.hindustantimes.com/india-news/to-spur-growth-nirmala-on-pm-modi-s-atamanirbha-bharat-abhiyan/story-s71j5O0ZG21QY4qsTsUnTP.html>.

2.3.2 Legal and Policy Measures to Achieve Self-Reliance Post Independence (1947-2015)

Although India had an illustrious history of an ancient civilisation dating back to 5000 BC,¹⁸⁶ with periods of high prosperity and a rich cultural heritage,¹⁸⁷ intellectual capacity¹⁸⁸ and an enlightened leadership,¹⁸⁹ however, after achieving independence in 1947, India still began its journey as a newly independent, poor and underdeveloped nation.¹⁹⁰ The ideals of *swaraj* and *swadeshi* were reinterpreted in the emergent post-colonial context, and achievement of self-sufficiency became an important component of nation building.¹⁹¹ The first Prime Minister of India, Pandit Jawaharlal Nehru regarded economic self-sufficiency as essential to safeguarding political independence.¹⁹² He observed: “*The Objective for the Country as a whole was the attainment as far as possible of national self-sufficiency. International trade was certainly not excluded, but we were anxious to avoid being drawn into a whirlpool of economic imperialism.*”¹⁹³

Further, he believed that relying on imports for critical assets like railways, airplanes, and weaponry would render a nation vulnerable to foreign influences, as these countries could halt supplies at their discretion, perpetuating a state of subjugation – “*Wherever these countries wished they could stop sending these things ... [w]e would thus remain slaves*”.¹⁹⁴ Thus, in the decades

¹⁸⁶ See BURTON STEIN, A HISTORY OF INDIA 41 (2d edn., 2010).

¹⁸⁷ See Binod Bihari Satpathy, *India Culture and Heritage* (DDCE/M.A. Hist./Paper VIII), https://ddceutkal.ac.in/Syllabus/MA_history/paper-8-N.pdf

¹⁸⁸ See BURTON STEIN, A HISTORY OF INDIA (2d edn., 2010).

¹⁸⁹ By 1947, India had already produced two Nobel laureates (CV Raman in Physics and Sir Rabindranath Tagore in Literature, who also happens to be the first to receive Nobel Prize in Literature outside the English speaking world), several civil servants, barristers, professors, scientists of global repute; Amit S. Ray, *The Enigma of the “Indian Model” of Development*, in 2 UNCTAD, RETHINKING DEVELOPMENT STRATEGIES AFTER THE FINANCIAL CRISIS: COUNTRY STUDIES AND INTERNATIONAL COMPARISONS 31 (2016).

¹⁹⁰ Amit S. Ray, *The Enigma of the “Indian Model” of Development*, in 2 UNCTAD, RETHINKING DEVELOPMENT STRATEGIES AFTER THE FINANCIAL CRISIS: COUNTRY STUDIES AND INTERNATIONAL COMPARISONS 31 (2016).

¹⁹¹ Shaila Seshia & Ian Scoones, *Tracing Policy Connections: The Politics of Knowledge in the Green Revolution and Biotechnology Eras in India* (IDS Working Paper 188, 2003).

¹⁹² David Hundeyin, “*Import v. Produce Locally*” – *An Enduring Economic Misconception*, Business Today (Mar. 05, 2021), <https://businessday.ng/columnist/article/import-vs-produce-locally-an-enduring-economic-misconception/>.

¹⁹³ Shaila Seshia & Ian Scoones, *Tracing Policy Connections: The Politics of Knowledge in the Green Revolution and Biotechnology Eras in India* (IDS Working Paper 188, 2003).

¹⁹⁴ Arvind Panagariya, *Self-sufficiency Held India Back: Some Useful Economic History Lessons on How We Manage to Handicap Ourselves*, TIMES OF INDIA (Mar. 02, 2021), <https://timesofindia.indiatimes.com/blogs/toi-edit-page/self-sufficiency-held-india-back-some-useful-economic-history-lessons-on-how-we-manage-to-handicap-ourselves/>.

following independence, India embarked on a trajectory to achieve self-reliance¹⁹⁵ across various sectors, including economics, industry, technology and agriculture.¹⁹⁶ A wide range of legal and policy measures were put in place to promote self-sufficiency and reduce dependency on external sources. In this section we explore some key initiatives and strategies undertaken to achieve self-reliance during 1947-2015.

(i) Industrial Policy Resolutions (1948 and 1956)¹⁹⁷: India's Industrial Policy from 1948 till 1991 can best be summed up in a quote from Nehru from the 1950s: "*I believe as a practical proposition that it is better to have a second-rate thing made in one's own country than a first rate thing one has to import*".¹⁹⁸ The planned development model adopted by India post-independence, known as the Nehruvian Model, emphasised and envisioned a major role for the public sector as an instrument for self-reliant economic growth.¹⁹⁹ Passed on April 6, 1948, the Industrial Policy Resolution 1948 (IPR), was the first official resolution on Industrial Policy.²⁰⁰ It laid the foundation for India's industrial development by reiterating²⁰¹ and emphasizing the role of public sector in key industries.²⁰² Key features of Industrial Policy Resolution, 1948 include: (i) Mixed public & private sector economy; (ii) existing private producers could continue with "No Nationalization for next 10 years" but it could be considered after 10 years;²⁰³ (iii) Foreign

¹⁹⁵ The concept of self-reliance has gone through several metamorphosis in India's development policy; Amit S. Ray, *The Enigma of the "Indian Model" of Development*, in 2 UNCTAD, RETHINKING DEVELOPMENT STRATEGIES AFTER THE FINANCIAL CRISIS: COUNTRY STUDIES AND INTERNATIONAL COMPARISONS 31 (2016).

¹⁹⁶ Nimish Adhia, *The History of Economic Development in India Since Independence*, 20(3) EDUCATION ABOUT ASIA (2015).

¹⁹⁷ See also The Statement of Industrial Policy 1945 issued by the Planning and Development Department of Government of India. It was the first comprehensive proposal for industrial development issued by the Government and called for explicit control of the Government over 20 key industries. The Policy Statement also bifurcated industry into public as well as private sector and laid the foundation of control of Union Government over industrial development. Raveesh Sharma, *The Industrial Policy Resolution of 1956*, The Medium (July 11, 2021), <https://raveesh86.medium.com/the-industrial-policy-resolution-of-1956-5677eb573027>.

¹⁹⁸ Naushad Forbes, *Doing Business in India: What has Liberalization Changed?* 13 (Stanford Center for International Development, Working Paper No. 93, 2001).

¹⁹⁹ *Public Sector in India (Overview & Profile)*, https://dpe.gov.in/sites/default/files/Chapter-1-Overview%20%26%20Profile_Final_0.pdf (last visited Oct. 12, 2023).

²⁰⁰ Raveesh Sharma, *The Industrial Policy Resolution of 1956*, The Medium (July 11, 2021), <https://raveesh86.medium.com/the-industrial-policy-resolution-of-1956-5677eb573027>.

²⁰¹ See The Statement of Industrial Policy 1945 and Bombay Plan 1944 (also called the 'Tata-Birla' Plan), See Shivanand Kanavi, *Captains, Put Up a Design*, OUTLOOK INDIA (Nov. 29, 2019), <https://www.outlookindia.com/magazine/story/books-captains-put-up-a-design/302413>.

²⁰² Raveesh Sharma, *The Industrial Policy Resolution of 1956*, The Medium (July 11, 2021), <https://raveesh86.medium.com/the-industrial-policy-resolution-of-1956-5677eb573027>.

²⁰³ Aditya Bhattacharjea, *Industrial Policy in India Since Independence*, 57 INDIAN ECONOMIC REVIEW 565 (2022).

Direct Investment (FDI) was permitted but majority ownership ought to remain with Indians.²⁰⁴

Several major changes took place after the passage of the IPR, 1948 which included: (i) enactment of the Constitution of India, guaranteeing fundamental rights and enumerating DPSPs; (ii) Centrally Planned & organised economy on Five Year Plan Basis; (iii) Adoption of Socialist society pattern as the objective of social and economic policy.²⁰⁵ These changes necessitated a fresh outlook at industrial policy that should be governed by constitutional principles and socialist objectives and experiences gained after independence.²⁰⁶

Consequently, the Indian Policy Resolution was passed on April 30, 1956.²⁰⁷ The objectives of IPR, 1956 included accelerating industrialization pace, development of heavy industry, improving livelihood, reducing disparities in wealth, public sector expansion and improved cooperation with private sector.²⁰⁸ Further, the Industrial Policy Resolution of 1956 outlined a classification of industries into three categories: Schedule A (public sector), Schedule B (industries that will progressively become state owned), and Schedule C (private sector), with different policies for each.²⁰⁹ Schedule A comprised of 17 industries that were reserved exclusively for the public sector to ensure self-reliance in critical sectors. These industries included, inter alia, railways, air transport, arms and ammunition, iron and steel and atomic energy.²¹⁰ Thus, both the resolutions reflected the desire of Indian State to achieve self-sufficiency in industrial production with public sector as the primary driving force.

²⁰⁴ Faiyaz Hussain, *Industrial Policy Resolution, 1948 and 1956* (MMHA&P University, Patna), https://mmhapu.ac.in/doc/eContent/Management/FaiyazHusain/Industrial%20policy%201948%20and%201956_Sem4.pdf (last visited Oct. 12, 2023).

²⁰⁵ Industrial Policy Resolution, 1956, <https://dpiit.gov.in/sites/default/files/chap001%20%2013.pdf> (last visited Oct. 12, 2023).

²⁰⁶ Industrial Policy Resolution, 1956, <https://dpiit.gov.in/sites/default/files/chap001%20%2013.pdf> (last visited Oct. 12, 2023).

²⁰⁷ Raveesh Sharma, *The Industrial Policy Resolution of 1956*, The Medium (July 11, 2021), <https://raveesh86.medium.com/the-industrial-policy-resolution-of-1956-5677eb573027>.

²⁰⁸ Industrial Policy Resolution, 1956, <https://dpiit.gov.in/sites/default/files/chap001%20%2013.pdf> (last visited Oct. 12, 2023); Raveesh Sharma, *The Industrial Policy Resolution of 1956*, The Medium (July 11, 2021), <https://raveesh86.medium.com/the-industrial-policy-resolution-of-1956-5677eb573027>.

²⁰⁹ Raveesh Sharma, *The Industrial Policy Resolution of 1956*, The Medium (July 11, 2021), <https://raveesh86.medium.com/the-industrial-policy-resolution-of-1956-5677eb573027>.

²¹⁰ *Industrial Policy Resolutions*, http://www.drarendrajadhav.info/drjadhav-data_files/Published%20papers/Indian%20Industrial%20Policy%20Since%201956.pdf (last visited Oct. 12, 2023).

(ii) Five-Year Plans (1951-2017): Independent India adopted a centrally planned economic development policy model.²¹¹ Such centralised and integrated economic development through 5 year plans was first experimented in the Soviet Union in 1928 by Joseph Stalin and since then have been adopted by countries like China, Bhutan, Vietnam, South Korea, Argentina, Romania, and Ethiopia.²¹² In India, the first Five Year Plan was formulated in 1951 against the backdrop of independence, partition, enactment of the Constitution, and for a nation that was struggling due to flood of refugees, a severe food scarcity, and rising inflation. It was largely concentrated on the growth of the primary sector, particularly irrigation and agriculture.²¹³ It was the beginning of a planned economic development of India,²¹⁴ and 12 such Five Year Plans have been formulated, executed and monitored during the period (1951 -2014) by the Planning Commission of India (PCI).²¹⁵ These plans identified priority sectors and allocated resources for their development. Priority was given to agriculture, industry, and infrastructure to promote self-sufficiency in food production, manufacturing, and basic services.

The Five-Year Plans were instrumental in charting India's economic growth and self-reliance. Although, some of the Five-Year Plans did not explicitly mention self-reliance as a key objective, however, the objective of self-reliance remained axiomatic in India's development planning until the Ninth Five Year Plan.²¹⁶ The First and Second FYPs laid the foundation by focusing on the primary sectors and the pre-requisites for India to become a self-sufficient economy. Key sectors emphasised in first and second FYPs were agriculture, heavy & basic industry (iron & steel), technological higher education institutions (IITs), dam construction, power and transport etc.²¹⁷

However, the later plans did not do away with self-reliance completely but rather re-invented the concept with phrases such as “technological and economic self-reliance”.²¹⁸

²¹¹ *Public Sector in India (Overview & Profile)*, https://dpe.gov.in/sites/default/files/Chapter-1-Overview%20%26%20Profile_Final_0.pdf (last visited Oct. 12, 2023).

²¹² Revathi Krishnan, *All About the First Five-Year Plan that was Presented by Nehru Nearly 70 Years ago Today*, THE PRINT (July 9, 2020), <https://theprint.in/india/all-about-the-first-five-year-plan-that-was-presented-by-nehru-nearly-70-years-ago-today/457511/>.

²¹³ Niti Aayog, *1st Five Year Plan*, <https://NITI.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/index1.html>

²¹⁴ V K R V Rao, *India's First Five-Year Plan – A Descriptive Analysis*, 25(1) PACIFIC AFFAIRS 3 (1952).

²¹⁵ The actual number is 13 by including the Rolling Plan formulated by the Janta Government 1978-80, i.e. the Sixth Five Year Plan was formulated twice.

²¹⁶ Vijay Laxman Kelkar, *India and World Economy: Search for Self-Reliance*, 15(5/7) ECONOMIC & POLITICAL WEEKLY 245 (1980).

²¹⁷ See Table “Outline of Various Five Year Plans” Below.

²¹⁸ See Planning Commission of India, *Seventh Five Year Plan* (1985).

Further, the term “self-reliant economy” came to be defined as “one which could meet all its import requirements through exports”, thus “import substitution” was replaced with “promotion of exports” as a critical instrument of self-reliance;²¹⁹ Moreover, the Foreign Direct Investment has been linked with self-reliance in a sense that More FDI will provide access to technology for modernising industry and resources to avoid build-up of external debt to help achieve self-reliance.²²⁰ Thus, the meaning of “self-reliance” has continuously and parallelly evolved with the changing macro-economic context. A brief summary of each five year plan, and its relevance for a self-reliance has been charted out in the below table.

Table 2.2 : Five Year Plans: Summary & Self-Reliance Initiatives		
S. No.	Plan	Outline of Key Objectives
1.	First FYP (1951-56)	<ul style="list-style-type: none"> ▪ Targeted Growth - 2.10%, Actual Growth – 3.60% ▪ Based on Harrod-Domar Model; ▪ The Motto of the plan was “Development of Agriculture” ▪ Aimed to address influx of refugees, severe food shortage & mounting inflation ▪ The plan focused on agriculture, price stability, power and transport ▪ Another main target was to lay down the foundation for Industry, agriculture development in the country and to provide affordable health care, education in low price to people. ▪ Emphasised active role of state in all economic sectors. ▪ During this period, many Irrigation Projects (Bhakra, Hirakud, Damodar Valley dams) were initiated, 5 Indian Institutes of Technology (IITs were established), University Grant Commission (UGC) was set up to strengthen higher education, Contracts were signed to start 5 Public sector Steel Plants at Durgapur, Rourkela, Bhilai (which came into existence in the middle of Second FYP).
2.	Second FYP (1956-61)	<ul style="list-style-type: none"> ▪ Targeted Growth – 4.50%, Actual Growth – 4.30% ▪ Based on the Mahalanobis Model. ▪ Conceived in an atmosphere of economic stability, it was felt agriculture could be accorded lower priority. ▪ Focused on development of the public sector and rapid industrialization – heavy & basic industries. Advocated huge imports through foreign loans.

²¹⁹ See Government of India, *Budget Speech by the Then Finance Minister*, Parliament (1992).

²²⁰ See Planning Commission of India, *Ninth Five Year Plan* (1992).

		<ul style="list-style-type: none"> ▪ Industrial Policy 1956 – based on socialistic pattern of society as the goal of economic policy. ▪ Irrigation Projects & Steel Plants initiated under the First FYP were completed. ▪ Coal production was increased, more railway lines were added in the north east. ▪ The Tata Institute of Fundamental Research and Atomic Energy Commission of India were Established as research institute. ▪ Focused on sectors such as power, irrigation, social services, communications and transport.
3.	Third FYP (1961-66)	<ul style="list-style-type: none"> ▪ Targeted Growth – 5.60%, Actual Growth – 2.80% ▪ Based on John Sandy & Sukhamoy Chakraborty’s model. ▪ At its conception, it was felt that Indian economy has entered a “take off stage”. Therefore, its aim was to make India a “self-reliant” and “self-governing” economy. ▪ Based on the experiences of first two plans, agricultural production was seen as limiting factor in India’s economic development. ▪ Agriculture and improvement in wheat production was given top priority to support exports and industry. Punjab began producing an abundance of wheat. ▪ For the first time Rupee was devalued in 1966 and India resorted to borrowing from the IMF. ▪ States were given more development responsibilities. State Electricity Boards and State Secondary Education Boards were formed. Many primary schools were started in rural areas. State road transportation corporations were formed and building local roads became a state responsibility. ▪ Construction of dams continued, many cement and fertilizer plants were built. ▪ Due to unforeseen events – Chinese aggression (1962), Indo-Pak war (1965) – approach was shifted during the last phase from development to defence & development – severe draught 1965-66.
4.	Fourth FYP (1969-74) ²²¹	<ul style="list-style-type: none"> ▪ Targeted Growth - 5.70%, Actual Growth – 3.30% ▪ Based on Gadgil Formula focusing on growth with stability and progress towards self-reliance.

²²¹ Failure of the Third Plan that of the devaluation of Rupee (to boost exports) along with inflationary recession led to postponement of the Fourth FYP. Three Annual Plans were introduced instead. Prevailing crisis in agriculture and serious food shortage necessitated the emphasis on agriculture during the Annual Plans. Implemented A New agriculture strategy which involved wide-spread distribution of high-yielding varieties of seeds, extensive use of fertilizers, exploitation of irrigation potential and soil conversion. During the annual plan phase, the economy absorbed the shocks generated during the third plan and paved the way for the planned growth ahead. See *Five Year Plans*, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION (MosPI) https://www.mospi.gov.in/sites/default/files/Statistical_year_book_india_chapters/ch7.pdf (last visited Oct. 13, 2023).

		<ul style="list-style-type: none"> ▪ Refusal of supply of essential equipment and raw materials from the allies during the Indo-Pak war resulted in twin objectives of “growth with stability” and “progressive achievement of self-reliance” for the fourth plan. ▪ Adopted the objective of correcting the earlier trend of increased concentration of wealth and economic power. ▪ Main emphasis on growth rate of agriculture to enable other sectors to move forward – Green Revolution advanced agriculture. ▪ Implementation of Family Planning Programmes. ▪ 14 Major Indian Banks were nationalized. ▪ The Concept of Buffer stock was introduced and a buffer stock of 5 million tonnes of food grains was envisaged. ▪ The Draught Prone Area Program (DPAP) was launched. ▪ Issues – Bangladeshi refugees before and after the 1971 Indo-Pak war.
5.	Fifth FYP (1974-79)	<ul style="list-style-type: none"> ▪ Targeted Growth - 4.40%, Actual Growth – 4.80% ▪ Formulated in the backdrop of economic crisis arising out of run-away inflation fuelled by hike in oil prices and failure of Government takeover of the wholesale trade in wheat. ▪ Focused on employment, ‘removal of poverty’ (<i>Garibi Hatao</i>), justice and ‘attainment of self-reliance’ in agricultural production and defence. ▪ Promotion of high rate of growth, better distribution of income and significant growth in the domestic rate of savings were seen as key instruments. ▪ The Electricity Supply Act was amended in 1975 which enabled the central government to enter into power generation and transmission. ▪ The Indian National Highway system was introduced to widen many roads to accommodate the increasing traffic. ▪ The Minimum Needs Programme (MNP) was introduced to provide for certain basic minimum needs and thereby improve the living standards of the people. ▪ Issues – cost calculation proved completely wrong due to high inflation, promulgation of emergency in 1975 (emphasis shifted on 20 Point Programme). FYP was relegated to the background and was eventually terminated by the Janta Government in 1978.
6.	Sixth FYP (1980-85) ²²²	<ul style="list-style-type: none"> ▪ Targeted Growth - 5.20%, Actual Growth – 5.70%

²²² There were two Sixth Plans. The 1978-1983 plan was implemented by the Janta Government but it lasted only two years, 1978-80 and is now termed as Rolling Plan. 1978-83 Plan emphasized employment in contrast to Nehru Model which the Janta Government criticized for concentration of power, widening inequality & for mounting poverty. However, the Government lasted for only 2 years. Congress Govt. returned to power in 1980 and launched a different plan aimed at directly attacking on the problem of poverty by creating conditions of an expanding economy. See *Five Year Plans*, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION (MosPI)

		<ul style="list-style-type: none"> ▪ Marked the beginning of economic liberalization and end of Nehruvian Socialism. ▪ Focused on increase in national income, modernization of technology, ensuring continuous decrease in poverty and unemployment through schemes for transferring skills sets (Training of Rural Youth for Self-Employment and Integrated Rural Development Program) and providing slack season employment (National Rural Employment Programme), controlling population explosion etc. ▪ Price controls were eliminated and ration shops were closed. ▪ The National Bank for Agriculture and Rural Development (NBARD) was established for development of rural areas. ▪ Family planning was expanded in order to prevent overpopulation. ▪ Military Five-Year Plans became coterminous with Planning Commission's plans from this plan onward.
7.	Seventh FYP (1985-89)	<ul style="list-style-type: none"> ▪ Targeted Growth - 5%, Actual Growth - 6% ▪ The plan aimed at accelerating food grain production, increasing employment opportunities 'social justice' & raising productivity with focus on 'food, work & productivity'. ▪ It laid stress on improving the productivity level of industry by upgrading technology. ▪ The trust areas of the plan were social justice, removal of oppression of the weak, using modern technology, agricultural development, anti-poverty programmes, full supply of food, clothing, and shelter, increasing productivity of small and large scale farmers, and making India an independent economy. Under the plan, India strove to bring about a self-sustained economy in the country with valuable contributions from voluntary agencies and the general populace. ▪ Based on a 15-year period of striving towards steady growth, the plan was focused on achieving the prerequisites of self-sustaining growth by 2000.
8.	Eighth FYP ²²³ (1992-97)	<ul style="list-style-type: none"> ▪ Targeted Growth - 5.60%, Actual Growth - 6.80% ▪ Worsening Balance of Payment position, rising debt burden, widening budget deficits, recession in industry and inflation were the key issues during the launch of the plan. ▪ Drastic policy measures were taken to combat the bad economic situation and to undertake an annual growth rate of 5.6% through introduction of fiscal & economic reforms

https://www.mospi.gov.in/sites/default/files/Statistical_year_book_india_chapters/ch7.pdf (last visited Oct. 13, 2023).

²²³ The Eighth FYP was postponed by two years because of political uncertainty at the Centre. See *Five Year Plans*, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION (MosPI) https://www.mospi.gov.in/sites/default/files/Statistical_year_book_india_chapters/ch7.pdf (last visited Oct. 13, 2023).

		<p>including liberalisation, privatization and globalization (LPG) under the Prime Ministership of Shri P V Narasimha Rao.</p> <ul style="list-style-type: none"> ▪ Modernization of industries was a major highlight of the Eighth FYP. A gradual opening of the Indian economy was undertaken. ▪ India became a member of the World Trade Organization (WTO) on 1st January 1995. ▪ Energy was given priority with 26.6% of the outlay. ▪ Other major objectives includes – controlling population growth, poverty reduction, employment generation, strengthening the infrastructure, institutional building, tourism management, human resource development, involvement of Panchayat Rajs, Nagar Palikas, NGOs, decentralization and people’s participation.
9.	Ninth FYP (1997-2002)	<ul style="list-style-type: none"> ▪ Targeted Growth – 6.50%, Actual Growth – 5.40% ▪ Came after 50 years of Independence and focused on “Growth with Social Justice & Equality”. ▪ It tried primarily to use the latent and unexplored economic potential of the country to promote economic and social growth. ▪ Aimed to depend predominantly on the private sector – Indian as well as FDI). ▪ State was envisaged to increasingly play the role of facilitator & increasingly involve itself with social sector viz education, health etc and infrastructure where private sector participation was likely to be limited. ▪ Assigned priority to agriculture & rural development with a view to generate adequate productive employment and eradicate poverty. It had the aim of developing self-reliance in terms of agriculture. ▪ Joint Efforts from public and private sectors in ensuring economic development of the country.
10.	Tenth FYP (2002-07)	<ul style="list-style-type: none"> ▪ Targeted Growth - 8%, Actual Growth – 7.60% ▪ Recognized that economic growth can’t be the only objective of national plan. ▪ Hence, beside 8% growth rate, the Tenth Plan set ‘monitorable targets’ for 11 key indicators of development which included reduction in gender gaps in literacy and wage rate, reduction in infant & maternity mortality rates, improvement in literacy, access to potable drinking water cleaning of major polluted rivers, etc. ▪ Governance was considered as factor of development & agriculture was declared as prime moving force of the economy. ▪ States role in planning was to be increased with greater involvement of Panchayati Raj Institutions. State wise break up of targets for growth and social development sought to achieve balanced development of all states.

11.	Eleventh FYP (2007-2012)	<ul style="list-style-type: none"> ▪ Targeted Growth - 9%, Actual Growth – 8% ▪ Aimed at “Towards Faster & More Inclusive Growth”. ▪ India had emerged as one of the fastest growing economy by the end of Tenth Plan but the growth was not perceived as sufficiently inclusive for many groups, specially SCs, STs, minorities. ▪ Intended to increase enrolment in higher education of 18-23 years age group, focus on distant education, convergence of formal & non-formal, distant and IT education institutions. ▪ Rapid and inclusive growth (poverty reduction); emphasis on social sector and delivery of service therein, empowerment through education & skill development, reduction of gender inequality, environmental sustainability, provide clean drinking water for all by 2009.
12.	Twelfth FYP (2012-17)	<ul style="list-style-type: none"> ▪ Targeted Growth - 8%, Actual Growth – N/A ▪ Aimed at “Faster, More Inclusive and Sustainable Growth” ▪ Indented to create 50 Million new job opportunities in non-agricultural sectors, remove gender and social gaps in school enrolment, enhance access to higher education, reduce malnutrition, provide electricity to all villages, ensure access to proper drinking water to 50% of rural population, increase green coverage by 1 million hectares every year, provide banking services to 90% of households. ▪ Unique Identification Number (UID) was introduced as a platform for cash transfer of the subsidies. ▪ Aimed toward achieving self-sufficiency in launching satellites, developing launch vehicles for enhanced payload capability, adopting appropriate outsourcing strategies for assuring production of launch vehicles, enhancement of infrastructure for launch vehicles and developing technologies for the future programmes of ISRO.

Sources: The present table is prepared by referring to a number of primary & secondary sources.²²⁴

(iii) Green Revolution (1960s-1970s): The Green Revolution was launched by the Government of India under the regime of Prime Minister Lal Bahadur Shastri in 1965 with

²²⁴ See Planning Commission, Government of India, *5 Year Plans*, <http://164.100.161.239/plans/planrel/fiveyr/index4.html> (last visited Oct. 13, 2023); *Five Year Plans*, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION (MosPI) https://www.mospi.gov.in/sites/default/files/Statistical_year_book_india_chapters/ch7.pdf (last visited Oct. 13, 2023); Hemant Singh, *List of All Five-Year Plans of India*, JAGRANJOSH (Apr. 07, 2021), <https://www.jagranjosh.com/general-knowledge/list-of-all-five-year-plans-of-india-1468309723-1>; Ministry of Power, Government of India, *Historical Background of Legislative Initiatives*, https://web.archive.org/web/20130922215937/http://www.powermin.nic.in/indian_electricity_scenario/pdf/Historical%20Back%20Ground.pdf (last visited Oct. 13, 2023); Amit Cowshish, *13th Five-Year Defence Plan (2017-22) – A Re-Run of the Past*, MANOHAR PARRIKAR INSTITUTE FOR DEFENCE STUDIES AND ANALYSIS (July 31, 2017), https://idsa.in/idsacomments/13th-five-year-defence-plan-2017-22_acowshish_310717;

the assistance of veteran agriculturalist MS Swaminathan.²²⁵ During 1947 to 1960s India faced acute food shortage and rising population, insufficient agricultural production of food grains²²⁶ and the country remained vulnerable to severe famines.²²⁷ In this backdrop, the Green Revolution was launched. It was a comprehensive strategy to achieve self-sufficiency in food grain production and involved the introduction of high-yielding crop varieties (HYVs), modern agricultural practices, expanded use of inorganic fertilizers, pesticides & other chemical inputs, and better irrigation methods to increase agricultural productivity.²²⁸

Other measures included increased area for farming, double-cropping patterns (i.e. planting two crops rather than one, annually), improved farm implements and crop protection measures and modernized & modified farm equipment.²²⁹ It facilitated institutional and social changes in the rural areas and provided opportunities for self-sustaining economic growth and reduced poverty.²³⁰ It also changed the traditional way of doing agriculture and created employment in the rural sector.²³¹ The Green Revolution made India self-sufficient²³² in food grains even though it has spread only to a quarter of its arable land. It was successful in states like Punjab, Haryana, Western Uttar Pradesh, and parts of Tamil Nadu & Kerala.²³³

²²⁵ Prarthna Rajkumari, *Self-Reliance in Food – Green and White Revolution with Special Reference to North East India*, PRESS INFORMATION BUREAU (Aug. 22, 2017), <https://pib.gov.in/newsite/printrelease.aspx?relid=170143>.

²²⁶ This low productivity of food grain is also attributed to policy decisions of PM Nehru's of relying on import of food grains from the west (U.S.) and focusing on development of heavy industry and non-food export crops (such as Jute) production to earn foreign currency. See Glenn Davis Stone, *Did the Green Revolution Really make India Self-Sufficient in Food Production?*, SCROLL IN (Oct. 07, 2023), <https://scroll.in/article/1057113/opinion-did-the-green-revolution-really-make-india-self-sufficient-in-food-production>.

²²⁷ See M. L. Dantwala, *From Stagnation to Growth: Relative Roles of Technology, Economic Policy and Agrarian Institutions*, in R. T. SHAND (EDS.), *TECHNICAL CHANGE IN ASIAN AGRICULTURE* 234 (1973).

²²⁸ Per Pinstrup-Anderson & Peter B. R. Hazell, *The Impact of Green Revolution and Prospects for the Future*, 1(1) *FOOD REVIEWS INTERNATIONAL* 1 (1985).

²²⁹ See Daisy A. John & Giridhara R. Babu, *Lessons from the Aftermath of Green Revolution on Food System and Health*, 5 *FRONTIERS IN SUSTAINABLE FOOD SYSTEMS* (2021).

²³⁰ Per Pinstrup-Anderson & Peter B. R. Hazell, *The Impact of Green Revolution and Prospects for the Future*, 1(1) *FOOD REVIEWS INTERNATIONAL* 1 (1985).

²³¹ Sudaita Ghosh, *Covid-19 and the Aspiration of Atmanirbhar Bharat*, 13 *JOURNAL OF POLICY & SOCIETY* 143 (2021).

²³² See *contra* Glenn Davis Stone, *Did the Green Revolution Really make India Self-Sufficient in Food Production?*, SCROLL IN (Oct. 07, 2023), <https://scroll.in/article/1057113/opinion-did-the-green-revolution-really-make-india-self-sufficient-in-food-production>.

²³³ Govindan Parayil, *The Green Revolution in India: A Case Study of Technological Change*, 33(4) *TECHNOLOGY AND CULTURE* 737 (1992).

(iv) White Revolution (1970s): Launched on January 13, 1970, Operation Flood,²³⁴ also known as the White Revolution,²³⁵ was a significant program initiated in India to transform the country's dairy production. It is regarded as world's largest development programme which revitalised Indian dairy industry since 1970s,²³⁶ and transformed India from a milk deficient nation to a leading milk producer in the world.²³⁷ At the time of its launch India was importing 55,000 tonnes of milk powder every year & milk production in the country was lowest in the world. This was despite the fact that India had the largest number of cattle heads in the world.²³⁸ Launched in three phases, the key elements of white revolution included: (i) increasing milk production ("a flood of milk")²³⁹ and making dairy farming more profitable for small and marginal farmers, (ii) introducing and establishing cooperative dairy models such as Amul; (iii) technological advancements in milk production, processing and distribution; (iv) Establishment of National Dairy Development Board (NDDB).

Dr. Verghese Kurian, played a pivotal role in this movement and he is often referred to as the "father of white revolution".²⁴⁰ The success of the white revolution transformed rural landscape and empowered millions of small and marginal dairy farmers, especially in Gujarat & Punjab.²⁴¹ It also made India a milk surplus nation and created pathways to explore export opportunities in dairy products.²⁴² Both the Green Revolution and White Revolution have played a significant role in making India self-reliant agriculture and dairy sectors, respectively.

(v) Technology and Space Programs: Space Activities in India began with the formation of Indian National Committee for Space Research (INCOSPAR) in the year 1962. However, it

²³⁴ BRUCE A. SCHOLTEN, *INDIA'S WHITE REVOLUTION: OPERATION FLOOD, FOOD AID AND DEVELOPMENT* (2010).

²³⁵ The term "White Revolution" was coined to parallel the success of the Green Revolution.

²³⁶ BRUCE A. SCHOLTEN, *INDIA'S WHITE REVOLUTION: OPERATION FLOOD, FOOD AID AND DEVELOPMENT* (2010).

²³⁷ Team LHI, *Operation Flood: India's White Revolution*, Peepul Tree (July 23, 2022), <https://www.peepulree.world/livehistoryindia/story/eras/operation-flood-white-revolution>.

²³⁸ Team LHI, *Operation Flood: India's White Revolution*, Peepul Tree (July 23, 2022), <https://www.peepulree.world/livehistoryindia/story/eras/operation-flood-white-revolution>.

²³⁹ *Operation Flood: One of World's Largest Rural Development Programmes*, National Dairy Development Board, <https://www.nddb.coop/about/genesis/flood> (last visited Oct. 15, 2023).

²⁴⁰ Dr. Verghese Kurian, WORLD FOOD PRIZE FOUNDATION, https://www.worldfoodprize.org/en/laureates/19871999_laureates/1989_kurien/ (last visited Oct. 15, 2023).

²⁴¹ K V Priya, *India's Dairy Sector: A Unique Model*, 45 EMPLOYMENT NEWS Weekly (Feb. 04-10, 2023), <https://employmentnews.gov.in/NewEmp/MoreContentNew.aspx?n=Editorial&k=70280>.

²⁴² See VERGHESE KURIEN, *INDIA'S MILK REVOLUTION - INVESTING IN RURAL PRODUCER ORGANIZATIONS* (International Bank for Reconstruction and Development, 2004).

was the establishment of the Indian Space Research Organization (ISRO) in 1969, that transformed India's space programme in harnessing the benefits of space technology²⁴³ with a focus on developing indigenous satellite and launch vehicle technology, reducing dependency on foreign providers. From humble beginnings, ISRO has come a long way and has reached a matured level of self-reliance of India in space technology with capability to design and develop launch vehicles and spacecraft,²⁴⁴ including their materials, components and sub-systems.²⁴⁵ Today India is among the Top-5 space nations globally.²⁴⁶ The success of India's Space Programme and the application of Space technology has been instrumental in strengthening "ease of living" for the common man and today satellite technology is being extensively used in sectors such as railways, road and bridge construction, agricultural sector, housing, tele-medicine, disaster management and accurate weather forecast.²⁴⁷

Recently, in 2020, India decided to open up its Space sector for private participation in the entire gamut of space activities with the aim to make India a competitive Space market.²⁴⁸ In order to facilitate private sector participation, Government of India created the Indian National Space Promotion and Authorisation Centre (IN-SPACe) as a "single-window, independent, nodal agency" which functions as an autonomous agency in Department of Space (DOS).²⁴⁹ IN-SPACe plays an important role in boosting the private space sector economy in India, and is responsible for promoting, enabling, authorising, and supervising various space activities of the Non-Government Entities (NGEs).²⁵⁰ It is hoped that the opening of the Space Sector for private participation will not only enhance the capacity and resources of the Space

²⁴³ *Overview of the Indian Space Sector*, MINISTRY OF EXTERNAL AFFAIRS, <https://www.coiparis.gov.in/page/overview-of-the-indian-space-sector/> (last visited July 15, 2024).

²⁴⁴ A P J Abdul Kalam, *Address at the Symposium on Launch Vehicles: Past, Present and Way Ahead* (VSSC, Thiruvananthapuram), PRESIDENT OF INDIA (July 28, 2005), <https://www.presidentofindia.gov.in/abdulkalam/speeches/address-symposium-launch-vehicles-past-present-and-way-ahead-vssc-thiruvananthapuram>.

²⁴⁵ *Industry*, INDIAN SPACE RESEARCH ORGANIZATION, <https://www.isro.gov.in/Industry.html> (last visited July 15, 2024).

²⁴⁶ Statement of Shri S. Somnath, DOS/Chairman, ISRO, *Azadi ka Amrit Mahotsav*, INDIAN SPACE RESEARCH ORGANIZATION, <https://www.isro.gov.in/azadi-ka-amrit-mahotsav.html> (last visited July 15, 2024).

²⁴⁷ Department of Space, Government of India, *ISRO in Collaboration with Private Sector will Boost "Atmanirbhar Bharat": Dr. Jitendra Singh*, PRESS INFORMATION BUREAU (Jan. 04, 2021), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1686004>.

²⁴⁸ Department of Space, Government of India, *ISRO in Collaboration with Private Sector will Boost "Atmanirbhar Bharat": Dr. Jitendra Singh*, PRESS INFORMATION BUREAU (Jan. 04, 2021), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1686004>.

²⁴⁹ *About IN-SPACe*, INDIAN NATIONAL SPACE PROMOTION AND AUTHORIZATION CENTER, https://www.inspace.gov.in/inspace?id=inspace_about_inspace (last visited July 15, 2024).

²⁵⁰ *About IN-SPACe*, INDIAN NATIONAL SPACE PROMOTION AND AUTHORIZATION CENTER, https://www.inspace.gov.in/inspace?id=inspace_about_inspace (last visited July 15, 2024).

sector but the increased private participation will also discourage the “brain-drain” of talented Space Scientists and experts who were moving outside India for opportunities.²⁵¹ As of February 2024, IN-SPACe has signed Memorandum of Understanding (MoUs) with 51 NGEs and 189 Start-ups have registered on the Digital Platform in the Indian Space Sector.²⁵²

(vi) Economic Liberalization (1991): India’s story of economic liberalization has been a gradually evolving process rather than a one-off process.²⁵³ Till the 1990s, India appeared to be caught in a “cycle of oscillations” between protective measures on one hand and “attempted but aborted” moves towards a liberalized economy on the other.²⁵⁴ However, an urgent need to respond to and resolve the rapidly escalating economic crisis of the late 1980s and early 1990s, including the issue of balance of payments,²⁵⁵ led to a series of “paradigmatic” reforms,²⁵⁶ a period now known as the Economic Liberalization of 1991. Embedded in an attitudinal shift in favour of private businesses,²⁵⁷ the wide ranging reforms introduced in this period in a “gradual and calibrated manner” had a significant impact on the Indian economy and ushered in the era of liberalization and globalization in India.²⁵⁸ These reforms resulted in opening up of the economy, significant increase in foreign investments,²⁵⁹ began a shift towards making India a more services-oriented economy, contributed in reduction of poverty (from 36% in 1993-94 to 26.1% in 1999-2000),²⁶⁰ resulted in creation of millions of new jobs, infusion of

²⁵¹ Department of Space, Government of India, *ISRO in Collaboration with Private Sector will Boost “Atmanirbhar Bharat”*: Dr. Jitendra Singh, PRESS INFORMATION BUREAU (Jan. 04, 2021), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1686004>.

²⁵² Department of Space, *Union Minister Dr. Jitendra Kumar Singh says, Total Number of Registered Start-ups on Digital Platform are approximately 189 in Indian Space Sector*, PRESS INFORMATION BUREAU (Feb. 08, 2024), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2003917>.

²⁵³ Mohammad Ali Mousavi & Tohid Asadi, *Towards Liberalization: A Study of Indian Experience, 1947-1991*, 5(1) JOURNAL OF WORLD SOCIOPOLITICAL STUDIES 1 (2021).

²⁵⁴ David B. H. Denoon, *Cycles in Indian Economic Liberalization, 1966-1996*, 31(1) COMPARATIVE POLITICS 43 (1998).

²⁵⁵ RASHMI BANGA & ABHIJIT DAS (EDS), *TWENTY YEARS OF INDIA’S LIBERALIZATION: EXPERIENCES AND LESSONS*, at x (United Nations Conference on Trade and Development (UNCTAD), UNCTAD/OSG/2012/1).

²⁵⁶ Mohammad Ali Mousavi & Tohid Asadi, *Towards Liberalization: A Study of Indian Experience, 1947-1991*, 5(1) JOURNAL OF WORLD SOCIOPOLITICAL STUDIES 1 (2021).

²⁵⁷ Dani Rodrik & Arvind Subramanian, *From “Hindu Growth” to Productivity Surge: The Mystery of the Indian Growth Transition* (National Bureau of Economic Research (NBER) Working Paper Series, Working Paper No. 10376, March 2004).

²⁵⁸ See e.g., J Mohan Rao & Amitava Krishna Dutt, *A Decade of Reforms: The Indian Economy in the 1990s*, in LANCE TAYLOR (ED), *EXTERNAL LIBERALIZATION IN ASIA, POST-SOCIALIST EUROPE, AND BRAZIL* 139 (Oxford Academic, 2007).

²⁵⁹ See e.g., JAGDISH N. BHAGWATI & ARVIND PANAGARIYA, *WHY GROWTH MATTERS: HOW ECONOMIC GROWTH IN INDIA REDUCED POVERTY AND THE LESSONS FOR OTHER DEVELOPING COUNTRIES* 31 (2013); Naushad Forbes, *Doing Business in India: What has Liberalization Changed?* (Stanford Center for International Development, Working Paper No. 93, 2001).

²⁶⁰ *Impact of Reforms*, INDIA BEFORE 91, <https://indiabefore91.in/impact-reforms> (last visited Nov. 18, 2024).

competition in domestic market,²⁶¹ increase in exports,²⁶² improvement in access to credit and acceleration of economic growth.²⁶³

However, it is important to note that India's economic liberalization is not "anti-self-reliance" rather it re-defined self-reliance in terms of wise and strategic use of resources to foster entrepreneurship, encourage innovation, and creation of a balanced ecosystem.²⁶⁴ It meant improvement in self-reliance by promoting domestic industries, reducing inefficiencies, and encouraging competition by opening up of the economy for private participation. It also resulted in a diversified economic base with blossoming of plethora of private enterprises. The learnings from economic liberalisation were strategically leveraged in the "Make in India" campaign, launched in 2014 which aimed to boost the manufacturing sector in India by opening up avenues for influx of foreign capital.²⁶⁵

(vii) Pharmaceutical Sector and Patents Act, 1970: Historically and ideologically, India has not been in favour of a strong patent regime in the Pharmaceutical Sector. Prime Minister Indira Gandhi at the World Health Assembly in Geneva, 1982 had stated "*The idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death*".²⁶⁶ Over the years, India's pharmaceutical industry has earned global acclaim, not just as a producer of affordable generic medicine but also as a key player in ensuring access to essential drugs worldwide, earning it the moniker of the "Pharmacy of the World". This transformation was facilitated by strategic legal frameworks, such as the Patents Act, 1970, India's resilient pursuit to protect the interests of its generic drug industry during the TRIPS

²⁶¹ Naushad Forbes, *Doing Business in India: What has Liberalization Changed?* (Stanford Center for International Development, Working Paper No. 93, 2001).

²⁶² See Arvind Panagariya, *India in the 1980s and 1990s: A Triumph of Reforms* (IMF Working Paper No. WP/04/43, March 2004).

²⁶³ *Impact of Reforms*, INDIA BEFORE 91, <https://indiabefore91.in/impact-reforms> (last visited Nov. 18, 2024).

²⁶⁴ Anita Kumari et al., *Self-Reliant India a Fulcrum for India's Sustainable Growth: A Review of Resource Management and Self-Reliance in the Context of Sustainable Development*, 5(5) INTERNATIONAL RESEARCH JOURNAL OF MODERNIZATION IN ENGINEERING TECHNOLOGY AND SCIENCE 2628 (2023).

²⁶⁵ *Envisioning a More Self-Reliant India with 'AtmaNirbhar Bharat' Abhiyan*, AZADI KA AMRIT MAHOTSAV, <https://amritmahotsav.nic.in/blogdetail.htm?59> (last visited July 15, 2024).

²⁶⁶ Chander Uday Singh, *Indian Patent Act of 1970 has Fettered the Transfer of Technology to India: Govt*, INDIA TODAY (Apr. 21, 2014), <https://www.indiatoday.in/magazine/economy/story/19840615-indian-patent-act-of-1970-has-fettered-the-transfer-of-technology-to-india-government-803049-1984-06-14> (originally published Jun 15, 1984).

negotiation and the “clever insertion” of Section 3(d) in the Patents Act, 1970 to mitigate the impact of grant of product patents on its pharmaceutical industry.²⁶⁷

The Indian Patents Act, 1970 firstly, restricted pharmaceutical patents to processes (process patents) rather than products (product patents) which enabled Indian firms to manufacture generic versions of patented drugs by innovating alternative production methods. Secondly, the Act granted a shorter patent term for chemical and pharmaceutical processes (7 years), which facilitated the entry of generics into the market sooner. Due to these provisions, companies such as Cipla and Ranbaxy emerged as global leaders in producing cost-effective generic drugs.²⁶⁸ This drastically reduced drug prices, particularly for life-saving treatments like antiretrovirals (ARVs) for HIV/AIDS. For instance, Cipla’s generic ARVs were priced at a fraction of the cost of patented versions, revolutionizing “access to treatment” around the world.²⁶⁹

Furthermore, India resiliently negotiated against product patents during the Uruguay Round of the GATT, 1986-1994 (which led the establishment of the TRIPS Agreement) showcasing its commitment to balancing global trade obligations with domestic health priorities.²⁷⁰ However, due to lack of support from other countries and the perceived pressing need to be a part of WTO led India to ultimately concede its position and accept TRIPS. However, India strategically utilized the transition period to comply with TRIPS (1995-2005), including the “mailbox” provision,²⁷¹ to strengthen its domestic pharmaceutical base before transitioning to a product patent regime.²⁷² Furthermore, Indian government

²⁶⁷ See Jayashree Watal, *Patents: An Indian Perspective*, in JAYASHREE WATAL & ANTONY TAUBMAN (EDS), *THE MAKING OF THE TRIPS AGREEMENT: PERSON INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS* 295 (2015).

²⁶⁸ See William Greene, *The Emergence of India’s Pharmaceutical Industry and Implications for the U.S. Generic Drug Market* (U.S. International Trade Commission, Office of Economics Working Paper, No. 2007-05-A, May 2007).

²⁶⁹ Prabhu Ram, *India’s New “TRIPS-Compliant” Patent Regimes – Between Drug Patents and the Right to Health*, 5 CHICAGO-KENT JOURNAL OF INTELLECTUAL PROPERTY 195 (2006); See also Saurabh Chandra, *Impact of TRIPS over Indian Patent Regime vis-à-vis Indian Pharmaceutical Industry*, 1(1) GALGOTIAS JOURNAL OF LEGAL STUDIES 43 (2013).

²⁷⁰ See Jayashree Watal, *Patents: An Indian Perspective*, in JAYASHREE WATAL & ANTONY TAUBMAN (EDS), *THE MAKING OF THE TRIPS AGREEMENT: PERSON INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS* 295 (2015).

²⁷¹ WTO, *Fact Sheet: TRIPS and Pharmaceutical Patents – Developing Countries’ Transition Periods*, World Trade Organization, https://www.wto.org/english/tratop_e/trips_e/factsheet_pharm04_e.htm (last visited Dec. 4, 2024).

²⁷² *The Effects of the 2005 TRIPS Implementation Deadline on Access to Medicines* (Technical Briefing Document, Medecins Sans Frontieres Campaign for Access to Essential Medicines February 2005),

successfully negotiated for provisions like compulsory licensing (Article 31) and the Doha Declaration on Public Health (2001)²⁷³ to ensure that TRIPS had sufficient flexibility to protect public health and promote access to medicines. Moreover, utilising the loophole in TRIPS,²⁷⁴ India inserted Section 3(d) in the Patents Act, which prevents the patenting of incremental innovations that do not result in significant therapeutic benefits.²⁷⁵ This provision combats the practice of “**evergreening**” where minor modifications to existing drugs are patented to extend the monopoly.²⁷⁶ The cumulative impact of these efforts have allowed India to not only produce low-cost generic medicines, thereby reducing dependency on foreign pharmaceutical companies and promoting self-sufficiency in healthcare,²⁷⁷ but also become “globally reliant” pharmacy of the world, a tag to which India lived up to during the COVID-19 pandemic by supplying COVID vaccines to countries worldwide.²⁷⁸ However, the pandemic also highlighted some areas in the pharmaceutical sector in which India needs to become self-reliant which include Active Pharmaceutical Ingredients (APIs – 90% of which are imported), Drug Intermediates (Dis) and Key Starting Materials (KSMs).²⁷⁹

(viii) National Solar Mission (2010): Launched on 11 January 2010, The National Solar Mission (NSM) is a major initiative of the Government of India that seeks to promote self-reliance in renewable energy by setting ambitious targets for solar power generation and incentivizing domestic solar manufacturing. It requires active participation from States to

https://msfaccess.org/sites/default/files/MSF_assets/Access/Docs/ACCESS_briefing_EffectsTRIPS-Implementation_ENG_2005.pdf (last visited Dec. 4, 2024).

²⁷³ See Nanditta Batra, *Lessons from India’s Implementation of Doha Declaration on TRIPS and Public Health* (South Centre, Research Paper No. 166, Oct. 6, 2022).

²⁷⁴ See Jayashree Watal, *Patents: An Indian Perspective*, in JAYASHREE WATAL & ANTONY TAUBMAN (EDS), *THE MAKING OF THE TRIPS AGREEMENT: PERSON INSIGHTS FROM THE URUGUAY ROUND NEGOTIATIONS* 308-09 (2015). (highlighting that the term “invention” or the criteria of patentability were left undefined in Article 27.1 of TRIPS, as they were considered to be sufficiently clear for patent examination process. However, this also created a “loophole” which India utilized to insert Section 3(d)).

²⁷⁵ The Patents Act, 1970, § 3(d) (defining “what are not inventions”).

²⁷⁶ See e.g., Shamnad Basheer, *India’s Tryst with TRIPS: The Patents (Amendment) Act, 2005*, 1(1) INDIAN JOURNAL OF LAW & TECHNOLOGY 15, 36 (2005).

²⁷⁷ Atsuko Kamiike, *The TRIPS Agreement and the Pharmaceutical Industry in India*, 32(1) JOURNAL OF INTERDISCIPLINARY ECONOMICS 95 (2020).

²⁷⁸ ANKITA SHARMA & SRIVIDHYA, *INDIA: PHARMACY TO THE WORLD – A HEALING TOUCH WITH HEALTHY PROFITS* (Invest India, July 2020).

²⁷⁹ Atish H. Rodge, *Indian Pharmaceutical Industry Strives for Self-Reliance in the Post-COVID World*, Medical Buyer (August 2020), <https://www.medicalbuyer.co.in/indian-pharmaceutical-industry-strives-for-self-reliance-in-the-post-covid-world/>; Reji Joseph & Ramaa Arun Kuma, *A Self-Reliant Pharma Industry*, THE HINDU (Feb. 08, 2022), <https://www.thehindu.com/opinion/op-ed/a-self-reliant-pharma-industry/article38393539.ece>.

promote ecologically sustainable growth while addressing India's energy security challenges.²⁸⁰ It also contributes to the global effort to meet the challenges of climate change. The Mission's objective is to establish India as a global leader in solar energy by creating the policy conditions for solar technology diffusion across the country as quickly as possible. This is in line with India's Nationally Determined Contributions (NDCs) target to achieve about 50 percent cumulative electric power installed capacity from non-fossil fuel-based energy resources and to reduce the emission intensity of its GDP by 45 percent from the 2005 level by 2030.²⁸¹

The Mission adopted a Three (3)- phase approach, Phase 1 (up to 2012 - 13), Phase 2 (2013 - 17), and Phase 3 (2017 - 22). The immediate aim of the Mission is to focus on setting up an enabling environment for solar technology penetration in the country both at a centralized and decentralized level.²⁸² The mission has contributed towards reduction in the cost of solar electricity supply by establishing the Solar Energy Corporation of India (SECI) to reduce risks for solar power producers, creating integrated solar parks to reduce capital investments, bundling solar power with coal-based power to reduce the cost of power supplied to utilities and using Viability Gap Funding (VGF) to lower the average price of bundled electricity.²⁸³

(ix) Defence Production Policy (2011): The Defence Production Policy aimed to reduce dependency on foreign defence equipment by promoting indigenous production and technology development. The objectives of the Policy are to achieve substantive self-reliance in the design, development and production of equipment/ weapon systems/ platforms required for defence in as early a time frame as possible; to create conditions conducive for the private industry to take an active role in this endeavour; to enhance the potential of SMEs in indigenization and to broaden the defence R&D base of the country.²⁸⁴ Further, the Defence Production Policy of 2018 (DPP-2018) aimed to make India a top five global producer of

²⁸⁰ *Solar Overview*, MINISTRY OF NEW AND RENEWABLE ENERGY, <https://mnre.gov.in/solar-overview/> (last visited May 21, 2025).

²⁸¹ Praveen Kumar Yadav & Mubarak Musa Umar, *Unleashing India's Solar Potential: A Review of the National Solar Mission and the Path to Sustainable Energy in India*, 3(2) JOURNAL OF TECHNOLOGY INNOVATIONS AND ENERGY 49 (2024).

²⁸² Gireesh Shrimali & Sunali Rohra, *India's Solar Mission: A Review*, 16 RENEWABLE AND SUSTAINABLE ENERGY REVIEWS 6317 (2012).

²⁸³ Akoijam, A. S., & Krishna, V. V., *Exploring the Jawaharlal Nehru National Solar Mission (JNNSM): Impact on Innovation Ecosystem in India*, 9(5) AFRICAN JOURNAL OF SCIENCE, TECHNOLOGY, INNOVATION AND DEVELOPMENT 573 (2017).

²⁸⁴ Bharath Gopaldaswamy & Guy Ben-Ari, *India's Defense Production Policy: Challenges and Opportunities* (Centre for the Advanced Study of India, 2011).

aerospace and defence manufacturing by 2025. The policy also set an annual export target of US \$5 billion by 2025. The policy also emphasized the need for a well-thought-out export strategy to ensure that the industry has access to export markets.²⁸⁵

The policy has contributed towards increasing India's domestic defence manufacturing base and reduce dependence on imports. As per statistics, India is now manufacturing around 65% of its defence equipment domestically. This is a significant change from the mid-1990s, when India imported nearly 70% of its defence equipment.²⁸⁶ The policy provides incentives to promote the indigenous design, development, and manufacture of defence equipment. The policy encourages investment in specific segments and technological areas, such as aerospace engines, maintenance repair and overhaul, and critical technologies and materials. India has developed major defence platforms such as the Dhanush Artillery Gun System, Advanced Towed Artillery Gun System (ATAGS), and Light Combat Aircraft Tejas. As a cumulative outcome, India's defence exports have increased from 686 crore rupees in 2013-14 to over 21 thousand crore rupees in 2023-24.²⁸⁷

(x) Make in India Campaign (2014): Launched in 2014, the Make in India campaign has been a cornerstone of India's goal to transform itself from a service oriented economy into a global manufacturing hub by encouraging foreign investment and promoting the production of goods domestically, thereby increasing its manufacturing sector's contribution to the GDP from 16% to 25% by 2025.²⁸⁸ With a strong focus on enhancing industrial capabilities, fostering innovation, and creating world-class infrastructure, the initiative aims to position India as a key player in the global economy.²⁸⁹ The initiative is supported by several major schemes such as the Production Linked Incentive (PLI) Scheme, PM GatiShakti, the National Logistics Policy, and comprehensive tax reforms such as the Goods and Services Tax (GST).²⁹⁰

²⁸⁵ Amit Cowshish, *India's Defence Industry: From Dependence Towards Self Reliance: International Ramifications*, 17(1/2) INDIAN FOREIGN AFFAIRS JOURNAL 118 (2022).

²⁸⁶ Ministry of Defence, *Marching Towards Atmanirbharta: India's Defence Revolution*, PRESS INFORMATION BUREAU (Oct. 29, 2024), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2069090>.

²⁸⁷ *Id.*

²⁸⁸ Yash Mehta & A. John Rajan, *Manufacturing sectors in India: Outlook and Challenges*, 174 PROCEDIA ENGINEERING 90 (2017).

²⁸⁹ Anshuman Tripathy & Sudha Madhavi Dastrala, *Make in India: So Far and Going Ahead* (IIMB-WP No. 674/2023), <https://www.iimb.ac.in/sites/default/files/2023-03/WP%20No.%20674.pdf>.

²⁹⁰ Research Unit, Ministry of Commerce & Industry, *10 Years of Make in India: Transforming India into a Global Manufacturing Powerhouse*, PRESS INFORMATION BUREAU (Sept. 25, 2024), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2024/sep/doc2024925401801.pdf>.

The Make in India campaign and its various components are now aligned with the Atma Nirbhar Bharat Mission.

(xi) Digital India (2015): Launched by Prime Minister Narendra Modi on 1 July 2015, the Digital India initiative aimed to promote self-reliance in the digital sphere by connecting rural areas in India with high-speed internet networks, improving digital literacy, encouraging the development of indigenous digital solutions, e-governance, and digital infrastructure. The campaign is centred on three key pillars - digital infrastructure as a utility to every citizen, governance and services on demand, and digital empowerment of citizens. The plan also attempted to expand access to the internet in rural areas through the implementation of the Netcare System program.²⁹¹ The Digital India vision was also aligned with the Atma Nirbhar Bharat Mission to promote inclusive growth in areas of electronic services, job opportunities, products and manufacturing and to transform India into a digitally empowered society and knowledge economy.²⁹² Further, under the initiative, the Government is actively aiming to connect all the schemes and service deliveries with technology to form “digital villages” with the ultimate goal of achieving a 5 Trillion Dollar Digital economy in the future.²⁹³

The above discussed legal and policy measures reflect India’s commitment towards achieving self-reliance across various sectors of the economy which is driven by the desire to reduce external dependency, strengthen national capabilities and promote economic and technological sovereignty. While the pursuit of these policies has been marked by several challenges, and repeated adjustments, these initiatives have played a pivotal role in shaping India’s development trajectory.

2.4 THE ATMA NIRBHAR BHARAT ABHIYAN (2020 – PRESENT)

The preceding discourse highlights that India has been consistently pursuing self-reliance oriented policies since independence, however, the critical turning point that re-galvanised India (and other countries around the globe also) towards self-reliance, after almost two decades of emphasis on globalization, was undoubtedly the onset of COVID-19 pandemic. The COVID-19 pandemic disrupted global trade and investment supply chains, creating

²⁹¹ *Digital India*, COMMON SERVICE CENTRE (CSC), <https://csc.gov.in/digitalIndia> (last visited May 21, 2025).

²⁹² Giridhari Mohanta et al, *A Study on Growth and Prospect of Digital India Campaign*, 7(2) *Saudi Journal of Business & Management Studies* 727 (2017).

²⁹³ Rahul Midha, *Digital India: Barriers & Remedies*, 2(8) *INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH IN SCIENCE AND ENGINEERING* 414 (2016).

significant challenges for nations worldwide.²⁹⁴ China, a major manufacturing and exporting hub, restricted the production and export of goods to countries heavily dependent on its supply chain, leading to widespread vulnerabilities and economic losses.²⁹⁵ India, like many other countries, not only observed tremendous workload on its healthcare systems²⁹⁶ but also faced shortages of critical COVID-19 supplies, such as PPE Kits,²⁹⁷ N95 masks, pharmaceuticals, and oxygen generators, which are predominantly sourced from China.²⁹⁸ Furthermore, the largest lockdown of the world, implemented to curb the pandemic, had a profound impact on domestic economic operations. It effectively halted nearly 70% of economic activity, including investments, exports, and non-essential consumption.²⁹⁹

In essence, the COVID-19 pandemic exposed the dangers of “hyper-globalization” which significantly undermined the response to the pandemic.³⁰⁰ Although some scholars have argued that this is not a failure of the global market but more of a “policy failure” in management of supply chains that could be attributable to a plethora of diverse factors and supply chain dynamics which vary considerably, such as non-diversification of sources, and not necessarily globalization.³⁰¹ However, during and post the pandemic world a broader consensus has emerged against “overreliance” on global supply chains, particularly from geopolitical rivals, and a recognition of the need for balance between “global interdependence” and “self-reliance” that is reflected in the growing trend of promoting domestic manufacturing and

²⁹⁴ See Jun Zhan & Siyu Lu, *Influence of COVID-19 Epidemic on China and Global Supply Chain and Policy Suggestions*, 9(5) OPEN JOURNAL OF BUSINESS AND MANAGEMENT 2497 (2021).

²⁹⁵ See Lorenzo Musella, *The Impact of Covid-19 on the Supply Chain: Review of the Effects of a Pandemic and analysis of its Fragilities* (Master Thesis, KTH Royal Institute of Technology, Stockholm, Sweden, 2023).

²⁹⁶ See Sudip Bhattacharya et al., *Addressing the Shortage of Personal Protective Equipment During the COVID-19 Pandemic in India - A Public Health Perspective*, 7(2) AIMS PUBLIC HEALTH 223 (2020).

²⁹⁷ See e.g. Sai Saran et al., *Personal Protective Equipment During COVID-19 Pandemic: A Narrative Review on Technical Aspects*, 17(2) EXPERT REVIEW OF MEDICAL DEVICES 1265 (2020).

²⁹⁸ See Sudip Bhattacharya et al., *Addressing the Shortage of Personal Protective Equipment During the COVID-19 Pandemic in India - A Public Health Perspective*, 7(2) AIMS PUBLIC HEALTH 223 (2020); See also Megan L Ranney et al., *Critical Supply Shortages – The Need for Ventilators and Personal Protective Equipment During the COVID-19 Pandemic*, 328(18) THE NEW ENGLAND JOURNAL OF MEDICINE e41 (2020).

²⁹⁹ *All that You Need to Know about Atma Nirbhar Bharat Abhiyan*, ELEARNMARKETS (Sep. 26, 2023), <https://blog.elearnmarkets.com/atma-nirbhar-bharat-abhiyan/>.

³⁰⁰ *Hyperglobalization Undermines Response to COVID-19 Crisis*, PUBLIC CITIZEN (Feb. 10, 2021), <https://www.citizen.org/article/goods-needed-to-combat-covid-19-hyper-globalization-undermines-response/>.

³⁰¹ Gary Gereffi, *What Does the COVID-19 Pandemic Teach us About Global Value Chains? – The Case of Medical Supplies*, 3(3) JOURNAL OF INTERNATIONAL BUSINESS POLICY 287 (2020).

reshaping industrial policy.³⁰² This has led to a new wave of self-reliance and nationalism across the world, which have also sparked a fear of revival of protectionist practices among scholars.³⁰³

In India also, recognising the drawbacks of heavy reliance on foreign nations for essential items, the Hon'ble Prime Minister Narendra Modi launched the “*Atma Nirbhar Bharat Abhiyaan*” i.e. a Self-Reliant India Campaign.³⁰⁴ He issued a clarion call to the Indian population to turn “adversity into an opportunity” and urged the Indian industries to make bold decisions that will ultimately lead to the development of self-reliant India.³⁰⁵

To revitalize the Indian economy, he announced the “*Atma Nirbhar Bharat Abhiyan*”, an economic package exceeding Rs. 20 Lakh Crore (10% of India's GDP).³⁰⁶ It not only led to the infusion of liquidity and direct transfers of cash into the accounts of labourers and daily-wage earners that was helpful for their survival during the lockdown,³⁰⁷ but also introduction of bold and major reforms in critical sectors to make them globally competitive³⁰⁸ by promoting business, attracting investment, improving local supply chain, and further strengthening Make in India.³⁰⁹ keep them. As a result, the term “*Atma Nirbhar Bharat*” gained widespread recognition and shortly after it gained massive popularity and became a unifying call to action across the nation, with a collective desire to bolster India's self-reliance.³¹⁰ Consequently, Oxford even declared “*Atmanirbharta*”, meaning “self-reliance”, as the Oxford Hindi word of

³⁰² See e.g. Bryan Mercurio & Ronald Tundang, *Balancing Global Interdependence and Self-Reliance: The Future of Critical Medicines Production*, THINK GLOBAL HEALTH (July 18, 2023), <https://www.thinkglobalhealth.org/article/balancing-global-interdependence-and-self-reliance>.

³⁰³ See Hemant Pandey, *Globalization in Context of COVID-19*, IIPA DIGEST 56 (Oct-Dec 2020).

³⁰⁴ *Atmanirbhar Bharat*, AZADI KA AMRIT MAHOTSAV, <https://cmsadmin.amritmahotsav.nic.in/aatmanirbhar-bharat.htm> (last visited Dec. 9, 2024).

³⁰⁵ DC Correspondent, *Turn Crisis into Opportunity, Says PM Modi; Reiterates Self-Reliance*, DECCAN CHRONICLE (June 11, 2020), <https://www.deccanchronicle.com/business/economy/110620/turn-crisis-into-opportunity-pm-modi-hammers-on-self-reliance.html>.

³⁰⁶ Aditya Kumar, *Summary of Announcements: Aatma Nirbhar Bharat Abhiyan*, PRS LEGISLATIVE RESEARCH (May 20, 2020), <https://prsindia.org/policy/report-summaries/summary-announcements-aatma-nirbhar-bharat-abhiyaan>.

³⁰⁷ *Atmanirbhar in Financial Economics, India* (Jyoti Nivas College, M.Com. e-journal, Sept 2020), https://jyotinivas.org/jnc-pg/Atmal_sept20.pdf.

³⁰⁸ *Id.*

³⁰⁹ Pradeep Kumar, *Atmanirbhar Bharat* (Lok Sabha Secretariat, Members Reference Note LARRDIS No.1/RN/Ref/January/2021).

³¹⁰ Vaishali Jain & Somvir Gill, *Atmanirbhar Bharat: India's Quest for Self-Reliance in Post-COVID-19 World*, 14(2) JOURNAL OF POLITY & SOCIETY 109, 112 (2022).

the year 2020, highlighting the central role of self-reliance in India's socioeconomic discourse.³¹¹

It is crucial at this stage to highlight that the concept of self-reliance, within the context of globalization, neither means revival of protectionism nor it means rejection of globalization, rather it entails a shift towards a more human-centric approach to globalization. It is imperative to distinguish self-reliance from being self-centred. India has a deep-rooted, time immemorial philosophical principle and tradition of “*Vasudhaiva Kutumbakam*” which emphasizes the idea that the world is one family. Hence, it is essential to underscore that self-reliance, as envisaged in ANBA, does not imply isolation from the international community. On the contrary, Indian remains committed to the global welfare, recognising the interconnectedness of its progress with that of the world. Further, the global community places its trust in India's capacity to make substantial contributions to the advancement of humanity and a whole.

Self-reliant India in this context means making India “a greater and more significant aspect of the worldwide economy”.³¹² In the words of Prime Minister Modi “*India does not advocate self-centric arrangements when it comes to self-reliance. India's self-reliance is ingrained in the happiness, cooperation and peace of the world*”.³¹³

2.4.1 Five Pillars of Atma Nirbhar Bharat Abhiyan³¹⁴

In order to stimulate economic growth and foster the development of a self-reliant India, the ANBA relies on five fundamental pillars. These pillars constitute the cornerstone of a transformative vision aimed at not just incremental change but a quantum leap, with the objective of harnessing the current challenges as opportunities for advancement. Each of these pillars plays a pivotal role in shaping the future of India's self-reliance.

³¹¹ Naomi Canton, ‘*Aatmanirbharta*’ chosen Oxford Hindi Word of Year 2020, TIMES OF INDIA (Feb. 03, 2021), <https://timesofindia.indiatimes.com/india/aatmanirbharta-chosen-oxford-hindi-word-of-year-2020/articleshow/80656419.cms>.

³¹² Vijay D Joshi et al., *Vision of “Atma Nirbhar Bharat” Role and Significance of MSME*, THE MANAGEMENT ACCOUNTANT 44 (Dec. 2020).

³¹³ Prime Minister's Office, *English Rendering of Prime Minister Shri Narendra Modi's Address to the Nation on 12.5.2020*, PRESS INFORMATION BUREAU (May 12, 2020), https://prsindia.org/files/covid19/notifications/5251.IND_PM_Address_to_Nation_May_12.pdf.

³¹⁴ See *Atmanirbhar Bharat Abhiyan*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited Sept. 26, 2023).



Fig 2.1 – Five Pillars of Atma Nirbhar Bharat

(Source: Atmanirbhar Bharat Abhiyaan - Self-Reliant India, INVEST INDIA³¹⁵)

- (I) **Economy:** (Transforming adversity into advantage) – The first pillar of ANBA focuses on the economy. It seeks not just incremental growth but a substantial leap forward. The objective was to turn the current adversity, exemplified by the challenges posed by the COVID-19 pandemic, into an advantage. This pillar acknowledges that to achieve self-reliance, the Indian economy must undergo a significant transformation. It involves reimagining and reshaping various economic sectors, fostering innovation, promoting entrepreneurship, and attracting investment. It is about building a resilient economy that can withstand external shocks while fostering sustainable growth.
- (II) **Infrastructure:** (The Face of Modern India) – Infrastructure forms the second pillar of ANBA. It represents the physical backbone of a self-reliant India. The quality and extent of infrastructure can be a mirror reflecting the modernity and progress of the nation. It encompasses not just roads, bridges, and airports but also digital infrastructure, healthcare facilities, educational institutions, and more. Developing world-class infrastructure not only facilitates economic growth but also enhances the quality of life

³¹⁵ *Atmanirbhar Bharat Abhiyan – Self Reliant India*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited Dec. 04, 2024).

for citizens. It is a critical component in attracting investments, improving connectivity, and ensuring equitable development across regions.

- (III) Systems:** (Embracing the Technology Age) – The third pillar emphasizes the need for modern systems driven by 21st century technology. Self-reliance in this era demands that systems and processes evolve to be agile, efficient, and technologically advanced. It requires a departure from old rules and practices that may no longer be relevant in the contemporary world. Modern systems should be responsive to the needs of citizens and businesses, leveraging digitization, automation, and data-driven decision making. The integration of cutting edge technology is instrumental in enhancing productivity, reducing bureaucracy, and ensuring transparency in governance.
- (IV) Demography:** (The Engine of Self-Reliance) – A vibrant demography forms the fourth pillar of ANBA. India's diverse and plural demography is the soul of India's democracy and has long been the source of India's energy, resilience. It plays a significant part in participating in the nation's development, voicing their concerns, and holding the government accountable. A robust democracy ensures that policies and decisions are made in the best interest of the people. It encourages open dialogue, collaboration, and inclusivity, all of which are essential in the pursuit of self-reliance. In a democracy, the collective wisdom of the nation guides its path towards self-sufficiency.
- (V) Demand:** (Leveraging Supply Chains Intelligently) – The fifth and final pillar revolves around demand. It recognizes the strength of India's demand and supply chains and seeks to utilize them intelligently. India's vast and diverse consumer base presents an enormous opportunity for domestic industries. By Fostering a conducive environment for demand-driven growth, ANBA aims to boost the manufacturing sector, create jobs, and reduce import dependency. This pillar encourages the production of goods and services that cater to the evolving needs and preferences of Indian consumers, thus strengthening self-reliance.

2.4.2 Sectors in which Atma Nirbharta is Proposed to be Achieved

The aim of Atma Nirbhhar Bharat mission is to “make India and its citizens independent and self-reliant in all senses”.³¹⁶ Hence, the ANBA mission is not limited to few sectors but rather aims to achieve self-reliance in all spheres of the economy- from manufacturing to supplying and also demand.³¹⁷ Nevertheless, the Government of India had identified 12 sectors in which India’s competitive and comparative advantage over other countries is perceived.³¹⁸ These sectors will receive special attention to not only make India *atmanirbhar* but also a global supply chain leader.³¹⁹ Later on 8 more sectors were identified taking the total number of identified sectors to 20.³²⁰

Food Processing	Agro Chemicals	Footwear and Accessories	Coveralls, masks, sanitisers and ventilators	Minerals
Organic Farming	Electronics	Hide Products (e.g. Leather)	Gold & Precious Metals	Plastic & Rubber
Iron & Steel	Industrial Machinery	Auto Parts	Diamond & Precious Stones	Transport
Aluminium & Copper	Furniture	Textiles & Clothing	Fuels	Animal Products (e.g. dairy)

³¹⁶ *Atmanirbhar Bharat*, AMRITMAHOTSAV, <https://amritmahotsav.nic.in/aatmanirbhar-bharat.htm> (last visited Oct 05, 2023).

³¹⁷ *All That You Need to Know about Atma Nirbhar Bharat Abhiyan*, ELEARNMARKETS (Sept. 26, 2023), <https://blog.elearnmarkets.com/atma-nirbhar-bharat-abhiyan/>.

³¹⁸ PTI, *Aatmanirbhar Bharat! Twelve Sectors in which India can become Self-Reliant, Global Supplier*, Financial Express (May 21, 2020), <https://www.financialexpress.com/policy/economy-aatmanirbhar-bharat-twelve-sectors-in-which-india-can-become-self-reliant-global-supplier-1966773/>; See also PTI, *Govt has Identified 12 Sectors in which India can become Self-Reliant, Global Supplier: Goyal*, TIMES OF INDIA (May 21, 2020), <https://timesofindia.indiatimes.com/govt-has-identified-12-sectors-in-which-india-can-become-self-reliant-global-supplier-goyal/articleshow/75871497.cms>.

³¹⁹ PTI, *Atmanirbhar Bharat | Centre Identified 12 Sectors to make India Self-Reliant, Global Supplier*, MONEY CONTROL (May 21, 2020), <https://www.moneycontrol.com/news/business/economy/atmanirbhar-bharat-centre-identifies-12-sectors-to-make-india-self-reliant-global-supplier-piyush-goyal-5299881.html>.

³²⁰ See Kirtika Suneja, *20 Sectors Identified where India can Become Supplier to the World: Piyush Goyal*, ECONOMIC TIMES (July 23, 2020), <https://economictimes.indiatimes.com/news/economy/foreign-trade/20-sectors-identified-where-india-can-become-supplier-to-the-world-piyush-goyal/articleshow/77123183.cms>; PTI, *Identified 20 Sectors where India can become Global Supplier*, LIVE MINT (July 23, 2020), <https://www.livemint.com/news/india/identified-20-sectors-where-india-can-become-global-supplier-goyal-11595495297257.html>.

³²¹ CONFEDERATION OF INDIAN INDUSTRY, *MEASURING AATMANIRBHARTA: DEVELOPING THE AATMANIRBHAR INDEX 15* (2022).

2.4.3 Challenges in Making the Atma Nirbhar Bharat Abhiyan Successful

The vision of *Atma Nirbhar Bharat* represents a transformative shift towards building a resilient, self-sustaining economy that can withstand global shocks and reduce critical dependencies on foreign countries. However, realising this vision is coupled with challenges that span structural, institutional, technological and operational dimensions. Some of the key challenges are as follows:

(i) Understanding the Philosophy of Self-Reliance in Post COVID World Correctly:

While India, has embraced globalization since the LPG (Liberalization, Privatization, Globalization) reforms in 1991, the Covid-19 pandemic has led to a gradual shift towards more self-centred world. The philosophy of self-reliance has gained renewed importance as countries worldwide reassess the vulnerabilities exposed by global supply chain disruptions, over-dependence on imports, and geopolitical uncertainties.³²² For India, *Atma Nirbhar Bharat* emerged as a response not just to economic recovery, but to redefine development with a focus on resilience, domestic capacity building, and strategic autonomy. However, the question remains whether self-reliance can be effectively adopted as an economic policy by a cosmopolitan nation like India in the post-Covid era. Moreover, translating this philosophy into practice will require a nuanced understanding that self-reliance is not isolationism, but a calibrated approach to reduce critical dependencies while maintain global engagement. The challenge lies in shifting mindsets from being passive consumers of global products to proactive creators of indigenous solutions while at the same time ensuring that the push for self-reliance does not stifle competition, innovation, or collaboration in an interconnected world.

(ii) Strengthening MSMEs and Protecting Startups: While India has a strong foundation of policies, schemes, and institutional support for MSMEs, the biggest challenge remains the gap between scheme formulation and actual implementation at the grassroots level. Several core issues contribute to this disconnection including delayed payments,³²³ financial

³²² See e.g., Lukasz Benarksi et al, *Geopolitical Disruptions in Global Supply Chains: A State-of-the Art Literature Review*, 36(4) PRODUCTION PLANNING & CONTROL 536 (2023); *Reframing Supply Chain Resilience: From Reactive to Strategic* (ARC Group White Paper 2025), <https://arc-group.com/wp-content/uploads/2025/04/white-paper-reframing-resilience-110425B.pdf>.

³²³ See e.g., Prabhpreet Singh, *The Impact of Delayed Payments on India's MSME Sector*, LEGAL PAY (Mar. 12, 2024), <https://www.legalpay.in/post/impact-of-delayed-payments-on-msme>; Shivani Bazaz, *How Govt is Addressing Payment Delays for India's MSMEs, According to Economic Survey 2025*, CNBC TV 18 (Jan. 31, 2025), <https://www.cnbc18.com/budget/how-govt-is-addressing-payment-delays-for-indias-msmes-according-to-the-economic-survey-19549809.htm>; *Delayed Payment Cases By MSMEs Near 1 Lakh Mark*, CHAMBER OF MICRO

illiteracy, limited digital integration, and liquidity crunch,³²⁴ fragmented regulatory support, underutilization of factoring and TReDs³²⁵ and high rate of failure of Startups. Additionally, many reform initiatives under *Atma Nirbhar Bharat* have not been fully absorbed at the grassroots level due to lack of public understanding, leading to resistance (as in the case of the withdrawn farm laws). Furthermore, although India has emerged as one of the world's largest startup ecosystems, the majority of new ventures fail within their first five years, often due to insufficient funding, market saturation, poor innovation, and an absence of differentiated value propositions.³²⁶ Startups also face information asymmetry between stakeholders, particularly between academia, industry, investors, and government institutions, which impedes technology transfer and collaborative growth.³²⁷ Furthermore, regulatory friction,³²⁸ a rigid angel tax regime,³²⁹ and a fragile intellectual property enforcement framework contribute to reduced investor confidence and premature closures. These structural weaknesses not only impede individual startup survival but also threaten India's broader ambition to become a global hub of self-reliant, innovation-driven entrepreneurship. Further, India's trade infrastructure, ease of doing business, and commercial dispute resolution mechanisms still

SMALL & MEDIUM ENTERPRISES (CIMSME), <https://indiansmechamber.com/news-details.php?id=101>; Abhishek Sharma, *Delayed Payments, High Costs: Budget Leaves MSMEs with More Pains than Gains*, BUSINESS WORLD (Feb. 10, 2025), <https://www.businessworld.in/article/delayed-payments-high-costs-budget-leaves-msmes-with-more-pains-than-gains-547454>; Manu Prakash, *How the Unpaid Dues of INR 26,414 Crore are Threatening MSMEs' Working Capital Stability*, CREDABLE (Apr. 17, 2025), <https://credible.in/insights-by-credible/business-insights/working-capital-crisis-unfolding/>.

³²⁴ Abhishek Sharma, *Festive Cheer & Financial Fear: Liquidity Crunch Hits MSMEs Amid High Demand*, BUSINESS WORLD (Nov. 06, 2024), <https://www.businessworld.in/article/festive-cheer-financial-fear-liquidity-crunch-hits-msmes-amid-high-demand-538256>; Editorial Team, *Why Indian MSMEs are Facing a Cash Crunch*, LAW CRUST, <https://lawcrust.com/why-indian-msmes-are-facing-a-cash-crunch/> (last visited May 21, 2025).

³²⁵ See *Unlocking MSME Liquidity: The TReDS Framework and the Compliance Gap*, NOVO JURIS LEGAL (Apr. 15, 2025), <https://www.novojuris.com/thought-leadership/unlocking-msme-liquidity-the-treds-framework-and-the-compliance-gap.html>.

³²⁶ See e.g., Jitendra Singh Dahiya, *The Harsh Reality of Startup Failure in India*, LINKEDIN (Aug. 21, 2024), <https://www.linkedin.com/pulse/harsh-reality-startup-failure-india-comprehensive-insights-dahiya-hdyqf/>; *IBM Study: Innovation Key to Startup Success in India*, IBM NEWSROOM (May 18, 2017), <https://in.newsroom.ibm.com/2017-05-18-IBM-Study-Innovation-Key-to-Startup-Success-in-India>; Parth Malpani, *The Fall of Indian Startups*, THE MEDIUM (Sept. 08, 2022), <https://parthmalpani.medium.com/the-fall-of-indian-startups-4b2d2700cf22>.

³²⁷ Johan Kask & Gabriel Linton, *Navigating the Innovation Process: Challenges Faced by Deep-Tech Startups*, in PAIVI AALTONEN & EMIL KURVINEN (EDS), CONTEMPORARY ISSUES IN INDUSTRY 5.0, at 197(2025).

³²⁸ *From Friction to Flight: Unblocking India's Startup and Innovation Ecosystem*, THE ECONOMIC TIMES (Apr. 08, 2025), <https://economictimes.indiatimes.com/tech/startups/from-friction-to-flight-unblocking-indias-startup-and-innovation-ecosystem/articleshow/120096114.cms>.

³²⁹ ET Online, *Changes to Angel Tax will Provide Relief to Small Businesses, Startups: Experts*, THE ECONOMIC TIMES (May 23, 2023), <https://economictimes.indiatimes.com/small-biz/sme-sector/changes-to-angel-tax-will-provide-relief-to-small-businesses-startups-experts/articleshow/100439804.cms>; Ati Malik, *Comprehending the Angel Tax Exemption*, STARTUP INDIA, https://www.startupindia.gov.in/content/sih/en/bloglist/blogs/comprehending_the_angel_tax_Exemption.html (last visited May 23, 2025).

require deeper reforms. Unless these systemic and perception challenges are addressed, India risks undermining its own objectives of sustainable, rules-based self-reliance and may falter in its bid to become a global manufacturing hub.

(iii) **Striking the Right balance between Self-reliance and international legal obligations:** While Schemes under the Atma Nirbhar Bharat such as the PLI Scheme aim to support self-reliance and domestic manufacturing, they risk violating core WTO commitments such as the National Treatment principle under GATT,³³⁰ Article 2 of TRIMS (on prohibition of investment-linked local sourcing mandates)³³¹ and Article 3 of SCM Agreement (dealing with prohibition of subsidies contingent on the use of domestic goods).³³² This legal incompatibility with international law can not only lead to adverse rulings in international forums but also hamper India's global trade relations, deter foreign investment and weaken the legitimacy of *Atma Nirbhar Bharat*. Thus, one of the principal challenge to *Atma Nirbhar Bharat* lies in striking the right balance between self-reliance and international legal obligations, particularly under WTO rules. India's push for self-sufficiency post-COVID while necessary risks being perceived as protectionist if not aligned with non-discriminatory principles. Measures such as Unilateral trade restrictions, unchecked subsidies, or opaque export controls if adopted could invite international disputes and harm India's global reputation.

(iv) **Inefficient Patent Ecosystem:** A central challenge to achieving the vision of *Atma Nirbhar Bharat* lies in the persistent inefficiencies within India's patent ecosystem, which collectively stifle innovation and deter intellectual property generation. Although India has made notable strides in improving patent filings and increasing participation from domestic entities, several systemic barriers continue to hold back its global competitiveness. One of the most pressing issues is the chronic underinvestment in research and development, with India's R&D expenditure stagnating at around 0.64% of its GDP which is far below innovation leaders like South Korea and the United States.³³³ This limited investment curtails the pipeline of

³³⁰ General Agreement on Tariffs and Trade 1994, art. III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994];

³³¹ Agreement on Trade-Related Investment Measures, art. 2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 186 [hereinafter TRIMS Agreement].

³³² Agreement on Subsidies and Countervailing Measures, art. 3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14. [hereinafter SCM Agreement].

³³³ Animesh Jain & Anurag Anand, *India's R&D Funding, Breaking Down the Numbers*, THE HINDU (Mar. 14, 2024), <https://www.thehindu.com/opinion/lead/indias-rd-funding-breaking-down-the-numbers/article67947662.ece>.

innovations that could otherwise be commercialized through patents. Moreover, within academia, the culture remains skewed toward immediate publication over long-term patenting, as faculty and researchers are made to perceive publishing as more beneficial for career advancement. Moreover, India's patent processing infrastructure remains overburdened, with average disposal times extending to 51 months,³³⁴ primarily due to a shortage of examiners and staff at the Indian Patent Office. Enforcement also remains a weak link as demonstrated by India's repeated placement on the USTR Priority Watch List reflects concerns over lax patent protection, limited judicial efficiency, and a perceived anti-patentee bias, particularly in sectors like pharmaceuticals.³³⁵ Compounding these concerns is the widespread non-compliance with the requirement to file Form-27 declarations on the commercial working of patents, undermining transparency and accountability.³³⁶ The underperformance of IPR Chairs across universities, plagued by lack of structure, accountability, and research output, further limits India's ability to generate and sustain high-quality IP. These structural and cultural deficits pose a formidable barrier to the goal of self-reliance in innovation.

(v) Fragmented and Reactive Nature of India's Standardization Framework: Another key challenge to the *Atma Nirbhar Bharat* vision emanates from the fragmented and reactive nature of India's standardization ecosystem, which often lags behind global trends and technological innovations. Although the INSS³³⁷ and SNAP³³⁸ provide a framework for standardization, there are major gaps in institutional capacity, stakeholder participation, international alignment, and sectoral prioritization. Many Indian industries still operate without clear quality benchmarks, impeding export potential and diminishing competitiveness. Regulatory overlaps, inconsistent enforcement mechanisms, and the slow pace of standard development exacerbate these issues. Moreover, India's influence in international standard-

³³⁴ Piyush Gour, *India Accelerates in the Patent Race: But is There a Pot of Gold at the End of the Rainbow?*, Spicy IP (Nov. 10, 2023), <https://spicyip.com/2023/11/wipo-ip-indicators-2023-india-accelerates-in-the-race-towards-the-pot-of-gold-but-is-there-one.html>.

³³⁵ ET Bureau, *US Again Puts India on IPR Priority Watch List*, THE ECONOMIC TIMES (Apr. 30, 2025), <https://economictimes.indiatimes.com/news/india/us-again-puts-india-on-ipr-priority-watch-list/articleshow/120742475.cms>.

³³⁶ Essense Obhan & Sneha Gandhi, *Nothing to Declare? New Form 27 Puts Patentees in India in a Quandary*, OBHAN & ASSOCIATES (Dec. 24, 2024), <https://www.obhanandassociates.com/blog/nothing-to-declare-new-form-27-puts-patentees-in-india-in-a-quandary/>.

³³⁷ DEPARTMENT OF COMMERCE, MINISTRY OF COMMERCE & INDUSTRY, INDIAN NATIONAL STRATEGY FOR STANDARDIZATION (INSS): EVOLVING A QUALITY ECOSYSTEM (2018), https://commerce.gov.in/wpcontent/uploads/2020/02/MOC_636655449469105249_INSS_Booklet_2018.pdf [hereinafter INSS, 2018].

³³⁸ *Standards National Action Plan*, BUREAU OF INDIAN STANDARDS, <https://www.bis.gov.in/standards-nationalaction-plan/> (last visited May 19, 2025).

setting forums remains limited, restricting its ability to shape global norms in areas where it has domestic strengths such as pharmaceuticals, renewable energy, and traditional medicine. Furthermore, capacity-building challenges and the lack of integrated conformity assessment systems further weaken the implementation of standards. These institutional and infrastructural weaknesses hamper the scalability and global acceptability of Indian goods and services, undermining the broader goals of Make in India and *Atma Nirbhar Bharat*.

(vi) Limited Private Participation in the Space Sector: The Space sector is one of the critical sectors for *Atma Nirbhar Bharat*. One of the key challenges for the private sector is the absence of a dedicated national space law. Towards this end, a series of conferences and deliberations have taken place during the last decade,³³⁹ including the draft Space Activities Bill, 2017 prepared and released by the Department of Space (DOS) for public comments.³⁴⁰ Moreover, in the wake of COVID-19, and in pursuance of the *Atma Nirbhar Bharat Abhiyan*, the Government of India also decided to open up the Space Sector for private participation by formulating the Indian Space Policy 2023,³⁴¹ and the Norms, Guidelines and Procedures for implementation of Indian Space Policy-2023 in respect of Authorization of Space Activities (NGP 2024).³⁴² Furthermore, the process of licensing private parties for space activities has also commenced with two Indian enterprises having been granted authorization from IN-SPACe for launching their respective payloads.³⁴³ While the establishment of bodies like IN-SPACe and NSIL and formulation of the Indian Space Policy-2023 and NGP 2024 reflects a positive policy shift towards commercialization and liberalization of the space sector, their

³³⁹ See Sandeepa Bhat B, *National Space Law for India: A Reality Check*, in SANDEEPA BHAT B & SHOUVIK KUMAR GUHA (EDS), *FUNDAMENTALS OF NATIONAL SPACE LAWS* 94, 100 & 101 (2022).

³⁴⁰ The Draft Space Activities Bill, 2017; See also Department of Space, Government of India, Notification, Seeking comments on Draft Space Activities Bill, 2017' from the stake holders/public –regarding, No.E.11020/2/2015-Sec-VI issued on November 21, 2017, https://www.isro.gov.in/media_isro/pdf/Publications/Vispdf/Pdf2017/seeking_comments_on_draft_space_activities_bill201710.pdf (the notification states at ¶10: “there is a need for national space legislation for supporting the overall growth of the space activities in India. This would encourage enhanced participation of non-governmental/private sector agencies in space activities in India, in compliance with international treaty obligations, which is becoming very relevant today.”).

³⁴¹ Indian Space Research Organization, Indian Space Policy – 2023, https://www.isro.gov.in/media_isro/pdf/IndianSpacePolicy2023.pdf (last visited May 29, 2025).

³⁴² Indian National Space Promotion and Authorization Centre, Department of Space, Government of India, Norms, Guidelines and Procedures for Implementation of Indian Space Policy -2023 in Respect of Authorization of Space Activities (NGP) (2024) [hereinafter NGP 2024].

³⁴³ The two private companies (startups) are: (i) Dhruva Space Pvt Ltd (Hyderabad); and (ii) Digantara Research & Technologies Pvt Ltd (Bengaluru); See e.g. Rongheet Poddar, *Liberalization of the Indian Space Sector: Private Participation and Legal Challenges*, 2(2) CASL LEX AD COELUM 45, 46 (2022); *Indian Private Space Sector: 2 Start-ups Authorized to Launch Payloads*, LIVE MINT (June 27, 2022), <https://www.livemint.com/news/india/indian-private-space-sector-2-start-ups-authorized-to-launch-payloads-11656315651351.html>.

legitimacy remains tenuous without statutory support. The lack of such a law creates legal uncertainty and hinders a more enthusiastic private investment in one of India's most promising high-technology sectors.³⁴⁴ This legal vacuum not only weakens India's compliance with international obligations (such as Article VI of the Outer Space Treaty requiring supervision of private actors), but also violates foundational administrative law principles regarding executive action.³⁴⁵ Without a law delineating rules for licensing, ownership transfer, liability allocation, IP rights, and dispute resolution, India's space liberalization remains ad hoc and unconvincing for global investors. Consequently, India risks missing a significant opportunity to become a global hub for commercial space activities, despite having the technological and cost advantages.

(vii) Persistent Dependence on Foreign Imports in the Defence Sector³⁴⁶: One of the core challenges in making India self-reliant is the persistent dependence on foreign defence imports and the lack of a comprehensive, dedicated legal framework governing defence procurement and exports. While India has introduced forward-looking policies like the DAP 2020 and positive indigenisation lists, the procedural complexities, lack of coordination across institutions, weak contractual protections (e.g., for latent defects), and inadequate export governance mechanisms hinder sustainable indigenisation. Furthermore, without a shift from “know-how” to “know-why,” India risks remaining an assembler rather than an originator of high-end defence technology. Furthermore, private sector involvement, offset fulfilment, and Inter-Governmental Agreements (IGAs) lack uniform legal standards, affecting transparency, enforceability, and long-term capability building. The absence of a centralised legal cell within the Ministry of Defence further weakens contract vetting, dispute resolution, and post-contract compliance, leaving India's strategic ambitions vulnerable to legal and operational pitfalls. Moreover, there is the issue of structural inefficacy and misapplication of India's defence offset policy, especially in negotiated (SVC) contracts. For decades, offsets were treated as a

³⁴⁴ See e.g., Monica Shaurya Gohil, *Need for Comprehensive and Robust Indian Space Laws*, ILI LAW REVIEW 47 (Summer Issue 2021); *Privatization of Space in India: Navigating Legal Challenges and Opportunities*, VRITTI LAW PARTNERS (Mar. 29, 2024), <https://vrittipartners.com/privatization-of-space-in-india-navigating-legal-challenges-and-opportunities/>.

³⁴⁵ *Rajnarain Singh v. Chairman, Patna Administration Committee*, AIR 1954 SC 569; *A.K. Roy v. Union of India*, AIR 1982 SC 710; *Kunj Behari Lal Butail v. State of Himachal Pradesh*, (2000) 3 SCC 40; *Additional District Magistrate Rev. Delhi Admin. v. Siri Ram*, (2000) 5 SCC 452 (discussing the limits of executive action and powers which cannot go beyond the legislation).

³⁴⁶ See *Infra*, Part B, Ravindra Kumar Singh, *Fostering Indigenisation vis-à-vis Defence Acquisition Policy of India: A Legal Perspective*; *Infra* Part C, Anuja Shah & Kartik Kalra, *A Critical Appraisal of DAP 2020: The Dilution and Resuscitation of India's Defence Offset Policy*.

mandatory component across all defence procurements, regardless of whether competition was involved. This resulted in widespread price-padding, minimal enforcement, and negligible foreign direct investment or technology transfer. The offset mechanism became more symbolic than substantive, often serving as a formal requirement rather than an effective economic or industrial catalyst. Given India's dependence on imports and the centrality of technology infusion to the *Atma Nirbhar Bharat* vision, offsets were expected to facilitate indigenous capability building. However, empirical evidence such as the CAG Reports have shown that only a small fraction of offset obligations were fulfilled. The mandatory inclusion of offsets in SVCs, despite geopolitical and market-driven vendor selections, further weakened their credibility and economic logic. In effect, the offset regime has failed to achieve its core purpose of stimulating self-reliant defence production.

(viii) Continued Structural Dependence on Fossil Fuels³⁴⁷: India's continued structural dependence on imported fossil fuels, notably oil and coal, despite its ambitious renewable energy targets and policy reforms remains a critical challenge for self-reliance in the energy sector. While the *Atma Nirbhar Bharat Abhiyan* has catalysed major investments and regulatory changes across the energy and infrastructure sectors, India still imports nearly 90% of its oil and 80% of its industrial coal. This dependence exposes the country to price volatility, geopolitical shocks, and energy insecurity. Further, issues such as financial distress among DISCOMs, inadequate grid infrastructure, and policy barriers to private investment limit the scalability and affordability of clean energy.

(ix) Lack of Coherence in Implementing *Atma Nirbhar Bharat* in the spirit of Cooperative Federalism³⁴⁸: One of the paramount challenge to *Atma Nirbhar Bharat* is the lack of institutional and political coherence in implementing cooperative federalism which undermines India's ability to foster self-reliance effectively. Despite the constitutional and economic rationale for shared governance, regional disparities, bureaucratic bottlenecks, and political divergence between the Centre and States frequently impede collaboration. States with limited fiscal or infrastructural capacity often find themselves unable to contribute meaningfully to national schemes without targeted central assistance. Moreover, overlapping

³⁴⁷ See *Infra*, Part B, Bishwa Kallyan Dash, *Redefining Energy Rights Through Atma-Nirbhar Bharat Scheme: A Tool Boosting India's March Towards a Green Energy Nation*.

³⁴⁸ See *Infra*, Part B, Vijay Tyagi & Gaurav Kumar, *Role of Cooperative Federalism in India: A Catalyst for Achieving Atmanirbhar Bharat*.

regulations, weak inter-state coordination, and the absence of a formal mechanism for joint resource mobilisation contribute to policy fragmentation. These inefficiencies hinder uniform implementation of core *Atmanirbhar Bharat* goals such as agricultural transformation, MSME support, and public health infrastructure. Without addressing these coordination failures, India's ambitions for decentralised, locally anchored self-reliance risk becoming unfulfilled.

(x) Policy Simplification & Determining Atmanirbharata: Many Sectors of India are congested with complex and sophisticated policies and regulatory frameworks. There is a need to decongest this over-regulation by undertaking systematic policy simplification to make it simple for the people to understand, promote transparency and encourage participation.³⁴⁹ Moreover, it is one thing to push for self-reliance and another thing to say with confidence that India has become self-reliant. In this regard, *Atmanirbharta* needs to be clearly defined by clearly specifying the criteria that will be used and utilised to determine and track progress of *atmanirbharta* (self-reliance) in a specific sector and the economy generally.³⁵⁰

2.5 CONCLUSION

In today's world, the development policy landscape is entangled in a web of buzzwords.³⁵¹ One such buzzword that has come to dominate the development policy landscape, in India and other countries also, is "self-reliance". It has seen a meteoric rise recently against the backdrop of COVID-19 pandemic.³⁵² However, the concept is not a new one, and has seen multiple phases of emphasis & disuse, reinvention, reincarnation and different new interpretations over the years.³⁵³

While the concept of autarky remains relevant in economic theory and certain strategic contexts, it is seldom practiced in its extreme form in the modern world. Almost every nation

³⁴⁹ Ministry of Finance, *Finance Minister Announces New Horizons of Growth; Structural Reforms Across Eight Sectors Paving Way for Aatma Nirbhar Bharat*, PRESS INFORMATION BUREAU (May 16, 2020), https://prsindia.org/files/covid19/notifications/5722.IND_AtmaNirbhar_Bharat_Announcements_May_16.pdf.

³⁵⁰ TN Ninan, *Jobs a Bigger Problem than Trade Deficit: What Indian Should Remember in Atmanirbhar Push*, *The Print* (Apr. 30, 2022), <https://theprint.in/opinion/jobs-a-bigger-problem-than-trade-deficit-what-india-should-remember-in-atmanirbhar-push/936748/>.

³⁵¹ Andrea Cornwall, *Introductory Overview - Buzzwords and Fuzzwords: Deconstructing Development Discourse*, in ANDREA CORNWALL & DEBORAH EADE (EDS.), *DECONSTRUCTING DEVELOPMENT DISCOURSE: BUZZWORDS AND FUZZWORDS 1* (2010).

³⁵² Aradhna Aggarwal, *Export Performance and India's Tryst with Self-Reliance in the Globalized World*, 57(4) *ECONOMIC & POLITICAL WEEKLY* (2022).

³⁵³ Aradhna Aggarwal, *Export Performance and India's Tryst with Self-Reliance in the Globalized World*, 57(4) *ECONOMIC & POLITICAL WEEKLY* (2022).

recognizes the benefits of international trade, cooperation, and interdependence. Achieving self-sufficiency in specific industries or resources can be a strategic goal, but it is essential to balance these pursuits with the advantages of global engagement, innovation, and economic efficiency that come with international trade and cooperation.

Much before the COVID-19 pandemic, the world has recognized the drawbacks of globalization and over-interdependence. And have started the shift, in certain degrees towards self-sufficiency in certain aspects. It is important to recognize that connectivity and collaboration in the international sphere still has some inherent value which must be weighed and factored in carefully while pursuing autarky.

In conclusion, ANBA is not merely a slogan or a policy initiative, rather, it represents a comprehensive vision for India's future and its role in the global community. It envisions a self-reliant India that is economically resilient, technologically advanced, and firmly rooted in democratic principles. To achieve this vision, it focuses on key pillars, including economic transformation, infrastructure development, modernisation of systems, democratic empowerment, and leveraging domestic demand. These pillars, when meticulously pursued, hold the potential to propel India towards self-sufficiency, making it a global economic force to reckon with while ensuring the well-being of citizens.

CHAPTER 3: PROMOTION OF INDIAN BUSINESSES – SCHEMES, PROGRAMMES AND POSSIBILITIES

3.1 INTRODUCTION

“Small businesses are the backbone of our economy”- Ellen Tauscher

India is predominantly an agrarian economy. Almost fifty-four percent of India’s workforce is engaged in activities revolving around agriculture. Agriculture employs almost eighty % of India’s rural women workforce. At the same time, small businesses play a crucial role in the Indian Economy. The Gross Domestic Product (GDP) of India is heavily influenced by Micro, Small, and Medium-Sized Enterprises (MSME). According to the most recent data, India has 633.9 lakh MSMEs, with 99 % of them being micro-enterprises.¹ Thus, the MSME sector alone is thought to employ more than 11.10 crore people, making a significant contribution to India's GDP.² Furthermore, the sector plays a critical role in employment generation, regional development and exports, showing resilience and adaptability in the time of crisis, saving economies from collapse.³

The MSME sector is also playing a crucial role by helping the Central and State governments in furthering their industry demands and helping the government generate revenue from it. MSMEs assist the government by setting up units in the manufacturing sector, addressing issues like pollution, poverty, industrial, and residential waste management, among other allied activities. The small start-ups are also playing a significant role by contributing to sectors that are not finely developed in India.

In this context with a large number of industries growing in every sector in India, the Micro, Small and Medium Enterprises Development Act, 2006 (“**the MSMED Act**”) was

¹ Santhosh G, *MSME Financing in India: Challenges and Initiatives*, THE SUSTAINOMICS: LINKEDIN (Sep. 25, 2023), <https://www.linkedin.com/pulse/msme-financing-india-challenges-initiatives-gcpitian-santosh-ganesh/>.

² Ministry of Micro, Small & Medium Enterprises, *Contribution of MSMEs to GDP*, PRESS INFORMATION BUREAU (Aug. 09, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1744032>.

³ Santosh G, *supra* note 1.

enacted in India.⁴ The MSMED Act of 2006 was passed to create an enabling policy environment for the sector's promotion and development by defining MSMEs, creating a framework for growing and enhancing the competitiveness of the MSME enterprises, ensuring the flow of credit to the sector, paving the way for preference in government procurement of MSE products and services, addressing the issue of delayed payments, etc.⁵ It included within its ambit, two types of MSMEs – those involved in the manufacturing or production of goods and the service enterprises. Thus, the Act ensured support to Medium Enterprises while also including services within its ambit. The prime objective of this act has been to facilitate the promotion and development of the MSME sector. In order to achieve this goal, the government has launched various schemes for multiple sectors.

After 14 years of its enactment, this legislation was amended in 2020 to push the turnover limit of MSMEs, and to pace up with market and economic growth. The Amendment ended the manufacturing and service sectors. Micro Manufacturing and Service units are now, those with an investment cap of Rs.1 crore and a turnover of Rs.5 crores, while the Small enterprises are those with a maximum investment of Rs.10 crores and a turnover of Rs.50 crores. Medium enterprises are those with a maximum investment of Rs.50 crores and a turnover of Rs. 250 Crores. Further, exports are excluded from the counting of turnover.⁶

3.2 OVERVIEW OF SCHEMES IMPLEMENTED

Over the years the MSME sector has been receiving various aid in the form of schemes from the government in order to boost its capacity. At present, there are more than twenty-five schemes of the government targeting various sectors that will assist them in achieving their desired business growth objectives⁷. Several Policy changes were infused by the Government of India aiming at:

⁴ The Micro, Small and Medium Enterprises Development Act, 2006.

⁵ REPORT OF THE EXPERT COMMITTEE ON MICRO, SMALL AND MEDIUM ENTERPRISES (June 2019), <https://dcmsme.gov.in/Report%20of%20Expert%20Committee%20on%20MSMEs%20-%20The%20U%20K%20Sinha%20Committee%20constitutes%20by%20RBI.pdf>.

⁶ Q.1. *What is the Definition of MSME*, MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES, <https://msme.gov.in/faqs/q1-what-definition-msme> (last visited May 15, 2025).

⁷ *Schemes implemented by M/o MSME & its Organisations, Schemes for MSMEs in India, Promoting Manufacturing in India*, INVEST INDIA, <https://www.investindia.gov.in/schemes-msmes-india> (last visited May 15, 2025).

- (i) attainment of universal financial inclusion of MSMEs within a prescribed time frame and making sure that every registered MSME has a bank account linked to the Udyog Aadhar
- (ii) Creation of equity fund worth Rs100 billion for the sector
- (iii) With the addition of a larger group of credit providers, including as NBFCs and microfinance institutions, credit guarantee programmes' coverage and use might be improved. The end result could be a seven-fold increase in profit from Rs 40 billion to Rs 280 billion.⁸

Scheme	Aim & Objective	Key benefits	Applicability
Credit Guarantee Scheme for Micro and Small Enterprises	To enable collateral/third-party guarantee-free loans to MSMEs for credit guarantee support	<ol style="list-style-type: none"> 1. Collateral and third-party guarantee free loans up to Rs. 2 crores. 2. Reduction in Guarantee coverage from 85% (Micro Enterprise up to Rs 5 lakhs) to 75% (others). 3. 50% cover for retail activity 	Existing and Aspiring Entrepreneurs ⁹
National SC-ST Hub Scheme	To extend professional aid to SC/ST Entrepreneurs	<ol style="list-style-type: none"> 1.25% subsidy or Rs. 25 lakh on purchase of plant & machinery/equipment. 2.Repayment of money charged for bank loan processing, testing services, membership of Export Promotion Council etc 3.Free skill training and distribution of trade-specific tool kits to trained candidates . 	Aspiring and Existing SC/ST Entrepreneurs
A Scheme for Promotion of Innovation, Rural Industries and Entrepreneurship (ASPIRE)	To establish Livelihood Business Incubators (LBIs) networks in rural and underserved communities to foster innovation, accelerate entrepreneurship, create job opportunities, and retrain/upskill	<ol style="list-style-type: none"> 1. Grant of maximum Rs.1 crore & Rs. 75 lakh to Government agencies & Private agencies respectively for acquiring plant and machinery. 2. Grant of a maximum Rs.1 crore. to Government and Private agencies as operational expenditure support towards labor cost, running incubation, skill development programmers, etc. 	Agency/institution of Government of India/ State government Industry Associations, Academic Institutions Non-profit private institutions with experience in successfully

⁸ Charan Singh & Kishinchand Poornima Wasdani, *Finance for Micro, Small, and Medium-Sized Enterprises in India: Sources and Challenges* (Asian Development Bank Institute (ADBI) Working Paper 581, 2016), <https://www.adb.org/sites/default/files/publication/188868/adbi-wp581.pdf>.

⁹ MINISTRY FOR MICRO, SMALL AND MEDIUM ENTERPRISES, GOVERNMENT OF INDIA, SCHEMES FOR MSMEs (Nov. 2022), <https://msme.gov.in/sites/default/files/FlipbookEnglishSchemeBooklet.pdf>.

	wage-earners and self-employed		executing incubation and/or skill development programs
Khadi Gramodyog Vikas Yojana - Umbrella Scheme Khadi Vikas Yojana Gramodyog Vikas Yojana	Growth of Khadi industry in rural areas by increasing productivity, improving infrastructure & promoting marketing and exports.	<p><u>1.Khadi Vikas Yojana</u></p> <p>1. Under Modified Market Development Provision of assistance aid of 35% on Prime Cost for Cotton, Wool etc and 20% on Prime Cost for Silk Khadi.</p> <p>2. Under Interest Subsidy Eligibility Certificate Scheme Khadi Institution needs to remit only 4% interest rate.</p> <p>3. Under Work-shed Scheme for Khadi Artisans Rs. 1,20,000/- or 75% of the cost of workshed including toilet is provided for Individual worksheds of 20 Sq. mtrs and Rs.80,000 or 75% of the cost of the workshed including toilet is provided for Group workshed (10 Sq. mtrs per artisans)</p> <p>4. Rs.15.00 lakh is for revival of infrastructure of Khadi Institutions and Rs.25.00 lakh is for renovation of departmental sales outlets</p> <p><u>2.Gramodyog Vikas Yojana</u></p> <p>1.Under Agarbatti Programme Training for the industry and machinery for trained artisans is provided</p> <p>2.Similarly for Leather Footwear Activity under Handmade Paper Leather & Plastic Industry, Agro-Food Based Food Processing Industries, Service Industry etc training for the industry and the required equipment/machinery is provided.</p>	Khadi Institutions (KIs) registered with KVIC and State Khadi Boards under certain conditions including compliance to age group (18-80), with valid Aadhar card etc
Promotion of MSMEs in - NER & Sikkim	Facilitate Funding for Infrastructural improvement of MSMEs and	1.Common facilities for MSMEs to develop new products & processes including toolings.	State Government or any State Govt. organization engaged in

	Tourism development of NER & Sikkim.	2. Developed infrastructure for entrepreneurs for establishing new units or expanding their units. 3. Support for creation of common infrastructures to boost tourism in NER & Sikkim.	promotion of MSMEs.
MSME Sustainable (Zed) Certification	To encourage innovations and to back expansion of concept to market, design competitiveness and protection & commercialization of Intellectual creations of MSME sector.	1. Cost of Certification (upto 90,000/-) 2. Subsidy on cost of ZED certification (Joining Reward + 80-60-50% subsidy for MSMEs) 3. Additional Subsidy to SC/ST Women and 5% to enterprises part of SFURTI or cluster development Program 4. Financial aid upto 75% for Testing/ Certification with Rs.50,000 as cap 5. Up-to Rs.2 lakhs for consultancy for all ZED certified MSMEs. 6. Up-to Rs. 3 lakhs for all ZED certified MSMEs	For incubation-students, MSMSEs, Individuals For Design-MSMEs as defined under MSMED Act, 2006 For IPR-Manufacturing MSMEs with UAM/UDYAM Registration.
Credit Guarantee Scheme for Subordinate Debt (CGSSD) for Stressed MSMEs	To provide a substantial help to MSMEs that have become or are about to become NPA by encouraging promoters to invest in the MSME unit, thereby increasing the liquidity and maintaining debt-equity ratio.	Promoters of the MSMEs given credit upto to 50% of their stake or Rs. 75 lakh	Promoters of the operational MSMEs which are about to become NPA. ¹⁰

Further under the banner of Atmanirbhar Bharat Abhiyan two more funds- Emergency Credit Line Guarantee Scheme and Self Reliant India (SRI) Fund was announced in 2020, to enable the growth MSMEs. In light of the COVID-19 crisis's anguish, an emergency credit line guarantee scheme was created to help MSMEs pay their operational debts and restart operations. For the credit capacity they gave to qualified customers, Member Lending Institutions (MLIs) received a full guarantee. The programme expired in March 2023.

¹⁰ *Id.*

Interestingly, it has been stated that the Self-Reliant India fund will inject equity capital into MSMEs with the capacity and feasibility to grow. Under this programme, the Government of India has provided a corpus of Rs. 10,000 crore to the Government.¹¹

Moreover, the Ministry for MSMEs recently introduced the Udyam Assist Platform in January 2023 to formalise the eligibility of Informal Micro Enterprises for Priority Sector Lending advantages. Small Industries Development Bank of India shaped the platform. The informal micro businesses can download a registration certificate that will be treated as the Udyam Registration Certificate for the purposes of benefiting from Priority Sector Lending after registering under GST through the Assist mode of designated organizations such as banks or NBFCs.¹²

Apart from the above-mentioned small-scale industries, there have been various steps taken towards the Khadi regime, awareness about Intellectual Property rights, promotion and innovation in rural industry & entrepreneurship, focusing on the digitization of MSMEs, schemes related to pottery under the Gramodyog Vikas among others.

A closer look at Table 1 shows the boost that the government is providing to the various stakeholders in order to increase their production, manufacturing and marketing avenues. However, it is pertinent to note that these are schemes without a proper framework of their implementation.

In order to ensure that all these schemes serve their maximum potential there is an urgent requirement for proper legalisation that comes into place with regard to the larger framework of the AtmaNirbhar Bharat scheme that is in place. Without a proper framework the amount that is being sanctioned for such schemes, remains unutilized and untouched. The robustness that it can provide is not being met by virtue of the expense that is being incurred. However, the regulatory regime in India has taken a few steps in this direction.

¹¹ Ministry of Micro, Small & Medium Enterprises, *Implementation of Schemes for MSMEs under Atma Nirbhar Bharat*, PRESS INFORMATION BUREAU (Aug. 08, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1849804>.

¹² Viji, *Udyam Assist Platform*, VIKASPEDIA (Mar. 26, 2023) <https://vikaspedia.in/schemesall/schemes-for-entrepreneurs/udyam-assist-platform>.

3.3 THE REGULATORY REGIME FOR MSMEs IN INDIA

The regulatory regime in India is witnessing a shift to support the existing and upcoming MSMEs. Over the years' regulators such as the Reserve Bank of India (“**RBI**”), the Securities and Exchange Board of India (“**SEBI**”), the Insurance Regulatory and Development Authority (“**IRDA**”) amongst others have been instrumental in shaping the pillars, of support being extended to the MSMEs.

The RBI has micro and small enterprises in the list of priority lending sectors. Banks have been advised to achieve a year-on-year growth of 20% in credit to micro and small enterprises and an annual growth of 10% in the number of microenterprise accounts.¹³

The RBI has extended various credit schemes to the MSMEs in the past couple of months, owing to the slowdown caused by the CoVID-19 pandemic. However, one of the major issues faced by most MSMEs business owners is with regard to financing concerns. In a way the sellers have sold their goods, however, the payment for the goods or services has been overdue for a couple of months. Repeated follow-ups and lack of working capital for the MSME business owners affect their production and upgradation capacity, thus making them weak in terms of running their businesses efficiently. In order to curb this issue, the RBI in the year 2014 introduced the concept of Trade Receivables Discounting System (“**TReDS**”). By the year 2017 three platforms were granted licenses to operate the TReDS system.

3.3.1 The TReDS System

As a background to the TReDS System, it is pertinent to understand the Factoring Regulation Act, 2011 (“**Factoring Act**”) that came into force on April 02, 2012. By virtue of this act for the first time in India, a comprehensive legal framework overseeing all facets of factoring operations and codifying laws relevant to them was developed by the Factoring Regulation Act of 2011. This act's main objectives are to address the payment delays and liquidity problems that micro, small, and medium-sized enterprises have, as well as to provide a structure that will make it simple to obtain working capital loans. In order to encourage additional transactions by removing the burden of exorbitant duties that otherwise would have applied to the transfer of moveable property; the Act also eliminated stamp duty on manufacturing transactions.

¹³ Singh & Wasdani, *supra* note 8.

Under the definition clause of the Factoring Act, two definitions are of crucial importance: *firstly*, under **Section 2(i)** the term “factor” has been defined as a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which has been granted a certificate of registration under sub-section (1) of section 3 or anybody corporate established under an Act of Parliament or any State Legislature or any Bank or any company registered under the Companies Act, 1956 (1 of 1956) engaged in the factoring business.¹⁴ *Secondly*, under **Section 2(j)** the term “factoring business” has been defined as the business of [acquisition by way of assignment of receivables of assignor for a consideration for the purpose of collection of such receivables or for financing, whether by way of making loans or advances or otherwise, against such assignment, but] does not include¹⁵ – (i) credit facilities provided by a bank [or a non-banking financial company] in its ordinary course of business against security of receivables; (ii) any activity as commission agent or otherwise for sale of agricultural produce or goods of any kind whatsoever or any activity relating to the production, storage, supply, distribution, acquisition or control of such produce or goods or provision of any services.

On the backbone of the Factoring Act, the RBI introduced the TReDS system. TReDS is an electronic platform that facilitates the financing or discounting of trade receivables of MSME enterprises through a plethora of financiers.

In simple words, it assures the supplier of goods or services payment from multiple financiers, who secure the amount, even when the buyers have received the goods or service, but have not made the payment. Therefore, TReDS in a way is ensuring that the cash-flow capital of MSME enterprises is not disturbed.

Three parties are involved in TReDS: *the corporate buyer, the financier, and the MSME supplier.* Depending on the manner of discounting, either the customer or the supplier uploads the invoice, which the other party then approves. The platform's financiers begin to submit bids as soon as the invoice is accepted. The discounted amount is credited to the supplier's account in T+1 day after the supplier accepts the bid, where T is the acceptance day.

¹⁴ The Factoring Regulation Act, 2011, § 2(i).

¹⁵ *Id.* § 2(j).

In spite of such regulatory advancements, the TReDS system has not been as effective as it should have been. The reasons are multiple, however, a few of them are discussed below:

- *Firstly*, there is no motivation for corporate buyers. The procedural rules are overly onerous because they compel the buyer to give up all rights to contest the delivery of the service or the items at the moment it allows the invoice to be discounted. While this is reassuring for the financing parties, it prevents the corporate buyer from onboarding in the first place because by accepting the "factoring unit," it would be giving up its right to contest the goods and services. These platforms also discourage corporate customers with diversified supply chains that can include non-MSME suppliers because they are only intended for MSME providers. They might also be reluctant to split up and run two invoice discounting systems.
- *Secondly*, many corporate purchasers already run their own reverse factoring processes for their supplier ecosystem through corporate treasury departments. Thus, there is little traction. According to the research, other banks, including SBI, offer comparable financing options for their customers, vendors, and dealers.
- *Thirdly*, there are small pools of funds available for financing. Only organisations that are subject to RBI regulations may bid on these platforms. In fact, only a small number of NBFCs (NBFC-Factors) other than banks were permitted to fund through these platforms until the recent implementation of the Factoring (Amendment) Act, 2021.

Acknowledging the issues, the Government under the leadership of the former chairman of the SEBI, Shri. U.K. Sinha, the RBI made the decision in January 2019 to create an expert committee with a total of eight members to investigate and make recommendations for various long-term solutions towards the economic and financial stability of the MSME sector.¹⁶ The committee has made a number of recommendations to the government, including bolstering the financial system and admitting the need to promote the use of contemporary technologies while keeping in mind the MSME Development Act to secure the growth of this industry.

Further, the government issued regulations in this regard. As of today, the ability to engage in factoring activity will be granted to all current non-deposit taking NBFC-Investment

¹⁶ *Press Releases: RBI constitutes Expert Committee on Micro, Small and Medium Enterprises (MSMEs)*, RESERVE BANK OF INDIA (Jan. 02, 2019), <https://www.rbi.org.in/commonman/English/Scripts/PressReleases.aspx?Id=3110>.

and Credit Companies (NBFC-ICCs) with asset sizes of INR 1,000 crore and above, provided that certain requirements are met. This number thus will travel from 7 to 180+ and in return it will greatly boost the number of NBFCs permitted to engage in factoring operations. Through registration as an NBFC-Factor, other NBFC-ICCs can also engage in factoring activities.¹⁷ For this purpose, companies that qualify may submit an application to the RBI requesting registration under the Act. Additionally, the details of the assignment of receivables for trade receivables funded by a TReDS must be submitted to the Central Registry by the TReDS in question within 10 days on behalf of the Factors.¹⁸

The above-highlighted interventions show that the Indian regulatory regime is not only confined to the paperwork being reduced for MSMEs. It is a step ahead in understanding the challenges faced by MSME business owners. In addition, the courts have also interpreted a few sections of the MSME Act.

3.3.2 The Judicial Side

The MSME Act facilitates a dispute resolution mechanism within itself. In the same regard, an issue arose on whether the Facilitation Council may act both as a conciliator and an arbitrator, Under Section 18 of the MSME Act.

¹⁷ Reserve Bank of India, Registration of Factors (Reserve Bank) Regulations, 2022, Notification No. DOR.FIN.080/CGM(JPS) – 2022 (issued on Jan. 14, 2022), <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12222&Mode=0>.

¹⁸ *Press Release: RBI Issues Regulations Under the Amended Factoring Regulation Act, 2011*, RESERVE BANK OF INDIA (Jan. 20, 2022), https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=53131.

The High Court at Bombay interpreting Section 18¹⁹ of the MSME Act that deals with the Facilitation Council in *Gujarat State Petronet Ltd. v. MSEFC*²⁰ observed that –

“[S]ub-section (2) and sub-section (3) of the MSMED Act vests jurisdiction in the Council to act as conciliator as well as arbitrator. The question is in view of the provisions of Section 80 of the Arbitration Act 1996, the Council which has conducted the conciliation proceedings is prohibited from acting as arbitrator. As stated earlier, certain provisions of Arbitration Act 1996 including Section 80 are specifically made applicable to conciliation proceedings contemplated by Section 18(2) of the MSMED Act. Whereas provisions of Arbitration Act 1996, in its entirety, are made applicable to the arbitration and conciliation proceedings contemplated by sub-section (3) of Section 18 of the MSMED Act.”

Thus on the basis of a harmonious reading of both these provisions, the Court held that the Council cannot act as both and it may refer the matter to any centre or institution which provides alternate dispute resolution services.

Further, the Madras High Court in *Ved Prakash v. P. Ponram*²¹ has held with respect to Section 18(3) that the Facilitation Council is not barred from proceeding to arbitration under the indicated section. However, it will ensure that the same member who acted as a conciliator does not preside as an arbitrator unless voluntarily agreed by the parties to it.

¹⁹ The Micro, Small and Medium Enterprises Development Act, 2006, § 18 (“**Reference to Micro and Small Enterprises Facilitation Council –**

- (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
- (2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.
- (3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section(1) of section 7 of that Act.
- (4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.
- (5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.”).

²⁰ *Gujarat State Petronet Ltd. v. Micro and Small Enterprises Facilitation Council*, Konkan Division, AIR 2018 Bom 265.

²¹ *Ved Prakash v. P. Ponram*, MANU/TN/1563/2020.

Interestingly, the constitutional validity of Section 19²² of the MSME Act was challenged before the Kerala High Court in the case of *Managing Director, KSRTC v. Union of India*.²³ The High Court went on to observe that –

“[T]he intent behind Section 19 is to benefit and help the micro/small enterprises and a legislation cannot be challenged on the ground of such inequities. It further held that under section 19, since the differential treatment of buyers and sellers is on valid grounds, the provision for pre-deposit is not violative of Article 14 of the Constitution. Every legislation will create some trouble for some persons, when it seeks to confer benefits on others. Such crudities and inequities are not available as grounds for challenging a legislation”

The state governments are required to create a Micro and Small Enterprise Facilitation Council in accordance with Sections 20²⁴ and 21²⁵ of the Act in order to resolve disagreements on obtaining references and making claims for delayed payments. The MSEFC will give instructions to the buyer unit for payment of the required amount along with interest after reviewing the case filed by the MSE unit. This decision must be made within 90 days of the complaint's filing. The council may be contacted by an MSME with an Udyog Aadhar.

In order to give further effect to the provision and also to empower micro and small entrepreneurs across the country to unswervingly file their cases relating to delayed payments by Central Ministries/Departments/CPSEs/State Governments, The Ministry of MSME launched the Delayed Payment Monitoring System- MSME Samadhaan, on 30th October 2017.²⁶ According to Section 21,²⁷ if the buyer does not pay the supplier for goods or services within 45 days of the day of acceptance of the same or the deemed day of acceptance, the buyer is obligated to pay compound interest with monthly rest to the supplier on the amount at three

²² The Micro, Small and Medium Enterprises Development Act, 2006, § 19 (“**Application for setting aside decree, award or order** – No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.”).

²³ *Managing Director, KSRTC v. Union of India*, MANU/KE/1392/2009.

²⁴ The Micro, Small and Medium Enterprises Development Act, 2006, § 20.

²⁵ *Id.* § 21.

²⁶ *MSME Samadhaan- Delayed Payment Monitoring System*, MINISTRY OF MICRO, SMALL & MEDIUM ENTERPRISES, https://samadhaan.msme.gov.in/MyMsme/MSEFC/MSEFC_Welcome.aspx (last visited May 15, 2025).

²⁷ The Micro, Small and Medium Enterprises Development Act, 2006, § 21.

times the bank rate notified by the Reserve Bank. Thus, complaints about payment delays may now be lodged online and seen by central ministries, departments, CPSEs, state governments, etc. so they can take proactive action. Additionally, the portal provides updates on the case's progress.²⁸

Therefore, from the prism of regulatory and judicial point of view, it can be understood that the regulators as well as the Courts have been pushing their limits in order to extend support to the MSME businesses. Still, then there exists a vacuum that needs to be addressed. This brings us to another emerging sector in this arena, that is, the start-up ecosystem that has been brewing.

3.3.3 The Start-up Eco-system

India today is the third largest start-up eco-system in the world. It is expected to witness a year on year growth of a consistent 12% – 15%.²⁹ In the year 2018 India witnessed about 50,000 start-ups; amongst them 8,900 – 9,300 are technology based.³⁰ Thereby, this implies that each day at least 2 – 3 start-up ideas were executed at one or the other part of the Indian sub-continent.

This is the brighter side of the start-up eco-system that has been hovering in India. While the not very brighter side are the harsh realities of these magnanimous start-ups as not every start-up even survives the first few years of their inception journey. The initial steps of *vocal for local* begin and end at the same place.

In a report it has been found that 90% of Indian start-ups fail within the first five years.³¹ One of the driving forces behind this huge failing rate is the lack of innovation. Moreover, it is not only the start-up that gets buried, but, it plunges deep with the investment from investors and other sources. SoftBank's Vision Fund reported a huge loss of USD 26.2

²⁸ Viji, *MSME Samadhaan*, VIKASPEDIA (June 03, 2024), <https://vikaspedia.in/e-governance/online-citizen-services/government-to-business-services-g2b/msme-samadhaan>.

²⁹ *Indian Startup Ecosystem*, #startupindia, STARTUP INDIA, <https://www.startupindia.gov.in/content/sih/en/international/go-to-market-guide/indian-startup-ecosystem.html> (last visited May 15, 2025).

³⁰ *Id.*

³¹ Rounak Kumar Gunjan, *90% Indian Start-ups Create Jobs, Clone Western Ideas and Close Down due to Lack of Funds*, NEWS 18 (July 09, 2018), <https://www.news18.com/news/business/most-indian-startups-create-jobs-clone-western-ideas-and-close-down-due-to-lack-of-funds-1805555.html>.

billion from Indian start-ups.³² Employees are affected, families get affected and ultimately an entire vicious cycle is created.

While the areas where India needs innovation is almost known to the larger section of the society and the government at large. Innovation is not an easy task. It requires huge capital, investment and like minds coming together to solve a purpose. At this juncture, *the government can step in and collectively identify the challenges of a particular sector and invite a group of start-ups to work towards overcoming the particular challenge. This in a way would ensure the investment is secure and the best minds shall be working collectively for a particular purpose.* Thus, the start-up India robust framework can be thought and crafted keeping these broad outlines in mind.

3.4 SUSTAINABLE DEVELOPMENT OF MSMEs

Being the second main source of employment hiring 60 million people in rural areas, 95% industrial units, 40% exports, and 45% manufacturing output are contributions of MSMEs to the economy. Economic growth cannot equalize economic prosperity until economic policies take into consideration the equal distribution of the costs and benefits of both financial and natural resources. It has been discovered that while the poor and subsistence communities typically shoulder the expenses of development, the gains are almost invariably distributed to the wealthy, thereby expanding the gap between the haves and have-nots.³³ Thus economic development, a very important facet of sustainable development falls in peril.

MSMEs can function in underdeveloped areas, boost entrepreneurial activity, avert poverty, offer job opportunities, and promote sustainability. They have the ability to produce several, albeit tiny, earning possibilities that serve a sizable portion of the population environment.³⁴ It's making significant progress in assuring resource efficiency, waste reduction, and ensuring employee well-being in addition to fostering employment and social fairness, even though their work might not offer sustainability.³⁵

³² Shraddha Goled, *The Tragic Twist in the Indian Start-up Saga*, ANALYTICS INDIA MAGAZINE (June 13, 2022), <https://analyticsindiamag.com/it-services/the-tragic-twist-in-the-indian-startup-saga/>.

³³ Mohd. Asif Khan, *MSME'S and Their Role in Ensuring Sustainable Economic Development in India Characterized By LPG*, 1(1) INTERNATIONAL JOURNAL OF MANAGEMENT RESEARCH & DEVELOPMENT 41 (2011).

³⁴ *Micro, Small and Medium Sized Enterprises (MSMEs)*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, <https://sdgs.un.org/topics/capacity-development/msmes> (last visited May 15, 2025).

³⁵ Khan, *supra* note 33.

Thus MSMEs serves economic development through the creation of employment, reductions of goods and service costs through innovation thus infusing sustainable development at both micro and macro level.³⁶ The government too has been promoting a number of initiatives and regulations to help these enterprises adopt and up-scale their operations without harming the environment in order to assist them in adopting new and green technologies. This includes a number of programmes, such as the ZED Certification Scheme from the Technology Upgradation and Quality Certification, the ASPIRE Scheme for Promoting Innovation, Rural Industry, and Entrepreneurship, the Credit Linked Capital Subsidy for Technology Upgrading (CLCSS), and the Design Clinic for Design Expertise to MSMEs. The Coir Board and the Khadi and Village Industries Commission (KVIC), are interestingly at the forefront of these efforts.³⁷

3.5 COMPARATIVE PERSPECTIVE ON MSMEs

Global trends in MSME classification show that it is highly subjective, varying according to domestic policies across jurisdictions. The majority categorise MSMEs according to the number of employees, whereas in India, MSMEs are currently categorised according to turnovers and investments in plant and machinery/equipment. In light of the implementation of GST, the current investment and turnover-based definition makes steering business easier, making the entire process sensible, transparent, progressive, and simpler to implement (GST). Additionally, the industry to an extent has become formalized owing to registration under GST.³⁸

3.4.1 United States

Nearly 50% of jobs in the U.S.'s private sector are held by small businesses, which comprise 99.9% of all businesses. The majority of small businesses, or about 30 million companies in the United States, have less than 20 employees or are sole proprietorships.³⁹ The Small

³⁶ *Id.*

³⁷ *MSMEs are Engines of Our Economy to Achieve Sustainable Development*, MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES, <https://msme.gov.in/msmes-are-engines-our-economy-achieve-sustainable-development> (last visited May 15, 2025).

³⁸ Indirect Tax Committee, *A Look at GST Through the Lenses of MSMEs*, <https://d23z1tp9il9etb.cloudfront.net/download/knowledgeShare17-18/A-Look-at-GST-Through-the-Lenses-of-MSMEs.pdf> (last visited May 15, 2025).

³⁹ *Access to Financial Services Matters to Small Businesses*, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, <https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm> (last updated Apr. 27, 2021).

Business Administration was established as the central agency of the federal government, to support and defend the interests of small companies through a vast network of field offices and partnerships, by the Small Business Act of 1953. Some of the SBA's main responsibilities include assisting in the launch, development, and expansion of enterprises, the creation of jobs, and acting as the voice of small businesses through advocacy. It also functions to assist small firms, facilitate access to financing, boost entrepreneurship, facilitate access to government contracts, and promote a favourable environment sensible to their needs, by lowering regulatory requirements.⁴⁰

Financial transaction data demonstrates that organic growth companies significantly contribute to their prevalence, revenue production, and employment. Firms with organic growth typically fund their expansion from operating profits rather than borrowing money from outside sources. Four years after its establishment, they tend to produce the majority of small business revenue and the majority of total revenue.⁴¹ As per conventional wisdom, the principal owner, commercial banks, and trade creditors form the three main sources of funding, together accounting for more than 70% of all small business financing.⁴²

3.4.2 Columbia

In Columbia, SMEs comprise the cornerstone of its economic expansion. The Single Business and Social Registry - Rules recorded 1,532,290 formal firms in 2017, of which 92.7 % are microenterprises and 6.7 % are small and medium enterprises, making up 99.4 % of the nation's commercial fabric. SMEs account to around 67% of employment and about 28% of GDP, according to the National Statistics Department. Additionally, in 2018 it made up 54% of overall credit portfolio.⁴³

The "Policia Nacional de Emprendimiento" (2020–24), which recognises unique traits and demands of entrepreneurs based on the type of their business – subsistence, consolidation, or wealth creation – supports SMEs in Columbia. To ensure a public supply of reliable support

⁴⁰ Will Kenton, *Small Business Administration (SBA): Definition and What it Does*, INVESTOPEDIA (Aug. 21, 2023), <https://www.investopedia.com/terms/s/small-business-administration.asp>.

⁴¹ Dinna Farell et al, *A Cash Flow Perspective on the Small Business Sector* (JPMorgan Chase & Co. Institute, May 2020), <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-cash-flow-perspective-small-business.pdf>.

⁴² Allen. N. Berger & Gregory F. Udell, *The Economics of Small Business Finance: The Roles of Private Equity and Debt Markets in the Financial Growth Cycle*, 22(6-8) JOURNAL OF BANKING & FINANCE 613 (1998).

⁴³ *Columbia*, OECD LIBRARY, <https://www.oecd-ilibrary.org/sites/2960938f-en/index.html?itemId=/content/component/2960938f-en> (last visited Sep. 25, 2023).

tools, it places a strong emphasis on skill development, access to and sophistication of finance mechanisms, strengthening and marketing strategies, technical development and innovation, and institutional design. Each region in Columbia now has a Regional SME Council, which consists of representatives from the national and regional governments, as well as SMEs, SME groups, and chambers of commerce. The Councils are crucial to delivering policy.⁴⁴

In recent years, Columbia has made remarkable strides in developing financing instruments that cater to needs at various stages of a company's life cycle. The National Learning Service (SENA) oversees the Emprender Fund, which has provided USD 137.1 million in initial capital resources to 4,141 initiatives between 2005 and 2014, creating 19,723 jobs. The development of networks of angel investors and capital funds has also led to the introduction of a number of innovative financing vehicles.⁴⁵

The Financing Law of 2018 also creates a simple tax regime, making it easier to comply with tax duties, promoting formalization of SMEs by lowering the associated costs. Another endeavour is streamlining requirements and processes using a Unique Business Data base (VUE). Entrepreneurs can now understand procedures, regulations, and obligations, (commercial, tax, and social security) thanks to the corresponding digital platform.⁴⁶

3.4.3 Malaysia

Small and medium-sized enterprises (SMEs) constitute the mainstay of Malaysian economy, making up 97.2% of all business establishments, contributing 38.2% of GDP, and employing 7.3 million people. A total of 1,151,399 businesses are classified as SMEs, and of those, 85.5% forms part of the service sector, followed by the manufacturing (5.1 %), agriculture (1.7 %), and construction (7.4 %), with mining and quarrying accounting for the final 0.3 %.⁴⁷

The creation of the Ministry of Entrepreneur Development and Cooperatives, a dedicated ministry, recently in Malaysia has amplified priority placed upon the

⁴⁴ OECD, OECD SME AND ENTREPRENEURSHIP OUTLOOK 2021 (2021), https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/06/oecd-sme-and-entrepreneurship-outlook-2021_c4d635de/97a5bbfe-en.pdf.

⁴⁵ REPORT OF THE EXPERT COMMITTEE ON MICRO, SMALL AND MEDIUM ENTERPRISES, *supra* note 5, at 15.

⁴⁶ Columbia, OECD LIBRARY, <https://www.oecd-ilibrary.org/sites/2960938f-en/index.html?itemId=/content/component/2960938f-en> (last visited Sept. 25, 2023).

⁴⁷ Malaysia- Key Facts on SME Financing, OECD, <https://www.oecd-ilibrary.org/sites/3bc2915c-en/index.html?itemId=/content/component/3bc2915c-en> (last visited Sept. 25, 2023).

entrepreneurship development agenda (MEDAC).⁴⁸ SME Corporation Malaysia is the Central Coordinating Agency (CCA) under the Ministry that coordinates the implementation of SMEs development programs across all related Ministries and agencies. It ensures that financial assistance schemes by all relevant ministries and government agencies and monitors them for effectiveness in facilitating SMEs progression up the value chain. It acts as the central point of reference for research and data dissemination on SMEs and entrepreneurs, as well as provides business advisory services for SMEs.⁴⁹

Guarantee schemes play a crucial part in assisting financially sound SMEs lacking in collateral and a track record to receive financing. Credit Guarantee Corporation Malaysia Berhad (CGC) reported an approval value of MYR 5.922 billion in 2020, an increase from MYR 5.880 billion in 2019. Additionally, in order to meet the particular business needs, Securities Commission Malaysia (SC) has promoted the creation of alternative finance platforms that link issuers with hitherto untapped investor pools via more affordable, expedient, and practical delivery routes. As a result, now there are a variety of non-banking sources of alternative financing, including venture capital, equity crowdfunding, and peer-to-peer lending.⁵⁰ MyAssist MSME another initiative is an online business advisory platform that helps SMEs with issues relating to their businesses by offering business advice and information, digital marketing opportunities and guidance, technology and business innovation support facilitation, business matching services, etc. Among the financial aid programs offered by this platform is imSME, the first SME loan and finance referral platform helping MSMEs discover financing options.⁵¹

3.4.4 Mexico

More than 4.1 million SMEs, forming 99.7 % of all private businesses in Mexico, contributes to 35.6% of the country's total gross production. Only 12.1% of SMEs are in the manufacturing sector, while 51.4% focuses in commerce, 36.1% in services, and 12.1% in forms part of services. Further, less than 10% of SMEs export their products to foreign

⁴⁸ *Id.*

⁴⁹ REPORT OF THE EXPERT COMMITTEE ON MICRO, SMALL AND MEDIUM ENTERPRISES, *supra* note 5, at 15.

⁵⁰ Grahame Boocock & Mohammed Noor Mohammed Shariff, *Loan Guarantee Schemes for SMEs - The Experience in Malaysia*, 7(2) SMALL ENTERPRISE DEVELOPMENT 25 (1996).

⁵¹ CGC Launches imSME, *Malaysia's First SME Loan/Financing Referral Platform*, ADFIAP FINANCING SUSTAINABLE DEVELOPMENT (Feb. 13, 2018), https://www.adfiap.org/members_news/cgc-launches-imsme-malaysias-first-sme-loan-financing-referral-platform/.

markets, while the manufacturing sector accounts 80.5% of the export value, or 4.3 % of all manufacturing exports. Also, just 0.1% of SMEs serve as the primary supplier to large international businesses.⁵²

One of the well-known examples of the Mexican Development Bank's receivables financing platform is the state-owned Nacional Financiera (NAFIN). As a model of factoring being expanded to provide pre-delivery finance, it also offers contract financing, which enables creditors to purchase raw materials to complete new orders. With no fees or collateral required and a fixed rate, this program offers financing to suppliers for up to 50% of confirmed contract orders from large purchasers using NAFIN supply chains.⁵³ A buyer must endorse suppliers before they are allowed to utilize this product, based on a proven track record of performance and a consistent average balance of receivables over time. Suppliers who receive contract financing are mandated to enter into a contract with NAFIN that states they shall factor their accounts receivable to NAFIN after their goods are delivered and the buyer posts a negotiable document to NAFIN website. An amount equivalent to the outstanding line of credit plus interest is taken as payment when NAFIN factors the negotiable instrument.⁵⁴

Additionally, the Ministry of Economy has introduced a number of initiatives to help SMEs. As part of this is a programme to provide loans to SMEs - an amount of 25,000 Mexican Pesos (or around 1,200 USD) each under favoured terms, such as lower interest rates and a 3-year term with a grace period up to three months. Another governmental measure in place is the Emerging Program for Economic Reactivation, which offers SMEs affected by the pandemic, loans up to 180 thousand Mexican Pesos (about \$900 US Dollars) with preferred interest rates of 10% over terms of three years, with the possibility of a three-month grace period.⁵⁵

3.4.5 Brazil

In Brazil 98.5% of businesses are micro and small enterprises (MSEs), which also account for 54.5% of formal employment and 30% of the country's GDP. MSEs also make up around 37%

⁵² Mexico- Key Facts on SME Financing, OECD, <https://www.oecd-ilibrary.org/sites/53f52411-en/index.html?itemId=/content/component/53f52411-en> (last visited Sep. 24, 2023).

⁵³ Juan Carlos Moreno-Brid et al, *Changing Challenges in the Modernization of Development Banks in Latin America: The Case of Nacional Financiera, Mexico's Key Development Bank* (THE IDEAs Working Paper Series, Paper No. 02/2017, 2017), https://www.networkideas.org/wp-content/uploads/2017/05/02_2017.pdf.

⁵⁴ REPORT OF THE EXPERT COMMITTEE ON MICRO, SMALL AND MEDIUM ENTERPRISES, *supra* note 5, at 15.

⁵⁵ OECD, *supra* note 52.

of all purchases made by the federal government. According to information from the Brazilian Ministry of Labor and Employment, small businesses are crucial to the economy's ability to create new, legally registered formal jobs. Furthermore, SMEs produced 124 million jobs between 2007 and 2019. In 2020, interestingly smaller businesses recruited 293 200 people, while larger businesses fired 193 600 people.⁵⁶

Brazil isn't part of the WTO' Government Procurement Agreement (GPA). Bu by the virtue of domestic statute, all government contracts for up to R\$80,000 must be awarded exclusively to small and micro enterprises, and contracts worth more than this amount should reserve 25% of the contract value for micro- and small businesses (MPEs). In addition, small and micro businesses will receive 30% of the subcontracts from large and medium-sized industries.⁵⁷ Micro and small businesses would also be given preference with a price differential allowance of up to 10% between their prices and those of medium or big businesses. The government utilizes a demand-driven approach for procurement from SMEs while also offering technical support to those companies throughout the whole process. The government preferentially makes purchases from groups of small manufacturers rather than from individual SMEs.⁵⁸

Further, the Brazilian government provides a variety of incentives to SMEs and national individual micro-entrepreneurs. Among these are specialized credit lines, which are simpler to get thus supporting expansion of small businesses. The 2017 MSEs' Microcredit Program decree increased the gross revenue cap for beneficiaries, added rural productive activities as beneficiaries, and created the methodology for the credit operation, which would be handled by qualified experts. Additionally, Brazil's government loan guarantees have steadily increased from BRL 6.55 billion in 2013 to BRL 9.44 billion in 2015.⁵⁹

⁵⁶ *Brazil- Key Facts on SME Financing*, OECD, <https://www.oecd-ilibrary.org/sites/91ccd722-en/index.html?itemId=/content/component/91ccd722-en> (last visited Sep. 26, 2023).

⁵⁷ Sylvia Aguilar, Promoting the Participation of Small and Medium Size Enterprises (SMEs) in Green Public Procurement (Final Report: Working Group 3C of the 10YFP Sustainable Public Procurement Programme: "Building Linkages and Synergies Between Policies for Promoting Small and Medium Size Enterprises (SMEs) in Public Procurement With Policies for Improving Environmental Performance in Developing Countries").

⁵⁸ REPORT OF THE EXPERT COMMITTEE ON MICRO, SMALL AND MEDIUM ENTERPRISES, *supra* note 5, at 16.

⁵⁹ OECD, *supra* note 56.

3.5 CHALLENGES AND POSSIBLE SOLUTIONS

A main problem faced by MSMEs today is whilst procurement of finance for their business enterprise. The reasons behind this includes **lack of credit history**, **lack of awareness on Government Schemes** and **limited access to modern financial regulations**. MSMEs, in contrast to large businesses, lack a track record, making it challenging for them to obtain loans from banks and other financial institutions. This deters lenders from making a hazardous investment in the company.⁶⁰

Though there are established rules and schemes to address many of these challenges, many hasn't reached grassroots. The **outdated regulatory practices** prevent timely financial support. Additionally, the processes for procuring insurance, business licences, and conducting tax assessments become more complex. As a matter of fact, many MSMEs in rural areas are unfamiliar with the web platforms utilised for financial transactions.⁶¹

Inadequate financial knowledge of these enterprises make taking right business decisions difficult. Poor Financial Literacy may result in the wrong choice of lenders who may charge high interest rates, ultimately culminating in low credit scores, issues concerning working capital and cash inflow, which could be important as MSMEs might require to rely on external financing options during times of emergency.⁶²

Though the government has identified the impact of **delayed payments** by buyers to MSMEs, and addressed the same legally, this remains a major challenge. Since most MSME capital is used for ongoing operations, the lack of liquidity can negatively affect the efficiency of the small companies leaving them penniless.⁶³

The Reserve Bank of India (2005) identified the following issues in financing SMEs:

- (i) insufficient access to finance by MSMEs owing to financial illiteracy informal business practices, absence of private equity, venture capital and secondary market instruments

⁶⁰ Santosh G, *supra* note 1.

⁶¹ *Challenges with MSME Business Financing in India*, BIZONGO (Apr. 03, 2024), <https://www.bizongo.com/blog/challenges-with-msme-business-financing-in-india>.

⁶² *Top Five Challenges for MSME Business Loans*, POONAWALLA FINCORP (Nov. 08, 2024), <https://poonawallafincorp.com/blogs/major-challenges-for-msme-business-loans.php>.

⁶³ Sonali Bagade, *MSMEs and Their Financial Challenges*, DR. D. Y. PATIL UNITECH SOCIETY (July 26, 2021), <https://imr.dypvp.edu.in/blogs/msmes-and-their-financial-challenges>.

- (ii) division of markets in terms of inputs and susceptibility of products to changes in market
- (iii) inability to effortlessly access national and international markets
- (iv) limited access to new technologies and products and ignorance of internationally acclaimed practices
- (v) significant delays in the payment of invoices and the defrayal of debt by large-scale buyers.⁶⁴

Firstly, it is rather clear that given the policies in place, the lack of a regulatory framework, the failure of the policies to reach the grassroots have served as a major hindrance towards MSME access to financial assistance. Design, Formulation and announcement of policies should be essentially clubbed with 'Policy Education', which can infuse major changes. The MSMEs by policy education and by programs or schemes dedicated towards achievement of financial literacy, can be empowered to use modern financial regulations to their advantage. This will further enable the MSMEs to make the right financial decisions regarding the choice of lenders, use digital platforms for financial transactions, update regulatory practices within the enterprise and solve issues regarding working capital and cash inflows. Like the Columbian model of setting up VUE, the unique business database, simplification of business laws for the sake of MSMEs as well as other stakeholders can be a major breakthrough.

Secondly, MSMEs should opt for digital financing options. These platforms could boost MSMEs' access to financing, increase productivity, and lower expenses. Additionally, the platforms can offer MSMEs data-driven insights to aid in better business decisions.

Thirdly, the collaboration of private and public businesses through alliances and partnerships may have a significant impact on SME finance. These can assist in bridging the financial gap for SMEs, facilitating the transfer of information, and fostering innovation by utilising the strengths of both the public and private sectors. Additionally, cooperation and partnerships between financial institutions, MSMEs, and other stakeholders have improved access to funding and raised consciousness of available financing options.⁶⁵

Fourthly, it is crucial for MSMEs to become part of the global value chain (GVC), given their large contribution to the export sector, to stay competitive as they provide a huge

⁶⁴ Singh & Wasdani, *supra* note 8.

⁶⁵ Santhosh G, *supra* note 1.

opportunity to advance technologically and digitally. Being a part of GVC would help MSMEs generate high-quality products and services that are globally more acceptable.⁶⁶

Further, it is worth noting some relevant recommendations of the expert committee on micro, small and medium enterprises of June 2019⁶⁷:

1. An amendment to the MSME Act mandating all MSMEs to their invoices above a threshold which will be periodically determined by the government. This step is suggested to address the issue of delayed payments since small businesses are also reluctant to take advantage of the MSME Act, given their fragile negotiating position.
2. Government agencies like PSUs and departments should be required to use the GeM portal to place orders with MSMEs up to the prescribed target of 25%. The portal might eventually transform into a complete marketplace where MSME sellers could buy raw materials as well. It is necessary to change the General Financial Rules (GFR) and departmental procurement codes and manuals to forbid placing purchase orders that exceed the annual budget authorised by the government or legislature.
3. Suitable financial and non-financial enticements should be given to support and preserve successful Indian startups located in the country.
4. The setting up of enterprise development centres (EDCs) in district industries centres (DICs). These organisations need to be strengthened to function professionally and support the growth of entrepreneurs into fully developed, self-sustaining businesses.
5. MSME clusters should work along institutions with infrastructural Innovation, an R&D and universities having its hands on a specific field. Debt instruments like Bonds, CDS etc can be used to further increase investments from the private sector with tax spurs through SIDBI, thus enhancing a number of clusters.
6. Development service providers Network extending customized solutions to small enterprises in the area of technology, product development, and marketing techniques be given stress by authorities.

⁶⁶ *Micro, Small and Medium Enterprises: Challenges and Way Forward* (Address by Shri Shaktikanta Das, Governor, Reserve Bank of India at the 15th ASSOCHAM Annual Banking Summit, Mar. 6, 2020), <https://www.rbi.org.in/commonman/Upload/English/speeches/PDFs/MSME06032020.PDF>.

⁶⁷ REPORT OF THE EXPERT COMMITTEE ON MICRO, SMALL AND MEDIUM ENTERPRISES, *supra* note 5, at 16.

7. A Non-Profit Special Purpose Vehicle (SPV) can be set up by the Ministry enabling crowd-sourcing of investments by various agencies, especially to provide a favourable business environment for MSMEs.
8. In order to help units in clusters where a change in the external environment, such as a ban on plastics or "dumping," has resulted in a significant number of MSMEs turning NPA, a Distressed Asset Fund with a corpus of 5000 crores should be diverged.
9. All Credit Guarantee Schemes ought to be governed and overseen by the RBI. The World Bank Group has developed well-known concepts for the design, implementation, and evaluation of Public Credit Guarantee Schemes for SMEs, which RBI can draw upon when establishing the regulatory and supervisory guidelines.
10. The Micro business might be able to cope with n. insurance coverage through natural disasters. Schemes such as PMSBY, Ayushman Bharat – PMJAY. PMJJBY should be provided to the workers to ensure financial security and confidence at times of distress.
11. Reverse factoring should be allowed through a second TReDS window to make it supplier financing simpler.
12. The development of a digital public infrastructure that has the potential to drastically lower the operating cost.

3.6 CONCLUSION

This article examined the economic condition of the MSMEs in India, their contribution to the Gross Domestic Product and sustainable economic development, the government policies enabling and encouraging the same, and laws in this regard. It seems that the government is on the right path in identifying and defining MSMEs on the basis of investment and turnover, and in terms of initiation of schemes. There are several policies in place fostering, facilitating and encouraging MSMEs to be in business, to upskill and improve goods and service quality and to expand and grow in competition alongside large-scale companies in international markets. Further, enacted laws such as the MSMED Act of 2006 and the Factoring Act of 2011 address issues faced by small business and ensures their rights. The provision addressing delayed payments, the establishment of the Micro and Small Enterprise Facilitation Council for hearing complaints and the Delayed Payment Monitoring System have been a remarkable stride to address a major hurdle in way of SMEs, given its lack of liquidity. Further the Khadi

Gramodyog Vikas Yojana, the umbrella scheme has been a milestone in mitigating poverty and unemployment in rural areas. Thus, clearly positive efforts are being made and to an extent, the laws and policies are in place.

However, the major obstacle in the way of MSME growth seems to be the widespread financial illiteracy and the lack of exposure to the digital world. No efforts has been made by the government in this aspect, leaving SMEs to succumb to outdated regulatory practices, culminating in the sophistication of processes such as licensing and payment of taxes. As a matter of fact, despite numerous policy initiations, neither do they have a regulatory framework nor is it reaching the grassroots. While the domestic policy regime set up by the government as a welfare measure should pointedly address the issues of the most deserving, their ignorance of the same creates a lacuna, often leaving the policy futile, depriving these communities of their right to sustainable economic development. Thus, Financial illiteracy, lack of exposure to modern financial regulations, schemes and policies of the government are areas that call for immediate attention.

Population is the biggest asset for any nation. As a country, India equally owes rights, protection, life, health and wealth to each of its citizens. The growth of MSMEs is connected with the very development and progress of the common man- the most underserved of communities. As a matter of fact, placing every blame upon the state and not obliging the civil society with any responsibility is not the way. The coming together of stakeholders such as financial institutions, business enterprises, public authorities and private companies can facilitate the pooling in of resources, shared culture, finances, experience and tackle misinformation and ignorance. Mainstreaming policies and laws, thus remain a major leap.

Towards the end the manufacturing sector being the second largest employment generator, the MSME sector has tremendous potential, given its ability to avert poverty, create jobs, facilitate development and progress and survive through crisis. The recent amendment of Section 43b of the Finance Act in 2023 has obligated timely payment of goods and service charges to MSMEs, by cutting off deductions in tax payment owing to non-compliance to the time constraints for processing charges.⁶⁸ Taking into consideration the legal scenario, it seems

⁶⁸ Pratik Kumar Patawari Jain, *Changes in Income Tax Law Regarding MSMEs: Payment Compliance and Deductions*, TAX GURU (May 09, 2023), <https://taxguru.in/income-tax/income-tax-law-msmes-payment-compliance-deductions.html>.

that the government is pushing the edge towards removing the obstacle of delayed payments and fostering an environment for the informal sector to avail benefits of priority sector lending. Thus its rather clear that the national policy environment is pacing up to financially empower the MSME sector, like many progressive economies. Implementation of the recommendations of the Expert Committee on MSME can further bring in significant changes and stimulate this enabling environment. Thus having the correct regulations and enabling environment to help MSMEs solve their current difficulties and explore future opportunities can equally enforce economic growth and create an augmented business ecosystem.⁶⁹

In pursuance of the above, three novel ideas have been introduced in the substantial literature on entrepreneurship, development economics, and the psychology of organizations: financial inclusion, business practices, and individual initiative. The concept of financial inclusion, which has many facets, refers to the use of accounts with legitimate financial institutions by businesses, which enables them to contract insurance, save and borrow money legally, request and receive loans, and use any kind of payment service, including digital ones. Business practices are a set of procedures that companies adopt in the areas of stock control, record keeping, marketing, and financial planning. Lastly, personal initiative (PI) is a psychological process that aims to give businesspeople a proactive attitude, i.e., that they are self-starters, have forward-looking thinking, and be able to go beyond obstacles.⁷⁰ In the practical sense, financial inclusion, sustainable business practices and individual initiative spearhead ambitions of becoming 'Vishwaguru' alongside sustainable growth and development.

⁶⁹ Address by Shri Shaktikanta Das, *supra* note 66.

⁷⁰ Juna Carlos Mejia et al, *Financial Inclusion and Business Practices of Microbusiness in Columbia*, 13 EURASIAN BUSINESS REVIEW 465 (2022).

CHAPTER 4: PROTECTION OF INDIAN BUSINESSES – INTERNATIONAL TRADE LAW PERSPECTIVE

4.1 INTRODUCTION

In the wake of adverse events such as a global pandemic and a war which continues unabated, most of the countries are turning crises into opportunities by refurbishing their trade and manufacturing policies. The Government of India has launched ‘the Self-Reliant India’ or the ‘Atma Nirbhar Bharat Abhiyan’ as a strategy to empower the country and its citizens by making it “independent” and “self-reliant” in all major sectors. A slew of schemes have been enacted in this backdrop so as to enhance domestic manufacturing capabilities of India and thereby strengthen the economy through exports of these indigenously made products. However, it brings to fore considerable challenges because any such inward-looking trade policies are likely to be called into question before the World Trade Organisation as policies promoting trade protectionism.

Before the advent of Atma Nirbhar Bharat Abhiyan, The Government of India had launched the Merchandise Exports from India Scheme (MEIS) through its Foreign Trade Policy from 2015-2020 for promotion of the manufacturing and exporting of products from India. This scheme envisaged rewarding exporters with ‘Duty Credit Scrips’ for compensating the losses incurred by them while paying customs and excise duties.¹ Countries were categorised into three groups under the Schemes and the rates at which rewards were granted would depend on the group within which a particular country would fall.² In 2018, U.S challenged the validity of MEIS, along with certain other schemes for the promotion of exports before the World Trade Organisation (WTO). In its ruling, the WTO Panel found that MEIS

¹ *Chapter 3: Exports From India Schemes*, in Directorate General of Foreign Trade, Foreign Trade Policy, 2015-2020 (Issued on Dec. 05, 2017, and as updated on Apr. 04, 2022), <https://content.dgft.gov.in/Website/dgftprod/011eb646-a1ff-4a0b-bb8b-f60aceb83395/FTP%20Chapter3-Updated%20as%20on%2012.04.2022.pdf>.

² Ministry of Commerce & Industry, Public Notice No. 2/2015-2020, Merchandise Exports from India Scheme (MEIS) – Schedule of Country Groups, ITC (HS) Code Wise List of Products with Reward Rates under Appendix 3B Notified (Issued on April 1, 2015), https://content.dgft.gov.in/Website/pn0215_0.pdf.

was an export subsidy, thereby contravening the provisions of the Agreement on Subsidies and Countervailing Measures (ASCM).³ Although India did notify its intention to prefer an appeal before the Appellate Body, it had to roll out the scheme within a span of 120 days from the date of adoption of the report of the Panel. The MEIS Scheme was formally declared to be withdrawn with effect from 1st January 2021.⁴

With the MEIS Scheme designed for promotion of manufacturing and exports from India drawing the ire of the WTO, due caution has to be exercised so as to ensure that the Atmanirbhar Bharat Abhiyan, with a similar objective, does not culminate as an identical unsuccessful venture. The Government has asserted that the measures initiated under 'Self-Reliant India' do not favour the notion of protectionism and instead, would be a catalyst for building India's economic resilience.⁵ In this context, it becomes imperative to examine whether the vision for Atmanirbhar Bharat Abhiyan would be compliant to the laws enacted by WTO which strives to ensure that countries adopt free and open trade policies in their engagements with one another.

This Chapter aims to understand and analyse whether the measures proposed under the Atmanirbhar Bharat Abhiyan are in consonance with the mandates laid down by WTO through its various agreements. For this purpose, the article would place special emphasis on the Production-Linked Incentive Schemes, and key measures launched under the Atmanirbhar Bharat Abhiyan. Both of these are analysed with reference to the mandates laid down under key WTO Agreements such as the General Agreement on Tariffs and Trade, 1994, the Agreement on Trade Related Investment Measures, 1995 and the Agreement on Subsidies and Countervailing Measures, 1994.

³ WTO PANEL REPORT, INDIA – EXPORT RELATED MEASURES (WTO Doc. WT/DS541/R, Oct. 31, 2019), https://www.wto.org/english/tratop_e/dispu_e/541r_e.pdf.

⁴ Department of Commerce, Ministry of Commerce & Industry, Government of India, Ceiling/cap on MEIS Benefits Available to Exporters on Exports Made from 01.09.2020 to 31.12.2020, Notification No.30/2015-2020 (Issued on Sept. 1, 2020), <https://content.dgft.gov.in/Website/dgftprod/4a37d60a-f0bf-4783-bc67-a17131168d46/N30E.pdf>; However, a similar scheme for refunding duties, taxes and levies on exported products was notified in August 2021 despite of the WTO ruling against MEIS Scheme; See Department of Commerce, Ministry of Commerce & Industry, Government of India, Scheme Guidelines for Remission of Duties and Taxes on Exported Products (RoDTEP), Notification No. 19/2015-2020 (Issued on Aug 17, 2021), <https://content.dgft.gov.in/Website/dgftprod/8c25b521-147e-40e4-afa4-416eafdf3df6/RoDTEP%20Scheme%20Guidelines%20Notification%2019%20dated%2017%20Aug%202021.pdf>.

⁵ MINISTRY OF FINANCE, GOVERNMENT OF INDIA, ECONOMIC SURVEY 2021-2022, at 34 (2022).

4.2 ATMA NIRBHAR BHARAT ABHIYAN AND KEY WTO PRINCIPLES

The Atma Nirbhar Abhiyan is entrenched in the primary goal of making India self-reliant economically. The basic premise of the Government's vision is to overhaul the over-reliance on its trading partners to meet internal customer demands and give impetus to domestic manufacturers to meet these demands. In other words, the aim of the government through this initiative is to reduce its over-dependence on other countries for trade by focusing on inward manufacturing. From the perspective of international trade, the ANB Abhiyan is focussed on reducing the trade deficit that India faces owing to the overreach of its net imports over exports. However, the approach of the government is to continue to trade with other countries but aim to eliminate trade imbalances and, where possible, adopt a mercantilist approach to international trade.

However, from a perspective of international trade, the measures potentially taken to further protection of Indian business may draw give rise to potential issues of compliance with India's obligations under international trading agreements. For instance, as a member of the World Trade Organisation, India is obligated to remove or diminish barriers which impede the flow of international trade and to encourage by all available means the expansion of commerce.⁶ Such obligations may arise in context of two main obligations under WTO Agreements:

4.2.1 Most Favored Nation Principle

As the name suggests, the most-favoured-nation clause is a provision in a trade agreement that mandates a country to provide concessions, rights, or immunities to one nation or to all other countries that are members of the World Trade Organization (WTO).⁷ It is a position in international economic relations that is intended to promote equal treatment of all member countries in international trade. As under the GATT, 1994, the most favoured nation clause prohibits the member states who are party to the agreement from according one another less favourable terms of international trade than they accord any other country, whether they are a

⁶ Havana Charter for an International Trade Organization, Final Act and Related Documents, United Nations Conference on Trade and Employment, United Nations Document E/Conf. 2/78 (Nov. 21, 1947- Mar. 24, 1948).

⁷ General Agreement on Tariffs and Trade 1994, art. I, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994]; General Agreement on Trade in Services 1994, art. II, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183, 33 I.L.M. 1167 (1994) [hereinafter GATS 1994].

member of the WTO or not. In other words, the MFN clause binds parties to the obligation that favourable market access offered to anyone country must be offered to all other member countries.⁸ This implies that in implementing measures to promote businesses, actions under the ANB Abhiyan must be bound by non-discriminatory mandates of the GATT, 1994

4.2.2 National Treatment Principle

The principle of national treatment, in simple terms, prohibits discrimination between imported goods and domestically produced goods with regard to internal taxation or regulation.⁹ It is a bulwark against discriminatory treatment where domestic measures in the form of internal taxes and other charges, in addition to other laws, regulations or requirements which may affect the internal sale, offering for sale, purchase, transportation, distribution or use of products should not be applied so as to afford protection to domestic production.¹⁰ This implies that in undertaking certain measures that afford special protection to domestic producers for like products, India is bound to ensure that such measures not afford discriminatory treatment to like products from other countries.

4.2.3 Exceptions to the Obligations

There are however certain exceptions that exempt countries from the obligations set out under the Agreement. The GATT has clearly established an array of substantive obligations owed by Member States; however, Article XX acts as a ‘safety valve, an insurance mechanism, or an adjustment policy’ which allows these Member States to balance their policy goals with free trade based on certain policy objectives. However, the invocation of these exceptions shall be subject to the condition that any measure undertaken by a contracting party must not result in ‘arbitrary or unjustifiable discrimination between countries where the same conditions prevail or constitute a disguised restriction on international trade.’¹¹ This postulates that even after a particular measure satisfies one of the policy objectives carved out under Article XX, the test laid down under the introductory clause must also be fulfilled. This ensures checks and balances against restrictive or protectionist policies:

- (a) necessary to protect public morals;

⁸ Judith L. Goldstein et al, *Institutions in International Relations: Understanding the Effects of the GATT and the WTO on World Trade*, 61(1) INTERNATIONAL ORGANIZATION 37 (2007).

⁹ GATT 1994, art. III.

¹⁰ *Id.* art. III (I).

¹¹ *Id.* art. XX, chapeau.

- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the importations or exportations of gold or silver;
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
- (e) relating to the products of prison labour;
- (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- (h) undertaken in pursuance of obligations under any intergovernmental commodity agreement which conforms to criteria submitted to the contracting parties and not disapproved by them or which is itself so submitted and not so disapproved;
- (i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilization plan;
- (j) essential to the acquisition or distribution of products in general or local short supply

4.3 POSSIBLE LEGAL IMPLICATIONS OF TRADE MEASURES UNDER THE ATMA NIRBHAR BHARAT SCHEME

4.3.1 Issues in Trade Liberalisation

In the 2022-23 budget, India had raised the import duties for a host of goods (31 items in the goal of strengthening the production of such goods in the Indian market. In a quest to give impetus to local manufacturing and thereby a demand for local products, India must pay heed to restructuring its MFN tariff rates. At present, the average MFN applied tariff rate is 15 percent in 2020 which was the highest of any major world economy, with an average applied tariff rate of 11.9 percent for non-agricultural goods and 34 percent for agricultural tariff lines.

This raises issues as India's tariff regime is also characterized by large disparities between the World Trade Organization (WTO) bound rates and MFN applied rates.

4.3.2 Challenges in Implementation of Quantitative Restrictions (Import and Export)

Article XI of the GATT generally prohibits quantitative restrictions on the importation or the exportation of any product by stating "No prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any Contracting Party." One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than tariff measures and are more likely to distort the free flow of trade. GATT provisions, however, provide some exceptions for quantitative restrictions applied on a limited or **temporary basis**.

- Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting member
- Import and export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade
- Import restrictions on any agricultural or fisheries product necessary to the enforcement of governmental measures which operate to restrict production of the domestic product or for certain other purposes

India's MOCI again notified quantitative restrictions for the Indian fiscal year 2020/2021 of 150,000 metric tons (MT) certain pulses such as peas and mung beans as well as 400,000 MT for black matpe and pigeon peas. Imports of peas are restricted to the port of Kolkata and are subject to a minimum import price. While India removed a number of the import quotas for pulse crops in May 2021 to calm fears of food price inflation, it is not clear if the removal of the import restrictions is temporary or permanent

4.3.3 Import Substitution Industrialization – Rising Import Duties

The ANB Abhiyan, undoubtedly, is entrenched in the need to stir an economic resurgence of Indian manufacturers and producers. As such the strategy of Atmanirbhar Bharat Abhiyan seems to give a strong supply-side push by boosting the availability of capital. *Firstly*, India has

one of the highest Most Favoured Nation applied tariff rate among any major world economy. The tariff rate for agricultural goods averages to 34% and non-agricultural goods averages to 11.9%. There is also flexibility to change tariff rates at any time creating a lot of uncertainty for foreign exporters. Further custom rates are open to the administration's discretion because of its complexity and its ad hoc nature

There are also import restrictions, through the form of quotas or license. India beginning in 2017 has imposed import quotas on a few pulse crops and removed it again in 2021 over fears of food inflation. There is no clarity as to whether this is a temporary measure or not. With respect to licenses as an import restriction, there are long periods of time before a license is issued and on importing the good might be subject to various approval processes which the domestic good would not be subject to. There are also concerns around valuation and the lack of standardised valuation. These valuation takes lengthy periods and this often leads to frequent processing delays.¹²

4.3.4 Export Subsidies and Incentive Schemes

Overcoming the trade deficit would concurrently require boosting exports from India. This point particularly bears relevance in context of India's GDP over the past 2 years. As per the latest statistics demonstrated by the World Trade Statistical Review, the GDP in India slowed significantly, as the second quarter recorded a drastic dip of 25.9%. Such indicators strongly underlie the need to boost Indian exports as the dip signifies the highest fall recorded by any country in that given quarter.¹³ A big factor for these figures can be attributed to the over dependence on exports from other countries. For instance, in the merchandise sector, which represents one of the largest dependent sectors in India, the imports have by and large exceeded the quantum of exports. Figures indicate that in 2021, the imports from China – which stands as the largest source of imports to India - are currently growing far faster than exports to China. While imports grew 33%, exports from India in the merchandise sector grew just 8%. Consequently, while imports from China are at an all-time high, exports are ~20% below their

¹² OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2022: NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS (2022), <https://ustr.gov/sites/default/files/2022%20National%20Trade%20Estimate%20Report%20on%20Foreign%20Trade%20Barriers.pdf>.

¹³ *Chapter 3: World Trade and Economic Growth, 2020-21*, in WORLD TRADE ORGANIZATION, WORLD TRADE STATISTICAL REVIEW, 2021, at 34 (2021).

peak.¹⁴ India's average annual growth rate in merchandise exports was 5.3% between 2008 and 2018. The merchandise exports have also seen a slim rise, up to 8% in the year 2021.¹⁵ This comes after the clamp down on Chinese products in the question to boost alike Indian products.

4.3.5 Non-Tariff Barriers

India maintains various forms of non-tariff barriers on three categories of products: banned or prohibited items which are denied entry into India (e.g., tallow, fat, and oils of animal origin); restricted items that require an import license (e.g., livestock products and certain chemicals); and “canalized” items (e.g., some pharmaceuticals and corn under a tariff-rate quota) importable only by government trading monopolies and subject to cabinet approval regarding import timing and quantity

4.4 PRODUCTION – LINKED INCENTIVE SCHEMES AND GATT

4.4.1 PLI Schemes: An Overview

The Production-Linked Incentive (PLI) Schemes were notified in 2020 for 13 sectors with an objective of boosting domestic manufacturing. For this purpose, the businesses in approved sectors would be eligible to receive incentives on incremental sales if the goods are manufactured in India. In addition to augmenting domestic manufacture, it also aims at achieving self-sufficiency by reducing the dependence on imported products.¹⁶ It is pertinent to note that PLI Schemes have only made broad mandates on the thresholds of investments and the sales targets that are to be achieved in order to be eligible for the incentives.¹⁷ On the face of it, there is no explicit stipulation as to the value or percentage of domestic goods that have to be utilised in the place of imported goods for availing the incentives. Thus, the PLI Scheme has been brought forth after drawing cues from the earlier unsuccessful bid at WTO over the MEIS. However, each of the PLI Schemes that have been enacted for the different

¹⁴ *All Time High Trade with China*, INDIADATAHUB (Nov. 15, 2021), <https://indiadatahub.com/insights/article/all-time-high-trade-with-china>.

¹⁵ WORLD TRADE ORGANIZATION, *supra* note 13 at 35.

¹⁶ Ministry of Commerce & Industry, *Status of Production – Linked Incentive Schemes*, PRESS INFORMATION BUREAU (Apr. 07, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1710134>.

¹⁷ RESERVE BANK OF INDIA, REPORT ON CURRENCY AND FINANCE 2021-2022, at 100 (2022).

sectors have to be intensely scrutinised for gauging whether it is adhering to the various mandates that have been laid down by the WTO through its Agreements.

4.4.2 PLI Schemes and GATT 1994

The General Agreement on Tariffs and Trade (GATT) is a WTO Agreement which aims to eliminate discrimination as well as reduce tariffs and other trade barriers between countries engaged in trade of goods.¹⁸ Article III of GATT enshrines the ‘National Treatment’ obligation, which broadly stipulates that internal taxes and other measures should not be applied to imported or domestic products in such a manner that it would result in affording protection to domestic production.¹⁹ This requirement has been imposed so that countries would refrain from protectionism and would strive to offer ‘equality of competitive conditions’ between imported products and domestically manufactured products.²⁰

Para 4 of Article III enjoins States to accord to imported products, a treatment which is “no less favourable” than what is accorded to like products that are produced in their own countries. In order to ascertain whether there has been an infringement of Art III:4, three aspects have to be satisfied: (i) the measure being questioned must be a “law, regulation or requirement”, which is affecting the “internal sale, offer for sale, purchase, transportation, distribution, or use” (ii) the imported product and the domestic product must be “like” and (iii) the imported product should be given a “less favourable treatment” than the domestic product.²¹ Notably, Article III:4 does not specifically state that the measure has to be directed towards according protection to domestic products. However, the stipulation under Para 4 has to be interpreted in light of the general principle laid down under Article III:1.²²

The PLI Schemes envisage increasing self-reliance by boosting domestic manufacturing and thereby reducing India’s dependency on imported goods. This means that inasmuch as the

¹⁸ See generally GATT 1994; See also Donald M. McRae, *General Agreement on Tariffs and Trade*, AUDIOVISUAL LIBRARY OF INTERNATIONAL LAW (June 2021), <https://legal.un.org/avl/ha/gatt/gatt.html> (for a introductory discussion on GATT 1947).

¹⁹ GATT 1994, art. III (National Treatment on Internal Taxation and Regulation).

²⁰ WTO Appellate Body Report, Japan – Taxes on Alcoholic Beverages, WTO Doc. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, at 31 (Oct. 04, 1996) [hereinafter Japan-Taxes on Alcoholic Beverages].

²¹ WTO Appellate Body Report, Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WTO Doc. WT/DS161/AB/R, WT/DS169/AB/R, at ¶133 (Dec. 11, 2000) [hereinafter Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef].

²² WTO Appellate Body Report, European Communities- Measures Affecting Asbestos and Asbestos – Containing Products, WTO Doc. WT/DS135/AB/R, at ¶93 (Mar. 12, 2001) [hereinafter European Communities- Measures Affecting Asbestos and Asbestos].

Scheme extends a more favourable treatment to a domestic product by incentivising its production, an imported product which stands in a competitive relationship with the domestic product is likely to be detrimentally affected. If a Scheme contains measures that incentivise use of domestic products in the place of imported products, then it is generally considered to be capable enough to affect the sale, purchase and use of the imported products.²³ Thus, as it stands today, PLI Schemes constitute a requirement that has the potential to affect imported products and contravenes the national treatment obligation laid down under Article III:4.

It is pertinent to note that the term “affecting” under Article III:4 has been interpreted to mean any legal or regulatory measure or other requirement which has the potential to “adversely modify the conditions of competition” to the detriment of the product which has been imported from the territory of another State.²⁴ In other words, Article III:4 effectively protects the “expectations on competitive relationship” between products that are manufactured in one country and products that are imported therein.²⁵ As long as there is an unambiguously different treatment of domestic and imported products, then such measure would be found to be at odds with Article III:4, even if the current impact on trade is minimal or unknown.²⁶ Insofar as PLI Schemes endeavour to extend more favourable treatment to domestic products, it exhibits a tendency to modify the conditions of competition adversely and to the detriment of foreign countries from which products are imported to India. This adversely affects the expectations of competitive relationship that a foreign country might have when products manufactured therein are imported and traded alongside the domestic products manufactured in India. Therefore, the introduction of PLI Schemes is amenable to challenge before WTO even if its present repercussions on international trade is minimal or is not evident.

4.4.3 Do PLI Schemes Stipulate Local Content Requirement?

In trade law parlance, measures that are designed so as to incentivise or preferentially finance businesses conditional upon their sourcing local goods and services in their operations is

²³ WTO Appellate Body Report, China – Measures Affecting Imports of Automobile Parts, WTO Doc. WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R, at ¶196 (Dec. 15, 2008) [hereinafter China – Measures Affecting Imports of Automobile Parts].

²⁴ Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef, *supra* note 21, at ¶135.

²⁵ WTO Panel Report, United States – Measures affecting Alcoholic and Malt Beverages, WTO Doc. DS23/R - 39S/206 (June 19, 1992) [hereinafter United States – Measures affecting Alcoholic and Malt Beverages].

²⁶ WTO Panel Report, Canada – Certain Measures Affecting the Automotive Industry, WTO Doc WT/DS139/R WT/DS142/R (Feb 11, 2000) [Canada – Certain Measures Affecting the Automotive Industry].

termed as ‘local content requirement.’²⁷ The immediate consequence of local content requirements would be to compel foreign companies to procure from the local industries in a country or set up a subsidiary there or involve in local production.²⁸ While the country adopting such local content measures would arguably stand to benefit with the boosting of its local markets, it ends up skewing the competition as it places a disproportionate burden on foreign entities to compulsorily utilise products manufactured locally, thereby depriving them of the opportunity to select a producer on the basis of cost or quality.²⁹ Local content requirements come in diverse and sophisticated forms. Measures that ostensibly favour domestic businesses of a country or locally assembled products are also well within its ambit.³⁰ Article III:5 of GATT categorically proscribes States from maintaining any internal quantitative regulation which provides, either directly or indirectly, that any “specific amount or proportion” of the product “must be supplied from domestic sources.”

As PLI Schemes do not explicitly mention the requirement for goods to be manufactured locally as a condition for granting of incentives and instead bases it on incremental sales value, it might seem that the Scheme is compliant with the WTO mandates. However, on a closer scrutiny of the PLI Schemes that have been notified for different sectors, it can be surmised that this may not be the case. For instance, the PLI Scheme which has been notified with respect to Solar Goods clearly mentions that manufacturers would be “encouraged to source their materials from the domestic markets.”³¹ Furthermore, it also specifies that the amount of incentives granted would increase proportionately with the increase in addition of local value.³² Similarly, the Guidelines for the Scheme in the Electronic Goods sector as well as that in the White Goods sector specifies that a potential applicant has to declare a “plan for domestic value addition” along with the application.³³ In the Guidelines enacted with respect

²⁷ See James J Nedumpara & Akshaya Venkataraman, *The Rise of Import Substitution Subsidies and Local Content Requirements in a Dystopian WTO 2.0 Regime*, in MEREDITH KOLSKY LEWIS (EDS), *A POST-WTO INTERNATIONAL LEGAL ORDER: UTOPIAN, DYSTOPIAN AND OTHER SCENARIOS* (2020).

²⁸ Holger P Hestermeyer & Laura Nielsen, *The Legality of Local Content Measures under WTO Law*, 48(3) *JOURNAL OF WORLD TRADE* 553, 554 (2014).

²⁹ *Id.*

³⁰ Hanna Deringer et al, *The Economic Impact of Local Content Requirements: A Case Study of Heavy Vehicles* (EICPE Occasional Paper No. 1/2018), <https://ecipe.org/wp-content/uploads/2018/01/LCR-Paper-final-2-KL.pdf>.

³¹ Ministry of New & Renewable Energy, Production Linked Incentive Scheme ‘National Programme on High Efficiency Solar PV Modules,’ F.No. 283/62/2020 (Issued on Apr. 28, 2021).

³² *Id.*

³³ Ministry of Electronics and Information Technology, Guidelines for the Operation of Production Linked Incentive Scheme for Large Scale Electronics Manufacturing, F. No. W-28/1/2019 (Issued on June 1 2020);

to Pharmaceuticals sector, the domestic value addition that has been stipulated is 90 per cent for products based on fermentation and 70 per cent for those based on chemical synthesis.³⁴ What follows from this is that PLI Schemes indirectly stipulate the use of domestic goods as a mandate while applying for the incentives granted under the Scheme. Consequently, it contravenes Article III:5 of GATT which prohibits such indirect regulations requiring specific proportions of the product manufactured to be sourced domestically.

It is worthwhile to examine some of the decisions pronounced by the WTO on cases where similar local content requirements were mandated by countries so as to boost domestic manufacturing of the products. This would give us a clearer insight of how PLI Schemes would fare in light of the stipulations laid down by WTO. In *United States – Measures Affecting the Importation, Internal Sale and Use of Tobacco*³⁵ a legislation enacted by the Domestic Marketing Assessment in the U.S mandated that every manufacturer of cigarettes in the country has to certify before a designated authority that at least 75 percentage of the amount of tobacco used in the manufacturing of the cigarettes has been produced in the U.S. This was held to be an ‘internal quantitative regulation’ which mandated the use of product in specified amounts or proportion within the meaning of Article III:5 of GATT. A parallel can be drawn between this particular case and the requirement imposed on applicants to disclose the domestic value addition while applying for incentives under PLI Schemes in India. It becomes evident that such a stipulation in the PLI Schemes is likely to be regarded as an internal quantitative regulation and declared to be in contravention of Article III:5.

In the recent past, a similar initiative undertaken by Government of India for promoting domestic manufacturing of solar power cells was read down by WTO Panel which was later upheld by the Appellate Body on account of the local content requirements imposed therein. In *India – Certain Measures Relating to Solar Cells and Solar Modules*,³⁶ the measure at issue was

Ministry of Commerce & Industry, Guidelines for the Production Linked Incentive Scheme for Promoting Domestic Manufacturing of White Goods, F. No. P-29014/101/2020 (Issued on June 4, 2021).

³⁴ Ministry of Chemicals and Fertilisers, Guidelines for Production Linked Incentive (PLI) Scheme for Promotion of Domestic Manufacturing of critical Key Starting Materials (KSMs)/ Drug Intermediates and Active Pharmaceutical Ingredients (APIs) in India, F.No 31026/16/2020 (Issued on Oct. 29, 2020).

³⁵ WTO Panel Report, US – Measures Affecting the Importation, Internal Sale and Use of Tobacco, WTO Doc. DS44/R (Oct. 4, 1994) [hereinafter US – Measures Affecting the Importation, Internal Sale and Use of Tobacco].

³⁶ WTO Appellate Body Report, India – Certain Measures Relating to Solar Cells and Solar Modules, WTO Doc. WT/DS456/AB/R (Sept. 16, 2016) [hereinafter India – Certain Measures Relating to Solar Cells and Solar Modules].

the imposition of domestic content requirement on developers of solar cells and solar modules. The scheme under which the project was implemented by the Government of India stipulated that the developers had to submit a plan specifying how they intended to implement the requisite domestic content requirement in their endeavour. The WTO Panel found that the domestic content requirement squarely falls within the ambit of requirement which would affect the sale, purchase and use of imported solar cells or modules in India. Moreover, it was also held that the measures, intended to augment the conditions for domestic manufacturing of solar technology, was clearly according a less favourable treatment to imported products and thereby violated Article III:4 of GATT.

From these cases, it can be reasonably surmised that the WTO is likely to rule against the PLI Schemes, if any country challenges it, on account of imposition of domestic content requirements. Mandating the submission of plan detailing how a business entity intends to augment domestic manufacturing under PLI Schemes has the potential to detrimentally affect the sale, purchase and use of like goods that are imported from elsewhere.

4.4.4 Can PLI Schemes Qualify under any of the Exceptions to National Treatment?

Notably, Article III provides for two situations which constitute an exception to the prohibition on national treatment under GATT. The first exception, laid down under Article III:8(a), permits a ‘derogation’ from the national treatment obligation when government procures products for its purposes without an intention to utilise it commercially. The second exception, laid down under Article III:8(b), is more of the nature of a justification for immunising measures that are otherwise contradictory to the national treatment obligation. It states that the prohibition on national treatment does not prevent “payment of subsidies exclusively to domestic producers.” This payment may be derived out of the application of internal taxes and charges, provided these are levied complying to the requirements of Article III.

The true scope and ambit of the exception laid down under Article III:8(b) was enunciated by the Appellate Body in *US – Tax Incentives*.³⁷ It was clarified that extending subsidies to domestic producers, to the exclusion of foreign producers does not by itself constitute a violation of Article III. Even if it distorts competitive conditions between the imported product

³⁷ WTO Appellate Body Report, United States – Conditional Tax Incentives for Large Civil Aircraft, WTO Doc. WT/DS487/AB/R (Sept. 4, 2017) [hereinafter United States – Conditional Tax Incentives for Large Civil Aircraft].

and domestic product, it stands justified on account of the exception carved in favour of it, provided there is no departure from the other requirements enshrined under Article III. Notably, it is the internal taxes, the proceeds of which are applied for the payment of subsidies that are to be in consonance with the obligations under Article III.³⁸ Therefore, as long as the internal taxes imposed on imported products are not higher than that imposed on domestic products and as long as imported products are not treated less favourably than the domestic products, the application of the proceeds of these internal taxes in the payment of subsidies would be justified under the exception.

However, in *Brazil – Taxation*, the Appellate Body has elucidated that a requirement to use domestic goods instead of imported goods and making it as a condition for availing of a subsidy would not constitute an exception under Article III:8(b). This is because the exception provides an easing of stipulations only insofar as there is a distortion of competitive conditions between the domestic products manufactured using subsidy and like imported products. On the other hand, a stipulation as to mandatory utilisation of domestically manufactured products in order to avail the subsidy would have the tendency to distort the competitive conditions with respect to different sets of domestic products and like imported products.

Under the PLI Schemes, the subsidies are paid exclusively to the domestic manufacturers and therefore, it is permissible for the Government of India to invoke Article III:8(b) as a justification for derogating from the national treatment obligation. It may also be in a position to prove that the internal taxes levied on imported products are not higher than that imposed on domestic products. However, India would not be able to succeed in establishing that its measure would fall within the ambit of the exception, inasmuch as it mandates the use of domestic goods in the place of imported goods. The imposition of this requirement would distort the competitive conditions between multiple domestically manufactured goods and like goods that are imported from another country. Thus, with this stipulation in place, India may not be in a position to qualify for the exception granted to States for providing subsidies to domestic products, to the exclusion of like imported products.

³⁸ WTO Appellate Body, *Brazil – Certain Measures Concerning Taxation and Charges*, WTO Doc. WT/DS472/AB/R WT/DS497/AB/R (Dec. 13, 2018) [hereinafter *Brazil – Certain Measures Concerning Taxation and Charges*].

Therefore, PLI Schemes as they stand today are unlikely to survive a challenge before the WTO on the grounds of violation of Article III of GATT.

4.5 PLI SCHEMES AND TRIMS

Article 2 of the Agreement on Trade-Related Investment Measures (TRIMS) proscribes States from applying any such trade related measure which might be contradictory to the National Treatment obligation encapsulated under GATT. The Annex to the TRIMS Agreement enlists trade measures which would be deemed to be inconsistent with the National Treatment obligation under Article III:4 of the GATT. Any measure which is mandatory or capable of being enforced under domestic law or any measure which needs to be complied with in order to receive any advantage along with a requirement that the enterprise purchases or uses domestically sourced products would be considered to be a TRIM.³⁹ Notably, the stipulation can be either in terms of a specified volume or value of products being of domestic origin or that a specified proportion of its volume or value is locally sourced and/or produced.⁴⁰ For instance, in *India- Automobiles*⁴¹ a stipulation whereby components and parts manufactured in India were to be purchased and used incrementally over the years was imposed on the manufacturers of passenger cars if they had to avail licenses for importing cars in the form of completely and semi-knocked down kits. This was found to be in violation of Article 2 of the TRIMS Agreement inasmuch as it imposed a mandate of indigenisation of products in order to receive a benefit.

It follows that PLI Schemes which stipulate that specified proportion of the products manufactured have to contain domestic content falls squarely within the ambit of a TRIM and is inconsistent with Article 2 of the Agreement. In *Indonesia - Autos*⁴² it has been clarified that a measure need not be explicitly categorised as an ‘investment measure’ for it to be scrutinised under TRIMS Agreement. Any legislative measure which intends to confer benefits on meeting local content requirements would be considered as contravening Article 2 of TRIMS

³⁹ See Agreement on Trade-Related Investment Measures, Annex, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 186 [hereinafter TRIMS Agreement].

⁴⁰ *Id.*

⁴¹ WTO Appellate Body Report, India – Measures affecting the Automotive Sector, WTO Doc. WT/DS146/AB/R (Mar. 19, 2002) [hereinafter India – Measures affecting the Automotive Sector].

⁴² WTO Panel Report, Indonesia – Certain Measures Affecting the Automobile Industry, WTO Doc. WT/DS54/R, at ¶6.3 (July 2, 1998) [hereinafter Indonesia – Certain Measures Affecting the Automobile Industry].

Agreement.⁴³ A defence that it is not an investment measure is therefore, not likely to stand. Nor is the defence that it was for a benign cause of promoting local manufacturing capacity likely to succeed as this is considered to have the potential to affect investments in those sectors.⁴⁴ Notwithstanding this, measures that are inconsistent with Article III:4 of GATT are automatically presumed to be contradictory to obligations under the TRIMS Agreement as well.⁴⁵ Therefore, a separate analysis on inconsistency with TRIMS Agreement is avoidable once inconsistency with National Treatment obligation under GATT is established.

4.6 PLI SCHEMES AND SCM AGREEMENT

The WTO Agreement on Subsidies and Countervailing Measures (SCM) prohibits ‘subsidies’ which are granted subject to a condition that domestic goods are used in place of imported goods.⁴⁶ A subsidy is deemed to have been provided if the government engages in direct transfer of funds, foregoes dues, provides or purchases goods or services, makes payments to a funding mechanism or entrusts private bodies to carry out any of these functions.⁴⁷ In addition to these, a subsidy can also take the form of an income or price support or the conferral of a benefit.⁴⁸ A benefit is deemed to have been conferred if there is a financial contribution that leaves its recipient better off than he would otherwise have been.⁴⁹ A measure can fall under one or more of the categories defined as ‘subsidy’ under SCM Agreement.⁵⁰

It is pertinent to note that Article 3.1 (b) which places an embargo on subsidies that are granted on usage of domestic goods over that of imports, which are called import substitution subsidies, has been interpreted to encompass those that are contingent in fact and those that are contingent in law.⁵¹ Moreover, what is proscribed is the very existence of such a

⁴³ *Id.* at ¶6.6

⁴⁴ *Id.*

⁴⁵ WTO Panel Report, US- Certain Measures relating to the Renewable Energy Sector, WTO Doc. WT/DS510/R (June 27, 2019) [hereinafter US- Certain Measures relating to the Renewable Energy Sector].

⁴⁶ Agreement on Subsidies and Countervailing Measures, art. 3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14. [hereinafter SCM Agreement].

⁴⁷ *Id.* art 1.

⁴⁸ *Id.*

⁴⁹ WTO Appellate Body Report, Canada – Certain Measures Affecting the Export of Civilian Aircraft, WTO Doc. WT/DS70/AB/R, at ¶157 (Aug. 2, 1999) [hereinafter Canada – Certain Measures Affecting the Export of Civilian Aircraft].

⁵⁰ WTO Appellate Body Report, Canada – Certain Measures Affecting the Renewable Energy Generation Sector, WTO Doc. WT/DS412/AB/R (May 6, 2013) [Canada – Certain Measures Affecting the Export of Civilian Aircraft].

⁵¹ WTO Appellate Body Report, Canada – Certain Measures Affecting the Automotive Industry, WTO Doc. WT/DS139/AB/R (May 31, 2000) [Canada – Certain Measures Affecting the Automotive Industry].

condition which requires usage of domestic goods over imported goods and is not dependent on an examination of the potential impacts of the condition on the goods in the market.⁵² Usually, WTO ascertains whether there is a relationship of contingency by scrutinising the facts and circumstances of a case.⁵³

In *US – Tax Incentives*, it has been held that it is an import substitution subsidy for the purpose of Article 3 of SCM Agreement, not only when it incentivises usage of domestic goods ‘instead of’ imported goods but also when it incentivises usage of domestic goods ‘in preference’ of imported goods.⁵⁴ In the case of PLI Schemes for Solar Goods, it has been unequivocally stated that the incentives granted would be proportionate to the amount of local content involved in it whereas in the case of Pharmaceuticals, there is a stipulated percentage of domestic value addition that needs to be established so as to make a claim for the incentives.⁵⁵ This makes it evident that PLI Schemes provide benefits ‘conditional’ to the usage of domestic goods ‘over that of’ imported goods thereby making it amenable to a scrutiny under Article 3.1(b) of the SCM Agreement.

Notably, subsidies that are paid exclusively to domestic manufacturers are protected under trade law.⁵⁶ Therefore, there is no harm in extending subsidies to local manufacturers or producers, to the exclusion of foreign manufacturers even though this may lead to a proliferation of these subsidised goods in the downstream and prejudicing of imports.⁵⁷ However, the law steps in when there is an incentivisation of usage of domestic goods instead of or in preference to imported goods.⁵⁸ What can be surmised from this is that if PLI Schemes were mere production subsidies granted to local manufacturers, it would not constitute a violation of SCM Agreement as it would be protected by Article III:8 of GATT. Since it overtly makes the granting of incentive conditional to the usage of domestic content over imported goods, it attracts Article 3.1(b) of the SCM Agreement.

⁵² WTO Appellate Body Report, *United States - Conditional Tax Incentives for Large Civil Aircraft*, WTO Doc. WT/DS487/AB/R, at ¶15.18 (Sept. 4, 2017) [hereinafter *United States - Conditional Tax Incentives for Large Civil Aircraft*].

⁵³ *Canada – Certain Measures Affecting the Export of Civilian Aircraft*, *supra* note 49.

⁵⁴ *United States - Conditional Tax Incentives for Large Civil Aircraft*, *supra* note 52, at ¶15.11.

⁵⁵ See Ministry of New & Renewable Energy, *supra* note 31; Ministry of Chemicals and Fertilisers, *supra* note 34.

⁵⁶ GATT 1994, art. III:8(b)

⁵⁷ WTO Appellate Body Report, *Brazil – Certain Measures Concerning Taxation and Charges*, WTO Doc. WT/DS472/AB/R (Dec. 13, 2018) [hereinafter *Brazil – Certain Measures Concerning Taxation and Charges*].

⁵⁸ *Id.*

4.6 CONCLUSION

This Chapter examined the possible ramifications of a WTO scrutiny of Atmanirbhar Bharat Abhiyan through the lens of key WTO Principles, measures adopted under ANB and PLI Schemes. On a perusal of the various Guidelines issued under PLI Schemes targeted for different sectors, it becomes clear that it follows along the same lines of India's unsuccessful bids in the past such as the MEIS Scheme or the Solar Cells and Solar Modules case. As has been attempted to be established in this Chapter, the PLI Schemes, at present, are drafted in a manner that is antithetical to the obligations of National Treatment enshrined under GATT inasmuch as it amounts to mandatory imposition of local content requirements in order to avail promised benefits. For this reason, it is also likely to be found contravening the TRIMS Agreement.

A mere subsidisation of domestically sourced or manufactured products to the exclusion of foreign producers would have been acceptable under GATT and SCM Agreement. Since it incentivises usage of domestic goods in the place of imported goods for availing the benefits, it is also likely to be held violative of the SCM Agreement. Therefore, the PLI Schemes need to be revamped in order to provide payments to domestic manufacturers without making it conditional or mandatory that a fixed percentage or proportion of locally manufactured content would be necessary to avail the subsidy. While granting of subsidy, the actual percentage of local content could be taken into account for ascertaining a hierarchy or a ranking of eligible beneficiaries. However, it being stipulated as a mandatory condition would make the Scheme redundant as it is likely to be read down by the WTO.

CHAPTER 5: UNLOCKING INNOVATION – STRENGTHENING THE INDIAN PATENT SYSTEM IN THE ERA OF ATMA NIRBHAR BHARAT

5.1 INTRODUCTION

The human mind is inherently curious. It is constantly in a quest to find the next best thing. To varying extents, we are all beneficiaries of the intellectual labor of several brilliant minds; minds that took up the onerous task of providing the world with amenities that make our lives easier to navigate through. Intellectual property rights (IPRs) grant protection to such intellectual creations of human beings. A patent is one such right, specifically an exclusive right and a monopoly limited by time, granted for an invention in return for the disclosure of the technical information underlying the creation.¹

In India, the Patents Act of 1970 (Act) governs the grant of patents. It confers on the creator a negative exclusionary right to prohibit anyone else from manufacturing, using or selling his invention for a period of 20 years.² For obtaining a patent, an invention must be a novel product or process, involving an inventive step and must have industrial application and shall not fall into the statutory exceptions enumerated in Sections 3 & 4 of the Act.³ Armouring an invention with patent protection thus gives the owner a time-bound, exclusive right over his creation. Various justifications are invoked for the granting of patent rights, the most prominent being that it is an impetus to foster innovation by acting as a reward. By allowing the owner to leverage his intellectual creation as an economic asset, patents also provide an avenue for investments that could be pivotal to the development as well as the commercial exploitation of the product or the process. This sentiment is more prominently echoed in

¹ The Patents Act, 1970, § 48; *See also* LIONEL BENTLY & BRAD SHERMAN, *INTELLECTUAL PROPERTY LAW* 309 (2001).

² FERAZ ALI KHADER, *THE LAW OF PATENTS- WITH A SPECIAL FOCUS ON PHARMACEUTICALS IN INDIA* 4 (2007); *See also* Hemant Singh, *Patent Enforcement in India*, in CHRISTOPHER HEATH (ED), *PATENT ENFORCEMENT WORLDWIDE: WRITINGS IN HONOUR OF DIETER STAUDER* 440 (Hart Publishing, 3d edn. 2015).

³ The Patents Act, 1970, § 2(1)(j).

Section 83 of the Act which states that “*patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay*”.⁴ Proprietary interests aside, it has been argued that patents secure a greater public interest through the dissemination of knowledge by disclosing the technical information and also by giving public access to the innovation after the expiry of the patent period.⁵

India has innovators in abundance and in recent years, India has been climbing up the ladder in terms of innovation and patent activity. India was at the forefront of developing a vaccine to fight against the COVID-19 infection. Its indigenously produced Covaxin, which was developed at a tremendously fast pace is generally regarded as a shining example of India’s innovation boom.⁶ In the Global Innovation Index (GII) of 2023, India has bagged 40th rank out of 132 countries, whose innovation ecosystems were scanned by the World Intellectual Property Organization (WIPO).⁷ This is the first time India has entered the top 40 in the GIIL. It is also the topmost country among the cluster of lower-middle-income countries. As per the Hurun Global Unicorn Index of 2023, India is the 3rd largest start-up hub in the world, just behind the United States and China.⁸ Even though the data from the Index indicates a downtrend of start-up activity, India houses several Unicorns (start-ups established after the year 2000 and has a valuation 1 billion USD), Gazelles (start-ups that are projected to become Unicorns in next three years) and Cheetahs (start-ups that are projected to become Unicorns in next five years). There are also several start-ups outside the country co-founded by Indians.

⁴ *Id.* § 83.

⁵ SUBCOMMITTEE ON PATENTS, TRADEMARKS & COPYRIGHTS, THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, AN ECONOMIC REVIEW OF THE PATENT SYSTEM, 85TH CONGRESS 2D SESSION, at 76 (1958) (Fritz Machlup, “The claim that the patent system serves to disseminate technological information, and that this accelerates the growth of productivity in the economy, is not questioned.”); *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141 (1989) (“Moreover, the ultimate goal of the patent system is to bring new designs and technologies into the public domain through disclosure.”); *Pfaff v. Wells Electronics, Inc.*, 525 U.S. 55 (1998) (“..the patent system represents a carefully crafted bargain that encourages both the creation and the public disclosure of new and useful advances in technology, in return for an exclusive monopoly for a limited period of time.”); For a contrary opinion, see *The Disclosure Function of the Patent System (Or Lack Thereof)* 118(6) HARVARD LAW REVIEW 2007 (2005).

⁶ Manveena Suri & Julia Hollingsworth, *India’s Homegrown Covid-19 Vaccine has 78% Efficacy Against Symptomatic Infections, Developer Says*, CNN WORLD (July 03, 2021), <https://edition.cnn.com/2021/07/03/india/bharat-biotech-covaxin-efficacy-intl-hnk/index.html>.

⁷ SOUMITRA DUTTA ET AL (EDS), GLOBAL INNOVATION INDEX 2022 WHAT IS THE FUTURE OF INNOVATION-DRIVEN GROWTH? (15th edn., WIPO 2022), <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2022-en-main-report-global-innovation-index-2022-15th-edition.pdf>.

⁸ Hurun Research Institute, *Global Unicorn Index 2023*, HURUN (Apr. 18, 2023), <https://www.hurun.net/en-US/Info/Detail?num=3OEJNGKGFPS>.

Most recently on 23 August 2023, becoming the fourth country to land on the moon and the first country to do a successful soft launch on the South Pole of the moon, India has cemented herself as an innovative force to be reckoned with.⁹

India has also witnessed amplified patent activity in recent years. A total of 80,211 patent applications were filed between 2022 and 2023¹⁰ which is a 24.64% jump from the 66,440 patents filed between 2021 and 2022 and is approximately 42% more than the number of patents filed between 2017 and 2018.¹¹ As per the 2023 report, 52.28% of the patents are filed by Indian applicants showing around 31.8% increase in resident filing from the previous year. Resident applications have seen a tremendous growth of 69.8% in between 2015 and 2023.¹²

While India undoubtedly has a long history of fostering innovation, the advent of *Atmanirbhar Bharat Abhiyan* (ANBA) or the Self-Reliant India campaign from 12 May 2020 has significantly helped to boost the passion for innovation and improve the patent ecosystem. Self-reliance is a quality that suits individuals and nations alike and the genesis of this concept in India can be found in the Swadeshi movement which focused on making India self-sufficient as part of the struggle for independence. With the ANBA project, the country aims to not only become self-reliant but also plans to plug India into the global value chain.¹³ As much as ANBA has the potential to propel India's patent ecosystem through its various schemes and programs, patenting innovations can in turn help realize India's goal to become a global manufacturing hub and thereby improve the state of imports in India.¹⁴

⁹ Editorial, *India's Moon Landing is a Stellar Achievement – And a Win for Science*, 620 NATURE 921 (2023), <https://www.nature.com/articles/d41586-023-02685-4>.

¹⁰ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2022-23 (2023), https://www.ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_114_1_ANNUAL_REPORT_202223_English.pdf [hereinafter IP INDIA ANNUAL REPORT 2022-23].

¹¹ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2017-2018 (2018), https://ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_110_1_Annual_Report_2017-18_English.pdf [hereinafter IP INDIA ANNUAL REPORT 2017-18].

¹² IP INDIA ANNUAL REPORT 2022-23, *supra* note 10.

¹³ PTI, *Atmanirbhar Bharat is Neither 'Isolationism' Nor 'Protectionism': Nirmala Sitharaman*, TIMES OF INDIA (Oct. 12, 2022), <https://timesofindia.indiatimes.com/business/india-business/atmanirbhar-bharat-is-neither-isolationism-nor-protectionism-nirmala-sitharaman/articleshow/94796303.cms>.

¹⁴ Education Desk, *Not Only Invent but also Patent the Inventions for AtmaNirbhar Bharat, Says Pokhriyal*, INDIAN EXPRESS (Oct. 16, 2020), <https://indianexpress.com/article/education/not-only-invent-but-also-patent-the-inventions-for-atmanirbhar-bharat-says-pokhriyal-6756421/>.

While these achievements are indeed remarkable, India's patent activities are only a fraction of the volume of those undertaken by the IP5, the five largest intellectual property offices in the world.¹⁵ Globally, China National Intellectual Property Administration (CNIPA) tops in terms of number of patents filed. According to the preliminary data, over 1.6 million patents were filed in China in 2022 and 90% of them are resident applications.¹⁶ The US Patent and Trademark Office (USPTO) comes second with over half a million patent applications in 2022. The number of patent applications filed in 2022 in the other three from the IP5, Japan Patent Office (JPO), Korean Intellectual Property Office (KIPO) and the European Patent Office (EPO) are also greater than India's figures. India not only underperforms in terms of number of patent applications filed and patents granted, but it also lags behind its global counterparts in terms of patent application processing time, taking almost double the amount of time than the global best practice.

This chapter seeks to locate all of the efforts made to rectify the issues within the patent system through ANBA or otherwise and analyze the depths of the mutualistic symbiotic relationship between ANBA and India's patent ecosystem.

5.2 DECONGESTING THE SYSTEM

In the past seven years, several efforts pursuant to the goal of making a patent giant have been made by the government and the legislature. ANBA has further provided catalysis in demystifying the patent application process for a variety of actors.

5.2.1 Amendments to the Rescue

A series of amendments made to the Patent Rules 2003 (Rules) starting from 2016, mark the continuous efforts from the end of the legislature to render the patent application process less cumbersome, streamlined, user-friendly, and less expensive and has infused the Act with provisions to diversify applicants. The 2016 amendment had several beneficial provisions for startups. Through this amendment, for the first time, startups were defined as an entity where more than five years have not lapsed from their incorporation, and do not have a turnover of

¹⁵ Abhijit Ahaskar, *Patents Granted in India Tripled in Last 5 years; Still a Fraction of China, US*, LIVE MINT (Jan. 31, 2022), <https://www.livemint.com/companies/start-ups/patents-granted-in-india-tripled-in-last-5-years-still-a-fraction-of-china-us-11643630387938.html>.

¹⁶ *Key IP5 Statistical Indicators 2022*, EUROPEAN PATENT OFFICE, <https://link.epo.org/ip5/Key%20IP5%20statistical%20data%202022%20FINAL.pdf> (last visited May 19, 2025).

more than 25 crores in these five years.¹⁷ Startups were also given the option to request for expedited examination of their applications under Rule 24B. Essentially, patent applications are examined only when requested by the applicant or any interested person and they can make such a request anytime within 31 months from the date of priority or from the date of application, whichever is earlier.¹⁸ A request for expedited examination shall not be questioned if the startup has ceased to be a startup due to the lapse of five years from the date of incorporation or its turnover has crossed 25 crores.¹⁹ The benefit of expedited examination was also made available to international applications or Patent Cooperation Treaty applications filed under the Act who has chosen India as the International Searching Authority²⁰ (ISA) or International Preliminary Examining Authority (IPEA).²¹

The Patent Cooperation Treaty (PCT) provides a mechanism for unified patent filing in multiple jurisdictions through a single application. National offices or intergovernmental organizations that meet the requirements so prescribed can be designated as ISA or IPEA which will carry out international search and submit a documentary search report on prior art and international preliminary examination, respectively. Accordingly, India has been recognized as an ISA and IPEA from 15 October 2013. Other significant changes introduced by the 2016 amendment include video conferencing facility for hearing under Rule 28, limited hearing adjournment,²² mandatory e-filing by patent agents²³ and delay condonation in certain situations such as strike or natural calamity.²⁴ In a bid to realize the goals of ANBA, the benefit of expedited examination was further extended to small entities, female applicants, government departments, government companies, institutions established by a legislation, owned and controlled by the government, applicants or institutions wholly or substantially financed by the government from 2021.²⁵ Patent applications fees for these categories have also been reduced by 80%.

¹⁷ The Patent (Amendment) Rules, 2016.

¹⁸ The Patents Act, 1970, § 11B (1).

¹⁹ *Id.* § 24C (5).

²⁰ India Const. art. 16.

²¹ *Id.* art. 32.

²² The Patent Rules, 2003, Rule 129A.

²³ *Id.* Rule 6(1A).

²⁴ *Id.* Rule 6(6).

²⁵ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2019-2020 (2020), https://ipindia.gov.in/writereaddata/Portal/Images/pdf/IP_India_English_29.08.21_Final_.pdf.

A significant change that was brought by the first 2020 amendment was fixing the timeline to submit the form regarding the working of patents.²⁶ Section 146 of the Act requires patent owners to submit a statement on the commercial working of the patents owned by them. The 2020 amendment has stated that such statements shall be furnished once every financial year and within six months after the expiry of that financial year.²⁷ The format of Form-27 in which statements shall be submitted has also been modified to allow the single filing for related patents. Such a statement or report need not be filed for a period of one year post the grant of the patent. A periodic review of the working of patents is crucial to ensure that the innovation reaches the public and that the creators are being sufficiently compensated for the hard work and capital they had invested in the creation. It also becomes significant in the context of the quantum of punishment attached to the violation of these provisions. Failure to submit annual statements can attract a penalty of 10 lakh Rupees,²⁸ whereas filing false information can lead to either imprisonment for up to six months or the imposition of a fine or both.²⁹

Further amendments have been adopted in March 2024 aiming to bring more efficiency.³⁰ The period for requesting the examination under Rule 24B has been brought down from 48 months to 31 months. The amendment also makes it mandatory to establish a *prima facie* case in the representation made by the opponent during the pre-grant stage.

These amendments have significantly improved the dire state in which patent application processing was taking place in India; one of the main reasons why India was not a preferred destination for filing patents, compared to the IP5. The relief granted by these amendments is also reflected in the way India has fared well recently in terms of patenting. While legislative interventions do provide some respite from the dormancy that had been slowly tightening its grip around India's patent ecosystem can be of little help without the support of other initiatives having a common objective. Such initiatives are discussed in the following part of this chapter.

²⁶ The Patents (Amendment) Rules, 2020.

²⁷ The Patent Rules, 2003, Rule 131(2).

²⁸ The Patents Act, 1970, § 122(1)(b).

²⁹ *Id.* § 122(2).

³⁰ The Patent (Amendment) Rules, 2024.

5.2.2 Procedural Improvements

Indian Patent Office has been consistently striving towards streamlining procedures involved in securing IPRs, particularly since 2016. 2016-2017 saw an improvement in several procedural aspects with the help of advanced technology. Communication of First Examination Report shifted from paper communication to electronic communication. Similarly, communication regarding hearings also began electronically transmitted. To make examination of patent applications at different patent office locations uniform, the 'Auto-allocation of Requests for examination' system was introduced.³¹ Generation and issuance of Patent grant certificates were also completely automated in this period. Further, the 'India Patent Advanced Search System' (InPASS), a public search engine for finding patents, which was already operational, was updated. As a result of these refinements, coupled with others, a 53.3% increase in the grant of patents was there in 2016-2017 as compared to the figures in 2015-2016.³²

Between 2017 and 2018, further technological interventions such as video conferencing for hearings as introduced by the 2016 amendment to rules became operational.³³ 'Intellectual Property India' a mobile app for knowledge dissemination was developed, however, it has not been updated after 2017. An SMS alert system to keep the applicants updated regarding the status of their applications was also introduced in this period. 2018-2019 witnessed efforts to ameliorate the manpower shortage by appointing 220 new Examiners of Patents & Designs. Periodic publication of First Examination Reports and updating the website for submitting grievances and feedback were among the other changes brought in this phase.³⁴ Even though the COVID-19 pandemic dampened the general growth of IPR in India initially, IPO proactively took steps between 2020 and 2021 to let the examiners work from home to prevent further delay in disposing pending applications.³⁵ Such

³¹ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2016-2017 (2017), https://www.ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_94_1_1_79_1_Annual_Report-2016-17_English.pdf.

³² *Id.* at 19.

³³ IP INDIA ANNUAL REPORT 2017-18, *supra* note 11.

³⁴ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2018-2019 (2019), https://ipindia.gov.in/writereaddata/Portal/Images/pdf/IP_India_Annual_Report_2019_Eng.pdf.

³⁵ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2020-2021 (2021), https://www.ipindia.gov.in/writereaddata/Portal/IPOAnnualReport/1_112_1_Final_English_AR_2020-21_for_Net.pdf [hereinafter IP INDIA ANNUAL REPORT 2020-21].

digital initiatives were carried out in the following year also, as the threat of the pandemic continued to loom over the nation.

5.2.3 Scheme for Facilitating Startups Intellectual Property Protection

The share of resident filing in India has been historically low compared to non-resident filing, until recently. This paradigm shift has been possible due to the introduction of the Scheme for Facilitating Startups Intellectual Property Protection (SIPP) by the Department for Promotion of Industry and Internal Trade (DPIIT) under the Startup India Initiative in 2016. The aim of this scheme is to make the patent application process cost-effective for startups.³⁶ The pilot scheme was operational till 31 March 2017 and was further extended for a period of three years. The scheme was given an additional extension till 31 March 2023³⁷ and has finally been extended till 31st March 2026.³⁸ Under this scheme, facilitators (whose qualifications are specified in the scheme guidelines) are empaneled by the Controller General of Patent, Design and Trademark (CGPDTM) primarily to spread awareness regarding various ways to protect their intellectual property (IP) and help startups in filing their IPRs in India as well as in other jurisdictions. Additionally, they are also responsible for drafting patent specifications, appearing in hearings, responding to queries or examination reports and contesting oppositions on behalf of startups.³⁹ Facilitators are mandated to discharge their functions on a pro-bono basis as their fees will be taken care of by the Central Government through CGPDTM.

Several states have also come up with similar schemes to extend a supporting hand to the startups in their states. The State of Kerala, under the ‘Kerala Startup Mission’ has launched the ‘Patent Support Scheme’, through which startups registered in Kerala and student entrepreneurs pursuing academics can avail up to 2 lakh Rupees reimbursed for an Indian

³⁶ Office of Controller General of Patents, Designs, Trademarks and Geographical Indications, Public Notice Dated May. 27, 2016, No. CG/Misc./Facilitator/2016/506.

³⁷ Office of Controller General of Patents, Designs, Trademarks and Geographical Indications, Public Notice Dated Apr. 30, 2020, No. CG/E/SIPP Scheme/2020-21/237.

³⁸ *Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP)*, IP INDIA, https://ipindia.gov.in/writereaddata/Portal/News/885_1_approved_SIPP_scheme.pdf (last visited May 19, 2025).

³⁹ *Scheme for Facilitating Startup Intellectual Property Protection (SIPP)*, IP INDIA, https://ipindia.gov.in/writereaddata/Portal/News/323_1_Scheme_for_facilitating_start-ups.pdf (last visited May 19, 2025).

patent and up to 10 lakh Rupees reimbursed for a foreign patent.⁴⁰ Same amount of reimbursement can be claimed for the cost of filing and prosecution of patent application by startups registered in Karnataka under the ‘Patent Reimbursement Incentive’ which is an incentive scheme under the ‘Mission Startup Karnataka.’⁴¹ The Tamil Nadu Startup and Innovation Policy of 2023 provides for an ‘Asset Creation for Intellectual Property Subsidy’ which offers early startups, up to 3 lakh Rupees per patent registration regardless of where the application is filed.⁴²

5.2.4 National Intellectual Property Rights Policy

A roadmap for the future of IPR in India was drawn up in the form of the National Intellectual Property Rights Policy (the Policy) by the then Department of Industrial Policy and Promotion (now DPIIT) in 2019. DPIIT is also the nodal department of this Policy.⁴³ The motto of the Policy is encapsulated in its slogan “Creative India, Innovative India’ thereby underlining that the goal is to lay down a comprehensive plan for the development of a knowledge economy (an economy built on the intellect) to catalyze the country’s progress. The Policy contains seven objectives, namely:

1. **IP Awareness-** Outreach and Promotion- a nationwide awareness programme that will reach all sections of society and all sectors of the economy.
2. **Generation of IPRs-** the second leg of the policy will focus on tapping into the rich talent pool of innovators in the country and encouraging them to generate IPRS.
3. **Legal and Legislative Frameworks-** this leg ensures that the scale does not weigh disproportionately on the side of the rights of creators. Public interest is also of utmost importance and hence a balance should be maintained between the two purposes of a knowledge economy. Specific emphasis has been given to the fact that India will remain

⁴⁰ *Patent Reimbursement Scheme*, KERALA STARTUP MISSION, <https://startupmission.kerala.gov.in/schemes/patent-support> (last visited May 19, 2025).

⁴¹ *Patent Reimbursement Incentives*, STARTUP KARNATAKA, <https://www.missionstartupkarnataka.org/incentives?patent-reimbursement-incentives?en> (last visited May 19, 2025).

⁴² Government of Tamil Nadu, Tamil Nadu Startup and Innovation Policy 2023, https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/state_startup_policies/Tamil_Nadu_Startup_Policy.pdf (last visited May 19, 2025).

⁴³ Ministry of Electronics and Information Technology, Government of India, National Intellectual Property Rights Policy 2016, https://www.meity.gov.in/writereaddata/files/National_IPR_Policy.pdf (last visited May 19, 2025) [hereinafter National IPR Policy, 2016].

committed to the obligations under the Doha Declaration and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement.

4. **Administration and Management-** this objective ensures that the different processes to secure and commercialize IPRs are user-friendly, cost-effective and time-bound.
5. **Commercialization of IPRs-** this objective comes into the picture once the IPR is generated, registered and ready for being introduced in the market. The Policy also aims to develop a public platform that would bring all the stakeholders together to establish better trading channels.
6. **Enforcement and Adjudication of IPRs-** Even if IPRs are afforded legal protection through registration or otherwise, there have been innumerable instances of violation and infringement of these rights in India.⁴⁴ To bring down these instances, the Policy opines that respect for IPRs should be inculcated in the psyche of the huge population in India.
7. **Human Capital Development-** the final objective is to expand the pool of human resources required for the smooth implementation of the rest of the objectives.

As has been mentioned above, the first objective is solely focused on removing the aura of ignorance and confusion surrounding IPRs in the country and making the population aware of the benefits of IP generation and commercialization. Under the second objective, great emphasis is given to encouraging more research and development (R&D), improving the synergy between industries and academia, and introducing IPRs as a part of academic curriculum among others. The third objective requires a thorough analysis of existing laws to update and improve them as well as to introduce laws in areas which currently lack IP protection such as trade secrets. The fourth objective calls for streamlining the processes to protect IPRs, so that more creators- residents or otherwise- would flock to India as the preferred destination for safeguarding their creations. To this end, the Cell for IPR Promotion and Management (CIPAM) has been established as envisaged by the Policy which is entrusted with the facilitation of promotion, creation and commercialization of IP assets.⁴⁵ CIPAM coordinates international organizations, state ministries, departments and other agencies.

⁴⁴ Patrick Kilbride, *Digital Piracy Jeopardises India's Flourishing Creative Economy*, TIMES OF INDIA (Nov. 06, 2022), <https://timesofindia.indiatimes.com/blogs/voices/digital-piracy-jeopardises-indias-flourishing-creative-economy/>.

⁴⁵ *About CIPAM*, CELL FOR IPR PROMOTION AND MANAGEMENT, <https://cipam.gov.in/index.php/about/cipam/> (last visited Apr. 20, 2024).

CIPAM is also tasked to provide the public platform as envisaged under the fifth objective and also to undertake a study on the viability of an IPR Exchange in India.⁴⁶ As directed by the sixth objective, it has also undertaken several awareness programmes, sensitizes the judiciary and has also developed a toolkit on IPR enforcement for the police.⁴⁷

Most of the legislative reforms and the procedural improvement discussed previously as well as the initiatives that will be discussed in the subsequent sections can be traced back to the Policy of 2016.

5.2.5 Initiatives to improve Intellectual Property literacy

(i) Rajiv Gandhi National Institute for Intellectual Property Management: Creating awareness is the first step in mitigating any crisis. The same stands true for the patent crisis in the country. Realizing that there is a lack of IP awareness in the nation, the Rajiv Gandhi National Institute for Intellectual Property Management (RGNIIPM) was established in the year 2012 in Nagpur. RGNIIPM plays a vital role in nurturing the IP ecosystem by addressing multifaceted aspects of IP. It primarily offers training to Examiners of patents, trademarks, designs and geographical indications, judicial training for IP officials professionals such as lawyers, agents and the like.⁴⁸ Apart from imparting training, RGNIIPM also engages in multi-disciplinary research, offers various courses on IP, conducts awareness programmes in collaboration with other governmental organizations, R&D institutes, and also offers advice for policy formulations as well. Like any other law IPRs also evolve with time and since it is a technologically intensive area, refresher training offered by RGNIIPM to IP officials and administrators is extremely crucial to equip them with the latest developments on both fronts. Between 2022 and 2023, RGNIIPM has conducted a total of 822 programmes. The details of these programmes are given below:

S. No.	Programme Type	Number of Programmes
1.	Public Training Programmes	41
2.	Departmental Training	8

⁴⁶ National IPR Policy, 2016, *supra* note 43, at 14.

⁴⁷ *IPR Enforcement Toolkit for Police*, CELL FOR IPR PROMOTION AND MANAGEMENT (Jan. 06, 2017), https://cipam.gov.in/wp-content/uploads/2017/10/IPR_EnforcementToolkit_06January2017.pdf.

⁴⁸ *About Us*, RAJIV GANDHI NATIONAL INSTITUTE OF INTELLECTUAL PROPERTY MANAGEMENT, <https://ipindia.gov.in/about-us-rg.htm> (last visited May 19, 2025).

⁴⁹ IP INDIA ANNUAL REPORT 2022-23, *supra* note 10.

3.	Seminars/Workshops/ Awareness for Public Institutes	772
4.	International Programmes	1
Total Number of Programmes		822
Total Participants		174217

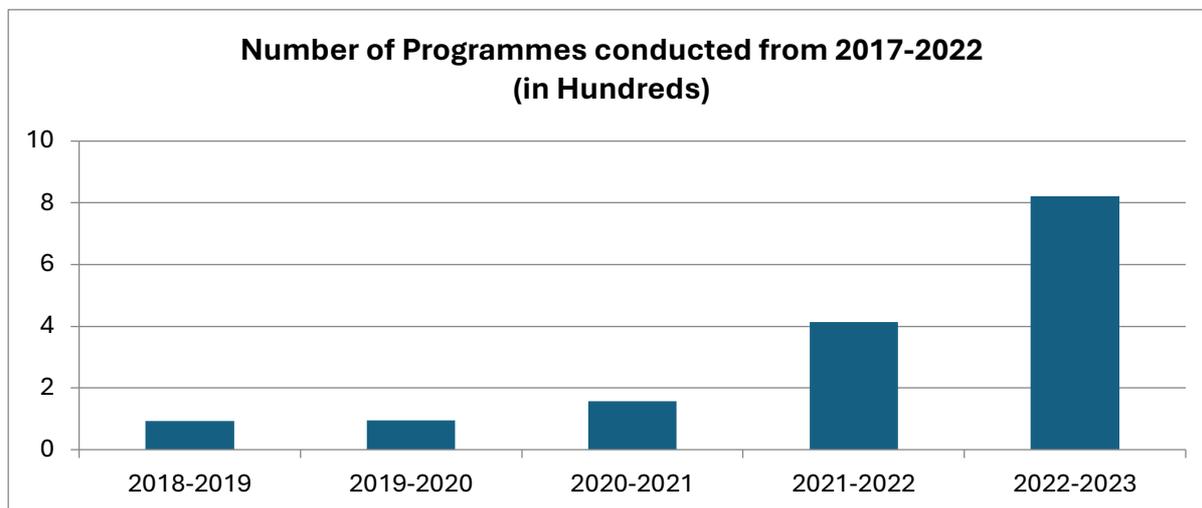


Fig. 5.1 Number of Programmes Conducted from 2017-2022

(Source: IP India Annual Report 2022-23⁵⁰)

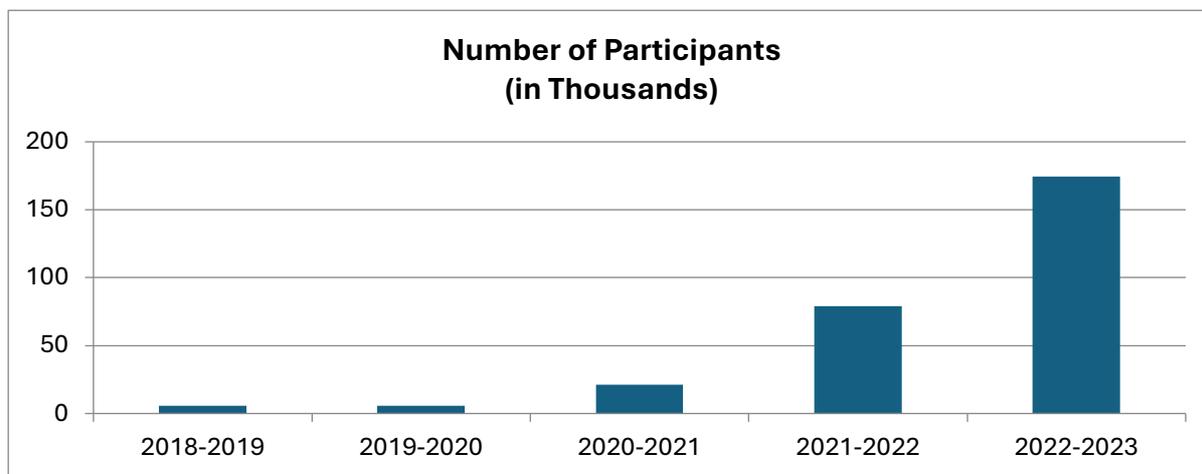


Fig. 5.2 Number of Participants

(Source: IP India Annual Report 2022-23⁵¹)

As is evident from the data, the number of programmes aimed at improving IP literacy in the country as well as the share of the population it has reached out to have drastically increased in the last year.

⁵⁰ *Id.*

⁵¹ *Id.*

(ii) Kalam Programme for Intellectual Property Literacy and Awareness: The Kalam Programme for Intellectual Property Literacy and Awareness (KAPILA) also deserves a mention in the list of initiatives launched in recent years to promote IP literacy. KAPILA was launched on the birth anniversary of India's former president APJ Abdul Kalam, whose life and the message he spread helped significantly in instilling scientific temperament in the nooks and corners of the country.⁵² The entire focus of this programme is to amplify IP literacy among students in Higher Education Institutions (HEIs) and thereby inducing best practices in young minds and contributing to the knowledge economy. UG, PG and PhD level courses are also offered to further the mission of KAPILA. It also provides assistance of up to 5600 Rupees per patent application and so far 10,056 patents have been filed under this programme.⁵³ It is critical to encourage HEIs to convert their research into patents as they contribute immensely to knowledge creation and growth which will eventually add on to the knowledge economy.

(iii) National Intellectual Property Awareness Mission: The National Intellectual Property Awareness Mission (NIPAM) was launched under the 'Azadi ka Amrit Mahotsav' initiative in 2021, which is another IP awareness campaign focusing on students but this time students from classes 8 to 12 also come under the ambit of the programme.⁵⁴ The goal was to impart IP awareness to at least one million students by mid-August 2022.⁵⁵ Even though this was not materialized, the mission has managed to reach out to 18.62 lakh students and faculty members spanning across 7377 educational institutions in India by March 2023.⁵⁶

(iv) IPR Chairs: Much before any of the above-mentioned education and awareness schemes, the then Ministry of Human Resource Development (MHRD) [which is now the Ministry of Education (MoE), since 2001, started setting up IPR Chairs in various institutes and universities under the 'Intellectual Property Education, Research and Public Outreach (IPERPO)' Scheme. Initially, IPR Chairs were established in the University of Madras, Delhi University and National Law School of India University Bangalore in 2001. This has now

⁵² *Welcome to KAPILA*, KALAM PROGRAMME FOR IP LITERACY AND AWARENESS, <https://kapila.mic.gov.in/> (last visited May 19, 2025).

⁵³ *Id.*

⁵⁴ *National Intellectual Property Awareness Mission (NIPAM) Launched*, IP INDIA, <https://ipindia.gov.in/newsdetail.htm?774> (last visited May 19, 2025).

⁵⁵ THE OFFICER OF CONTROLLER GENERAL OF PATENTS, DESIGNS, TRADEMARKS AND GEOGRAPHICAL INDICATIONS, ANNUAL REPORT 2021-2022 (2022), https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_Annual_Report_Eng_for_Net.pdf [herein after IP India Annual Report 2021-22].

⁵⁶ IP INDIA ANNUAL REPORT 2022-23, *supra* note 10, at 3.

branched out to 20 institutions, half of them situated in North India. These Chairs were established to spread IP awareness and to develop specialized IP courses in HEIs among other objectives.⁵⁷ MHRD had also set up a portal called the ‘MHRD IPR Chairs Gateway’ which contains information regarding the Chairs.⁵⁸

In 2012, MHRD constituted a three-member Evaluation Committee to look into the performance of these Chairs. Unfortunately, the Committee found that this scheme has been failing because of a multitude of reasons.⁵⁹ Firstly, it noted that several institutions were unable to find a suitable professor to occupy the IPR Chair and this was partly because the IPERPO Scheme had not prescribed any qualifications as to who the Chair could be. The Scheme failed to provide details on what kind of activities shall be taken up by these Chairs. Because of this, most of the programmes were on the awareness front and severely lacked in research activities. The Centre for Internet & Society (CIS) only conducted an in-depth investigation into the working of these Chairs and found that there is severe underutilization of funds granted⁶⁰ and that no information was available regarding many of the Chairs⁶¹ and some become inactive over the years.⁶²

Even though MHRD had issued revised guidelines for IPR Chairs, DPIIT in 2016, proposed the setting up of IPR Chairs in several institutions under the ‘Scheme for Pedagogy & Research in IPRs for Holistic Education & Academia’ (SPRIHA).⁶³ Apart from the above-mentioned issues that marred IPR Chairs under MHRD, this move was also motivated by objective 7.2 of the National IPR Policy which is as following⁶⁴:

⁵⁷ *About Chairs*, MHRD IPR CHAIR GATEWAY, <http://mhrdiprchairs.org/About-Chairs> (last visited Apr. 20, 2024).

⁵⁸ *Id.*

⁵⁹ REPORT OF THE EVALUATION COMMITTEE ON CONTINUATION OF THE SCHEME OF INTELLECTUAL PROPERTY EDUCATION, RESEARCH AND PUBLIC OUTREACH (IPERPO) IN THE XII FIVE YEAR PLAN 2012-17, <https://cis-india.org/a2k/blogs/report-of-the-evaluation-committee.pdf>.

⁶⁰ Nehaa Chaudhari, *RTI Responses - MHRD IP Chairs: Details of Funding & Expenditure*, CENTRE FOR INTERNET & SOCIETY (Jan. 31, 2015), <https://cis-india.org/a2k/blogs/rti-responses-mhrd-ip-chairs-details-of-funding-and-expenditure>.

⁶¹ Nehaa Chaudhari, *MHRD IPR Chairs – Underutilization of Funds and Lack of Information Regarding Expenditures*, CENTRE FOR INTERNET & SOCIETY (Nov. 19, 2014), <https://cis-india.org/a2k/blogs/mhrd-ipr-chairs-underutilization-of-funds-and-lack-of-information-regarding-expenditures>.

⁶² Amulya Purushothama, *MHRD IPR Chair Series: Introduction*, CENTRE FOR & INTERNET SOCIETY (Aug. 10, 2015), <https://cis-india.org/a2k/blogs/mhrd-ipr-chair-series-introduction>.

⁶³ Ministry of Commerce & Industry, *Scheme for Pedagogy & Research in IPRs for Holistic Education and Academia*, File No. 17(02)/2016-IPR VII, <https://copyright.gov.in/Documents/SPRIHA.pdf>.

⁶⁴ National IPR Policy, 2016, at 18.

“Strengthening IP Chairs in educational institutes of higher learning to provide quality teaching and research, develop teaching and curricula and evaluate their work on performance based criteria.”

SPRIHA does tread in the same path as its predecessor IPERPO, however, has covered all grounds unlike IPERPO by providing details as to qualifications and emoluments of the Chair and other team members,⁶⁵ activities to be undertaken by the Chairs ranging from internship programmes to Ph.D. fellowships,⁶⁶ By establishing IPR Chairs in more diverse locations, DPIIT has also ensured that they are not limited to certain geographical areas.

5.2.6 Production Linked Incentive Scheme

Production Linked Incentive (PLI) schemes, with an estimated expenditure of 1.97 lakh crore (more than US\$26 billion) are an integral part of ANBA. By providing incentives to selected sectors, the PLI Scheme aims to materialize the goal of transforming India into a manufacturing hub, making Indian businesses and manufacturers globally competitive by luring investments in strategic areas and cutting-edge technology, assuring efficiency, simultaneously generating employment and eventually fulfilling the objective of self-reliance. PLI schemes have also been predicted to have a domino effect on the MSME ecosystem as well.⁶⁷ In April 2020, PLI Scheme was first announced for Large Scale Electronic sector. In July 2022, it was further announced for various sectors such as Key Starting Materials (KSMs)/Drug Intermediates (DIs), Active Pharmaceutical Ingredients (APIs) and medical devices.⁶⁸ It was further announced for several

⁶⁵ Ministry of Commerce & Industry, Scheme for Pedagogy & Research in IPRs for Holistic Education & Academia (SPRIHA), File No. 17(02)/2016-IPR VII, https://www.ipindia.gov.in/writereaddata/Portal/News/392_1_SPRIHA.pdf.

⁶⁶ *Id.* at 8.

⁶⁷ Ministry of Commerce & Industry, *Production Linked Incentive Schemes for 14 Key Sectors Aim to Enhance India's Manufacturing Capabilities and Exports*, PRESS INFORMATION BUREAU (Aug. 02, 2023), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1945155>.

⁶⁸ Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, Production Linked Incentive (PLI) Scheme for Promotion of Domestic Manufacturing of Critical Key Materials (KSMs)/ Drug Intermediates (Dis) and Active Pharmaceutical Ingredients (APIs) in India, No. 31026/16/2020-Policy (notified on July 21, 2020); https://pharma-dept.gov.in/sites/default/files/Gazettee%20notification%20of%20bulk%20drug%20schemes_0_0.pdf.

other sectors as well including the food processing industry,⁶⁹ white goods (air conditioners and LED lights),⁷⁰ automobile and auto components⁷¹ and textiles.⁷²

While PLI Schemes are not directly aimed at increasing patent filing, they undoubtedly are going to steer patent activity in the positive direction as patenting the products that fall under these schemes will act as an added advantage for the manufacturers.

5.2.7 Patent Prosecution Highway

Patent Prosecution Highway (PPH) is a collaborative project between different patent offices that help to reduce the pendency of patent applications by establishing efficient channels between participating patent offices and allowing for fast track examinations and grants. CNIPA, JPO and other patent offices have frequently established PPH in the past. The IP5 also has a PPH among the five patent offices known as the IP5 PPH.⁷³ Patents filed under PPH programs are generally found to be granted at a faster pace than normal patent applications. Treading the same path, the IPO launched a pilot PPH program with JPO in 2019 for a period of three years.⁷⁴ Under this program, an applicant, whose claim/claims have been examined and found to be patentable in an application filed in one of the patent offices in the program (Office of Earlier Examination) can request for a fasttrack examination of the same claim/claims in the other patent office (Office of Later Examination), thereby greatly reducing the application processing time.

All of these efforts combined have resulted in a surge of patenting activity in India. Some of the key statistics are given below:

⁶⁹ Cabinet, *Cabinet Approves Production Linked Incentive Scheme for Food Processing Industry*, PRESS INFORMATION BUREAU (Mar. 31, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1708691>.

⁷⁰ Department for Promotion of Industry and International Trade, Ministry of Commerce and Industry, *Production Linked Incentive Scheme (PLI) for White Goods (Air Conditioners and LED Lights) Manufacturers in India*, F. No. P-29014/101/2020-LEL (notified on Apr. 16, 2021), https://dpiit.gov.in/sites/default/files/PLIWG-Notification-16042021_10May2021.pdf.

⁷¹ Ministry of Heavy Industries, *Production Linked Incentive (PLI) Scheme for Automobile and Auto Component Industry Notification*, S.O. 3526 (E) (notified on Sept. 23, 2021), <https://heavyindustries.gov.in/sites/default/files/2023-09/PLI-Auto-Scheme.pdf>.

⁷² Ministry of Textiles, *Production Linked Incentive (PLI) Scheme for Textiles Notification*, S.O. 3689 (E) (notified on Sept. 24, 2021), <https://cdnbbsr.s3waas.gov.in/s33937230de3c8041e4da6ac3246a888e8/uploads/2023/06/2023061225.pdf>.

⁷³ *IP5 Patent Prosecution Highway (IP5 PPH)*, FIVE IP OFFICES, <https://www.fiveipoffices.org/activities/ws/ip5pph> (last visited May 19, 2025).

⁷⁴ *Procedure Guidelines for Patent Prosecution Highway (PPH)*, IP INDIA, https://ipindia.gov.in/writereaddata/Portal/News/591_1_PPH_Procedure_Guideline_combined_20191128_final.pdf (last visited May 19, 2025).

Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Filed	47854	50659	56267	58503	66440
Examined	6030	85426	80080	73165	66571
Granted	13045	15283	24936	28385	30073
Disposal	47695	50884	55945	52755	35990*

*Disposal of 15991 applications U/s 21(1) was deferred due to extension of the prescribed period of limitation by The Hon'ble Supreme Court of India

Sl. No	Name of the Institution	Number of Applications Filed
1	Lovely Professional University	1387
2	Jain (Deemed-to-be-University)	1093
3	Galgotias Univeristy	1089
4	Teerthanker Mahaveer Univeristy	1007
5	Indian Institute of Technology (IIT) (Collectively)	803

As is evident from this table, educational institutions, especially HEIs have been proactive in filing patent applications. This data also dismantles the common perception that private colleges and universities are not at par with prestigious government institutions such as the IITs.

5.3 WHERE DOES INDIA LAG?

It was mentioned in the introduction to this paper that, despite the significant improvements that have happened in recent years India lags behind its peers in patenting activity. This part tries to map out the reasons behind this.

5.3.1 Patenting v. Publishing

From the initiatives and statistics discussed above in relation to HEIs and patents, it is evident that academia in India is on an upward trajectory. However, patenting by educational institutions in India falls behind its peers such as China. In 2021 a total of 3,08,000 patents were granted to universities alone⁷⁷ whereas the total patents granted by India in 2021 was around 30,000 (refer to Table). In India, several academicians do not consider patents as a

⁷⁵ IP India Annual Report 2021-22, *supra* note 55.

⁷⁶ IP INDIA ANNUAL REPORT 2022-23, *supra* note 10.

⁷⁷ *Patent Commercialization Activities at Chinese Universities Skyrocket in Past Decade*, CHINA IP NEWS (Aug. 03, 2022), https://english.cnipa.gov.cn/art/2022/8/3/art_2829_176992.html.

necessity for their career growth⁷⁸ and prefer paper publications wherein they can publish their results immediately instead of waiting years to get a patent application approved.⁷⁹ As per the Scimagojr Journal & Country rankings, India is at the 7th position in terms of research publications.⁸⁰ The unwritten rule of the academia “publish or perish” also has contributed to the almost frenzied levels of research publishing that happens in India. Some academicians are also opposed to patenting as they view it as an obstacle to open knowledge dissemination, but this stance is built on rather shaky foundations as most of the papers published tend to be behind a paywall, far from the reach of students in India coming from lower-income and middle-class families. The other faction that prefers patenting, does so to protect their innovation, to claim priority or for peer recognition rather than for any commercial benefit arising out of the patents.⁸¹

5.3.2 Expenditure on Research and Development

R&D is crucial for innovation. A lot of R&D goes behind a successful innovative product or process that can be patented. In turn, the more patents an individual or an industry has, the more R&D investments will flow for further patenting due to the huge potential of commercialization and exclusive rights that come with patents. Hence, a country’s expenditure on R&D has a direct correlation with how far it can climb the innovation ladder. R&D expenditure in India in 2022 was only 0.64% of its Gross Domestic Product (GDP) in India. In contrast, South Korea spends 4.5% of GDP on R&D, which is one of the highest in the world and it is also reflected in the patenting activity of the country.⁸² Other patent giants in the IP5 also perform much better than India in this regard. Considering the size of the country as well as the talent pool that can be utilized, the amount spent on R&D in India is highly inadequate.

⁷⁸ Akriti Jain et al, *To Patent or Not? Factors and Motivation Affecting Indian Academic Patenting*, 58(6) ECONOMIC & POLITICAL WEEKLY 43, 51 (2023).

⁷⁹ Akriti Jain, *Patenting by Universities: Weighing Costs and Benefits*, TIMES OF INDIA (June 21, 2019), <https://timesofindia.indiatimes.com/blogs/rootedether/patenting-by-universities-weighing-costs-and-benefits/>.

⁸⁰ SCIMAGO JOURNAL & COUNTRY RANK, <https://www.scimagojr.com/countryrank.php> (last visited May 19, 2025).

⁸¹ Jain et al, *supra* note 78, at 44.

⁸² Sara Reardon, *South Korean Scientists’ Outcry Over Planned R&D Budget Cuts*, 622 NATURE 224 (2023), <https://www.nature.com/articles/d41586-023-02841-w>.

5.3.3 Manpower and Pendency in Processing Applications

An oft-cited reason behind the overwhelming amount of patent applications piled up in the IPO is the inadequate strength of manpower in the office. As per the 2021-2022 report, 856 out of the 953 sanctioned positions are currently occupied. In contrast, USPTO has a working strength of 13, 103 staff, EPO has 6,298 staff members, JPO has 2,794 staff members, and KIPO has 1,895 staff members.⁸³ Over 2 lakh patent applications are pending in the IPO and the time taken for processing each of these applications on an average is 51 months. While this is an improvement, it is still much higher than the average processing time in other major patent offices.⁸⁴ Hence, even the sanctioned strength might not be enough to overcome the current challenges and decongest the system.

5.3.4 IP Enforcement

India has a notorious reputation for lax IP enforcement. In the 2022 Special 301 Report released by the Office of the United States Trade Representative, India has been put on the ‘Priority Watch List’ indicating that there are issues regarding IP protection and enforcement in the country.⁸⁵ It has been noted that the narrow criteria laid out for patentability in the Patents Act and risk of patent revocations are some of the factors that might make India an unfavourable destination for filing patents. Special emphasis was given to Section 3(d) of the Patent Act which does not allow patents to be granted to inventions involving chemical compositions that do not show any increased efficacy.⁸⁶ This provision is often contended as unconstitutional by pharmaceutical companies as it puts an additional restriction on what can be patented by them. Additionally, it was pointed out that, patent seekers grapple with expensive and time-sensitive pre- and post-grant oppositions. India continues to be in the ‘priority watch list’ in the 2024 Special 301 Report as well.⁸⁷

⁸³ FIVE IP OFFICES, IP5 STATISTICS REPORT (2022), <https://link.epo.org/ip5/statistics2022>.

⁸⁴ WORLD INTELLECTUAL PROPERTY ORGANIZATION, WORLD INTELLECTUAL PROPERTY INDICATORS 2023 (2023), <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2023-en-world-intellectual-property-indicators-2023.pdf>.

⁸⁵ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2022 SPECIAL 301 REPORT (2022), <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>.

⁸⁶ The Patents Act, 1970, § 3(d).

⁸⁷ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2024 SPECIAL 301 REPORT (2024), <https://ustr.gov/sites/default/files/2024%20Special%20301%20Report.pdf>.

5.3.5 Working of Patents

The requirement of filing a statement under Section 146 as to the commercial working of the patent is seen to severely flouted. Out of the 1,37,333 patents in force only 4781 Form-27 have been received by the Patent Office and only 560 of these have been reported as 'working'.⁸⁸ This is an alarming situation that should be addressed immediately.

5.4 CONCLUSION

It is clear that there are certain areas that need improvement to make India truly *atma nirbhar* in terms of patenting. Firstly, to bring down the number of pending applications in IPO as well as the average time taken to process applications, manpower in IPO should be increased. Around 61.5% of IPO's total revenue between 2022 and 2023 came from patent applications and only 21.26% of the total revenue was utilized by IPO in this period, hence there appears to be no financial constraints in expanding the manpower.

Secondly, efforts shall continue to spread awareness regarding IPR through RGNIIPM, KAPILA, NIPAM and IPR Chairs. A primer on IPR should be introduced in school curriculum and there should be an annual review of the performance of IPR Chairs. Special focus should be given to spread awareness to MSMEs and startups specifically on how they can use patents as a business tool. With respect to HEIs courses and awareness programmes, inculcating an IPR consciousness should also be a priority. To further the goal of ANBA, NGOs associated with tribals, and local artisans and craftsmen should also be entrusted with empowering them with the benefits of getting their craft and products patented for them as well as their community which will also protect it from exploitation from multinational corporations.

While there is a need to make IP enforcement stringent in India, the criticism of the 301 Special Report regarding narrow patentable matter does not hold much ground as unlike the patent giants of the world, India's unique socio-economic disposition has led to the country adopting a welfare attitude towards what can be patented. Section 3(d) was introduced to prevent evergreening of patents by pharmaceutical companies. Without which pharmaceutical companies are free to establish monopolies and drive medicines away from the reach of the underprivileged who make up for a huge portion of India's population. The abolition of the

⁸⁸ IP INDIA ANNUAL REPORT 2022-23, *supra* note 10.

Intellectual Property Appellate Board is a decision that needs reconsideration in this context. It is abundantly clear that ANBA has ushered in a new era of patenting activity in India through several of the schemes and programmes under it and this has in turn helped in realizing the goals of ANBA. With consistent efforts, this symbiotic relationship can definitely help in solidifying India's role as a global leader.

CHAPTER 6: STANDARDIZATION FOR INDIAN BUSINESSES: STRENGTHENING THE INDIAN NATIONAL STANDARDIZATION STRATEGY (INSS) FOR MAKE IN INDIA INITIATIVE

6.1 INTRODUCTION

India's growing economic significance necessitates a harmonised and dynamic standards ecosystem to fuel further growth and elevate the 'Made in India' brand. Standards are vital in fostering technological advancement, industrial development, societal well-being, and converging emerging technologies.¹ This is significant not only for enhancing the competitiveness of domestic industries but also for supporting local manufacturing while ensuring access to international markets. Towards this end, the Indian National Standardization Strategy (INSS) forms the backbone of India's efforts to become a global manufacturing hub under the Make in India initiative.² Given India's rapid economic growth, its increasing role in global trade, and the necessity for a robust quality infrastructure, the INSS provides a structured approach to developing a mature standards ecosystem.³ The strategy responds to the global shift in standardisation efforts, aligning India's framework with technological, social, and economic developments both domestically and globally.

This chapter presents a comprehensive analysis of the INSS framework, exploring its objectives, the role of the Bureau of Indian Standards (BIS), and how it addresses challenges to enhance India's competitiveness. A perusal of INSS and the Standards National Action Plan (SNAP) reflects its crucial role in aligning India's standards with international norms, fostering a favourable environment for domestic industries to thrive globally.

¹ INVESTMENT AND TECHNOLOGY PROMOTION DIVISION, MINISTRY OF EXTERNAL AFFAIRS, INDIA IN BUSINESS: PREFERRED INVESTMENT DESTINATION (2014), https://www.mea.gov.in/images/pdf/22899_India_in_Business.pdf.

² DEPARTMENT OF COMMERCE, MINISTRY OF COMMERCE & INDUSTRY, INDIAN NATIONAL STRATEGY FOR STANDARDIZATION (INSS): EVOLVING A QUALITY ECOSYSTEM (2018), https://commerce.gov.in/wp-content/uploads/2020/02/MOC_636655449469105249_INSS_Booklet_2018.pdf [hereinafter INSS, 2018].

³ Bharat Kumar Yadav, *Standardization and Regulatory Ecosystem in India*, in DINESH K. ASWAL ET AL (EDS), HANDBOOK OF METROLOGY AND APPLICATIONS 2053 (2023).

6.2 NEED FOR STANDARDISATION

Standardisation has one of the foremost factors that has driven the economy since the industrial revolution by ensuring greater productivity, minimisation of wastage, ensuring efficiency and furthering the interests of competition. The role of Standardization towards fostering trade around the globe by creating standardized processes at all levels, from local to international has been persistent from History till today, and would continue to maintain its relevance in the future.⁴

Standardisation allows for free and fair competition, thereby promoting consumer interests at large. However, the impediments to attain such a desired state involves intrinsic efforts in integration of the competition law and policy intellectual property and connected matters. Channelising the law and policy efforts in an integrated manner considering industry participation and consumer behaviour, without compromising the quality and efficiency of the Trade and Services is the need of the hour. The Make in India Initiative towards attaining the desired vision, requires promoting standardisation of Indian Businesses. Furthermore, the revolutionary state of industrial participation is one of the formidable causes of conflict between Intellectual Property rights and Competition Law. The aspect of Standards co-extensively deal with both Product Safety, and Interoperability.

6.3 SECTOR-WISE DEVELOPMENT AND PROGRESS OF ‘MAKE IN INDIA’

India is a fore runner in the technology and product segments associated thereof, and with the government initiative on ‘Make in India’, One of core strengths of India lies in its large and diverse economy, that envisions a suitable market opportunity for foreign investors. To compliment itself, a staggering GDP exceeding \$3 trillion coupled with demographic factors including a vast Middle-Income demography, India presents to Investors a vast consumer market for goods and services. India has evolved itself from a consumer-centric market to a progressive manufacturing hub, thereby favouring extensive Foreign Direct Investment (FDI) in the last few years. The introduction of initiatives such as the "Make in India," that promotes manufacturing within the country, has bolstered FDI inflows by emphasizing itself of Investment Security, skill development, and competition.

⁴ See Lawrence Busch, *Standardizing the world*, in LAWRENCE BUSCH, STANDARDS: RECIPE FOR REALITY 82 (2011).

Since 1992, India has witnessed substantial FDI inflows across diverse sectors. Particularly among Industries such as the information technology (IT), drugs and pharmaceuticals, Energy, manufacturing and automotives, consumer goods, *inter alia*, have been able to receive a notable foreign investment.

Situated at the crossroads of South Asia and adjacent to key global markets in the APAC Region, India serves a gateway for businesses expanding their presence in Asia. This geographical advantage, a robust transportation and logistics network, provides a relaxed strategic platform for the FMCG Sector.

The Regulatory framework and provision of sector-specific incentives have been the backbone for attraction of FDI, as the protection of rights and interests of Investors is quintessential for investment. For instance, the renewable energy sector, has policies that particularly promote solar and wind power generation, allowing for global competitors to leverage on India's vast renewable energy potential. It may be noted that the strengthening of FDI in India has been on the rise, despite the presence of minor bureaucratic hurdles, regulatory complexities, and infrastructure bottlenecks. As the figure 6.1 below shows Computer hardware and software sector in India received the highest share in FDI's amounting to over 7 billion U.S. dollars in fiscal year 2024. The services sector,⁵ came second amounting to over 6 billion dollars. All in all, the business services sector in the country seemed to be faring very well in terms of attention from foreign investors. One possible reason for this could be because almost 65% of the registered foreign companies in India were under this sector.⁶

⁵ Services Sector includes financial, banking, insurance, non-financial/business, outsourcing, R&D, courier, technical testing and analysis.

⁶ Manya Rathore, *Distribution of Foreign Direct Investment Equity Inflows in India for the Financial Year 2024, by Sector*, STATISTA (June 13, 2024), <https://www.statista.com/statistics/711398/india-fdi-equity-inflows-distribution-by-sector/>.

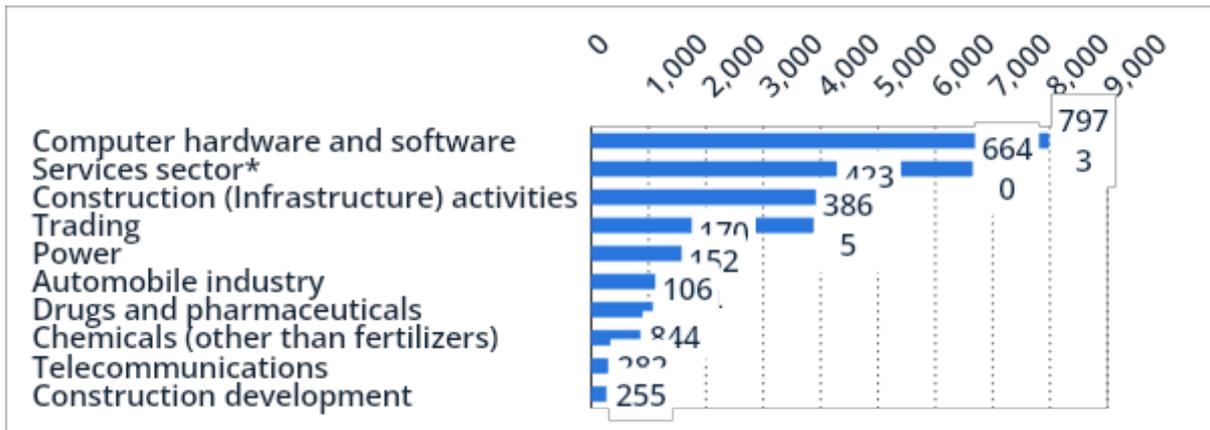


Fig. 6.1 Distribution of Foreign Direct Investment Equity Inflows in India for Financial Year 2024 by Sector (in Million U.S. dollars).

(Source: Department for Promotion of Industry and Internal Trade⁷)

6.3.1 Mobile Phone Segment

The mobile phone industry was a significant focus under the 'Make in India' initiative, leading to a notable increase in local manufacturing from 2014 to 2022. In the initial years of the "Make in India" campaign, several brands such as Samsung, Xiaomi, and Vivo, commenced with Assembly plants for their devices in India, and thereafter local manufacturing facilities were set-up. On an overall, there were also increased collaborative-partnerships with local manufacturers to fulfil the requirement of localization, promoted by the Government under the Production Linked Incentive (PLI) Scheme. The PLI Scheme for electronics pivoted the increase in the manufacturing of mobile phones in India by providing financial incentives based on production targets. The "Make in India" initiative has significantly transformed India into one of the largest mobile phone manufacturing hubs globally.

It may be noted that the local manufacture of smartphones not only reduced import dependency but also generated employment opportunities in the electronics manufacturing sector. Tche industry's growth trajectory remains positive, with continued investments expected in advanced manufacturing technologies and the development of an ecosystem supporting research and development in mobile technology.

On an overall, 2014 to 2022,⁸ India's mobile phone manufacturing sector experienced substantial growth and diversification under the "Make in India" initiative. The initiative not

⁷ As cited in Rathore, *Id.*

⁸ Manya Rathore, *Share of 'Made in India' Mobile Phones Shipment in the Local Market from 2014 to 2022*, STATISTA (Jan. 04, 2024), <https://www.statista.com/statistics/1440079/india-made-in-india-local-phone-shipments/>.

only attracted global smartphone manufacturers to establish local production facilities but also stimulated the development of a robust electronics manufacturing ecosystem in the country. As India continues to focus on promoting indigenous manufacturing and enhancing technological capabilities, the mobile phone industry is poised for further expansion and innovation in the coming years. As the Fig. 6.2 below shows, In 2022 over 98% of mobile phones shipments in the overall Indian market were locally produced.

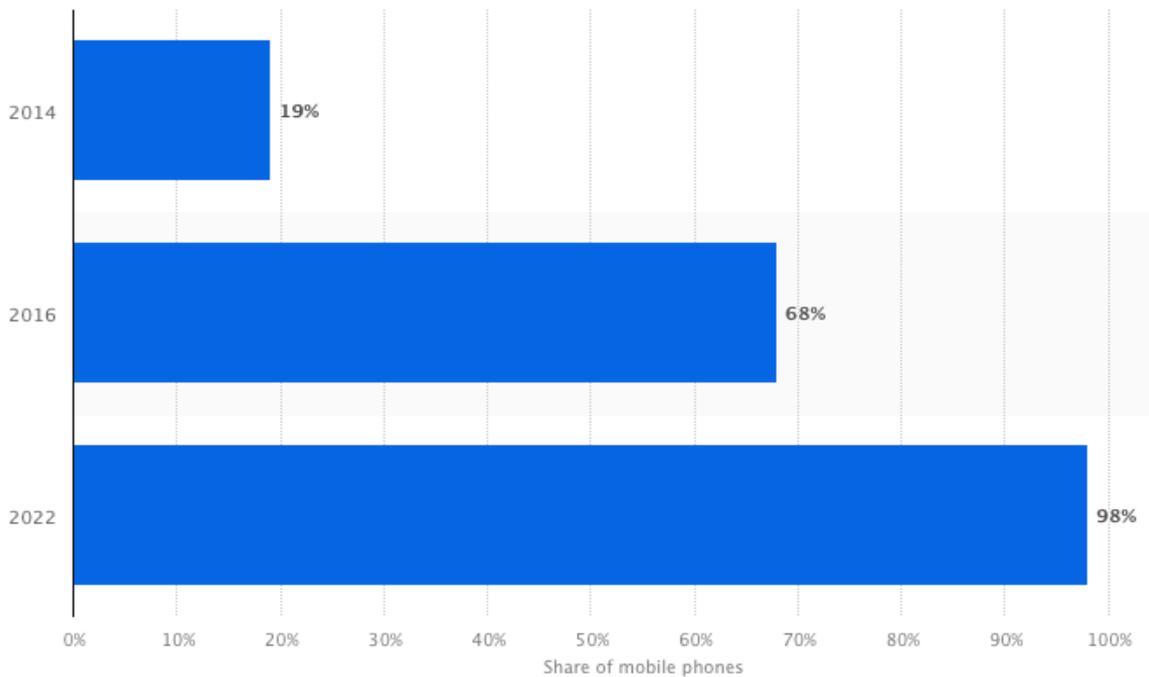


Fig. 6.2 Share of ‘Made in India’ Mobile Phones Shipment in the Local Market from 2014 to 2022 (Source: Rathore, Statista⁹)

6.3.2 Other Electronic Segment

The Electronics industry in India, received its thrust with the Make in India initiative, and has thus transformed the landscape of the Industry. During the third quarter of 2022, television and true wireless stereo (TWS) headphones led in terms of local manufacturing contribution to the segment. About 33.6 percent of TWS were made in India.¹⁰ With a persistent

⁹ *Id.*

¹⁰ Statista Research Department, *Share of Local Manufacturing in Electronics Q3 2022, by Product Segment*, STATISTA (Aug. 29, 2024), <https://www.statista.com/statistics/1378642/india-local-manufacturing-in-electronics-by-product-segment/>.

government support, strategic planning, and investments India is on the path to becoming a global manufacturing centre.

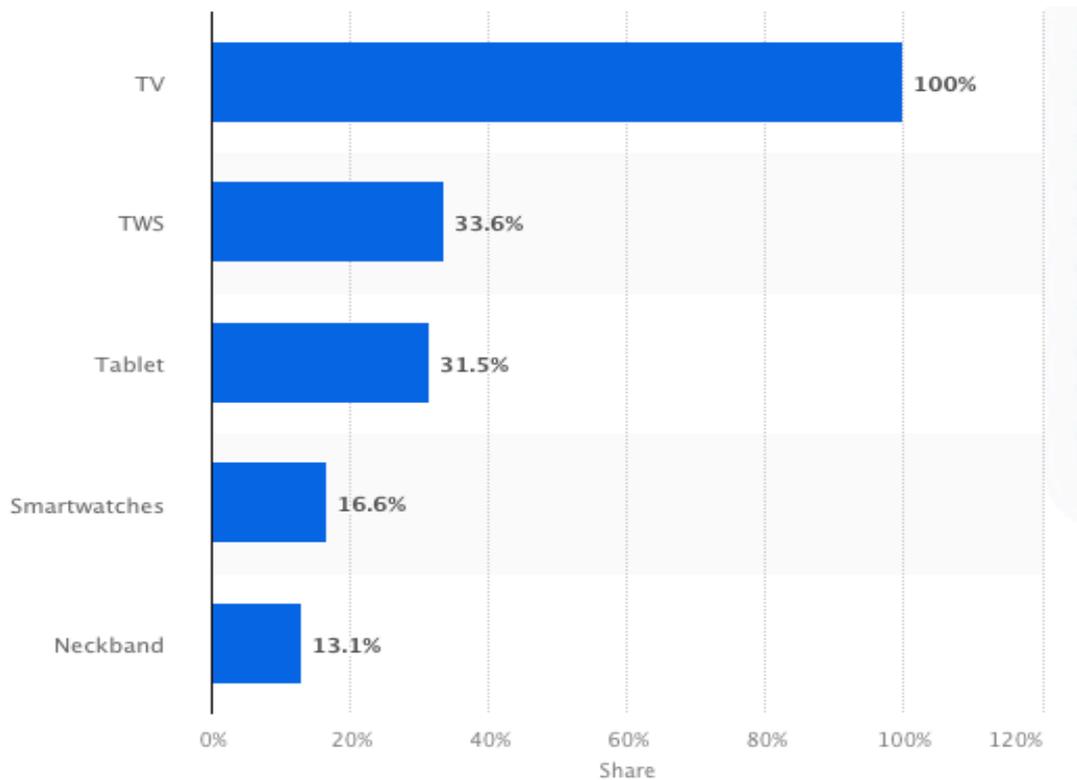


Fig. 6.3 Share of Local Manufacturing in Electronics in the Third Quarter (Q3) of 2022, by product segment

(Source: Statista Research Department¹¹)

Addressing these challenges remains critical to sustaining and accelerating FDI inflows into India. Efforts to streamline regulatory processes, improve infrastructure development, and enhance transparency in governance are ongoing priorities for the Indian government to create a more conducive environment for foreign investors. Looking ahead, India's commitment to economic reforms, coupled with its ambitious development agenda, including initiatives like Digital India and Smart Cities Mission, are expected to further enhance its attractiveness as an investment hub. The country's resilient economic fundamentals, growing market opportunities, and proactive government policies position India favourably for continued FDI inflows in the years to come.

India's emergence as a hub for FDI underscores its growing significance in the global economy. With a favourable demographic profile, progressive policy reforms, and expanding market opportunities, India offers foreign investors a promising environment to capitalize on

¹¹ *Id.*

its vast potential across diverse sectors. As India continues on its path of economic growth and development, the role of FDI will remain pivotal in shaping its future trajectory as a dynamic and competitive investment destination on the global stage.

6.4 RISE OF OFF-SET CLAUSES: A PRE-CURSOR?

An Offset Clause is an arrangement where the procurer instils an obligation on the supplier for transfer of some intrinsic value over and above the initial sale transaction, forging the requirement for continued modification, and alterations to the scope of work, that would be performed at no additional cost to the procuring agency. In an ideal scenario, Contractors or Supplies negotiate for a robust Offset Agreement is required to ensure that the Contractor is not put to jeopardy, while there is an inherent balance of obligations created for the parties.

The practice of offsets was noticed to be in subsistence in over 120-130 countries that had offset requirements in one form or another.¹² The forerunners for the fall in Off-Set Clauses has been that these clauses tend to inflate the cost of procurement Contracts.¹³

Having its inception in the 1960s, the war with China caused an imperative need for a fast-paced domestic defence industry with offsets were a key element. The structural introduction of Offsets in the Defence Capital Acquisition was formulated in the Defence Procurement Procedure (DPP) in 2005 in line with the recommendations from the Kelkar Committee and have undergone alterations upto 6 times thereafter. India's offset arrangements were essentially in one of the following forms, viz. Licensing, Transfer of Technology, long-term credit mechanisms, etc.

The Offset Clauses were one of the forerunners towards 'self-sufficiency' in the defence sector and reduce the foreign exchange burden on account of import of arms and ammunition. The Off-set Clauses involved:

- (a) partially compensating for a significant outflow of a buyer country's resources in a large purchase of foreign goods;
- (b) facilitating induction of technology; and

¹² Peter Hall & Stefan Markowski, *On the Normality and Abnormality of Offsets, Obligations*, 5 DEFENCE AND PEACE ECONOMICS 173 (1994).

¹³ Jurgen Brauer & John Paul Dunne, *Arms Trade Offsets: What Do We Know?*, in CHRISTOPHER J. COYNE & RACHEL L. MARHERS (EDS.), *THE HANDBOOK ON THE POLITICAL ECONOMY OF WAR* CHELTENHAM 259 (2011).

- (c) adding capacities and capabilities of domestic industry

The current Offset Policy allows for discharge of Obligations in one of the following manner¹⁴:

S. No.	Discharge Avenue	Indian Offset Partner	Features
1.	Direct purchase of or executing export order for eligible Products or Services	Private Sector/DPSU	Eligible product/services Listed (Investment in civil infrastructures & training has been excluded)
2.	Investment in Defence Manufacturing through FDI or direct investment or JV or through non-equity route for coproduction, co-development and production or licensed production of defence products	-	Through FDI
3.	Investment in Transfer of Technology for manufacture of eligible products	-	Through JV/non equity route
4.	Acquisition of technology through ToT to Government Institutions & establishments	DRDO/DPSU	-
5.	Critical Technology Acquisition	DRDO	Critical technologies listed

6.5 MOVING TOWARDS INDIGENISATION OF INDIAN BUSINESS: DEFENCE ACQUISITION PROCEDURE 2020?

National security is integral to the concept of India's offset policy encapsulated towards attaining self-sufficiency or indigenisation of the defence sector. One of the critical challenges to the sustenance of such mechanisms is the requirement from foreign vendors to reinvest to the extent of at least 30 percent of the contract value in the Indian defence sector. Overall, as of August 2022, 15 companies had missed the first deadline set for implementation of their defence offset commitment, and the same may have been caused on account of the overt burdensome restrictions imposed by the Defence Offset Guidelines issued by the Ministry of

¹⁴ See STANDING COMMITTEE ON DEFENCE (2022-23), 17TH LOK SABHA, REP. NO. 37, CAPITAL OUTLAY ON DEFENCE SERVICES, PROCUREMENT POLICY AND DEFENCE PLANNING (DEMAND NO. 21) (2023).

Defence towards: (i) Fostering development of internationally competitive enterprises and (ii) Augmenting capacity for Research, Design and Development related to defence products.¹⁵

The envisioned Defence Acquisition Procedure 2020, hailed as a product of extensive analysis, deliberations, interactions and focused formulations, is formulated in furtherance of 'Self Reliance' in the defence sector and towards attaining the Ease of Doing Business. The Procedure entails a cooperative framework involving the Defence Research Development Organisation, Ordnance Factory Board and Defence PSUs, procurements related to Information and Communication Technology Systems, etc. Pursuant and further to its Introduction, the total value of all offset contracts amounts to USD 13.21 Billion as of March 2023, and the quantum of offset obligations for which claims have been submitted amounted to a mere USD 6.42 Billion, with the quantum of offset due to USD 1.84 Billion. It is astonishing that despite having such a robust policy for self-sufficiency, there is a lack of assessment of the quality of offsets in the bid evaluation criteria as per the Defence Offsets Guidelines under the extant Defence Procurement Procedure.¹⁶

6.6 PUBLIC PROCUREMENT AS A MEANS FOR INNOVATION

Traditionally Public procurement has evolved through policies and guidelines that lay emphasis on ensuring efficiency, open and fair competition and transparency in procurement for the Government. Stakeholders involved in public procurement find themselves to be exposed to the need for new skill sets to foster innovation. Public Procurement has been neglectly an extrinsic aspect of Innovation. India although has the policies on Public Procurement in place, the same has been scarcely associated with Innovation. It is pertinent to note that the Public Procurement as a means for Innovation, should not be misunderstood as innovation in the process of procurement. Illustrative practices include the 'Public Private Innovation', practiced in Denmark; 'Public Technology Procurement', practiced in Sweden, 'Private-Finance Initiative', practiced extensively in Australia and United Kingdom.

The Make in India initiative towards a robust framework for Atma Nirbhar Bharat, requires that Innovation be inclusive as a part of the Public Procurement Policy. India with the

¹⁵ Ministry of Defence, Defence Offset Guidelines, 2020.

¹⁶ Shri. Ajay Bhatt, Minister of State in the Ministry of Defence, Answer to Lok Sabha Unstarred Question No. 2823, Question by Shri Dushyant Singh on Offset Contracts (Mar. 17, 2023), <https://sansad.in/getFile/loksabhaquestions/annex/1711/AU2823.pdf?source=pqals>.

Innovation Action Plan (IAP) 2014-15, sought to instil among each Government Department and Ministries, the drive towards globally competitive, growth orientated and profitable streamlining of industrial sectors. The Innovation in Government Departments over the years has been systematically of either of the following, Process Innovation or Organisational Innovation or Communication Innovation.

India has found itself pivotal in the Public-Private Partnership (PPP) model for ensuring innovation from Public Procurement. The Department of Economic Affairs of the Ministry of Finance of the Government of India has defined PPP in the following terms:

“PPP is an arrangement between a government/statutory entity/government-owned entity on one side and a private sector entity on the other, for the provision of public assets and/ or public services, through investments being made and/ or management being undertaken by the private sector entity, for a specified period of time, where there is well-defined allocation of risk between the private sector and the public entity and the private entity receives performance-linked payments that conform to specified and predetermined performance standards, measurable by the public entity or its representative”.¹⁷

The involvement of a private partner in the Indian PPP Model ensures that technical expertise, efficiency and output certainty are lent to the project. Innovation is fostered through competition in the tender process. It may be seen that the private sector is often miles ahead on the technological front, in comparison with the Public Sector. Hence, the imperative need to obligate that the private sector undertakes the responsibility to handle risks which it is capable of managing as it can lead to innovation and efficiency in costs and execution for the government.

6.7 ESTABLISHING THE NEED FOR A MATURE STANDARDS ECOSYSTEM

Developed through extensive consultations conducted from 2014 to 2017, the INSS is a comprehensive strategy to address India’s regulatory and quality infrastructure needs.¹⁸ It incorporates inputs from various stakeholders, including government bodies, industry experts, academics, and international organizations. The draft INSS was refined through national and

¹⁷ Department of Economic Affairs, Ministry of Finance, Government of India, as cited in *Concept of Judicial Activism with an Example of PPP in India*, LEGAL SERVICES INDIA, <https://legalserviceindia.com/legal/article-3130-concept-of-judicial-activism-with-an-example-of-ppp-in-india.html> (last visited May 19, 2025).

¹⁸ Yadav, *supra* note 3.

regional standards conclaves and sets a clear roadmap for enhancing India's standardization efforts. Its objectives include¹⁹:

1. Positioning standards as key drivers of economic activities.
2. Developing an ecosystem that accommodates diverse expertise in standards development.
3. Enhancing the competitiveness of Indian goods and services in global markets.
4. Adopting best practices in standardization, conformity assessment, and technical regulations.
5. Aligning the strategy with national policies related to trade, industry, consumers, and the environment.

The INSS's holistic approach ensures that it supports economic growth while maintaining alignment with the Make in India initiative's broader goals.²⁰ The subsequent section attempts to put attention to the key aspects of India's standardisation policy under the Make in India initiative with reference to Standards National Action Plan (SNAP) which reflects the comprehensive approach take under INSS.²¹

6.8 ROLE OF STANDARD NATIONAL ACTIONAL PLAN (SNAP)

Standardization serves as a pivotal driver of economic growth, technological advancement, and global competitiveness. It not only ensures consumer protection but also addresses vital health, safety, and environmental concerns.²² The Bureau of Indian Standards (BIS), as India's designated National Standards Body, recognizes these imperatives and has developed the Standards National Action Plan (SNAP).²³ This comprehensive plan aims to synchronize national standardization activities with India's technological, economic, and social priorities, ensuring that India's products and services meet and excel global standards.²⁴ This part

¹⁹ INSS, 2018 *supra* note 2.

²⁰ Directorate of Standardisation, *National Policy*, DEPARTMENT OF DEFENCE PRODUCTION, <https://ddpdos.gov.in/standards/national-policy> (last visited May 19, 2025).

²¹ *Sustainability, Smartness, Services: BIS Releases Indian Action Plan for Standardisation*, GLOBAL PROJECT QUALITY INFRASTRUCTURE (Apr. 02, 2019), https://www.gpqi.org/news_en-details/sustainability-smartness-services-bis-releases-indian-action-plan-for-standardisation.html.

²² Pavel Castka, *The Role of Standards in the Development and Delivery of Sustainable Products: A Research Framework*, 12(24) SUSTAINABILITY 10461 (2020).

²³ *Standards National Action Plan*, BUREAU OF INDIAN STANDARDS, <https://www.bis.gov.in/standards-national-action-plan/> (last visited May 19, 2025).

²⁴ *Id.*

explores BIS's strategic approach to shaping India's standardization framework through SNAP while delineating that the integration of national priorities with international practices is essential for economic modernization and global competitiveness.

6.8.1 BIS and The National Strategy for Standardization

Central to the implementation of the INSS and SNAP is the Bureau of Indian Standards (BIS), the national body for standardization incorporated under the BIS Act of 2016. The BIS is responsible for harmonizing all activities related to the development, certification, and testing of goods, ensuring they meet national and international standards. It plays a pivotal role in providing safe and high-quality products, promoting exports, minimizing health hazards, and substituting imports with locally manufactured goods. The BIS aligns its activities with the INSS, creating a regulatory framework that supports the growth of domestic industries and the objectives of the Make in India initiative.

The BIS has undertaken specific measures to address the standardization needs of various sectors. In response to the Ministry of Commerce's identification of 371 tariff lines for standardization, including products from China, the BIS developed and enforced robust standards. This effort aimed to curb unnecessary imports and promote domestic manufacturing capabilities, particularly in light of the COVID-19 crisis. Each ministry associated with these products collaborates with the BIS to finalize and enforce standards, ensuring compliance and reducing import dependency. This regulatory support is crucial for promoting locally manufactured products and enhancing their competitiveness in global markets.

Under the BIS Act of 2016, BIS is entrusted as the central authority for standard development in India.²⁵ In response to evolving needs, BIS has aligned its initiatives with the Indian National Strategy for Standardization (INSS), introduced by the Ministry of Commerce & Industry.²⁶ The INSS, recognizing the crucial role of standardization in bolstering India's quality infrastructure, aims to support economic activities by building an integrated ecosystem for standard development.

²⁵ The Bureau of Indian Standards Act, 2016.

²⁶ Apiwat Ratanawaraha, *Late Standardization and Technological Catch-up* (Ph.D. Thesis, Massachusetts Institute of Technology, Sept. 2006).

The INSS emphasizes the importance of aligning India's standards with international norms. Such alignment is not merely a technical exercise but a strategic imperative that enhances the global credibility and marketability of Indian products.²⁷ This integration ensures that innovations within India are scalable to meet international demand, thereby reinforcing India's global economic standing.²⁸ Consequently, BIS has adopted INSS principles to guide its strategic objectives under SNAP, ensuring that its standardization efforts are not only relevant but also adaptive to both domestic and international contexts.

6.8.2 Objectives of the Standards National Action Plan

SNAP sets forth several key objectives to be achieved by BIS²⁹:

- 1. Harmonization of Standardization Activities:** BIS aims to create a cohesive approach for all standardization efforts within the nation. This involves coordination with various standard-developing organizations (SDOs) to eliminate duplication and streamline processes.
- 2. Efficiency and Speed in Standardization:** Recognizing the fast pace of technological change, BIS has emphasized the need for speed and efficiency in standard development. To address this, SNAP proposes leveraging digital platforms, such as web conferencing, to accelerate decision-making and stakeholder engagement.
- 3. Promotion and Implementation of Standards:** BIS seeks to increase awareness of standards across industries, governmental bodies, and educational institutions. By fostering a culture of compliance, BIS aims to integrate standards into everyday business and governance practices, thereby enhancing the overall quality and safety of products and services.
- 4. International Participation and Influence:** SNAP includes a strategy to enhance India's involvement in international standardization organizations such as ISO and IEC. BIS's

²⁷ *Id.*

²⁸ Jayanta Roy Chowdhury, *Standardization and Innovation: Standards Development Principles*, in ANUJ BHATNAGAR ET AL (EDS), *HANDBOOK OF QUALITY SYSTEM, ACCREDITATION AND CONFORMITY ASSESSMENT 1* (2025).

²⁹ *Standards National Action Plan*, *supra* note 23; See also, Jayanta Roy Chowdhury, *Standards Action Plan (SNAP)*, SECONDED EUROPEAN STANDARDISATION EXPERT IN INDIA (SESEI), https://sesei.eu/wp-content/uploads/2019/12/Indian-Standardisation-Strategy_Jayanta-R-Chowdhury-BIS.pdf (last visited May 19, 2025).

objective is to identify strategic sectors where India can make substantive contributions, thereby boosting the country's visibility and influence on the global stage.³⁰

6.8.3 Methodology: Stakeholder Consultation and Data-Driven Planning

To ensure that SNAP is actionable and contextually relevant, BIS engaged in extensive consultations with key stakeholders, including industry associations, government agencies, research institutions, and technical experts. This participatory approach ensures that the plan is rooted in the real-world challenges faced by these entities, making it more likely to succeed.³¹

BIS's planning process also incorporated socio-economic data from sources such as the National Accounts Statistics and trade databases from the Ministry of Commerce.³² This data-driven approach allowed BIS to pinpoint key sectors that would benefit most from targeted standardization efforts, ensuring the efficient allocation of resources. The consultations revealed challenges such as gaps in existing standards, limited international participation, and capacity-building needs, which were subsequently incorporated into SNAP to develop targeted measures addressing these issues.

6.8.4 Implementation Strategy: Aligning Objectives with Actionable Measures

SNAP is structured around specific actions aimed at achieving its objectives³³:

1. Identification of Standardization Needs and Enhancing Stakeholder Involvement: BIS employs a proactive strategy for identifying standardization requirements. These measures are designed to build a robust ecosystem where stakeholders are not only involved but actively contribute to the standardization process, thus ensuring greater efficiency and alignment with national needs.³⁴ This includes:

- a. **Regular Engagement with Stakeholders:** BIS plans to engage continuously with ministries, regulators, and industry groups to gather insights on emerging needs and promote standards adoption through policies and regulations.

³⁰ Ratanawaraha, *supra* note 26.

³¹ *Standards National Action Plan*, *supra* note 23.

³² *National Accounts Statistics*, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, <https://mospi.gov.in/211-national-accounts-statistics> (last visited May 19, 2025).

³³ Henk J. de Vries et al, *Stakeholder Identification in IT Standardization Processes*, in JOHN L. KING & KALLE LYYTINEN, PROCEEDINGS OF THE WORKSHOP ON STANDARD MAKING: A CRITICAL RESEARCH FRONTIER FOR INFORMATION SYSTEMS 92 (2003).

³⁴ *Stakeholder Identification, Engagement and Empowerment*, INCLUSIVE INFRA GLOBAL INFRASTRUCTURE HUB, <https://inclusiveinfra.github.org/action-areas/stakeholder-identification-engagement-and-empowerment/> (last visited May 19, 2025).

4. **Enhancing International Participation:** BIS's plan for elevating India's role in global standardization includes³⁸:

- a. **Developing Strategic Plans for International Forums:** BIS intends to identify priority areas within ISO and IEC where India can lead initiatives and propose new work items, thereby increasing India's influence.
- b. **Collaboration with International Bodies:** BIS will explore bilateral and multilateral partnerships to strengthen India's integration and visibility in the global standardization community.³⁹

6.9 SECTOR-SPECIFIC PRIORITIES: ALIGNING STANDARDIZATION WITH NATIONAL GOALS

BIS has prioritized sectors based on economic impact and growth potential, such as agriculture, automotive, healthcare, IT, and renewable energy.⁴⁰ These sectors are chosen for their significant contributions to GDP, trade, and alignment with sustainability goals.⁴¹ By focusing on these areas, BIS aims to develop standards that not only drive domestic growth but also bolster the global competitiveness of Indian industries.

6.9.1 Standardization Efforts by the BIS: Sectoral Focus and Compliance

The BIS's efforts in standardization extend across multiple sectors critical to the Make in India initiative, including pharmaceuticals, furniture, and leather. These sectors are prioritized for revamping production processes to increase local manufacturing capabilities. The government's introduction of Production Linked Incentive (PLI)⁴² and Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS)⁴³ supports these

³⁸ HANDBOOK FOR TECHNICAL COMMITTEE MEMBERS OF BUREAU OF INDIAN STANDARDS (BIS), https://www.services.bis.gov.in/php/BIS_2.0/eBIS/wp-content/uploads/Handbook_for_TC_Members.pdf.

³⁹ *Id.*

⁴⁰ INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO), NATIONAL STANDARDIZATION STRATEGIES (2020), <https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100450.pdf>.

⁴¹ *Id.*

⁴² Ministry of Commerce & Industry, *Production Lined Incentive Schemes for 14 Key Sectors Aim to Enhance India's Manufacturing Capabilities and Exports*, PRESS INFORMATION BUREAU (Aug. 02, 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1945155>.

⁴³ *Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECS)*, MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, <https://www.meity.gov.in/offerrings/schemes-and-services/details/scheme-for-promotion-of-manufacturing-of-electronic-components-and-semiconductors-specs> (last visited May 19, 2025).

efforts by providing financial and regulatory support. Such schemes aim to strengthen local markets, develop supply chains, and enhance India's global presence.⁴⁴

To ensure compliance, the BIS has intensified surveillance at critical entry points, deploying officers to monitor imports and collaborate with customs authorities. Not only the BIS has taken steps to enhance the effectiveness of its standards enforcement, it has also launched a mobile app⁴⁵ and online portal⁴⁶ for certification access, allowing stakeholders to check compliance and report violations easily. These measures demonstrate BIS's commitment to transparency and accountability, ensuring that Indian products meet both national and international standards.

6.10 INTERNATIONAL COOPERATION AND THE INSS

A key pillar of the INSS is international cooperation, ensuring that Indian standards align with global practices. By collaborating with international standardization bodies such as the International Organization for Standardization (ISO)⁴⁷ and the International Electrotechnical Commission (IEC),⁴⁸ the INSS promotes mutual recognition of standards.⁴⁹ This collaboration enhances India's integration into global value chains, facilitating the market entry of Indian goods and services. The INSS also prioritizes building technical expertise through partnerships with academic and research institutions, preparing the workforce for international manufacturing challenges.

The INSS emphasizes that India should not merely follow international standards but also take leadership roles in developing and influencing them. This proactive approach allows India to shape global standards to its advantage, ensuring that they do not present barriers to Indian products. Such participation enhances India's strategic position in international forums, strengthening its influence and global market access.

⁴⁴ Ministry of Electronics and Information Technology, Scheme for Promotion of Manufacturing of Electronic Components and Semiconductors (SPECES) (notified on Apr. 01, 2020), *See also Electronics Components and Materials*, INVEST INDIA, <https://www.investindia.gov.in/sector/electronic-components-materials> (last visited May 19, 2025).

⁴⁵ *BIS Care App*, BUREAU OF INDIAN STANDARDS, <https://www.bis.gov.in/bis-apps/> (last visited May 19, 2025).

⁴⁶ MANAK MANCH, <https://www.manakonline.in/> (last visited May 19, 2025).

⁴⁷ *ISO: Global Standards for Trusted Goods and Services*, INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, <https://www.iso.org/home.html> (last visited May 19, 2025).

⁴⁸ INTERNATIONAL ELECTROTECHNICAL COMMISSION, <https://www.iec.ch/homepage> (last visited May 19, 2025).

⁴⁹ Ratanawaraha, *supra* note 26.

6.10.1 Conformity Assessment and Technical Regulations under the INSS

Conformity assessment is a crucial component of the INSS, aiming to build a credible and robust quality infrastructure. The INSS outlines strategies for improving conformity assessment programs, encouraging voluntary self-regulation mechanisms to reduce the regulatory burden on businesses. By enhancing the capacity of conformity assessment bodies and integrating them within a national accreditation framework, the INSS ensures that products meet high standards without excessive bureaucratic intervention.⁵⁰

Furthermore, the BIS's initiatives to implement technical regulations aim to minimize compliance costs while ensuring product safety and market relevance. By adopting international best practices and developing a flexible regulatory framework, the BIS and the INSS help Indian businesses meet global standards without compromising domestic interests. This approach aligns with the Make in India initiative's goal of promoting Indian products that are both competitive and compliant with international requirements.

6.10.2 Implementation and Monitoring of the INSS

The INSS is designed as a living document, adaptable to emerging challenges and technological advancements. It includes a structured implementation plan monitored by a high-level committee with quarterly reviews. These reviews ensure that objectives are met within the stipulated timelines, with progress published on the India Standards Portal for transparency.⁵¹ This dynamic approach guarantees that the INSS remains relevant and effective in addressing the evolving needs of India's industries.

By setting up a mechanism for continuous monitoring and updates, the INSS ensures that the standards ecosystem evolves alongside technological advancements such as artificial intelligence, sustainable practices, and digital technologies. The development of standards in these cutting-edge fields is crucial for India to stay competitive globally and to maintain the relevance of its regulatory framework.

⁵⁰ Philip Grinsted et al, *Quality Rules in India: Trade, Technical Regulations and Consumer Protection*, OBSERVER RESEARCH FOUNDATION (Aug. 21, 2023), <https://www.orfonline.org/research/quality-rules-in-india-trade-technical-regulations-and-consumer-protection>.

⁵¹ INSS, 2018 *supra* note 2.

6.10.3 Challenges and Opportunities in Implementing the INSS

Despite its comprehensive framework, the implementation of the INSS faces several challenges. One of the key challenges is aligning domestic standards with international norms while protecting India's industrial interests. The INSS must balance these interests by adopting global best practices without compromising local industries' growth.⁵² Another challenge lies in capacity building, which requires significant investments in skill development and technical training.⁵³ The Indian workforce must be equipped with the necessary expertise to implement and comply with standards effectively.

Regulatory coherence is also a challenge, as the INSS involves multiple agencies and stakeholders. Streamlining compliance procedures and fostering cooperation among regulatory bodies is essential for creating a conducive environment for industries. Addressing these challenges is vital for the INSS to succeed in enhancing India's competitiveness under the Make in India initiative.

6.10.4 The Future of the INSS: Building India's Global Manufacturing Competitiveness

The INSS sets a clear roadmap for India's future as a global manufacturing leader. By focusing on quality infrastructure, conformity assessment, and international cooperation, the INSS supports the Make in India initiative's broader vision. The strategy must continue to evolve to address digitalisation, sustainability, and technological advancements, ensuring that Indian products remain competitive and sustainable in global markets.

The INSS also highlights the need for India to pioneer standardization in sectors where it has a competitive advantage, such as traditional medicine, alternative therapies, and specialized manufacturing. By developing standards in these sectors, India can strengthen its global influence and create new opportunities for domestic businesses. The INSS's emphasis on continuous improvement and proactive engagement in international standardization forums positions India as a global leader in developing innovative standards.

⁵² Bharat Kumar Yadav, *SSLand and its Standardization – Growth Avenues and Challenges*, 13(4) IOSR JOURNAL OF ELECTRICAL AND ELECTRONICS ENGINEERING 27 (2018).

⁵³ *Id.*

6.11 CONCLUSION

SNAP is designed as a dynamic framework with a three-year implementation timeline. BIS will conduct periodic reviews to monitor progress and ensure that measures and outcomes align with both national and international requirements.⁵⁴ The plan includes provisions for continual updates, enabling it to evolve with new challenges, technological advancements, and stakeholder feedback. The Bureau of Indian Standards, through SNAP, is transforming India's standardization landscape by integrating technological advancements, stakeholder involvement, and international alignment. The strategic focus on harmonization, efficiency, and global collaboration not only sets the stage for economic and technological progress but also positions India as a prominent leader in the global standardization arena.⁵⁵ As BIS implements this ambitious plan, its emphasis on adaptability and strategic foresight will be critical in ensuring that India's standardization efforts remain relevant, effective, and globally influential.

The INSS and the BIS's regulatory efforts form an integrated system crucial for the success of the Make in India initiative. By developing a mature standards ecosystem, enhancing quality infrastructure, and ensuring regulatory alignment, the INSS creates an environment that supports the growth of Indian industries. Through international cooperation, innovation, and capacity building, the INSS prepares India's industries to meet the demands of global markets, ensuring the competitiveness and sustainability of Indian products. A robust and dynamic standardization system, as envisioned by the INSS, will not only drive India's economic growth but also establish the country as a leader in the global manufacturing sector.

⁵⁴ BUREAU OF INDIAN STANDARDS, STANDARDS NATIONAL ACTION PLAN (2019), <https://bis.gov.in/wp-content/uploads/2019/03/SNAP-Documents.pdf>.

⁵⁵ GLOBAL PROJECT QUALITY INFRASTRUCTURE, *supra* note 21.

CHAPTER 7: THE WAY FORWARD

The vision of *Atma Nirbhar Bharat Abhiyan* represents a modern reiteration of India's long standing goal of transforming its economy towards self-sufficiency by building a resilient economy that can withstand global shocks and reduce critical dependencies on foreign countries. However, realising this vision will require a coherent, dynamic and future-ready legal framework that supports promotion, protection and growth of domestic business while at the same time navigating India's obligations under international law and commitment towards international cooperation. As India transitions towards a more innovation-led, competitive, and globally integrated economy, reforms are necessary to systematically strengthen laws governing various sectors dealing with entrepreneurship and businesses. The present chapter synthesises the key recommendations made across various parts, chapters and papers in the present publication with the idea of setting out a detailed roadmap focusing on legal and policy reforms necessary to realize the vision of self-reliance.

7.1 PROMOTING ENTREPRENEURSHIP & CATALYZING INDIGENOUS GROWTH

While India has a strong foundation of policies, schemes, and institutional support for MSMEs the biggest challenge remains the gap between scheme formulation and actual implementation at the grassroots level. Several core issues contribute to this disconnection including delayed payments,¹ financial illiteracy, limited digital integration, and liquidity crunch,² fragmented

¹ See e.g., Prabhpreet Singh, *The Impact of Delayed Payments on India's MSME Sector*, LEGAL PAY (Mar. 12, 2024), <https://www.legalpay.in/post/impact-of-delayed-payments-on-msme>; Shivani Bazaz, *How Govt is Addressing Payment Delays for India's MSMEs, According to Economic Survey 2025*, CNBC TV 18 (Jan. 31, 2025), <https://www.cnbc18.com/budget/how-govt-is-addressing-payment-delays-for-indias-msmes-according-to-the-economic-survey-19549809.htm>; *Delayed Payment Cases By MSMEs Near 1 Lakh Mark*, CHAMBER OF MICRO SMALL & MEDIUM ENTERPRISES (CIMSME), <https://indiansmechamber.com/news-details.php?id=101>; Abhishek Sharma, *Delayed Payments, High Costs: Budget Leaves MSMEs with More Pains than Gains*, BUSINESS WORLD (Feb. 10, 2025), <https://www.businessworld.in/article/delayed-payments-high-costs-budget-leaves-msmes-with-more-pains-than-gains-547454>; Manu Prakash, *How the Unpaid Dues of INR 26,414 Crore are Threatening MSMEs' Working Capital Stability*, CREDABLE (Apr. 17, 2025), <https://credible.in/insights-by-credible/business-insights/working-capital-crisis-unfolding/>.

² Abhishek Sharma, *Festive Cheer & Financial Fear: Liquidity Crunch Hits MSMEs Amid High Demand*, BUSINESS WORLD (Nov. 06, 2024), <https://www.businessworld.in/article/festive-cheer-financial-fear-liquidity-crunch-hits-msmes-amid-high-demand-538256>; Editorial Team, *Why Indian MSMEs are Facing a Cash Crunch*, LAW CRUST, <https://lawcrust.com/why-indian-msmes-are-facing-a-cash-crunch/> (last visited May 21, 2025).

regulatory support, underutilization of factoring and TReDs³ and high rate of failure of Startups.

Additionally, many reform initiatives under *Atma Nirbhar Bharat* have not been fully absorbed at the grassroots level due to lack of public understanding, leading to resistance (as in the case of the withdrawn farm laws). Furthermore, although India has emerged as one of the world's largest startup ecosystems, the majority of new ventures fail within their first five years, often due to insufficient funding, market saturation, poor innovation, and an absence of differentiated value propositions.⁴ Startups also face information asymmetry between stakeholders, particularly between academia, industry, investors, and government institutions, which impedes technology transfer and collaborative growth.⁵ Furthermore, regulatory friction,⁶ a rigid angel tax regime,⁷ and a fragile intellectual property enforcement framework contribute to reduced investor confidence and premature closures.

These structural weaknesses not only impede individual startup survival but also threaten India's broader ambition to become a global hub of self-reliant, innovation-driven entrepreneurship. Further, India's trade infrastructure, ease of doing business, and commercial dispute resolution mechanisms still require deeper reforms. Unless these systemic and perception challenges are addressed, India risks undermining its own objectives of sustainable, rules-based self-reliance and may falter in its bid to become a global manufacturing hub.

To address these challenges, it is recommended that a multi-pronged, inclusive and decentralized strategy be adopted with measures such as launching targeted financial literacy

³ See *Unlocking MSME Liquidity: The TReDS Framework and the Compliance Gap*, NOVO JURIS LEGAL (Apr. 15, 2025), <https://www.novojuris.com/thought-leadership/unlocking-msme-liquidity-the-treds-framework-and-the-compliance-gap.html>.

⁴ See e.g., Jitendra Singh Dahiya, *The Harsh Reality of Startup Failure in India*, LINKEDIN (Aug. 21, 2024), <https://www.linkedin.com/pulse/harsh-reality-startup-failure-india-comprehensive-insights-dahiya-hdyqf/>; *IBM Study: Innovation Key to Startup Success in India*, IBM NEWSROOM (May 18, 2017), <https://in.newsroom.ibm.com/2017-05-18-IBM-Study-Innovation-Key-to-Startup-Success-in-India>; Parth Malpani, *The Fall of Indian Startups*, THE MEDIUM (Sept. 08, 2022), <https://parthmalpani.medium.com/the-fall-of-indian-startups-4b2d2700cf22>.

⁵ Johan Kask & Gabriel Linton, *Navigating the Innovation Process: Challenges Faced by Deep-Tech Startups*, in PAIVI AALTONEN & EMIL KURVINEN (EDS), *CONTEMPORARY ISSUES IN INDUSTRY 5.0*, at 197(2025).

⁶ *From Friction to Flight: Unblocking India's Startup and Innovation Ecosystem*, THE ECONOMIC TIMES (Apr. 08, 2025), <https://economictimes.indiatimes.com/tech/startups/from-friction-to-flight-unblocking-indias-startup-and-innovation-ecosystem/articleshow/120096114.cms>.

⁷ ET Online, *Changes to Angel Tax will Provide Relief to Small Businesses, Startups: Experts*, THE ECONOMIC TIMES (May 23, 2023), <https://economictimes.indiatimes.com/small-biz/sme-sector/changes-to-angel-tax-will-provide-relief-to-small-businesses-startups-experts/articleshow/100439804.cms>; Ati Malik, *Comprehending the Angel Tax Exemption*, STARTUP INDIA, https://www.startupindia.gov.in/content/sih/en/bloglist/blogs/comprehending_the_angel_tax_Exemption.html (last visited May 23, 2025).

and digital empowerment campaigns, especially in rural and semi-urban MSME clusters and startups, simplifying compliance by developing a platforms similar to Colombia's Unique Business Database (VUE); encouraging digital financing tools and TReDS utilization; establishing Enterprise Development Centres and public-private partnerships; and creating a supportive regulatory and fiscal environment. Additionally, procurement frameworks should be revised to ensure timely payments and better market access would support business viability and sustainability. Furthermore, to ensure timely payments and digital integration, it is recommend that a new section 14A should be inserted in chapter V of the Micro, Small and Medium Enterprises Development Act, 2006 as follows:

- 14A. Mandatory Disclosure of Invoices and Digital Recordkeeping.** — (1) Every buyer procuring good goods or services from a micro or small enterprise where the value of the supply exceeds five lakh rupees shall ensure that such invoice is generated on a centralized digital platform to be notified by the Central Government.
- (2) The Central Government may by notification designate the platform referred to in sub-section (1) and prescribe the procedure, form, and timeline for compliance.
- (3) Failure to disclose such invoices shall attract a penalty up to fifty thousand rupees per undisclosed invoice, and in case of recurring non-compliance, the buyer may be disqualified from receiving any benefits under government procurement schemes.

Enacting the above provision will ensure that a digital record is kept for fast tracking payments and speedier dispute resolution. For furthermore, fast tracking dispute resolution it is also recommended that Section 18 of the MSME Act should also include online mediation to be conducted as per the Mediation Act, 2023 and the disputes should be settled through commercial courts under the Commercial Courts Act, 2015. In this regard it is recommended that Section 18 should be amended as follows:

- 18. Reference to Micro and Small Enterprises Facilitation Council and Disputes to be treated as Commercial Disputes.**— (1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount of not more than three lakhs, due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.
- (2) On receipt of a reference under sub-section (1), the Council shall either itself conduct online mediation in the matter or seek the assistance of any institution or centre providing online mediation services registered with the Mediation Council of India, established under the Mediation Act, 2023 (32 of 2023) for conducting online mediation as prescribed under that Act.

Provided that and notwithstanding anything contained in any other law for the time being in force, such online mediation shall be completed within a period of thirty days from the date of receipt of reference.

(3) Notwithstanding anything contained in any other law for the time being in force, where the online mediation imitated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the dispute should be adjudicated by the commercial court of competent jurisdiction, established under the Commercial Courts Act, 2015 (4 of 2016), who shall pass the final judgement in the case within a period of sixty days from the date of first case management hearing.

Explanation I: The commercial court of competent jurisdiction shall have jurisdiction to hear such dispute notwithstanding the dispute is of a value less than the specified value.

Explanation II: The provision of Section 12A of the Commercial Courts Act shall not be applicable to the disputes referred to in this sub-section.

(4) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount of more than three lakhs, due under section 17, may file a suit under the Commercial Courts Act, 2015, after undergoing pre-institution mediation as specified under that Act, and such dispute shall be treated as a commercial dispute.

(5) The provision of this section shall apply notwithstanding any existing arbitration or conciliation agreement between the parties.

Another central challenge that hinders the promotion of Indian Business and achieving the vision of *Atma Nirbhar Bharat* lies in the persistent inefficiencies within India's patent ecosystem, which collectively stifle innovation and deter intellectual property generation. Although India has made notable strides in improving patent filings and increasing participation from domestic entities, several systemic barriers continue to hold back its global competitiveness. One of the most pressing issues is the chronic underinvestment in research and development, with India's R&D expenditure stagnating at around 0.64% of its GDP which is far below innovation leaders like South Korea and the United States.⁸ This limited investment curtails the pipeline of innovations that could otherwise be commercialized through patents. Moreover, within academia, the culture remains skewed toward immediate publication over long-term patenting, as faculty and researchers are made to perceive publishing as more beneficial for career advancement. Moreover, India's patent processing infrastructure remains

⁸ Animesh Jain & Anurag Anand, *India's R&D Funding, Breaking Down the Numbers*, THE HINDU (Mar. 14, 2024), <https://www.thehindu.com/opinion/lead/indias-rd-funding-breaking-down-the-numbers/article67947662.ece>.

overburdened, with average disposal times extending to 51 months,⁹ primarily due to a shortage of examiners and staff at the Indian Patent Office. Enforcement also remains a weak link as demonstrated by India's repeated placement on the USTR Priority Watch List reflects concerns over lax patent protection, limited judicial efficiency, and a perceived anti-patentee bias, particularly in sectors like pharmaceuticals.¹⁰ Compounding these concerns is the widespread non-compliance with the requirement to file Form-27 declarations on the commercial working of patents, undermining transparency and accountability.¹¹ The underperformance of IPR Chairs across universities, plagued by lack of structure, accountability, and research output, further limits India's ability to generate and sustain high-quality IP. These structural and cultural deficits pose a formidable barrier to the goal of self-reliance in innovation.

To address these multifaceted challenges, a comprehensive and coordinated reform strategy is essential to unlock the full potential of India's patent ecosystem in line with the goals of *Atma Nirbhar Bharat*. First and foremost, it is recommended that the Indian Patent Office must significantly augment its human resources by recruiting and training additional examiners and support staff. This is both financially viable and institutionally necessary, given that the IPO currently utilizes only a fraction of its revenue. *Secondly*, legislative reform is also critical. Amendments to Section 146 of the Patents Act should introduce an automated, digital mechanism for filing Form-27 disclosures with stricter compliance monitoring and proportionate penalties. The government should also establish performance-linked audits for IPR Chairs in universities and integrate the overlapping frameworks of IPERPO and SPRIHA to ensure coherent and accountable academic engagement with IP. Moreover, IP education must start early for which introducing intellectual property modules in school curricula and strengthening outreach through programmes like KAPILA, NIPAM, and RGNIIPM can cultivate a robust culture of innovation.

⁹ Piyush Gour, *India Accelerates in the Patent Race: But is There a Pot of Gold at the End of the Rainbow?*, Spicy IP (Nov. 10, 2023), <https://spicyip.com/2023/11/wipo-ip-indicators-2023-india-accelerates-in-the-race-towards-the-pot-of-gold-but-is-there-one.html>.

¹⁰ ET Bureau, *US Again Puts India on IPR Priority Watch List*, THE ECONOMIC TIMES (Apr. 30, 2025), <https://economictimes.indiatimes.com/news/india/us-again-puts-india-on-ipr-priority-watch-list/articleshow/120742475.cms>.

¹¹ Essense Obhan & Sneha Gandhi, *Nothing to Declare? New Form 27 Puts Patentees in India in a Quandary*, OBHAN & ASSOCIATES (Dec. 24, 2024), <https://www.obhanandassociates.com/blog/nothing-to-declare-new-form-27-puts-patentees-in-india-in-a-quandary/>.

Furthermore, patent ownership should be rewarded tangibly through policy integration with procurement and PLI schemes. Indian startups and MSMEs holding patents must be given preference in tenders and incentives to reinforce the economic value of innovation. Finally, the government must significantly increase public and private R&D funding, including offering weighted tax deductions for innovation expenditures and establishing a national innovation fund to support commercialization. These measures, if implemented collectively, can transform India's patent landscape into a dynamic engine of self-reliance and global leadership.

Moreover, incubators must be professionally supported and adequately financed to deliver customized training, mentorship, and infrastructure support across the startup lifecycle i.e. from ideation to acceleration. Building collaborative platforms that bring together failed and emerging startups, corporates, and academia can enhance knowledge exchange and revive dormant innovations. India must also adopt a structured funding model similar to the U.S. SBIR program, with phased financing linked to R&D milestones, thereby incentivizing high-risk, high-reward innovation. Lastly, India must invest in improving startup competitiveness through incentives for global marketing, strong supply chains, and participation in international trade expos. These steps, implemented in a coordinated and sustained manner, would significantly improve startup sustainability and position India as a global leader in innovation-driven economic development. In relation to application of patent by MSMEs and startups it is recommended that the application for the grant of patent should be processed and the granted within a period of one year from the date of filing. Hence, the following sub-section (3) shall be inserted in Section 43 of the Patents Act:

(3) Notwithstanding anything contained in any other section of this Act, where an application for the grant of patent has been filed by a micro, small or medium enterprise, as defined under the Micro, Small and Medium Enterprises Development Act, 2006, the application shall be processed and the patent shall be granted, subject to sub-section (1), within a period of twelve months from the date of filing of the application.

Another crucial challenge to make India *Atma Nirbhar* relates to the space sector pertaining to the limited private participation in this sector. The Space sector is one of the critical sectors for *Atma Nirbhar Bharat*. One of the key challenges for the private sector is the absence of a dedicated national space law. Towards this end, a series of conferences and

deliberations have taken place during the last decade,¹² including the draft Space Activities Bill, 2017 prepared and released by the Department of Space (DOS) for public comments.¹³ Moreover, in the wake of COVID-19, and in pursuance of the *Atma Nirbhar Bharat Abhiyan*, the Government of India also decided to open up the Space Sector for private participation by formulating the Indian Space Policy 2023,¹⁴ and the Norms, Guidelines and Procedures for implementation of Indian Space Policy-2023 in respect of Authorization of Space Activities (NGP 2024).¹⁵ Furthermore, the process of licensing private parties for space activities has also commenced with two Indian enterprises having been granted authorization from IN-SPACe for launching their respective payloads.¹⁶ While the establishment of bodies like IN-SPACe and NSIL and formulation of the Indian Space Policy-2023 and NGP 2024 reflects a positive policy shift towards commercialization and liberalization of the space sector, their legitimacy remains tenuous without statutory support. The lack of such a law creates legal uncertainty and hinders a more enthusiastic private investment in one of India's most promising high-technology sectors.¹⁷

This legal vacuum not only weakens India's compliance with international obligations (such as Article VI of the Outer Space Treaty requiring supervision of private actors), but also violates foundational administrative law principles regarding executive action.¹⁸ Without a law

¹² See Sandeepa Bhat B, *National Space Law for India: A Reality Check*, in SANDEEPA BHAT B & SHOUVIK KUMAR GUHA (EDS), *FUNDAMENTALS OF NATIONAL SPACE LAWS* 94, 100 & 101 (2022).

¹³ The Draft Space Activities Bill, 2017; See also Department of Space, Government of India, Notification, Seeking comments on Draft Space Activities Bill, 2017' from the stake holders/public –regarding, No.E.11020 /2/2015-Sec-VI issued on November 21, 2017, https://www.isro.gov.in/media_isro/pdf/Publications/Vispdf/Pdf2017/seeking_comments_on_draft_space_activities_bill201710.pdf (the notification states at ¶10: “there is a need for national space legislation for supporting the overall growth of the space activities in India. This would encourage enhanced participation of non-governmental/private sector agencies in space activities in India, in compliance with international treaty obligations, which is becoming very relevant today.”).

¹⁴ Indian Space Research Organization, Indian Space Policy – 2023, https://www.isro.gov.in/media_isro/pdf/IndianSpacePolicy2023.pdf (last visited May 29, 2025).

¹⁵ Indian National Space Promotion and Authorization Centre, Department of Space, Government of India, Norms, Guidelines and Procedures for Implementation of Indian Space Policy -2023 in Respect of Authorization of Space Activities (NGP) (2024) [hereinafter NGP 2024].

¹⁶ The two private companies (startups) are: (i) Dhruva Space Pvt Ltd (Hyderabad); and (ii) Digantara Research & Technologies Pvt Ltd (Bengaluru); See e.g. Rongheet Poddar, *Liberalization of the Indian Space Sector: Private Participation and Legal Challenges*, 2(2) CASL LEX AD COELUM 45, 46 (2022); *Indian Private Space Sector: 2 Startups Authorized to Launch Payloads*, LIVE MINT (June 27, 2022), <https://www.livemint.com/news/india/indian-private-space-sector-2-start-ups-authorized-to-launch-payloads-11656315651351.html>.

¹⁷ See e.g. Monica Shaurya Gohil, *Need for Comprehensive and Robust Indian Space Laws*, ILLI LAW REVIEW 47 (Summer Issue 2021); *Privatization of Space in India: Navigating Legal Challenges and Opportunities*, VRIITTI LAW PARTNERS (Mar. 29, 2024), <https://vrittipartners.com/privatization-of-space-in-india-navigating-legal-challenges-and-opportunities/>.

¹⁸ *Rajnarain Singh v. Chairman, Patna Administration Committee*, AIR 1954 SC 569; *A.K. Roy v. Union of India*, AIR 1982 SC 710; *Kunj Behari Lal Butail v. State of Himachal Pradesh*, (2000) 3 SCC 40; Additional

delineating rules for licensing, ownership transfer, liability allocation, IP rights, and dispute resolution, India's space liberalization remains ad hoc and unconvincing for global investors. Consequently, India risks missing a significant opportunity to become a global hub for commercial space activities, despite having the technological and cost advantages.

Thus, to truly harness the space sector for national self-reliance, India must enact a comprehensive and well-balanced National Space Law that provides legal clarity, regulatory predictability, and investor protection. Such legislation should enshrine five essential pillars: (1) a transparent, standardized licensing and supervision framework that complies with international treaty obligations and reduces bureaucratic barriers; (2) a clear legal regime for transfer of ownership, especially of space assets, allowing flexibility while safeguarding national interests; (3) a structured liability and insurance model, preferably a shared liability framework supported by a domestic space liability fund to limit risks for private actors while ensuring victim compensation; (4) intellectual property protections to assure private investors of rights over innovations developed in space; and (5) an independent, technologically competent dispute resolution mechanism to swiftly adjudicate complex and high-value space-related conflicts. The legislation should also affirm the statutory mandate of IN-SPACe and NSIL, aligning them with principles of transparency and due process. Without such a foundation, India's policy push in the space domain will remain superficial and unsustainable.

7.2 PROTECTING INDIAN BUSINESS FOR SAFEGUARDING NATIONAL INTEREST IN ECONOMIC RESILIENCE

One of the persistent challenges for protecting national interest and making India self-reliant is the dependence on Foreign Imports in the Defence Sector.¹⁹ India lacks a comprehensive, dedicated legal framework governing defence procurement and exports. While India has introduced forward-looking policies like the DAP 2020 and positive indigenisation lists, the procedural complexities, lack of coordination across institutions, weak contractual protections (e.g., for latent defects), and inadequate export governance mechanisms hinder sustainable indigenisation. Furthermore, without a shift from “know-how” to “know-why,” India risks

District Magistrate Rev. Delhi Admin. v. Siri Ram, (2000) 5 SCC 452 (discussing the limits of executive action and powers which cannot go beyond the legislation).

¹⁹ See *Infra*, Part B, Ravindra Kumar Singh, *Fostering Indigenisation vis-à-vis Defence Acquisition Policy of India: A Legal Perspective*; *Infra* Part C, Anuja Shah & Kartik Kalra, *A Critical Appraisal of DAP 2020: The Dilution and Resuscitation of India's Defence Offset Policy*.

remaining an assembler rather than an originator of high-end defence technology. Furthermore, private sector involvement, offset fulfilment, and Inter-Governmental Agreements (IGAs) lack uniform legal standards, affecting transparency, enforceability, and long-term capability building.

The absence of a centralised legal cell within the Ministry of Defence further weakens contract vetting, dispute resolution, and post-contract compliance, leaving India's strategic ambitions vulnerable to legal and operational pitfalls. Moreover, there is the issue of structural inefficacy and misapplication of India's defence offset policy, especially in negotiated (SVC) contracts. For decades, offsets were treated as a mandatory component across all defence procurements, regardless of whether competition was involved. This resulted in widespread price-padding, minimal enforcement, and negligible foreign direct investment or technology transfer. The offset mechanism became more symbolic than substantive, often serving as a formal requirement rather than an effective economic or industrial catalyst. Given India's dependence on imports and the centrality of technology infusion to the *Atma Nirbhar Bharat* vision, offsets were expected to facilitate indigenous capability building. However, empirical evidence such as the CAG Reports have shown that only a small fraction of offset obligations were fulfilled. The mandatory inclusion of offsets in SVCs, despite geopolitical and market-driven vendor selections, further weakened their credibility and economic logic. In effect, the offset regime has failed to achieve its core purpose of stimulating self-reliant defence production.

Hence, to advance the *Atma Nirbhar Bharat* vision in the defence sector, the creation of a dedicated legislative framework for defence procurement and exports, akin to the Arms Export Control Act in the U.S is strongly recommended. Such a law should clearly govern contract terms, offset obligations, export promotion, private sector partnerships, and technology transfers. Additionally, a legal cell within the Ministry of Defence should be instituted to handle contract drafting, negotiations, and post-award reviews to prevent legal ambiguities. Defence contracts must include explicit clauses on latent defects, risk transfer, warranties, and termination for convenience to protect the government's interests and ensure accountability.

The offset policy should mandate the purchase of Indian defence products or services by foreign vendors and focus on building R&D capacity rather than just financial transactions.

Export processes must be streamlined through manuals, dedicated export wings with full authority, and transparent dissemination of procedures. Offset provisions should also be retained in high-value, multi-vendor competitive tenders while abandoning their blanket application. This will strike the right balance between realism and aspiration in India's quest for self-reliance. Emphasis should also shift toward developing indigenous scientific knowledge (know-why) through long-term R&D investments. These reforms would ensure that indigenisation is not only procedural but also technological, structural, and sustainable.

Another major challenge to Make India Atmanirbhar in the Energy Sector is the Continued Structural Dependence on Fossil Fuels, notably oil and coal, despite its ambitious renewable energy targets and policy reforms.²⁰ While the *Atma Nirbhar Bharat Abhiyan* has catalysed major investments and regulatory changes across the energy and infrastructure sectors, India still imports nearly 90% of its oil and 80% of its industrial coal. This dependence exposes the country to price volatility, geopolitical shocks, and energy insecurity. Further, issues such as financial distress among DISCOMs, inadequate grid infrastructure, and policy barriers to private investment limit the scalability and affordability of clean energy.

In this regard, it is recommended that India should adopt a rights-based and investment-driven approach to India's energy transition, firmly embedded within the framework of *Atma Nirbhar Bharat*. *Firstly*, energy access must be formally recognized through constitutional or statutory means as a fundamental right, triggering positive obligations on the state to ensure universal, affordable, and clean energy. This should be supported by a national policy on energy justice. *Secondly*, the government must restructure the electricity sector, including DISCOM privatization (especially in Union Territories), progressive cross-subsidy reduction, and digitized smart metering to improve efficiency and financial viability. The renewable energy ecosystem should be scaled through public-private partnerships, enhanced viability gap funding, and direct financial support for green hydrogen, electric vehicles, and grid modernization. *Thirdly*, India must also deepen energy convergence through unified regulatory frameworks integrating solar, wind, hydro, EV infrastructure, and smart grids. A long-term clean energy law with provisions for investment security, public health metrics, and just transition planning is essential to realize energy independence by 2047.

²⁰ See *Infra*, Part B, Bishwa Kallyan Dash, *Redefining Energy Rights Through Atma-Nirbhar Bharat Scheme: A Tool Boosting India's March Towards a Green Energy Nation*.

India should also seek to strike the right balance between self-reliance and international legal obligations. While Schemes under the Atma Nirbhar Bharat such as the PLI Scheme aim to support self-reliance and domestic manufacturing, they risk violating core WTO commitments such as the National Treatment principle under GATT,²¹ Article 2 of TRIMS (on prohibition of investment-linked local sourcing mandates)²² and Article 3 of SCM Agreement (dealing with prohibition of subsidies contingent on the use of domestic goods).²³ This legal incompatibility with international law can not only lead to adverse rulings in international forums but also hamper India's global trade relations, deter foreign investment and weaken the legitimacy of *Atma Nirbhar Bharat*. Thus, one of the principal challenge to *Atma Nirbhar Bharat* lies in striking the right balance between self-reliance and international legal obligations, particularly under WTO rules. India's push for self-sufficiency post-COVID while necessary risks being perceived as protectionist if not aligned with non-discriminatory principles. Measures such as Unilateral trade restrictions, unchecked subsidies, or opaque export controls if adopted could invite international disputes and harm India's global reputation.

In this regard, it is recommended that India should institutionalize a dual-track approach i.e. pursuing *Atma Nirbhar Bharat* through domestic capacity building while simultaneously strengthening its global trade posture. This means investing in legal and institutional frameworks that promote competition neutrality, efficient dispute resolution, and export competitiveness, without violating WTO norms. India should move away from inefficient subsidies and instead focus on improving infrastructure, digital systems, and regulatory frameworks that boost productivity. India should mainstream competition impact assessments across all economic legislation to avoid unintended anti-competitive consequences. Public-private partnerships (PPPs), simplified FDI norms, and decriminalization of business laws are critical for attracting investment. The state must also focus on making international trade law literacy widespread – among businesses, policymakers, and voters – so that reforms are not derailed by misinformation or populist pushback. By

²¹ General Agreement on Tariffs and Trade 1994, art. III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994) [hereinafter GATT 1994];

²² Agreement on Trade-Related Investment Measures, art. 2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 186 [hereinafter TRIMS Agreement].

²³ Agreement on Subsidies and Countervailing Measures, art. 3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14. [hereinafter SCM Agreement].

fostering a robust, legally sound, and competitive domestic ecosystem, India can not only achieve self-reliance but also emerge as a credible proponent of fair global trade.

Furthermore, to align the Atma Nirbhar Bharat vision with India's international trade obligations while still promoting domestic industry, PLI Schemes should be restructured to remove mandatory or quantitative domestic content conditions. The revised model should instead rely on performance-based criteria such as incremental sales, R&D expenditure, or employment generation. Local content may be recognized as a preferential but non-mandatory scoring criterion to rank beneficiaries – avoiding violation of WTO rules. For example, India can transition to a tiered incentive structure where entities using higher local content are prioritized without making it a threshold eligibility requirement. Further, a dedicated WTO Compliance Review Committee may be established under the Department for Promotion of Industry and Internal Trade (DPIIT) to vet future industrial policies for legal risks. Lastly, India must also proactively participate in WTO reform dialogues to advocate for developing countries' flexibility in designing industrial policy in line with post-pandemic resilience needs.

7.3 ROBUST STANDARDIZATION FOR ELEVATING QUALITY AND COMPETITIVENESS

One of the paramount challenge to Atma Nirbhar Bharat is the lack of institutional and political coherence in implementing cooperative federalism which undermines India's ability to foster self-reliance effectively.²⁴ Despite the constitutional and economic rationale for shared governance, regional disparities, bureaucratic bottlenecks, and political divergence between the Centre and States frequently impede collaboration. States with limited fiscal or infrastructural capacity often find themselves unable to contribute meaningfully to national schemes without targeted central assistance. Moreover, overlapping regulations, weak inter-state coordination, and the absence of a formal mechanism for joint resource mobilisation contribute to policy fragmentation. These inefficiencies hinder uniform implementation of core *Atmanirbhar Bharat* goals such as agricultural transformation, MSME support, and public health infrastructure. Without addressing these coordination failures, India's ambitions for decentralised, locally anchored self-reliance risk becoming unfulfilled.

Hence it is recommended that the goal of *Atma Nirbhar Bharat* should be institutionalised through a structured, formal model of cooperative federalism with legally backed mechanisms

²⁴ See *Infra*, Part B, Vijay Tyagi & Gaurav Kumar, *Role of Cooperative Federalism in India: A Catalyst for Achieving Atmanirbhar Bharat*.

for Centre-State coordination in policy design, resource allocation, and implementation monitoring. This includes setting up an empowered National Council for Self-Reliance, comprising central and state representatives, to facilitate joint policy planning, resolve inter-state disputes, and evaluate implementation. Further, special fiscal instruments and performance-based grants should be directed to states with lower capacity to ensure balanced regional development. Legislative reforms should also focus on simplifying inter-state trade, harmonising taxation regimes, and streamlining labour and industrial policies to reduce regulatory friction. Additionally, decentralised planning should be promoted by empowering state-level institutions to innovate sectoral strategies, such as in agriculture, healthcare, and education, based on local strengths. Infrastructure investment, skilling programmes, and public service delivery must be co-designed by the Centre and States, ensuring both vertical and horizontal accountability. These steps would ensure that *Atmanirbhar Bharat* is not just a central ambition but a truly cooperative national mission.

Lastly, one of the major challenge to the *Atma Nirbhar Bharat* vision emanates from the fragmented and reactive nature of India's standardization ecosystem, which often lags behind global trends and technological innovations. Although the INSS²⁵ and SNAP²⁶ provide a framework for standardization, there are major gaps in institutional capacity, stakeholder participation, international alignment, and sectoral prioritization. Many Indian industries still operate without clear quality benchmarks, impeding export potential and diminishing competitiveness. Regulatory overlaps, inconsistent enforcement mechanisms, and the slow pace of standard development exacerbate these issues. Moreover, India's influence in international standard-setting forums remains limited, restricting its ability to shape global norms in areas where it has domestic strengths such as pharmaceuticals, renewable energy, and traditional medicine. Furthermore, capacity-building challenges and the lack of integrated conformity assessment systems further weaken the implementation of standards. These institutional and infrastructural weaknesses hamper the scalability and global acceptability of Indian goods and services, undermining the broader goals of Make in India and *Atma Nirbhar Bharat*.

²⁵ DEPARTMENT OF COMMERCE, MINISTRY OF COMMERCE & INDUSTRY, INDIAN NATIONAL STRATEGY FOR STANDARDIZATION (INSS): EVOLVING A QUALITY ECOSYSTEM (2018), https://commerce.gov.in/wpcontent/uploads/2020/02/MOC_636655449469105249_INSS_Booklet_2018.pdf [hereinafter INSS, 2018].

²⁶ *Standards National Action Plan*, BUREAU OF INDIAN STANDARDS, <https://www.bis.gov.in/standards-nationalaction-plan/> (last visited May 19, 2025).

To address these challenges, India must adopt a forward-looking and institutionally integrated strategy for standardization. First, the Bureau of Indian Standards (BIS) should be empowered through amendments to the BIS Act, 2016 to function as a coordinating authority for all standard development organizations (SDOs) across ministries and sectors, with a clear mandate for harmonization. The government must also establish a National Standardization Council, comprising stakeholders from industry, academia, and regulators, to identify priority areas, monitor implementation of SNAP, and align national standards with ISO/IEC developments. A legal mandate for standardization cells in key ministries and industry associations should be provided to further institutionalize sector-specific engagement. Moreover, digitization should be scaled through XML-based publishing of standards, public commenting portals, and e-consultation platforms. BIS must also develop sector-specific incentives under the PLI and SPECS schemes to reward compliance with Indian and international standards. Additionally, India should expand its international footprint by proactively proposing new work items to ISO/IEC in sectors where it has indigenous strengths. Capacity-building should be prioritized through targeted training for technical committees, enhanced R&D linkages, and collaboration with academic institutions. Finally, public procurement policy must mandate adherence to Indian standards and promote innovation-linked procurement, especially in defence and infrastructure sectors. By making standardization central to industrial policy, India can build a globally competitive quality infrastructure that fosters trust, efficiency, and market expansion.

PART B

FOSTERING INDIGENISATION VIS-À-VIS DEFENCE ACQUISITION POLICY OF INDIA: A LEGAL PERSPECTIVE

- Prof. (Dr.) Ravindra Kumar Singh*

Abstract

Defence procurement – as a subject – has always been central to the national security. Until a few years ago, India was largely dependent upon imports for its defence sector. If a country aspires and has sufficient potentials to become a world leader (Vishwa Guru), then it has to become self-reliant (Atmanirbhar) in the defence sector (i.e. in research and development, creation of intellectual capital, technological advancements, manufacturing, indigenisation, intensification of defence production facilities, having efficient and definite acquisition procedure, and so on). In the recent years, India has taken some landmark policy initiatives, for instance, defence offsets; enhancing FDI through automatic route from 49% to 74% in defence in order to make “Manufacture in India” a lucrative option for foreign equipment manufacturers; banning imports of notified list of weapons and platforms (positive indigenisation list) – to name a few, for ensuring long-standing security as also fostering domestic industry engaged in design, development and manufacturing of weapons, defence equipment, systems and platforms. With the aim of providing constant stimulus towards self-reliance (Atmanirbharta) in the defence sector, recently the “Fifth Positive Indigenisation List” was released by the Defence Minister during Naval Innovation and Indigenisation International Seminar “SWAVLAMBAn-2023”. All the items included in the Positive Indigenisation Lists are to be procured from indigenous sources consistent with the provisions of the Defence Acquisition Procedure (DAP) 2020. While upholding the utmost standards of transparency, integrity and public accountability, acquisition procedures for defence equipment under the DAP aim at self-reliance in which innovation and indigenisation are facilitated through various processes. The first section of this paper introduces the theme of this paper. The second section provides an overview of the law, policy and practice relating to defence acquisition. The third section highlights the strategic policies adopted by India towards becoming self-reliant in the defence sector. The fourth section suggests the ways by which the Atmanirbhar Bharat vision of India vis-à-vis acquisition/production of weapons, defence equipment, systems and platforms can be further strengthened. Finally, the last section concludes the discussion.

Key Words: Atmanirbhar Bharat (self-reliant India), defence acquisition, Defence Acquisition Procedure 2020 (DAP 2020), defence procurement, indigenisation and make in India.

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I. INTRODUCTION

In addition to other crucial sectors, defence is the sector in which a country has to become self-reliant if it aspires to enjoy a prominent place in the international arena. Over dependence on other advanced countries is never a gainful strategy in the long-term. A nice balance between international cooperation and self-reliance is perhaps the best way to go ahead. Of late, India has taken a few breakthrough policy initiatives for ensuring long-term security as also fostering domestic industry engaged in design, development and manufacturing of weapons, defence equipment, systems and platforms. The ongoing Russia-Ukraine war has also made the world realise the importance of being self-reliant in defence and security, as also the significance of technology and modernisation of the defence forces and resources for the military. It is also to be recollected that the US stopped supplying arms to India in 1965 when India had a war with Pakistan.

II. LAW, POLICY AND PRACTICE RELATING TO DEFENCE ACQUISITION

This *section* of the paper provides an overview of the law, policy and practice relating to defence acquisition. Public procurement means acquisition of goods, works, services or a combination thereof, using public money. Since public money is utilised for public procurement, therefore, such procurement must observe the principles of integrity, probity, transparency and non-discrimination. As on today, there is no specific statute enacted by Parliament of India on public procurement. Although a few states – such as, Karnataka,¹ Punjab,² Rajasthan,³ Tamil Nadu⁴ – have enacted their own state specific law on procurement. In the absence of any specific comprehensive central legislation, the General Financial Rules are observed by the Government of India for public procurement.⁵ The government is evidently bound to follow the procurement procedures in conformity with the fundamental principles provided for in the

¹ The Karnataka Transparency in Public Procurements Act, 1999.

² The Punjab Transparency in Public Procurement Act, 2019.

³ The Rajasthan Transparency in Public Procurement Act, 2012.

⁴ The Tamil Nadu Transparency in Tenders Act, 1998.

⁵ In addition, there are some manuals which are to be observed in accordance with the subject matter of the procurement, such as, the Manual for Procurement of Goods, 2017 (updated upto June 2022); the Manual for Procurement of Works, 2019 (updated upto June 2022); and the Manual for Procurement of Consultancy and other Services, 2017 (updated upto June 2022). These manuals have been issued by the Department of Expenditure, Ministry of Finance, Government of India.

Constitution of India and other relevant laws.⁶ Additionally, the government has to observe the Delegation of Financial Powers Rules, 1978, and guidelines and circulars issued by the Central Vigilance Commission (CVC). The General Financial Rules (GFR) is a compilation of rules and orders, in the nature of executive instructions, of the Government of India to be followed by all Ministries/Departments and Organisations under the Government and specified bodies while dealing with matters involving public finances.⁷

Central Government ministries may also come up with their own procurement guidelines based on the overarching principles of the GFR. The Defence Procurement Procedure, 2002 (DPP-2002) was the first comprehensive public document providing for defence procurements, and the same has been periodically revised with enhanced scope; the Defence Procurement Procedure, 2016 (DPP-2016) specifically focussed on “Make in India”, and provided larger stimulus to the “Micro, Small and Medium Enterprises” (MSMEs), “Strategic Partnership Model” and “Swift Decision Making”.⁸ The Defence Acquisition Procedure (DAP), formerly known as the Defence Procurement Procedure (DPP), was brought out in the year 2020 to ensure timely acquisition of military equipment, systems and platforms as required by the Armed Forces in terms of performance, capabilities and quality standards, through optimum utilisation of allocated budgetary resources.⁹ On top of upholding the utmost standards of transparency, integrity and public accountability, acquisition procedures for defence equipment under the DAP-2020 aim at self-reliance in which innovation and indigenisation are facilitated through various processes. Defence procurements are different from other kinds of commercial procurements, for these procurements entangle enormous price and are made for safeguarding the national security. Further, they have a long gestation period, and that they take in confidentiality in certain aspects. Further, unlike standard

⁶ See *e.g.*, the Indian Contract Act, 1872; the Sale of Goods Act, 1930; the Specific Relief Act, 1963; the Prevention of Corruption Act, 1988.

⁷ The GFR, issued for the first time in 1947, was subsequently revised in 1963, 2005, and 2017. The latest version of the GFR is the GFR 2017, which has evolved as a result of wide consultations with Central Government Ministries and Departments, some State Governments and other stakeholders. It aims at promoting simplicity and transparency in the financial system and procedures, so as to enable an improved, efficient and effective framework of fiscal management for the Government while providing the necessary flexibility to facilitate timely delivery of services. The GFR is applicable to autonomous bodies as well, except to the extent the byelaws of an autonomous body provides for separate Financial Rules which have been approved by the Government. See General Financial Rules, 2017.

⁸ See Highlights of the New Defence Procurement Procedure (DPP) 2016, No. 37/RN/Ref./July/2016, https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/The%20Defence%20Procurement%20Procedure.pdf.

⁹ The Defence Acquisition Procedure, 2020 (DAP 2020), at 1.

commercial procurements, there are not many suppliers or providers of defence equipment or services. As defence procurements are also public procurements, these procurements are to inevitably follow the fundamental principles of constitutional law: principles of transparency, public accountability, fair play in action, probity, integrity, etc. The DAP embraces all these principles through its various provisions. The DAP covers all capital acquisitions other than works and land undertaken by the Ministry of Defence (MoD) and Service Headquarters (SHQ) both from indigenous sources and ex-import, except for medical equipment.¹⁰ “Capital Acquisitions” include the acquisition of goods and services booked under the Capital Budget Head and follow the procedure as stipulated in the DAP; and where the SHQ needs to procure goods and services (from the Capital Budget), but in accordance with any other procedure, then specific approval of the Defence Acquisition Council (DAC) in such cases has to be sought.¹¹ Above all, one of the prominent policies governing the defence acquisition is moving in the direction of becoming self-reliant in the defence sector. In India, the Ordnance Factories,¹² Defence Public Sector Undertakings¹³ and the Defence Research and Development Organisation¹⁴ – are the key bodies in the area of defence production. The different bodies associated with defence acquisition are¹⁵: Defence Acquisitions Council (DAC), Defence Procurement Board (DPB), Defence Production Board, Defence Research and Development Board, and Acquisition Wing. Headed by the Raksha Mantri (Defence Minister), DAC is the central decision-making body on defence acquisitions, and based on the deliberations at the DAC, the decision of Defence Minister flows down from implementation to Defence Procurement Board, Defence Production Board and Defence R&D Board.¹⁶ The delegation of

¹⁰ *Id.*

¹¹ *Id.*

¹² The Ordnance Factories (41 Ordnance Factories) form an integrated base for indigenous production of defence hardware and equipment, with the primary objective of self-reliance in equipping the armed forces with state-of-the-art battlefield equipment. See *The Indian Ordnance Factories*, DIRECTORATE OF ORDINANCE, <https://ddpdoo.gov.in/> (last visited May 20, 2024).

¹³ There are sixteen Central Public Sector Undertakings under the administrative control of the Department of Defence Production, Ministry of Defence. See *Defence Public Sector Undertakings*, DEPARTMENT OF DEFENCE PRODUCTION, <https://www.ddpmod.gov.in/defence-public-sector-undertakings> (last visited May 20, 2024).

¹⁴ DRDO is the R&D wing of the Ministry of Defence (Government of India), “with a vision to empower India with cutting-edge defence technologies and a mission to achieve self-reliance in critical defence technologies and systems, while equipping ... armed forces with state-of-the-art weapon systems and equipment in accordance with requirements laid down by the three Services”. See *About DRDO*, DEFENCE RESEARCH & DEVELOPMENT ORGANISATION, <https://www.drdo.gov.in/about-drdo> (last visited May 20, 2024).

¹⁵ See Ministry of Defence, *Defence Procurement Organisation*, https://mod.gov.in/dod/sites/default/files/DEFENCE_PROCUREMENT_ORGANISATION.pdf (last visited May 20, 2024).

¹⁶ *Id.*

financial powers to sanction Capital Acquisition proposals covered in the Services Capital Annual Acquisition Plans is as follows¹⁷:

- (a) Upto Rs 300 crore: CISC, VCOAS, VCNS, DCAS and DGICG
- (b) Above Rs 300 crore and upto Rs 500 crore: Defence Secretary
- (c) Above Rs 500 crore and upto Rs 2000 crore: Raksha Mantri (Defence Minister)
- (d) Above Rs 2000 crore and upto Rs 3000 crore: Finance Minister
- (e) Beyond Rs 3000 crore: Cabinet Committee on Security (CCS)

III. POLICIES TOWARDS BECOMING SELF-RELIANT IN THE DEFENCE SECTOR

This *section* highlights the strategic policies adopted by India towards becoming self-reliant in the defence sector. The DAP 2020 reflects the Government's vision of the *Atmanirbhar Bharat* by fostering Indian domestic industry through "Make in India" initiative aiming at making India a global manufacturing hub.¹⁸ The following are some of the innovative policy initiatives taken by the Government of India (along with a few important provisions in the DAP 2020) towards becoming self-reliant in the defence sector:

A. Ease of Doing Business

Ease of doing business means how facilitative the business regulating environment (boosting widespread growth) of a country is. The "ease of doing business ranking" (which is based on the ease of doing business scores) makes a comparison of the economies with one another; whereas, the "ease of doing business scores" is measuring economies with respect to regulatory best practice, showing the proximity to the best regulatory performance on predetermined indicators.¹⁹ The DAP 2020 has effectuated "Ease of Doing Business" with emphasis on "Simplification, Delegation, Reduced Timelines and making the process as *Industry friendly* as possible".²⁰

¹⁷ The Cabinet Committee on Security (CCS) has approved the delegation of financial powers *vide* MoD ID No. F.No.470/Dir (Acq)/07 dated Sept. 12, 2007, and last updated *vide* MoD ID 20(11)/2015-D(GS-IV) dated Feb. 19, 2019; *See* the Defence Acquisition Procedure (DAP) 2020, 56-57.

¹⁸ 2 MINISTRY OF FINANCE, ECONOMIC SURVEY 2020-21, at 87.

¹⁹ WORLD BANK, DOING BUSINESS 2020: COMPARING BUSINESS REGULATION IN 190 ECONOMIES 77 (2020).

²⁰ The Defence Acquisition Procedure 2020 (DAP 2020), Preamble.

B. Enhancing FDI through Automatic Route from 49% To 74% in the Defence Sector

The Government has relaxed and permitted FDI under automatic route up to 74% and up to 100% through Government route²¹ wherever it is likely to result in access to modern technology or for other reasons to be recorded, and since the revision of the FDI policy, the total FDI inflow reported till May 2022 is INR 494 crore (approximately).²² This sectorial enhancement is aimed at making “Manufacture in India” a lucrative option for foreign equipment manufacturers focussing on “Ease of Doing Business”, so that India emerges as a global manufacturing hub in the defence sector. Some of the policy reforms introduced by the MoD in this regard are²³: (a) assigning higher multipliers in Offset Policy to attract investment and Transfer of Technology for Defence manufacturing; (b) two Defence Corridors being established (one in Tamil Nadu and another in Uttar Pradesh), which are to provide Plug & Play support to the industries including Foreign Original Equipment Manufacturers (FOEMs) in the Corridor. The DAP 2020 has satisfactorily incorporated provisions to encourage FDI to develop manufacturing hubs both for import substitution and exports while fostering interests of the Indian domestic industry; for instance, the incorporation of a new category “Buy (Global – Manufacture in India)” would encourage foreign OEMs to setup “manufacturing/maintenance entities” through their subsidiary in India together with safeguarding the local industry of India.²⁴

C. Defence Offsets

The objective of the Defence Offset Policy, as outlined in the DAP, “is to leverage the capital acquisitions and technology to develop Indian defence industry by (i) Fostering development of internationally competitive enterprises and (ii) Augmenting capacity for Research, Design and Development related to defence products”.²⁵ With the revision in the offset guidelines, preference is to be given to manufacture of complete defence products over components, and

²¹ *Vide* Press Note No. 4 (2020 Series), dated Sept. 17, 2020.

²² See Ministry of Defence, FDI in Defence Sector, PRESS INFORMATION BUREAU (July 25, 2022), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1844610>.

²³ *Id.*

²⁴ ECONOMIC SURVEY 2020-21, *supra* note 18, at 87-88.

²⁵ The Defence Acquisition Procedure 2020 (DAP 2020), at 108.

in order to give incentives in discharge of offset obligations, several multipliers have been added.²⁶ The DAP provides for the following regarding the Offset Clauses²⁷:

- (a) Offsets Clauses are applicable in Buy (Global) categories of procurement with the estimated AoN cost of the Buy portion to be Rs 2000 crore or more.
- (b) The requisite value of the offset obligations is 30% of the estimated cost of the acquisition in “Buy (Global)” category acquisitions.
- (c) Where an Indian Vendor participates in the Buy (Global) category of procurement, then it has to meet minimum 30% Indigenous Content (IC); and if the IC in the product is less than 30 percent, the Indian firm or the joint venture (where an Indian company enters into a joint venture with a foreign partner for the purpose of bidding for the proposal) has to ensure that offset obligations are fulfilled to the tune of 30% IC stipulations.
- (d) The offset condition becomes a part of the RFP and subsequently of the main contract. A separate offset contract is to be executed concurrently with the main contract.
- (e) No offsets are applicable in all *ab-initio* “Single Vendor” cases, including procurements based on IGA/FMS.
- (f) Offset obligations are also not applicable in (i) “procurements under the Fast Track Procedure” and (ii) “procurements under the ‘Option Clause’ where an offset obligation was not stipulated in the original contract”.
- (g) It is the overall liability of the vendor of the main procurement contract to discharge the offset obligations.
- (h) The vendor of the main procurement contract (Tier-I sub-vendor, on behalf of the main vendor) has the freedom to select the Indian Offset partner (IOP) for discharging the offset obligation.
- (i) The IOP must not have been barred by the Ministry of Defence (MoD) from doing business.

²⁶ ECONOMIC SURVEY 2020-21, *supra* note 18, at 88.

²⁷ The Defence Acquisition Procedure 2020 (DAP 2020), at 108-110.

- (j) Indian Offset partner (IOP) includes Indian enterprises, institutions and establishments engaged in the manufacture of eligible products and/or provision of eligible services, including DRDO.

D. Priority of Capital Acquisition Schemes Categorisations towards Indigenisation

Capital Acquisition schemes, under the DAP, are broadly classified as²⁸:

- (i) Buy: The “Buy” scheme procurements are further categorised as
- (a) Buy (Indian - IDDM): It is “the acquisition of products from an Indian vendor that have been indigenously designed, developed and manufactured with a minimum of 50% Indigenous Content (IC)” on the basis of the Base Contract Price (that is, Total Contract Price minus taxes and duties)
 - (b) Buy (Indian): It is “the acquisition of products from an Indian vendor which may not have been designed and developed indigenously, having 60% IC on cost basis of the base contract price”.
 - (c) Buy (Global): It is the “outright purchase of equipment from foreign or Indian vendors... An Indian Vendor participating in this category would be required to meet minimum 30% IC, failing which such vendor would be required to discharge offsets as applicable in the case”.
- (ii) Buy and Make: The “Buy and Make” scheme procurements are further categorised as:
- (a) Buy and Make (Indian): This “category refers to an initial acquisition of equipment in Fully Formed (FF) state in quantities as considered necessary, from Indian vendor(s) engaged in a tie-up with a foreign Original Equipment Manufacturer (OEM), followed by indigenous production in a phased manner involving Transfer of Technology (ToT) of critical technologies as per specified range, depth and scope from the foreign OEM. Under this category of acquisition, a minimum of 50% IC is required on cost basis of the Make portion of the contract less taxes and duties”.

²⁸ *Id.* at 1-5.

(b) Buy (Global - Manufacture in India): It is “an outright purchase of equipment from foreign vendors, in quantities as considered necessary, followed by indigenous manufacture of the entire/part of the equipment and spares/assemblies/sub-assemblies/Maintenance along with Repair and Overhaul (MRO) facility ... for the equipment, through its subsidiary in India/through a Joint Venture/through an Indian Production Agency (PA) (with ToT of critical technologies as per specified range, depth and scope to the Indian PA), meeting a minimum of 50% IC on cost basis of the Base Contract Price”.

- (iii) Leasing
- (iv) Make
- (v) Design and Development (D&D)
- (vi) Strategic Partnership Model (SPM)

In comparison to the DPP-2016, the augmented IC in various categories of acquisition under the DAP 2020 is also a positive stride towards indigenisation. Except “Leasing”, “Make”, “D&D” and “SPM”, the afore-stated categories have been prioritised based on their relative importance towards indigenisation. In decreasing order of priority, the priority of categories is as under²⁹:

- (i) Buy (Indian-Indigenously Designed Developed and Manufactured), i.e. Buy (Indian-IDDM)
- (ii) Buy (Indian)
- (iii) Buy and Make (Indian)
- (iv) Buy (Global-Manufacture in India)
- (v) Buy (Global).

According to the utmost priority to procurement under Buy (Indian – IDDM) category affirms the perspective of the Government to espouse indigenisation. The DAP permits vendors who are eligible for participating in a higher category to participate in the lower category, on

²⁹ *Id.* at 2.

condition that they meet the requirements for the same. The DAP also provides that the “Make”, “D&D” and “SPM” categorisations pursue developing long-term indigenous defence capabilities. “Buy (Global-Manufacture in India)” is an absolute purchase of equipment from foreign vendors, followed by indigenous manufacture of the entire/part of the equipment and spares/assemblies/sub-assemblies/maintenance of the equipment, through its subsidiary in India or through a Joint Venture or through an Indian Production Agency.³⁰ This category would also support indigenisation.

E. Banning Imports of Notified List of Weapons and Platforms (Positive Indigenisation List)

The Government of India has taken a decision “that any import of defence equipment/sourcing from Foreign industry, irrespective of value and type of acquisition should only be an exception requiring specific approval of DAC/Raksha Mantri”.³¹ With the aim of promoting domestic and indigenous industry, as also to be in sync with the “Atmanirbhar Bharat Abhiyan”, the DAP provides for notification of weapons/platforms banned for import. The list for the same would be updated from time to time on the MoD website. One of the crucial elements of the “Aatmanirbhar Bharat Abhiyan” launched by the Government of India is to transform the defence sector so as to realise self-reliance, as also to increase the export of defence equipment with vigorous partaking of public and private sectors; and one of the innovative ingenuities towards this vision of indigenisation is the announcement of Positive Indigenisation Lists.³² Recently, during the Naval Innovation and Indigenisation International Seminar “SWAVLAMBAN – 2023”, the Defence Minister of India promulgated the “Fifth Positive Indigenisation List”. All the items included in the Positive Indigenisation Lists are to be procured from indigenous sources consistent with the provisions of the DAP 2020. These Lists reflect the increasing capacities and capabilities of the domestic defence industry of India and will surely stimulate the potential of domestic research and development by attracting fresh

³⁰ *Id.* at 3.

³¹ See Press Information Bureau (Defence Wing), Government of India, *Offset Obligations in Defence Contracts*, <https://www.mod.gov.in/sites/default/files/PRESS%20RELEASE%20%2834%29.pdf> (last visited May 20, 2024).

³² The Ministry of Defence (MoD) publicised the First Indigenisation List on Aug. 21, 2020, the Second Indigenisation List on May 31, 2021 and the Third Indigenisation List on Apr. 07, 2022. See Press Information Bureau (Defence Wing), Government of India, *‘Aatmanirbharta’ in Defence: Prime Minister Shri Narendra Modi Announces Fourth Positive Indigenisation List of 101 Items During DefExpo 2022*, <https://mod.gov.in/sites/default/files/PM-announces-fourth-positive-indigenisation-list.pdf> (last visited May 20, 2024).

investment into technology and manufacturing capabilities, as also futuristic needs of the Armed Forces.³³ Weapons/platforms banned for import are to be procured under the following categories of acquisition: Buy (Indian - IDDM); Buy (Indian); Buy and Make (Indian), only if Buy quantities are zero; and Buy (Global - Manufacture in India), only if Buy quantities are zero.³⁴

This initiative of the Government will help India achieve self-sufficiency in the defence sector by advancing investment into technology and manufacturing capabilities of the domestic industry, and in keeping with preliminary estimates, more than Rs 1,75,000 crore worth orders are likely to be placed on Indian Industry in the next 5-10 years.³⁵ On the 76th Independence Day, addressing the nation from the ramparts of Red Fort, Prime Minister Narendra Modi said, “The resolution of our country is not small when the armed forces make a list and decide not to import 300 defence products. In this resolution, I can see the seed of a bright future of ‘Atmanirbhar Bharat’ that will convert this dream into a banyan tree.”³⁶

F. Promotion of the Use of Indigenous Military Materials

The DAP 2020 dictates that, during the Request for Information (RFI) stage, with a view to determine the viability of using and rewarding the use of indigenous military materials already being manufactured in India (known to be available in India), “SHQ may examine acquisition projects for platforms and other equipment/systems other than ‘Buy Global’ projects, with substantial material component”.³⁷ Also, in case of “Buy and Make (Indian)” category, where the material is not manufactured in India, in such cases, Transfer of Technology (ToT) for manufacture of materials could be sought.³⁸

³³ See Press Information Bureau (Defence Wing), Government of India, ‘Aatmanirbharta’ in Defence: Prime Minister Shri Narendra Modi Announces Fourth Positive Indigenisation List of 101 Items During DefExpo 2022, <https://mod.gov.in/sites/default/files/PM-announces-fourth-positive-indigenisation-list.pdf> (last visited May 20, 2024).

³⁴ The Defence Acquisition Procedure 2020 (DAP 2020), at 2.

³⁵ See Ministry of Defence, 4th Positive Indigenisation List, https://mod.gov.in/sites/default/files/4th-PIL_comp.pdf (last visited May 20, 2024).

³⁶ See Prime Minister’s Office, *English Rendering of Prime Minister’s Address from the Ramparts of Red Fort on 76th Independence Day*, PRESS INFORMATION BUREAU (Aug. 15, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1851994>.

³⁷ The Defence Acquisition Procedure 2020 (DAP 2020), at 23.

³⁸ *Id.* at 9.

G. Deletion of the Requirement of Integrity Pact Bank Guarantee (IPBG) in order to reduce Financial Burden on the Domestic Industry

In accordance with the advice of the Ministry of Finance and to lessen financial burden on the Indian defence industry, together with maintaining financial safeguards, the requirement of Integrity Pact Bank Guarantee (IPBG) has been dispensed with by effecting amendment in the DAP 2020; and in its place, Earnest Money Deposit (EMD) would be taken as a bid security for all acquisition cases with Acceptance of Necessity (AoN) cost more than Rs 100 crore.³⁹ EMD would act as security for Pre Contract Integrity Pact (PCIP) till the signing of contract. After the signing of contract, Integrity Pact will be covered through the Performance Cum Warranty Bank Guarantee (PWBG) till the completion of contract.⁴⁰ This amendment to the DAP 2020 further promotes “Make in India” and “Aatmanirbharta” in the defence sector, and also facilitates ease of doing business.

H. Splitting Source of Supply

The recent amendment to the DAP 2020 provides the following⁴¹: “In procurement cases, based on viable quantity/technological feasibility and sustainability factors, the SoC⁴² should clearly bring out the requirement of splitting of quantities amongst vendors. In such cases, specific approval will be taken in AoN for ratio of splitting the supply between (first lowest bidder) L1 and (second lowest bidder) L2 vendors, provided L2 vendor accepts the price and terms and conditions quoted by/negotiated with the L1 vendor, and the same will be pre-disclosed in the RFP. The other technically qualified bidders who have not been awarded contract will be issued a certificate by SHQ indicating that the product has been successfully trial evaluated, to facilitate vendors to explore other markets.” Wherever feasible, the splitting up of the total order quantities in acquisition cases between shortlisted vendors would encourage wider participation and broad base indigenous defence manufacturing sector in the country.⁴³

³⁹ See Ministry of Defence, *Defence Acquisition Procedure 2020 Amended to Promote ‘Make in India’ & ‘Aatmanirbharta’ in Defence*, PRESS INFORMATION BUREAU (Apr. 25, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1819937>.

⁴⁰ The Defence Acquisition Procedure 2020 (DAP 2020).

⁴¹ *Id.* at 31; Amendment issued *vide* MoD ID No 1(18)/D(Acq)/21 dated April 13, 2022.

⁴² SoC stands for “Statement of Case”.

⁴³ See Ministry of Defence, *Defence Acquisition Procedure 2020 Amended to Promote ‘Make in India’ & ‘Aatmanirbharta’ in Defence*, PRESS INFORMATION BUREAU (Apr. 25, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1819937>.

I. Co-development and Co-production

The DAP envisages co-development (of a product/equipment offering transformative/unique/niche technology, or a futuristic equipment/platform with a foreign country; or where co-development is likely to benefit ongoing indigenous projects in India) under an IGA/specific Project Agreement.⁴⁴ Similarly, the DAP also envisages co-production (of equipment/assemblies/sub-assemblies/spares for defence usage in India) with a foreign entity, which would lead to lessening the Life Cycle Cost and also help build a robust defence ecosystem in India.⁴⁵

J. Buyer's Right to Optimisation of Life Cycle Support and System Enhancements

Clause 31A⁴⁶ of the "Standard Contract Document" of the DAP 2020 provides for the reservation of rights by the MoD (Government of India) to explore other global sources and design and manufacturing ecosystem prevailing in India and to optimise the life cycle costs and improve the performance of the platform/equipment/system provisioned under the contract. This provision would help develop the Indian industries.

K. Simplification and Shortening of the Acquisition Process under iDEX

The recent amendment to the DAP 2020 has simplified the acquisition process under iDEX (Innovations for Defence Excellence) procedure with the intention of facilitating the budding startup talent pool of India to contribute towards self-sufficiency and indigenisation, and as a result of this simplification, time taken from grant of Acceptance of Necessity (AoN) to the signing of contract would be reduced to 22 weeks.⁴⁷

L. Atmanirbharta (Self-Reliance) in Defence Production

With the aim of realising *Atmanirbharta* by making India a global hub in defence manufacturing, "the Ordnance Factories (OFs), Defence Public Sector Undertakings (DPSUs) and the private industry ecosystem have enhanced their capabilities and widened the product

⁴⁴ The Defence Acquisition Procedure 2020 (DAP 2020), at 60.

⁴⁵ *Id.*

⁴⁶ This clause is not applicable for funded contracts for the design and development either directly or through DRDO or for the relevant part if design and development of any part of the contract deliverables is funded. See Standard Contract Document, cl. 31A, in DAP 2020.

⁴⁷ See Ministry of Defence, *Defence Acquisition Procedure 2020 Amended to Promote 'Make in India' & 'Aatmanirbharta' in Defence*, PRESS INFORMATION BUREAU (Apr. 25, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1819937>; Amendment issued *vide* MoD ID No 1(18)/D(Acq)/21 dated April 13, 2022.

range”.⁴⁸ In addition to developing a large number of major products through R&D initiatives and through ToT, “the DPSUs and OFs are also striving to increase the indigenous content in the equipment’s and products manufactured by them”.⁴⁹ With the promotion of Atmanirbharta, as of December 2023, about INR 2.20 lakh crore (98% of total AoN amount) was proposed to be sourced from domestic industries, and the procurement of Light Combat Helicopters & Light Combat Aircraft Mk 1A from HAL got a nod. Fifth Positive Indigenisation List (PIL) of Department of Military Affairs (DMA) comprising 98 items was released by Raksha Mantri Shri Rajnath Singh during the plenary session of ‘Swavlamban 2.0’. The list includes Highly complex systems, sensors, weapons and ammunition have been included in the list. All these have been proposed to be procured from indigenous sources as per provisions given in Defence Acquisition Procedure 2020 in staggered timeline.⁵⁰

IV. FURTHERING ATMANIRBHAR BHARAT VISION VIS-À-VIS DEFENCE PROCUREMENT/ PRODUCTION

This *section* suggests the ways by which the *Atmanirbhar Bharat* vision of India vis-à-vis acquisition/production of weapons, defence equipment, systems and platforms can be further strengthened. The Government of India launched the *Atmanirbhar Bharat Abhiyan* to bring about policy reforms in the defence sector in the direction of augmenting self-reliance in defence production, indigenisation of spares, redecorating trial and testing procedures for time-bound procurement.⁵¹ Besides simplifying the defence acquisition procedure, the aim of the DAP 2020 is also to expurgate acceptable timeframes for various activities and streamlining healthy contrivances to monitor for probity at all the stages of acquisition process.⁵² Furthering reforms in the defence acquisition in order to support contract management for speedier decision making and time-bound defence acquisition process, the DAP mandates establishment of a Project Management Unit (PMU), which is to rationalise acquisition procedure.⁵³ The DAP also prescribes for the “monitoring mechanism” so as to conform to

⁴⁸ ECONOMIC SURVEY 2020–21, *supra* note 18, at 88.

⁴⁹ *Id.*

⁵⁰ See Ministry of Defence, *Ministry of Defence – Year End Review 2023*, PRESS INFORMATION BUREAU (Dec. 22, 2023), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1989502>.

⁵¹ The Defence Acquisition Procedure 2020 (DAP 2020).

⁵² *Id.* Preamble.

⁵³ *Id.* at 10.

timelines for various stages of the entire procurement schedule, and also that periodic feedbacks/updates of all schemes are conducted at SHQ/MoD levels.

A. Transparency, Fair Play, Accountability and Competition

One of the most significant aspects of any kind of acquisition process is displaying and practising transparency, fair play in action and increasing competition. Owing to the uniqueness of the defence production and manufacturing, there are just a few players in this sector; and this aspect makes the sector less competitive, in addition to giving the scope for subjectivity. Barring the confidential statistics, there must be dissemination of relevant information and statistics which will go a long way in infusing transparency and fair play. Additionally, it would also help encourage private players to participate in the defence sector. Another important aspect is accountability, for there is a need for a much better and unified coordination among all the offices involved in the defence acquisition. Such coordination will assist in ensuring accountability, which will, in turn, result in timely fulfilment of contractual obligations because it is not uncommon that generally defence contracts take much longer timeframe.

B. Move from “Know-how” to “Know-why”

There is a need now to move from “know-how” (procedure and technology) to “know-why” (science and theories), so that the country can develop its own systems, weapons and platforms based on its own scientific and technological advancements. A country can never really become self-reliant in the defence sector without “know-why”. Further, the “know-why” aspect is crucial for emerging as a promising exporter.

C. Enhancement of the Process of Indigenisation

One of the aspects of self-reliance in defence is promoting the domestic industry, which does not perceptibly mean merely awarding contracts to domestic players. As the domestic players getting contracts import majority of the goods from foreign sources, thus, such situations actually result in indirect import. For more eloquent progression on indigenisation, it has to be ensured that around 60 to 70% of the procurement budget spending (capital acquisitions) should be from the local industries. It will also, successively, help subsiding the external dependency on defence acquisition.

D. Involvement of Indian Private Players

Another important facet of self-reliance in defence is promoting Indian private industry, nonetheless, without compromising quality of goods and services. Indian private industry must play an important role in making India *Atmanirbhar* in true sense, and for this, the Government should ascertain the strategic partners from the private sector who could fulfil the challenges of defence production. More participation of and contribution by the private sector will also help realise the mission of “Make in India” and “Manufacture in India”.

E. Discharge of Offset Obligations as per the DAP 2020

Offsets facilitate growth and bring about a fast-paced rise of the technological base of a country, if an all-inclusive and structured approach to defining offset strategies is adopted; however, what is to be understood is that simple offsets are unlikely to fetch such desired results.⁵⁴ Features, such as, “graded multipliers”, “banking and trading of offsets”, and so on can make offset proposition a win-win situation for both the seller and the buyer, making offsets more interesting and attractive.⁵⁵

It should be ensured that discharge of offset obligations, wherever applicable, further the growth of defence sector by adding to the research and development of defence manufacturing. The underlying object should be the enhancement of the capability of the Indian defence industry. This object cannot be achieved if the foreign defence supplier invests in or buys minor spare parts or invests in or buys non-defence articles or services. Offset policy should be calibrated to focus development in specific identified areas, as against aiming at general defence capability.⁵⁶ One good option is obligating the foreign supplier to necessarily buy Indian defence articles or services, in discharge of the offset obligations. This will incidentally advance the mission of India becoming a major defence exporter.

F. Inter-Government Agreements on a Parity Basis

In the context of defence acquisition, an Inter-Government Agreement (IGA) or Government to Government Agreement is an agreement between a country (India) and a friendly foreign country for acquiring defence articles, goods or services. Such IGAs are entered into to gain

⁵⁴ BIKRAMDEEP SINGH, INDIAN DEFENCE OFFSET POLICY – DOES IT HELP BOOST INDIGENISATION? 68 (2014).

⁵⁵ *Id.*

⁵⁶ *Id.*

geo-strategic advantages or diplomatic or political benefits, and they would not follow the typical standard procurement procedure; rather they are based on mutually agreed provisions between the Governments of both the countries.⁵⁷ As per the DAP, acquisitions on the basis of IGA are done after clearance from the Competent Financial Authority (CFA) and progress with the approval of Acceptance of Necessity (AoN) according authority, and may be broadly divided into three stages⁵⁸:

“(a) Approval of broad framework related to the proposed IGA along with AoN will be approved by the DAC.

(b) Negotiations with the foreign Government agency/OEM will then be carried out by a Committee comprising of representatives of the Acquisition Wing, concerned SHQ, Defence (Finance) and the nominated domestic manufacturer, if any, to determine draft terms of the IGA to include estimated price, availability, indigenisation plan etc.

(c) The MoD will then obtain the approval of the CCS on the draft IGA post which the IGA will be concluded with the foreign government.”

Earlier, India largely imported defence articles and services from the United States. Under section 3 of the Arms Export Control Act (AECA), the United States sells defence articles and services to foreign countries and international organisations.⁵⁹ There are two routes by which the US sells defence articles and services to foreign countries and international organisations: (a) Foreign Military Sales program (FMS), and (b) Direct Commercial Sales (DCS).⁶⁰ The Defense Security Cooperation Agency (DSCA) of the US Government administers the FMS program for the Department of Defense (DoD).⁶¹ Under FMS, the US Government and a foreign government enter into a Government-to-Government agreement called a Letter of Offer and Acceptance (LOA),⁶² which is the principal contractual framework governing the sale of defence articles and services to foreign countries and international organisations. India imports defence articles and services from Russia as well. Rosoboronexport, a joint-stock company that is actively involved in pursuing national policy of the Russian Federation in the area of military technical cooperation with foreign countries, “is Russia’s only state-controlled

⁵⁷ The Defence Acquisition Procedure 2020 (DAP 2020), at 59.

⁵⁸ *Id.*

⁵⁹ See *Foreign Military Sales (FMS)*, DEFENSE SECURITY COOPERATION AGENCY, <https://www.dsca.mil/foreign-military-sales-fms> (last visited May 20, 2024).

⁶⁰ In general, a foreign country can buy defence articles or services either through FMS or DCS, unless the specific defence articles or services are to be sold via FMS only.

⁶¹ See *Foreign Military Sales FAQ*, DEFENSE SECURITY COOPERATION AGENCY, <https://www.dsca.mil/foreign-military-sales-faq> (last visited May 20, 2024).

⁶² See *Foreign Military Sales (FMS)*, DEFENSE SECURITY COOPERATION AGENCY, <https://www.dsca.mil/foreign-military-sales-fms> (last visited May 20, 2024).

intermediary in the area of exports and imports of the entire range of military and double-purpose products, technologies and services”.⁶³

Given the growing position of India on the global map, India should enter into IGAs (Government to Government contract) on a parity basis with all exporters, including the US Government; that is to say, it should be ensured that contracts are not heavily tilted towards the seller. More particularly, India should insist on clauses protecting its interest, *inter alia*, in terms of “remedy against latent defects”, “transfer of risk”, “transfer of title”, etc. Further, the defence agreements (including the Government-to-Government agreements) should incorporate the relevant INCOTERM so that the risk passes to India in India at the delivery point.

G. Warranty against Latent Defect

Defects can be broadly classified into two categories: “patent defects” and “latent defects”. Patent defects are discoverable by a reasonable inspection and ordinary vigilance on the part of the buyer; whereas, latent defects are not ordinarily discoverable by a reasonable inspection and ordinary vigilance on the part of the buyer, and they come to the light only after operation of the goods (machines, equipment, etc) are used/operated for some reasonable duration.⁶⁴ The standard clause on “warranty” in the “Standard Contract Document” of the DAP 2020 is not fully satisfactory one, for there is no specific treatment accorded to the latent defect. By simply mentioning “including latent and patent defects”, the desired adequate protection cannot be ensured.

The specific suggestion in this regard is that either there should be a specific appropriate clause on “latent defect” or there should be a specific sub-clause on “latent defect” in the contract entered into between the MoD and the seller/supplier, providing for remedies in case of any breach on the part of the seller to fulfil its obligations. The said clause/sub-clause should also specify the duration of the warranty against the “latent defect”, for the duration of the warranty against the “latent defect” has to be longer than that of other customary defects.

⁶³ The operations of Rosoboronexport are overseen by the President of the Russian Federation, Government of the Russian Federation, Federal Service of Military-Technical Cooperation and Rostec State Corporation. See *Status*, ROSBORONEXPERT, <https://roe.ru/eng/rosoboronexport/status/> (last visited May 20, 2024).

⁶⁴ The Defence Acquisition Procedure 2020 (DAP 2020), at 401.

Additionally, for safeguarding better protection, the MoD should also ask for a Bank Guarantee or any other instrument covering the duration of the warranty against the “latent defect”.

H. Termination for Convenience (Unilateral Termination)

In addition to the other grounds of termination, the DAP 2020 provides for “termination for convenience”. In general, a party to a contract terminates the contract on the ground of “material or fundamental breach” or ‘prolonged breach” on the part of the other party. The innocent party who rightfully terminates the contract can also claim damages for the same from the other party (the defaulting party). A contract is also terminated on the ground of “prolonged force majeure”. Sometimes, a party to a contract reserves the right to unilaterally terminate the contract without any fault on the part of the other party; he does it for his own convenience. For instance, *A* enters into a contract with *B* and also enters into another contract with *C*. The two contracts are so symbiotic that if one is not performed, then, there is no point going ahead with the other one. In such a situation, assuming that the first contract between *A* and *B* passes through a rough weather, then *A* may at his option (by exercising his contractual right, as reserved by the second contract between *A* and *C*) terminate his contract with *C* because continuing further with the second contract would not be beneficial to *A*. Here, since there is no fault on the part of *C*, therefore, *A* will have to pay compensation to *C* for terminating the contract unilaterally for his (*A*’s) own convenience. This is called termination for convenience or unilateral termination. The DAP 2020 provides that where the buyer (MoD, Government of India) terminates the contract in whole or in part, the MoD at its sole discretion may choose to take over from the seller, at a fair and reasonable price, all unused and undamaged goods in the course of manufacture that are in the possession of the seller or supplied to the seller, at the date of termination; or compensate the seller by the equal amount duly adjusted by the recoverable value of the goods as applicable.⁶⁵ There should, therefore, be appropriate clause on “termination for convenience” and provisions for adjustment of rights between the parties when the defence agreement is terminated for convenience by the buyer (India). A suggestion in this regard would be that the clause on “termination for convenience” should refer to the interdependent contract, as also the situations when the contract may be (unilaterally)

⁶⁵ See Standard Contract Document, cl. 22(7), in DAP 2020, at 431.

terminated for convenience. It should, in sufficient detail, also provide for the consequences of such termination for convenience.

I. Focus on Exports: Dedicated Legislative Framework, Manuals and Dissemination of Information and Procedure

India can now aim at becoming one of the top five exporters of defence products and services by 2030 or 2035. That will bring geo-strategic, economic, diplomatic, military and political advantages to India, along with building strategic partnerships. If India really wants to be a major defence exporter, then, in addition to enhancing the research and development (R&D) and other aspects, three most imperative measures to be taken up more earnestly are:

- (a) ***Explicit and specific legislative enactment for the export of defence articles and services:*** The Industries (Development and Regulation) Act, 1951 is a general statutory law providing for the development and regulation of certain industries. Owing to the uniqueness of manufacturing, production and export of defence article and services, as also the aspects of national security, there should be a dedicated legislative framework for the comprehensive development and regulation of defence industries of India. For instance, in the US, the Arms Export Control Act (AECA) of 1976 is the fundamental law providing the authority and general rules for the conduct of Foreign Military Sales (FMS) and commercial sales of defence articles, defence services, and training.⁶⁶
- (b) ***Dedicated wing to deal with exports:*** In India, there is an “Export Promotion Cell” under the Department of Defence Production, Ministry of Defence “to co-ordinate and follow-up on export related action including enquiries received from various countries and facilitate private sector and public sector companies for export promotion”. However, in addition to its regular functions,⁶⁷ it should also be involved in, *inter alia*, preparing, implementing, and closing the contract. The “Export Promotion Cell” should actually act like a dedicated Cell “with full authority and complete accountability” for the export of defence articles and services, and thus, should deal with all the matters relating to defence exports. In the long run, this will help in streamlining and consolidating the export affairs of India’s defence

⁶⁶ See *Definition*, DEFENSE SECURITY COOPERATION AGENCY, <https://samm.dsca.mil/glossary/arms-export-control-act-aeca> (last visited May 20, 2024).

⁶⁷ See *Exports Promotion Cell*, DEFENCE EXPORTS PROMOTION, https://www.defenceexim.gov.in/show_content.php?id=3 (last visited May 20, 2024).

articles and services. In the US, originally defence trade and arms transfer portfolio was the major reason behind the establishment of the Defense Security Cooperation Agency (DSCA); although today its (DSCA's) mission "is wide-ranging, encompassing defense trade and arms transfers, international military training, institutional capacity building, humanitarian assistance, and Security Cooperation workforce development".⁶⁸

(c) **Dissemination of information and procedure for defence exports:** Unavailability of information pertaining to several aspects of IGAs is not a very satisfactory state of affairs. Owing to this, people do not know much about these agreements. There should be adequate dissemination of detailed information and comprehensive procedure regarding the sale of defence articles and services from India. Guides and Manuals detailing the policy, authority and procedure should be prepared for the same. Besides informing the people of India and infusing the elements of transparency and accountability, this will help the foreign buyers who are interested in buying Indian defence articles and services.⁶⁹

J. Negotiation

When the defence agreement (particularly in the case of Inter-Government Agreements) is negotiated, technical and legal experts should be involved who would ensure the technical aspects and the legal provisions in the IGAs. Further, with the growing power and influence on the international platform, India should get into defence contracts with other nations on an equality basis.

K. Legal Cell in the Defence Ministry

There is a need for a dedicated Legal Cell in the MoD, which can look after all the legal matters pertaining to defence acquisitions, particularly drafting and vetting of contracts. This assumes

⁶⁸ A small office in the Pentagon created by the Department of Defense in the early 1960s, evolved into the Defense Security Assistance Agency (DSAA) in 1971, and eventually into the Defense Security Cooperation Agency (DSCA) in 1998. See Defense Security Cooperation Agency, *Defence Trade and Arms Transfer*, <https://www.dsca.mil/50th-anniversary/defense-trade-and-arms-transfers> (last visited May 20, 2024).

⁶⁹ For instance, in the US, one can find sufficient details about the vision, mission, role and functions of the DSCA from its official website (<https://www.dsca.mil/>); Likewise, the Security Assistance Management Manual (SAMM) as Defense Security Cooperation Agency (DSCA) Manual – which "provides DoD-wide guidance to the Office of the Secretary of Defense (OSD), the Military Departments (MILDEPs), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, the Security Cooperation Organizations (SCOs), and all other organizational entities within the DoD engaged in the management or implementation of DoD Security Assistance and Security Cooperation programs over which DSCA has responsibility"; It can also be accessed at Defence Security Cooperation Agency, *Security Assistance Management Manual*, <https://samm.dsca.mil/listing/chapters> (last visited May 20, 2024).

importance because all defence acquisitions, whether from a foreign source or domestic source, are based on contracts and are governed by contracts, and thus, any loophole or ambiguity in such contracts would cost the country heavily. The proposed dedicated Legal Cell should also administer and manage the defence contracts; including the post-contract-completion review/analysis, which would let the MoD know what all went right and/or wrong so that the mistakes can be avoided in the future contracts.

V. CONCLUSION

The Indian Government's policy of becoming self-reliant in the defence sector is indeed laudable. The Government recognises the vital role of research, innovation and technological development in the direction of driving the self-reliance in defence, and for that reason, in the Budget 2023-24, for the purpose of strengthening "Research and Development in defence, the allocation to DRDO has been enhanced by 9%, with a total allocation of Rs 23,264 crore in BE 2023-24", and in an attempt to further foster "innovation, encourage technology development and strengthen the Defence Industrial ecosystem in the country, iDEX and DTIS have been allocated Rs 116 crore and Rs 45 crore respectively representing an enhancement of 93% for iDEX and 95% for DTIS over 2022-23".⁷⁰ SRIJAN portal (<https://srijandefence.gov.in/>), launched by the MoD, is also a remarkable move towards indigenisation.

Owing to the various positive initiatives taken by India, the expenditure on defence acquisition from foreign sources reduced from 46% to 36%, during 2018-19 to 2020-21, resulting in the reduction of import burden; and the Value of Production of Public and Private Sector Defence Companies did increase from Rs 79,071 crore to Rs 84,643 crore during 2019-20 and 2020-21.⁷¹

Although critiqued that the India's self-reliance in defence production is a long way to go, as the "Direct imports still run into billions of dollars every year, with the MoD spending INR 1,938.79 billion on foreign procurement in the past five years alone, from 2017-18 to

⁷⁰ See Ministry of Defence, *Defence Gets Rs 5.94 Lakh Crore in Budget 2023-24, a Jump of 13% over Previous Year*, PRESS INFORMATION BUREAU (Feb. 01, 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1895472>.

⁷¹ See Ministry of Defence, *Indigenization of Defence Sector*, PRESS INFORMATION BUREAU (Apr. 01, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1812299>.

2021-22”,⁷² the pace at which *Atmanirbharta* is moving is tremendous and favourable to the grand scheme of self-reliance. The DAP 2020 – which incorporates comments and suggestions from defence services, industries, think-tanks, etc – brings together various theoretical, organisational and procedural reforms in the acquisition procedure in an attempt to bear out the security and operational needs of the services on the one hand, and to focus on “ease of doing business” and “self-reliance” enabling indigenisation and innovation, on the other.⁷³ India has been endeavoring to become self-reliant and self-sufficient in the defence sector by bringing forth and acting upon some noteworthy policies, as discussed in this paper. Yet, it is a long way, as research and development upgradation, and intellectual capitals for “know-why” will take some time. This paper modestly makes a few suggestions by which the *Atmanirbhar Bharat* vision of India vis-à-vis acquisition/production of defence articles and services can be further reinforced.

⁷² Lok Sabha, *Import of Defence Items*, Unstarred Question No 351, Answered on 03 February 2023, as quoted in Laxman Behera, *High on Revenue, Low on Capital: India’s Defence Budget 2023-24*, at 12 (ORF, Issue Brief No 614, February 2023).

⁷³ The Defence Acquisition Procedure 2020 (DAP 2020).

PROMOTING AATMANIRBHAR BHARAT IN INTERNATIONAL TRADE FOR FAIR COMPETITION AND GREATER GOOD OF THE WORLD

- Prof. (Dr.) Vijay Kumar Singh*

Abstract

There is an old adage emphasizing ‘necessity is the mother of invention’. Innovation requires coming out of the comfort zone. Transformation is painful and generally is meted out with resistance. It requires a vision, resolve, and perseverance to ‘transform, perform, and reform’. Pandemic exposed nationalities to the greater challenges of overreliance on international markets for basic requirements of a nation. When the borders were shut for trade, one had to look inward for the basic requirements like masks and vaccines. Overreliance on international trade for economic growth exposed the severe challenge of uncertainties not only with reference to climate change but also because of geopolitical situations (like Russia-Ukraine war). It was then the Prime Minister of India announced (on 12th May, 2020) ‘the Aatmanirbhar Bharat Abhiyan’, an economic package of Rs. 20 lakh crores (approx. \$306 bn USD), to boost various sectors of the economy, in particular catering to the demography and demand by improving infrastructure and systems. Aatmanirbhar Bharat has been a measure necessitated because of pandemic, however, it has boosted the 2014 initiative of ‘Make in India’ as well. In all this, focus of making in India and becoming self-reliant, India’s commitment to international trade and policy including the regime of non-discrimination cannot be lost sight of. The mantra of providing an ecosystem of fair competition to the businesses around the world shall be sustained. As said by Hon’ble Prime Minister, “When India speaks of becoming self-reliant, it doesn’t advocate a self-centred system. In India’s self-reliance; there is a concern for the whole world’s happiness, cooperation and peace”. This becomes more so important when India is emerging as a world leader and hope for many countries to ensure peace and sustainability. India’s commitment at Glasgow (COP26) for achieving net zero would require support from the whole world, however, at the same time, focus on self-reliance can only cut the carbon emissions, movement towards renewable energy shedding fossil fuels. While doing so, India cannot lose sight of the global commitments under WTO, else it would lead to disputes like Solar Panel Subsidy cases, agricultural subsidy cases, etc. The competition law of India does not differentiate between enterprises public or private. Though competition law enforcement can only ensure competition in India, a robust national competition law and dispute resolution regime always provides hope to the business players around the world boosting ease of doing business (EODB). Competition can only be with equals and competition law has to ensure that the smaller players are not crushed away, and it becomes a special responsibility of the larger players to allow space for

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them to grow. This paper would analyse the concept of Aatmanirbhar Bharat and its interface with the competition law and policy and our international trade commitments at WTO.

Keywords: competition, protectionism, WTO, Aatmanirbhar Bharat

I. INTRODUCTION

COVID Pandemic necessitated the declaration of ‘Aatmanirbhar Bharat’ package¹ which was intended not only to ameliorate the conditions of poor and needy during the pandemic but was a long-term vision of making India self-reliant. Again, self-reliance does not mean just looking inward and rejecting competition from the goods/services across borders. It is not about restricting imports by anti-competitive ways but to increase exports by becoming competitive. Self-reliant India does not mean promoting inefficient protectionism but to usher in the support to help recover from the COVID shock and get going in the world market, meeting the requirements of several needy around the world. As said by Hon’ble Prime Minister, “*when India speaks of becoming self-reliant, it doesn't advocate a self-centered system. In India's self-reliance; there is a concern for the whole world's happiness, cooperation and peace*”.

Mahatma Gandhi was of similar view when he called for promoting ‘Swadeshi’. While Mahatma said that “a votary of *swadeshi* will give preference to local products even if they are inferior grade or dearer in price than things manufactured elsewhere and try to remedy the defects of local manufacturers”.² However, Mahatma also said “to reject foreign manufacturers merely because they are foreign, and promoting inefficient manufacturers just because they are from India, would be a criminal folly.” Thus, the clarion call for ‘*Vocal for Local*’ made by the Prime Minister during COVID essentially means creating demand for local products and at the same time creating a market for local products globally.³ At the same time, give a reality check

¹ Details about Aatmanirbhar Package declared on 12th May 2022 by the Prime Minister Narendra Modi were explained by the Finance Minister Nirmala Sitaraman in five press conferences held between 13th to 17th May 2022. *Atma Nirbhar Bharat Package*, INDIA BUDGET, <https://www.indiabudget.gov.in/anbp/> (last visited May 20, 2024).

² Siby K. Joseph, *Understanding Gandhi's Vision of Swadeshi*, MK GANDHI, <https://www.mkgandhi.org/articles/understanding-gandhis-vision-of-swadeshi.html> (last visited May 20, 2024) (Mahatma Gandhi's Swadeshi concept was not limited to economic aspects but was a generic concept covering almost every aspect of human life. For example, in political set up, Mahatma advocates decentralization and empowering village panchayats as the basic pillar of governance.)

³ Prime Minister's Office, *PM gives a clarion call for Atmanirbhar Bharat*, PRESS INFORMATION BUREAU (May 12, 2020), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1623391>.

to the domestic industry so that they evolve efficient ways of functioning and meeting the global competition.

Soon after independence, the policy makers in India had to decide about the character of country's market and the philosophy which would govern the ownership and control of its material resources. One school of thought advocated clear prescription for the future parliament, while the other school of thought didn't want 'to prescribe an economic model of India, and instead wished to allow the people of India to choose their favored model through Parliament'.⁴ However, an appropriate guidance came through the Articles 38 and 39 of the Constitution of India. Article 38 requires the State to secure a social order for the promotion of welfare of the people. Article 39(b) and (c) of the Constitution requires the State's policies to be directed towards securing the ownership and control of the material resources as best to serve the common good rather than common detriment.

The growth of Industrial Policies in India has seen progressive liberalization with an objective to nurture and strengthen the domestic markets and manufacturers to compete globally meeting the global standards. Industrial Policy of 1991 ushered in the era of Liberalization, Privatization and Globalization (LPG) focusing upon self-reliance in a number of areas.⁵ This was the end of 'license raj' and also the 'command and control' under the Monopolies and Restrictive Trade Practices Act (MRTP Act).⁶ The seeds for monitoring the performance of public sector undertakings (PSUs) were also laid down including more opportunities for public-private partnerships.

Irrespective of several measures taken at policy level, there were many challenges for India at the ground level to emerge as a preferred business partner for the world. One of them was poor performance on 'ease of doing business' (EODB) parameters. Efforts of Government is evident from the improved rankings from 142 in 2014 to 63 in 2019, especially on two parameters, i.e., 'resolving insolvency' and 'enforcement of contracts'.⁷ On the Global

⁴ *Constitutional Assembly Debates on Article 31 of the Draft Constitution, 1948* (Article 30 of Constitution of India), https://www.constitutionofindia.net/constitution_of_india/45/articles/Article%2039.

⁵ Government of India, Industrial Policy 1991, https://dpiit.gov.in/sites/default/files/IndustrialPolicyStatement_1991_15July2019.pdf.

⁶ Threshold limits of assets in respect to MRTP companies and dominant undertakings was removed so also the requirement of approval for entering into combinations.

⁷ *Ease of Doing Business in India*, DOING BUSINESS ARCHIVE, <https://archive.doingbusiness.org/en/data/exploreconomies/india> (last visited May 20, 2024).

Competitiveness Index,⁸ India has moved from 70 in 2014 to 68 in 2020. COVID-19 has given a serious blow to the plans of economic growth of countries around the world requiring special measures to boost their economies. The world is concerned whether these measures will be a blow to the overall sentiments of opening up borders and keeping the free flow of goods and services without restrictions, keeping up with the basic WTO norms. This paper would analyze India's position in this regard.

II. THE AATMANIRBHAR PACKAGE

India's *Aatmanirbhar Package* is unique in its approach inasmuch as it takes into account and integrates the reform measures pre and post COVID into itself. It creates a continuum to usher in the philosophy of making India 'self-reliant' and is promoted as a movement for its citizen through several associated initiatives and measures, like *GatiShakti*,⁹ *Make in India*,¹⁰ *Digital India*,¹¹ *Startup India*,¹² etc. COVID pandemic has brought severe economic challenges for the countries around the world necessitating the government and central banks to tweak their fiscal and monetary policies respectively.¹³ One of the significant measures taken by countries to countenance the economic deceleration has been declaration of financial stimulus to its citizens and liquidity injections by the banking system.

In India, however, the seeds of *Aatmanirbhar Package* were sown much before the pandemic and its declaration only coincided with the emergence of COVID. The pandemic situation was turned into an opportunity for the domestic manufacturers by stimulus package and a mindset change towards local products amidst the sealed borders. Overreliance on imported products could hinder growth and national security became evident during the

⁸ IMD, WORLD COMPETITIVENESS BOOKLET (2022), <https://imd.cld.bz/IMD-World-Competitiveness-Booklet-2022/2/>.

⁹ *Pm GatiShakti - National Master Plan*, PRESS INFORMATION BUREAU (Oct. 25, 2021), <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/oct/doc2021102511.pdf>.

¹⁰ Make in India was launched in September 2014 with the objective of (a) inspiring confidence in India's capabilities amongst potential partners abroad, the Indian business community and citizens at large; (b) providing a framework for a vast amount of technical information on 25 industry sectors; and (c) reaching out to a vast local and global audience via social media and constantly keep them updated about opportunities, reforms, etc. See MAKE IN INDIA, <https://www.makeinindia.com/> (last visited May 20, 2024).

¹¹ This initiative envisions digital infrastructure as a core utility to every citizen leading to digital empowerment of citizens. See DIGITAL INDIA, <https://digitalindia.gov.in/> (last visited May 20, 2024).

¹² Launched in January 2016, Startup India is aimed at supporting entrepreneurship and change in a mindset from 'job seekers to job givers'. See STARTUPINDIA, <https://www.startupindia.gov.in/> (last visited May 20, 2024).

¹³ Gabe Alpert, *International COVID-19 Stimulus and Relief*, INVESTOPEDIA (Aug. 20, 2022), <https://www.investopedia.com/government-stimulus-and-relief-efforts-to-fight-the-covid-19-crisis-5113980>.

pandemic. Though the *Aatmanirbhar Bharat package* was announced on 12th of May 2020 by the Prime Minister,¹⁴ the package also included the measures already taken before this date by the Government and the RBI. Immediately after declaration of the lockdown on 24th March 2020, under the *Pradhan Mantri Garib Kalyan Yojana (PMGKY)*, announcement was made to the tune of Rs. 1.70 lakh crore to help the poor have two meals of the day during the pandemic.¹⁵

Aatmanirbhar Bharat package is not only an economic stimulus scheme but a comprehensive scheme for bringing in slew of reforms with an objective of making India self-reliant which contributes to the progress of the whole world. *Aatmanirbhar Bharat* rests on the following five pillars:

- **Economy** with quantum jump rather incremental changes
- **Infrastructure** which is robust and projects India as a destination for global investment
- **System** which is dynamic and runs with the modern times
- **Demography** which is vibrant and skillful source of energy and
- **Demand** which reflects the growth potential for every stakeholder in the supply and consumption chain. The focus shall be not only on quantity but also quality to meet the global standards.

Each of these pillars is addressed by the government through a variety of measures, at the core of which is reforms in law and policy to enable an ecosystem which promotes unhindered growth.

The stimulus package announced under the *Aatmanirbhar Bharat* is made in five tranches other than the pre-announcement expenditure on PMGKY package, revenue loss due to tax concessions and RBI measures of loan interest waivers. Part 1 of the stimulus concentrated on the Micro, Small and Medium Enterprises (MSMEs), NBFCs and Discoms.

¹⁴ The Aatmanirbhar Bharat Package is a comprehensive economic package of Rs. 20 lakh crore, equivalent to 10% of India's GDP. See Prime Minister's Office, *PM gives a clarion call for Aatmanirbhar Bharat*, PRESS INFORMATION BUREAU (May 12, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1623391>.

¹⁵ Announced on 26th March, 2020. This included the support of free grains and other staple food for poor families for three months initially which has been extended until December 2022. Cash disbursement to women and age-old persons, payments to farmers through PM Kisan scheme, support to building and construction (migrant) workers, payments through EPFs, and distribution of free cooking gas under the Pradhan Mantri Ujjwala Yojana. See *Pradhan Mantri Garib Kalyan Yojna*, INDIA BUDGET, <https://www.indiabudget.gov.in/pmgky/> (last visited May 20, 2024).

Part 2 of the package focused on the free food grains for migrant workers, interest subvention for small MUDRA loans, special credit to street vendors, and loan through Kisan Credit Card. Part 3 was totally focusing upon the farm initiatives.¹⁶ Part 4 and 5 of the stimuli dealt with the viability gap funding and additional MNREGS scheme.¹⁷

A. Aatmanirbhar Bharat initiatives

The website of *Aatmanirbhar Bharat* shows about more than 10 lakh registered participants with 268 activities.¹⁸ Website calls for a *Aatmanirbhar Bharat Pledge* which has so far been taken by about 58684 persons.¹⁹ This number is not very encouraging in a population of 140 crore plus. Attention to this figure is important because the greatest challenge in taking key issues to the masses is very important. Unless the electorate understands as to what are the long-term repercussions of granting subsidies or having an over-protectionist market, the reforms would meet resistance from them for claiming short term benefits like subsidies. For example, important reforms²⁰ like Modern Farm Laws would not see the light of the day in absence of proper understanding of the matter²¹ by its stakeholders.

B. Reform Enabling Ease of Doing Business

One of the important points covered under the *Aatmanirbhar Package* is to nurture an ecosystem which attracts foreign investment. The entry to exit norms are being eased out with more and more single-window clearances. Some other major reforms enabling EODB²² are fast disposal

¹⁶ Measures related to food micro enterprises, fisheries, operation greens, agri infrastructure funds, animal husbandry, herbal cultivation and beekeeping.

¹⁷ See *Analysis of the Aatmanirbhar Bharat Abhiyaan*, PRS LEGISLATIVE RESEARCH, <https://prsindia.org/policy/report-summaries/analysis-aatma-nirbhar-bharat-abhiyaan> (last visited May 20, 2024).

¹⁸ <https://aatmanirbharbharat.mygov.in/#involve> (accessed on January 14, 2023)

¹⁹ (as on 21st May, 2023) <https://pledge.mygov.in/aatmanirbharbharat/>.

²⁰ For a dashboard on reforms, see *Reforms by Conviction*, TRANSFORMING INDIA, <https://transformingindia.mygov.in/reform/> (last visited May 20, 2024).

²¹ As Prime Minister said while withdrawing the Farm Bills – “*such a sacred thing, absolutely pure, a matter of farmers' interest, we could not explain to some farmers despite our efforts. Agricultural economists, scientists, progressive farmers also tried their best to make them understand the importance of agricultural laws*”. Prime Minister's Office, *Prime Minister Addresses the Nation*, PRESS INFORMATION BUREAU (Nov. 19, 2021), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1773138>.

²² WORLD BANK, DOING BUSINESS 2020: COMPARING BUSINESS REGULATION IN 190 ECONOMIES (2020); World Bank has discontinued publishing this report from 2021; See *World Bank Group to Discontinue Doing Business Report*, THE WORLD BANK (Sept. 16, 2021), <https://www.worldbank.org/en/news/statement/2021/09/16/world-bank-group-to-discontinue-doing-business-report>.

of commercial disputes through special commercial courts,²³ decriminalization of offences,²⁴ use of digital interfaces and IBC Reforms.²⁵ India ranked 132 out of 185 countries on EODB ranking in 2013 which improved to 63 in 2020. Under the 'trading across borders' parameter the ranking has improved from 126 in 2014 to 68 in 2019. The Foreign Direct Investment (FDI) norms²⁶ are further liberalized and the Foreign Trade Policy (FTP)²⁷ is aimed at promoting exports and improving the Balance of Payments (BoP).²⁸ The idea of FTP is to increase the country's exports to USD 2 trillion by 2030 with a policy shift from an incentives-based regime to a remission and entitlement-based one. There is a special focus on technology and trade.

India is a diverse country and the Constitution provides for a unique financial/commercial relationship between the Central Government and State Governments. There is always an effort of the Government to arrive at a convergence at the policy level to ease out the challenges of setting up a business in different states. The Business Reform Action Plan (BRAP) framework was developed as an annual assessment of States & Union Territories (UTs) on their efforts towards Ease of Doing Business.²⁹ Through a ranking framework exercise, the states were categorized into top achievers, achievers, fast movers and aspirers. The

²³ See DEPARTMENT OF JUSTICE PORTAL, <https://dashboard.doj.gov.in/eodb/index.html>.

²⁴ Initially it was the Company Law offences which were decriminalized through Company Law Amendment in 2019 (16 out of 81 offences). The 2020 Amendment further decriminalized 23 offences. The Jan Vishwas (Amendment of Provisions) Bill, 2022 is a proposed omnibus legislation that aims to decriminalise 183 offences across 42 Central Acts. Joint Parliamentary Committee has given its report on the Bill, and Finance Minister during her Budget Speech (February 1, 2023) has emphasized that "the government has reduced 39,000 compliances and decriminalised over 3,400 legal provisions." See *The Jan Vishwas (Amendment of Provisions) Bill, 2022*, PRS INDIA, <https://prsindia.org/billtrack/the-jan-vishwas-amendment-of-provisions-bill-2022> (last visited May 20, 2024).

²⁵ For example, minimum threshold to initiate corporate insolvency was raised from Rs. 1 Lakh to Rs. 1 Crore, which will benefit MSMEs.

²⁶ Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, Consolidated FDI Policy (Effective from Oct. 15, 2020), <https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf>.

²⁷ Foreign Trade Policy, 2023, <https://www.dgft.gov.in/CP/?opt=ft-policy>.

²⁸ Will Kenton, *Balance of Payments in Global Transactions: Why Does It Matter?*, Investopedia (Feb. 26, 2024) <https://www.investopedia.com/terms/b/bop.asp>

The balance of payments (BOP), also known as the balance of international payments, is a statement of all transactions made between entities in one country and the rest of the world over a defined period, such as a quarter or a year. It summarizes all transactions that a country's individuals, companies, and government bodies complete with individuals, companies, and government bodies outside the country. The balance of payments includes both the current account and capital account. The current account includes a nation's net trade in goods and services, its net earnings on cross-border investments, and its net transfer payments. The capital account consists of a nation's transactions in financial instruments and central bank reserves.

²⁹ See, the Business Reforms Action Plan Portal, <https://eodb.dpiit.gov.in/> (last visited May 20, 2024).

list of performance enablers provides a guideline to the State Governments to focus on key areas of development. Best practices from one state can be emulated by the other states. A competitive spirit among states enables innovation and competitive federalism.³⁰

C. Role of Public Sector Enterprises

Reserving sectors of manufacturing for Public Sector Enterprises (PSEs) have been the norm under previous Industrial Policies, however, under *Aatmanirbhar Bharat*, all sectors are contemplated to be opened up for private players. PSEs would have special role in identified strategic sectors.³¹ Opening up of the nuclear and space sectors for private players is an example. It may be noted here that under the Competition Law, a public enterprise does not enjoy any immunity and is treated alike the private enterprises,³² unless, there is an exemption granted under Section 54 of the Competition Act.³³

D. Private Participation

It has long been realized by the policy makers that growth and development of a country is not possible without active participation of the private enterprises. While it is important to have public enterprises in strategic sectors, there is no point restricting private players from participating in strategic sectors. For example, the defense sector and space sector has been thrown open for private players to explore. There is a need to provide assurance to the private players that their investment is safe and they would have a fair access to the mechanism of easy dispute resolution. State Governments in India has come up with legislations to provide stability to investment in infrastructure sectors by private players through a legislation.³⁴ Success of Public-Private Partnership (PPP) models³⁵ would be a key in achieving *Aatmanirbhar Bharat*.

³⁰ *Competitive Federalism*, NITI AAYOG, <https://www.niti.gov.in/competitive-federalism> (last visited May 20, 2024).

³¹ At least one PSE in strategic sectors, however, private players shall also be allowed.

³² Basis the principles of 'competitive neutrality' under § 2(h) of the Competition Act, 2002.

³³ For example, the mergers in the banking sector was exempted from Competition Law scrutiny under the this provision to facilitate consolidation of public sector banks.

³⁴ See Punjab Infrastructure (Development & Regulation) Act, 2002

An Act to provide for the partnership of private sector and public sector, participation of private sector in the development, operation and maintenance of infrastructure facilities and development and maintenance of infrastructure facilities through financial sources other than those provided by the State budget by following modern project management systems...

³⁵ See *Overview*, PPP INDIA, <https://www.pppinindia.gov.in/overview> (last visited May 20, 2024).

III. TRUE SPIRIT OF VASUDHAIVA KUTUMBAKAM

At the core of the International Trade Law is the philosophy that ‘barriers to international trade are detrimental for common good of the world’. From the GATT days, and much before, there is a perception that ‘international trade is beneficial, that the gains to the society from trade outweigh the losses to those who are hurt by competition from abroad, and that value is created through specialization and exchange in open markets’.³⁶ Irrespective of this thought, the philosophy behind nationalism and protectionism overpowers the thought of universal global good. One of the primary reasons for this overpowered feeling is the differences in the growth of the countries and its circumstances,³⁷ geopolitical decisions including the scenarios of war³⁸ and uncertainties like COVID 19.

Adam Smith’s analogy of ‘tailor not making his own shoes rather purchasing them from a cobbler and vice versa’ when extended to the international trade scenario, gives the concept of ‘absolute advantage’.³⁹ The concept of ‘absolute advantage’ contemplates that two or more countries may gain from trade by specializing in producing and exporting the goods that they can produce most efficiently. *David Ricardo* extended this argument further giving the ‘comparative advantage’ theory which essentially states that even if a person is good at making shoes as well as stitching clothes (a specialized multitasker), it makes sense to apply the resources to the best of the two.⁴⁰ Ricardo’s comparative advantage theory has been further worked upon by economists and the most prominent one was the *Eli Heckscher* and *Bertil Ohlim* (referred to as *Heckscher-Ohlim* – HO model) which relied on the endowment countries have in terms of various factors of production. Some countries may be endowed with cheap labour, some mineral resources and some capital.⁴¹ Thus, it makes sense for the countries to apply their production capacities to the best of their endowments and trade the other ones. COVID 19

³⁶ ANDREAS F. LOWENFELD, INTERNATIONAL ECONOMIC LAW 3 (2008); See also INDIRA CARR, INTERNATIONAL TRADE LAW (Routledge, 6th ed., 2018).

³⁷ Countries are categorized into developed, developing and least developed countries basis their development.

³⁸ Russia Ukraine war is an example which has not only affected these two countries but the ripple effect on the global supply chain is seen in several sectors.

³⁹ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, (Book IV Ch. 2, 414 Modern Library).

⁴⁰ DAVID RICARDO, PRINCIPLES OF POLITICAL ECONOMY AND TAXATION (1817).

⁴¹ Edward E. Leamer, *The Heckscher-Ohlin Model in Theory and Practice* (Princeton Studies in International Finance, No. 77, February 1995).

scenario thrust upon the countries to develop a feeling of self-reliance particularly in relation to availability of essential goods and services.

While India has now been exploring several bilateral opportunities in terms of Free Trade Agreements (FTAs),⁴² regional arrangements,⁴³ and emerging as preferred destination for foreign investment and manufacturing and hub, at the core it is bound by its philosophy of *Vasudhaiva Kutumbakam*. India is holding the G-20 presidency for 2023 and has given the theme “*Vasudhaiva Kutumbakam*” or “*One Earth · One Family · One Future*”.⁴⁴ India kept up with its spirit of helping hands through its ‘*vaccine maitri*’.⁴⁵

Prime Minister of India while making its commitment at COP26 also emphasized as follows:

सम्-गच्छ-ध्वम्,
सम्-व-दद्वम्,
सम् वो मानसि जानताम्।

Today in the 21st century, this mantra has become more important, has become more relevant.

सम्-गच्छ-ध्वम् - That is, let's move together सम्-व-दद्वम् - That is, let's all interact together and

सम् वो मनानसि जानताम् - That is, everyone's minds should also be one.⁴⁶

⁴² So far, India has signed 13 Free Trade Agreements (FTAs) with its trading partners, including the 3 agreements, namely India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (CECPA), India-UAE Comprehensive Partnership Agreement (CEPA) and India-Australia Economic Cooperation and Trade Agreement (IndAus ECTA) signed during the last five years. See Ministry of Commerce & Industry, FTAs, PRESS INFORMATION BUREAU (Apr. 06, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1814151>.

⁴³ For example, India is part of the Quadrilateral Security Dialogue (QSD), commonly known as the Quad – A Strategic Security Dialogue between Australia, India, Japan and the United States of America. See Prime Minister's Office, Quad Joint Leaders' Statement, PRESS INFORMATION BUREAU (May 24, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1827892>.

⁴⁴ G-20 – Logo and Theme, <https://www.g20.in/en/g20-india-2023/logo-theme.html> (last visited May 20, 2024)

The theme also spotlights LiFE (Lifestyle for Environment), with its associated, environmentally sustainable and responsible choices, both at the level of individual lifestyles as well as national development, leading to globally transformative actions resulting in a cleaner, greener and bluer future.

⁴⁵ See Khan Sharun & Kuldeep Dhama, *India's role in COVID-19 Vaccine Diplomacy*, 28(7) Journal of Travel Medicine, 1 (2021) (Vaccine Maitri means Vaccine Friendship).

⁴⁶ Prime Minister's Office, *National Statement by Prime Minister Shri Narendra Modi at COP26 Summit in Glasgow*, PRESS INFORMATION BUREAU (Nov. 1, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1768712>.

IV. INDIA IN THE WORLD TRADING SYSTEM

India has found value in the multilateral trading system from ancient times. The *silk route*, *amber route* and *spice route* were its famous trade routes⁴⁷ and it flourished until British Government monopolized trade in India through the East India Company.⁴⁸ India has been the member of GATT since beginning and one of the founding members of WTO.⁴⁹ India has been a strong supporter of strengthening the World Trade Organization (WTO) as an integrated global platform to discuss trade and settle disputes by amicable means.

Competition and non-discrimination are fundamental principles of WTO that guide its operations and policies. The principle of competition is aimed at promoting fair and open competition in international trade, while non-discrimination is aimed at ensuring that all WTO members are treated equally, regardless of their size or economic power. This is achieved through two main rules: the most-favored-nation (MFN) rule⁵⁰ and the national treatment⁵¹ rule. However, the issue of competition policy was dropped from the WTO agenda in August 2004 making the Working Group on the Interaction between Trade and Competition Policy (WGTCP) inactive.⁵²

The relationship between WTO law and domestic law is a two-way relationship.⁵³ The WTO is based upon an international contract among sovereign states and its legal order is a

⁴⁷ See Sumedha Verma Ojha, *Uttarapath and Dakshinapath: The Great Trade Routes of Jambudwipa*, SWARAJYA (Aug. 12, 2016), <https://swarajyamag.com/culture/uttarapath-and-dakshinapath-the-great-trade-routes-of-jambudwipa>.

⁴⁸ East India Company was established through a Royal Charter of Queen Elizabeth of UK and it was granted exclusive overseas trading rights with East Indies (including India, South Africa, etc.) It was a monopoly, as no other British subjects could legally trade in that territory, however, it faced stiff competition from the Spanish and Portuguese, as well as Dutch. See Dave Roos, *How the East India Company Became the World's Most Powerful Monopoly*, HISTORY (Oct. 23, 2020), <https://www.history.com/news/east-india-company-england-trade>.

⁴⁹ India has been a WTO member since 1 January 1995 and a member of GATT since 8 July 1948. See *India and the WTO*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/countries_e/india_e.htm (last visited May 20, 2024).

⁵⁰ The MFN rule requires WTO members to treat all other members equally, without discrimination or favoritism. This means that any trade agreement or concession granted to one member must be extended to all other members.

⁵¹ The national treatment rule requires WTO members to treat foreign goods and services in the same way that they treat domestic goods and services. This means that once foreign goods and services have entered a domestic market, they must be treated in the same way as domestic goods and services; See *Principles of the Trading System*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited May 20, 2024).

⁵² Vijay Kumar Singh, *Failed WTO Platform for Competition Law Convergence: Evolving Alternate Regime of MoUs on Internationalization of Competition Law*, 54(3-4) INDIAN JOURNAL OF INTERNATIONAL LAW 368 (2014).

⁵³ MITSUO MATSUSHITA ET AL., *THE WORLD TRADE ORGANIZATION: LAW, PRACTICE, AND POLICY* 31 (3d ed. 2015).

result of trade laws developed by different nations and its convergence at the WTO negotiation table.⁵⁴ The idea of free trade cannot sustain *de hors* the domestic support, both political and legal. India has emphasized this in its latest statement on WTO reforms on behalf of itself and developing countries (African Group and Cuba).

'WTO reform' does not mean accepting either inherited inequities or new proposals that would worsen imbalances. Reforms must be premised on the principles of inclusivity and development and respond to the underlying causes of the current backlash against trade and the difficulties that developing Members continue to face vis-à-vis their industrialization challenges.⁵⁵

V. FOREIGN TRADE DEVELOPMENT AND REGULATION

Foreign Trade (imports and exports) is a regulated activity, as it has international ramifications for a country. The matter relates to foreign exchange outgo and balance of payment obligations. However, foreign trade is a driving force of economic activity. Technology, investment and production are becoming increasingly interdependent upon each other, and foreign trade brings these elements together and spurs economic growth.⁵⁶ Foreign exchange outflow has been tightly regulated since independence; however, it was made stricter by enactment of Foreign Exchange Regulation Act (FERA) in 1973. In 1991, it was realized that restricting foreign inflow of capital would not help the economy grow and thus the philosophy of law changed from that of Regulation to Management.⁵⁷ The Trade Policy of the Government also underwent significant changes with a goal to increase productivity and competitiveness and to achieve a strong export performance. Bringing foreign trade as an idea into the minds of every manufacturer/producer/service provider of the country could boost exports and lead us to the goal of *Aatmanirbhar Bharat*.

The 1992 Foreign Trade (D&R) Act provides for a detailed mechanism to recognize exporters/importers through a license and also establishes an administrative set up for

⁵⁴ PETER SUTHERLAND ET AL., THE FUTURE OF THE WTO: ADDRESSING INSTITUTIONAL CHALLENGES IN THE NEW MILLENNIUM (2004), https://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf.

⁵⁵ Strengthening the WTO to Promote Development and Inclusivity Communication from the African Group, Cuba and India, WT/GC/W/778/Rev.3 4 December 2020 (Statement by India – Delivered by Ambassador & PR to the WTO).

⁵⁶ The Foreign Trade (Development and Regulation) Act, 1992, Statement of Objects and Reasons.

⁵⁷ FERA to FEMA – The Foreign Exchange Management Act, 1999. Similarly, the Imports and Exports (Control) Act, 1947 was transformed to the Foreign Trade (Development and Regulation) Act, 1992.

implementing the Foreign Trade Policy (FTP). The FTP lays down the policy direction for facilitating imports and increasing exports. Directorate General of Foreign Trade (DGFT) Organization is an attached office of the Ministry of Commerce and Industry which helps in development and regulation of foreign trade in India.⁵⁸ There is another quasi-judicial body by the name of The Directorate General of Trade Remedies (DGTR),⁵⁹ which investigates the issues relating to trade remedies, like antidumping duties, etc.

Quantitative Restriction on imports – As discussed above, India is a member of WTO and any trade restrictions has to be justified. Central Government may impose quantitative restrictions on import of goods on the ground if such increased quantities cause or threaten to cause serious injury to domestic industry for a period of four to ten years. Such restrictions in relation to a developing country can only be imposed when the share of imports of such goods from that country exceeds three percent.⁶⁰ Domestic industry in this context means the producer of goods (including producer of agricultural goods) – (i) like goods or directly competitive⁶¹ goods in India or (ii) constitutes a major share of the total production of said goods in India.

The Special Economic Zones – For promoting exports, development of infrastructure and creating employment opportunities, the Special Economic Zones (SEZ) may be notified by the Central Government or State Government.⁶² As on 11.04.2023, there are 376 notified SEZs, out of which 272 are operational.⁶³ GIFT City in Gujarat is a unique SEZ⁶⁴ which has further been empowered with the enactment of International Financial Services Authority

⁵⁸ provide facilitation to exporters in regard to developments in International Trade i.e., WTO agreements, Rules of Origin and anti-dumping issues, etc. to help exporters in their import and export decisions in an internationally dynamic environment; See *Directorate General of Foreign Trade*, MINISTRY OF COMMERCE AND INDUSTRY, <https://commerce.gov.in/about-us/attached-offices/directorate-general-of-foreign-trade/> (last visited May 20, 2024).

⁵⁹ The Directorate General of Anti-Dumping & Allied Duties (DGAD) which was formed in 1997 has been restructured as DGTR in May 2018 by restructuring and re-designing DGAD into DGTR by incorporating all the trade remedial functions i.e. Anti-Dumping Duty (ADD), Countervailing Duty (CVD), Safeguards Duty (SGD), Safeguards Measures (QRs) under a single window framework.

⁶⁰ The Foreign Trade (Development and Regulation) Act, 1992, § 9A.

⁶¹ *Directly Competitive or Substitutable Products, Repertory of Appellate Body Reports*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/repertory_e/d1_e.htm (last visited May 20, 2024).

⁶² The Special Economic Zone Act, 2015.

⁶³ *Fact Sheet on Special Economic Zones as on 11. 04.2023*, SEZ INDIA <http://sezindia.nic.in/upload/6435289da9bc8Fact%20Sheet%20on%20SEZ%20as%20on%2011-04-2023.pdf> (last visited May 20, 2024).

⁶⁴ The Regulatory powers of RBI, SEBI, IRDAI and PFRDA have been vested with IFSCA for regulating financial institutions, financial products and services in IFSC at GIFT City. See *Regulatory Framework of GIFT SEZ & IFSC*, GIFTSEZ, <https://giftsez.com/law-and-regulations.aspx> (last visited May 20, 2024).

(IFSCA).⁶⁵ Experimenting with various models of promoting exports and inflow of foreign exchange would be crucial to support the five pillars of *Aatmanirbhar Bharat*.

Export Promotion Councils – Objective of these sector specific councils⁶⁶ is to prepare the domestic industries for the requirements of export market. Federation of Indian Export Organisations (FIEO) is the Apex Body of export promotion organisations. It also maintains the Indian Trade Portal⁶⁷ which provides information on India's export and import policies, export benefits, Most Favoured Nation (MFN)/ preferential tariff, rules of origin, Sanitary and Phytosanitary Standards (SPS) / Technical Barriers to Trade (TBT) measures of 87 markets etc. at tariff line. India believes that Trade Facilitation is particularly important for developing countries, as studies show that they stand to gain the most from more efficient trade procedures, although achieving it may be more challenging for these economies than for the developed world.⁶⁸

VI. ROBUST COMPETITION LAW FOR SELF RELIANCE

An effective and modern competition law regime is vital to reap the full benefits of a market economy and ensure economic efficiency, optimal allocation of resources and equitable outcomes for consumers.⁶⁹ Competition law regime in India has seen a complete transformation from that of 'command and control' to 'active promotion of competition'.⁷⁰ The push for modern competition law emerged from opening up of markets and discussions at WTO Platform.⁷¹ Initially, a report on competition law reform was prepared by a committee

⁶⁵ *About IFSCA*, <http://www.ifsc.gov.in/> (last visited May 20, 2024) ("The main objective of the IFSCA is to develop a strong global connect and focus on the needs of the Indian economy as well as to serve as an international financial platform for the entire region and the global economy as a whole").

⁶⁶ See *Federation of Indian Export Organisation*, MINISTRY OF COMMERCE AND INDUSTRY, <https://commerce.gov.in/about-us/export-promotion-councils/federation-of-indian-export-organisation/> (last visited May 20, 2024) (There are independent export promotion councils for chemicals and allied products export, leather, shellac, plastics, gem and jewellery, cashew, pharmaceutical, Indian oil seeds and produce, sports goods, basic chemicals, cosmetics & dyes, project exports and services).

⁶⁷ INDIA TRADE PORTAL, <https://www.indiantradeportal.in/> (last visited May 20, 2024).

⁶⁸ *Trade Facilitation: Brief and Update on Trade Facilitation by India*, MINISTRY OF COMMERCE AND INDUSTRY, <https://commerce.gov.in/international-trade/india-and-world-trade-organization-wto/trade-facilitation/> (last visited May 20, 2024); See also National Trade Facilitation Action Plan 2020–2023 by National Committee on Trade Facilitation for implementation of the WTO Trade Facilitation Agreement.

⁶⁹ MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPETITION LAW REVIEW COMMITTEE (July 2019), <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>.

⁷⁰ Vijay Kumar Singh, *Competition Law and Policy in India: The Journey in a Decade*, 4 NUJS LAW REVIEW 523 (2011).

⁷¹ Singh, *supra* note 52.

constituted by the Ministry of Commerce,⁷² however, later a High-Level Committee (headed by *SVS Raghavan*) constituted by the Ministry of Corporate Affairs suggested a complete overhaul of the erstwhile Monopolistic and Trade Practices (MRTP) Act, 1969. A new competition law was proposed with the objective of not only being a passive enforcement agency but an active regulator promoting competition in markets in India.⁷³ Strategically, ‘competition law’ is a domestic legislation, drawing its jurisdiction on the basis of effects on markets in India.⁷⁴

In a way the *Aatmanirbhar Bharat* approach is an outcome-based proposition to the constitutional goals of socialist on which MRTP Act Preamble was based.⁷⁵ The efforts contemplated in the *Aatmanirbhar Bharat* scheme fulfills the objective that “the ownership and control of the material resources of the community are so distributed as best to subserve the common good”.⁷⁶ The modern competition law of India takes a broader approach, keeping in view the economic development of the country, and provides for a level-playing field to all enterprises, public or private, promoting the principles of ‘competitive neutrality’.

Competition law is a domestic legislation and ‘export cartels’ are not covered under the law.⁷⁷ Thus, domestic manufacturers/suppliers coming together to strategize for export markets does not come under the purview of competition laws.⁷⁸ However, if any intermediate market player in the supply chain in India gets effected, the law would take its course and CCI would have jurisdiction.⁷⁹ It is argued that companies may create export cartels to jointly market products, enter new markets, or achieve sufficient scale to actively participate in world commerce.

⁷² S. Chakravarthy, *New Indian Competition Law on the Anvil* (RGICS Working Paper Series No. 22, 2001).

⁷³ The Competition Act, 2002, pmbl.

⁷⁴ However, the law has extraterritorial jurisdiction when someone situated outside, or an enterprise operating outside India has an impact on markets in India, for e.g., merger of two multinational companies having supplies in markets in India beyond the prescribed threshold will be covered under the combination regulations.

⁷⁵ “An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment....”; India Const. art. 39(c) (“The State shall, in particular, direct its policy towards securing... that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment”).

⁷⁶ India Const. art. 39(b).

⁷⁷ The Competition Act, 2002, § 3(5)(ii) (“Nothing contained in this section shall restrict—...the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export”).

⁷⁸ Marek Martyniszyn, *Export Cartels: Is it Legal to Target your Neighbour? Analysis in Light of Recent Case Law*, 15(1) JOURNAL OF INTERNATIONAL ECONOMIC LAW 181 (2012).

⁷⁹ Cartelisation by Shipping Lines in the matter of provision of Maritime Motor Vehicle Transport Services to the Original Equipment Manufacturers, *suo moto* case No. 10 of 2014, decided on 20 January 2022 (CCI).

One of the objectives of Competition Act is to 'ensure freedom of trade carried on by other participants in markets in India'. These other participants include everyone in the supply chain. Competition law enforcement examines the Appreciable Adverse Effect on Competition (AAEC)⁸⁰ in cases of anticompetitive agreements⁸¹ and abuse of dominance⁸² as well as while examining a combination⁸³ under the Competition Act. The Industry Policy Statement issued by the Government in 1991, emphasized the need for wide-scale policy reforms⁸⁴:

The attainment of technological dynamism and international competitiveness requires that enterprises must be enabled to swiftly respond to fast changing external conditions that have become characteristic of today's industrial world. Government policy and procedures must be geared to assisting entrepreneurs in their efforts. This can be done only if the role played by the Government were to be changed from that of only exercising control to one of providing help and guidance by making essential procedures fully transparent and by eliminating delays (Industrial Policy, 1991).

While successive governments have taken efforts in this direction, *Aatmanirbhar Bharat* and call for '*vocal for local*' has provided a new impetus towards self-reliance. However, *Aatmanirbhar Bharat* does not mean tolerating inefficient firms and keep continuing them as sick/inefficient units and pumping in public money to sustain them. Wherever needed, the inefficient units have to give way to the efficient ones, whether public or private. Competition impact assessment of undue /unjustified protectionism⁸⁵ would be important for truly achieving the goals of *Aatmanirbhar Bharat*. NITI Aayog has also emphasized the need for robust competition in ensuring growth as follows:

As a market-based economy, it is essential that the government puts in place a regulatory framework that maximises the efficiency of markets. Often laws, rules and regulations enacted by the government inadvertently build into them provisions that restrict competition and harm efficiency of markets. This has happened in India as well. Just as it is

⁸⁰ The Competition Act, 2002, § 19(3) (in inquiry into certain agreements and dominant position of enterprise), § 20(4) (in inquiry into combinations).

⁸¹ The Competition Act, 2002, § 3 (prohibition of anticompetitive agreements - both horizontal and vertical agreements).

⁸² The Competition Act, 2002, § 4 (prohibition of abuse of dominant position).

⁸³ The Competition Act, 2002, §§ 5 & 6 (Regulation of Combination).

⁸⁴ SVS Raghavan Committee Report, para 2.6.2

⁸⁵ CCI, COMPETITION ASSESSMENT TOOLKIT (2018), https://www.cci.gov.in/images/publications_competition_assesment/en/competition-assessment-toolkit1652242714.pdf.

useful to repeal dormant laws, harmful provisions in the active laws must be dropped. Competition will ensure access to high quality products and services at low prices for consumers, and incentivise firms to upgrade their technology. Barriers to competition can also hurt the competitiveness of India’s exporters. For example, electricity and transportation infrastructure are often key input for manufacturing industries. If electricity market is not competitive, it can not only result in high electricity costs for industry, but also insufficient supply, which can in turn affect its competitiveness vis-à-vis the foreign companies in the world market.⁸⁶

VII. AATMANIRBHAR BHARAT FOR GREATER GOOD THROUGH FAIR COMPETITION

Given that India is an emerging economy with a large working population, one of the primary focus of central government is to tap into global investments and push India towards becoming the most favoured manufacturing hub across the globe.⁸⁷ Success of each of the five pillars of *Aatmanirbhar Bharat* scheme can only be ensured through fair competition.

A. Economy

India’s potential to achieve a USD 5 trillion GDP is contemplated within the realm of possibility.⁸⁸ *Aatmanirbhar Bharat*’s first pillar targets for a quantum jump of economy rather than incremental improvements, which is only possible when there is a significant and sudden shift towards self-reliance, with the country becoming less dependent on imports and more focused on domestic production and innovation. The ‘5 trillion Report’ chooses to focus on the following three segments of the economy:

Agriculture and Allied Activities	Manufacturing	Services
USD 1 trillion	USD 1 trillion	USD 3 trillion
Proposed short term, medium term and long-term measures for increasing the farm income. A large demography is engaged in	i. Focus on existing high impact sectors, like defense, electronics, aeronautical, auto and auto components, space, jewellery, readymade garments, organic/ayurvedic products,	Twelve champion sector in services have been identified as information technology & information technology enabled services (IT&ITeS), tourism and hospitality services, medical value

⁸⁶ *Pro-Competition Policies and Regulation*, in NITI AAYOG, INDIA: THREE YEAR ACTION AGENDA 2017-18 TO 2019-20 (2017).

⁸⁷ Rudra Kumar Pandey et al., *Chapter 11 – India*, in ALEX POTTER & CALVIN GOLDMAN (EDS), THE FOREIGN INVESTMENT REGULATION REVIEW (10th ed., 2022).

⁸⁸ DEPARTMENT OF INDUSTRIAL POLICY AND PROMOTION, MINISTRY OF COMMERCE AND INDUSTRY, GOVERNMENT OF INDIA, REPORT OF THE WORKING GROUP ON USD 5 TRILLION INDIAN ECONOMY (2019), https://dpiit.gov.in/sites/default/files/Final_Report-Working_Group_16012019.pdf.

<p>agriculture and allied activities.⁸⁹</p> <p>Farm law reforms are important to promote competitiveness in the sector.⁹⁰</p>	<p>ii. Focus on emerging sectors like, biotechnology and genomics, electric mobility and storage, unmanned aerial vehicles, active pharmaceutical ingredients (API),⁹¹ medical devices, robotics, advanced materials, etc.</p> <p>iii. Focus on MSMEs with SME credit, insurance schemes, and fintech innovations.</p>	<p>travel, transport and logistics services, accounting and finance services, audio visual services, legal services, communication services, construction and related engineering services, environmental services, financial services and education services.</p>
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Each of these segments of the economy has a potential of taking quantum jump in a competitive landscape. For example, a simplified regulatory framework for e-commerce exports of jewellery via international Courier Terminals (ICTs) is aimed at supporting the Make-in-India brand in the international markets and enhancing the competitiveness of Indian jewellery exports leveraging the rapidly evolving global e-Market space.⁹² Production Linked Incentives (PLI) have been introduced in the aftermath of pandemic to support domestic industrialization. The need of the hour is to support the domestic industries through these schemes, however, also ensure healthy competition for growth of the industries.⁹³ Unregulated subsidies may fall foul with the international community exposing the country to WTO disputes⁹⁴ and other geopolitical repercussions.⁹⁵

⁸⁹ According to India's Economic Survey 2020-21, the agricultural sector still employs 48.6% of the country's population while contributing only 14.4% of GDP.

⁹⁰ The Farm Law Reforms proposed by the three laws [(i) the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 (20 of 2020); (ii) the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 (21 of 2020); and (iii) the Essential Commodities (Amendment) Act, 2020 (22 of 2020)] passed by the Parliament had to be withdrawn due to the Farmer's Protest and was indeed a dent upon the efforts to achieve *Aatmanirbhar Bharat*. The Statement of Objects and Reasons of the Bill Withdrawing the Farm Laws observed as follows:

Even though only a group of farmers are protesting against these laws, the Government has tried hard to sensitise the farmers on the importance of the Farm Laws and explain the merits through several meetings and other forums... As we celebrate the 75th Year of Independence— "*Azadi Ka Amrit Mahotsav*", the need of the hour is to take everyone together on the path of inclusive growth and development.

⁹¹ See COMPETITION COMMISSION OF INDIA, MARKET STUDY ON PHARMACEUTICAL SECTOR IN INDIA: KEY FINDINGS AND OBSERVATIONS (2021), <https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-pharmaceutical-sector-in-india1652267460.pdf>.

⁹² Circular No. 09/2022-Customs dated 30.6.2022, CBIC, as cited in MINISTRY OF FINANCE, ECONOMIC SURVEY 2022-23, at 117.

⁹³ MINISTRY OF FINANCE, ECONOMIC SURVEY 2022-23, at 76.

⁹⁴ As on date (20.04.2023), India is party to 235 cases out of which in 24 cases India is a Complainant, in 32 cases it is a respondent and in 179 cases it is a third party. See *Disputes by Member*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm (last visited May 20, 2024).

⁹⁵ David Victor, *The Politics of Fossil-Fuel Subsidies*, in THE GLOBAL SUBSIDIES INITIATIVE, UNTOLD BILLIONS: FOSSIL-FUEL SUBSIDIES, THEIR IMPACTS AND THE PATH TO REFORM (2009).

In 2022, India has emerged as the top 5 economies of the world. It had set a target for itself to become a 5 trillion USD economy by 2024-25 which has now got pushed in calendar due to the pandemic and its shock.⁹⁶ However, the strong fundamentals of Indian Economy have allowed it to bounce back quickly.⁹⁷ As per WTO Statistics,⁹⁸ India's share in the world total exports is 1.77% and that of imports is 2.54%

<i>Merchandise exports f.o.b. million US\$</i>	<i>Merchandise imports c.i.f. million US\$</i>	<i>Commercial services exports</i>	<i>Commercial services imports</i>
395 425	572 909	239 856	195 018

Top 4 partners where India exports are the United States (18.1%), EU (14.9%), UAE (6.4%), China (5.8%) and Bangladesh (3.5%). India is categorized as 'developing country' at WTO which gives it the Special and Differential Treatment (S&DT) benefits.⁹⁹ However, with its economic growth, India has to move into developed country status, which essentially would mean losing the privileges under S&DT and competing at the world market with developed nations.¹⁰⁰

Change in Mindset – Positive Outlook: Reforms promoting competition cannot happen without resistance, as there is natural inertia to change, in particular, when there is a prevailing anticompetitive situation (monopoly or a cartel). The incumbent market players do not want competition or frequent innovations.¹⁰¹ Ultimately, this harms the economy due to deadweight loss. A change in the mindset towards reforms is thus very important for everyone. Consumers have to attune themselves to domestic products and the domestic producers have to treat their consumers at international standards.

⁹⁶ IMF now projects that India would become a \$5 trillion economy by 2026-27. See Indivjal Dhasmana, *IMF 'Corrects' Maths, Says India to be \$5-trillion Economy by FY27*, BUSINESS STANDARD (May 20, 2022), https://www.business-standard.com/article/economy-policy/imf-corrects-maths-says-india-to-be-5-trillion-economy-by-fy27-122051901704_1.html.

⁹⁷ Trade Policy Report by India for the 7th Trade Policy Review (25th November, 2020) WT/TPR/G/403.

⁹⁸ *Trade Profiles – India*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/res_e/statis_e/daily_update_e/trade_profiles/IN_e.pdf (last visited May 20, 2024).

⁹⁹ Chapter III of the Havana Charter entitles the developing countries to certain special and flexible provisions.

¹⁰⁰ Priyanka Pandit, *Losing the "Developing Country" Status in the World Trade Organization: Responses from India and China*, INDIAN COUNCIL OF WORLD AFFAIRS (Oct. 10, 2019), https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=4783&lid=2594.

¹⁰¹ For example, in the pharmaceutical sector, the patent owners want evergreening of patents, there are anticompetitive agreements like pay-for-delay, etc.

B. Infrastructure

Role of robust Infrastructure in Aatmanirbhar Bharat cannot be overemphasized. The positive linkage between infrastructure towards bringing overall growth in India is very well evidenced.¹⁰² The focus on reforming the physical, digital and regulatory infrastructure is ubiquitous for growth of India and this development cannot happen by unilateral efforts by public sector. Private sector would play a huge role in pumping in capital and expertise to leverage the infrastructure potential. Competition neutrality in this regard would provide a motivation to the firms engaged in infrastructure development.

The Government's initiative of National Infrastructure Pipeline (NIP)¹⁰³ and National Monetization Pipeline (NMP)¹⁰⁴ aims at unshackling the locked unused infrastructure with the public sector for anyone who wants to use them for a fee. Various policies and procedures are being streamlined to facilitate investment through single-window clearances and facilitation. Asset monetization aims at tapping private sector investment for new infrastructure creation. The framework of core asset monetization aims towards unleashing the income potential by monetizing the rights over public infrastructure (while the ownership remains with the Government).¹⁰⁵

The infrastructure line Ministries in Roads, Transport and Highways, Railways, Power, Pipeline and Natural Gas, Civil Aviation, Shipping Ports and Waterways, Telecommunications, Food and Public Distribution, Mining, Coal, and Housing and Urban Affairs have been roped in to facilitate NMP initiative. The aggregate asset pipeline under NMP over the four-year period, FY 2022-2025, is indicatively valued at Rs 6.0 lakh crore. The estimated value corresponds to ~14% of the proposed outlay for Centre under NIP (Rs 43 lakh crore). The top 5 sectors (by estimated value) capture ~83% of the aggregate pipeline value. These top 5

¹⁰² Arup Mitra et al., *Productivity and Technical Efficiency in Indian States' Manufacturing: The Role of Infrastructure*, 50(2) ECONOMIC DEVELOPMENT AND CULTURAL CHANGE 395 (2002).

¹⁰³ Launched in August 2020 with an aim to strategize and provide world-class infrastructure across India improving quality of life of people. Idea is to attract investment in infrastructure sector. See *National Infrastructure Pipeline*, INDIA INVESTMENT GRID, <https://indiainvestmentgrid.gov.in/index.jsp> (last visited May 20, 2024).

¹⁰⁴ Niti Aayog, *National Monetisation Pipeline (NMP)*, NATIONAL PORTAL OF INDIA, <https://www.india.gov.in/spotlight/national-monetisation-pipeline-nmp> (last visited May 20, 2024).

¹⁰⁵ 1 NITI AAYOG, NATIONAL MONETIZATION PIPELINE: MONETISATION GUIDEBOOK (2021).

sectors include: Roads (27%) followed by Railways (25%), Power (15%), oil & gas pipelines (8%) and Telecom (6%).¹⁰⁶

Competition law and policy again would play an important role in the infrastructure sector. Any unreasonable restrictions in the sector may hamper the contemplated growth. For example, in *Arshiya Rail case*,¹⁰⁷ the CCI highlighted the concerns regarding policy design for incentivizing private participation. CCI requested Ministry of Railways to look into the issue of frequent tariff changes, which leads to inconsistencies. It may also be noted that infrastructure sector development is not stand alone, but is dependent upon a number of allied sectors, for example steel would contribute hugely as a raw input in this sector. India imposed a safeguard measure in relation to iron and steel product.¹⁰⁸ The WTO Panel in this case ruled against India holding that the Competent Authority had not done proper competition analysis vis-à-vis the imported steel affecting the domestic industry.¹⁰⁹

C. System

System refers to the regulatory mechanism and ease of doing business. *AatmaNirbhar Bharat* would require a dynamic system which runs with the modern times. Quick transformations in regulations keeping in view the requirement of the modern-day markets would be a key. Promotion of Alternate Dispute Resolution (ADR) and scuttling delays in resolution of commercial disputes would be very important. The initiatives like Commercial Courts Act¹¹⁰ have to work in true spirit. The government has to follow the mantra of '*minimum Government maximum governance*'.¹¹¹

¹⁰⁶ Chapter 12 - Physical and Digital Infrastructure: Lifting Potential Growth, in MINISTRY OF FINANCE, ECONOMIC SURVEY 2022-23, at 343, <https://www.indiabudget.gov.in/economicsurvey/doc/eschapter/echap12.pdf>.

¹⁰⁷ *Arshiya Rail Infrastructure Ltd. v. Ministry of Railways*, CCI Case No. 64/2010 and 12/2011 decided on Aug. 14, 2012 (this case involved allegation of abuse of dominant position by Indian Railways in the Container Transport market).

¹⁰⁸ *India - Iron and Steel Products*, WORLD TRADE ORGANIZATION (WTO -DS518), https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds518sum_e.pdf (last visited May 20, 2024) (hot-rolled flat products of non-alloy and other alloy steel in coils of a width of 600 mm or more).

¹⁰⁹ *Id.* (that the competent authority had failed to (i) properly examine the price competition between imported and domestic products, when it based its price comparison on the average unit price of imported products and the average unit price of the like or directly competitive domestic products; (ii) to demonstrate the existence of a causal link between the increased imports and serious injury suffered by the domestic industry; and to (iii) conduct a proper non-attribution analysis).

¹¹⁰ *Dedicated Commercial Courts*, DEPARTMENT OF JUSTICE, <https://dashboard.doj.gov.in/eodb/commcourts.html> (last visited May 20, 2024).

¹¹¹ See *Minimum Government, Maximum Governance*, (NARENDRA MODI, May 14, 2014), <https://www.narendramodi.in/minimum-government-maximum-governance-3162>.

Restrictive regulations for a particular sector can affect competition in many ways. These include creating barriers to entry, price regulation, restricting competitive conduct such as agreements, vertical integration and advertisement.¹¹² Competition Impact Assessment of existing and potential regulations would help in negating any effects of restrictive regulations. The regulatory path which affects competition to the minimum shall be taken. For example, reforms in the public procurement has provided with a lot of benefits for Government procurement agencies and also the suppliers, curtailing the human intervention leading to corruption and many other inefficiencies.¹¹³

Decriminalization of Economic Offences – The Observer Research Foundation’s report titled *Jailed for Doing Business* found that there are more than 26,134 imprisonment clauses in a total of 843 economic legislations, rules and regulations which seek to regulate businesses and economic activities in India.¹¹⁴ The efforts towards decriminalizing the offences under the Companies Act¹¹⁵ has been furthered through the *Jan Vishwas Bill*, proposing decriminalization of 183 offences across 42 legislations.¹¹⁶

For easing out bottlenecks in trade facilitation, a National Committee on Trade Facilitation (NCTF) has been set up which ensures implementation of the National Trade Facilitation Action Plan.¹¹⁷ The plan has more than 90 trade facilitation measures rooted at promoting competition and fair trade. Imposition of antidumping duties by the Director General of Trade Remedies is intended to counter the dumping of goods which harms domestic markets. However, these measures need to be taken through a proper system and justifications, so that it can stand scrutiny at the WTO Dispute Settlement Mechanism.

¹¹² See NITI Aayog, *supra* note 86, at para 18.8.

¹¹³ The Government E-Marketplace (GeM) model - is a portal developed by the Government of India that allows a completely paperless and cashless system of procurement thereby minimizing human interface.

¹¹⁴ Gautam Chikermane & Rishi Agrawal, *Jailed for Doing Business: The 26,134 Imprisonment Clauses in India’s Business Laws* (Observer Research Foundation, 2022), https://www.orfonline.org/wp-content/uploads/2022/02/ORF_Monograph_JailedForDoingBusiness_Final-New-11Feb.pdf.

¹¹⁵ The Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020.

¹¹⁶ *The Jan Vishwas (Amendment of Provisions) Bill, 2022*, PRS INDIA, <https://prsindia.org/billtrack/the-jan-vishwas-amendment-of-provisions-bill-2022> (last visited May 20, 2024) (A Joint Parliamentary Committee has given report on this Bill for further consideration of the Parliament).

¹¹⁷ *Trade Facilitation: Brief and Update on Trade Facilitation Agreement by India*, MINISTRY OF COMMERCE AND INDUSTRY, <https://commerce.gov.in/international-trade/india-and-world-trade-organization-wto/trade-facilitation/> (last visited May 20, 2024).

D. Demography

Size and age of workforce of India will play a significant role in its economic growth in the coming years.¹¹⁸ Ladusingh and Narayana (2011) have found that in India, “income per effective consumer could increase by 24.9% from 2005 to 2035, of which 9.1% is from the first demographic dividend, and 15.8% is from the second demographic dividend; and that the second dividend will be stable up to 2070”.¹¹⁹ Trade in services (% of GDP) in India was reported at 11.92 % in 2021, according to the World Bank collection of development indicators, compiled from officially recognized sources.¹²⁰

As per the WTO GATS Agreement,¹²¹ services may be supplied in any of the four modes, for example (i) cross border supply (online education being provided to foreign consumers by Indian educational institution) (ii) consumption abroad (when a student moves from India to another country – receives the services there) (iii) commercial presence (when a foreign university establishes office in India and provides educational services) and (iv) presence of natural persons (when foreign professors come to India or Indian professors go to foreign countries to deliver their services). This is just an example from education sector. Similar examples could be found in the electronics and computer sciences sector.

India has been playing a constructive role in services negotiations in the WTO. While it has been treading cautious on GATS, it wants to leverage its demographic dividend across the services sector.¹²² India as also emerged as the global leader which has offered to waive visa fees for Least Developed Countries’ (LDC) Applicants.¹²³ A competitive services sector would be very important to make effective use of the demographic dividend and making one of the five pillars of *Aatmanirbhar Bharat* resilient to international norms and pressures. Skilling the

¹¹⁸ EY India, *India@100 Reaping the Demographic Dividend*, EARNST & YOUNG (Apr. 11, 2023), https://www.ey.com/en_in/india-at-100/reaping-the-demographic-dividend.

¹¹⁹ Laishram Ladusingh & M.R. Narayana, *Demographic Dividends for India: Evidence and Implications Based on National Transfer Accounts* (Asian Development Bank Economics Working Paper Series No. 292, December 2011).

¹²⁰ *Trade in Services (% of GDP) – India*, THE WORLD BANK, <https://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS?locations=IN> (last visited May 20, 2024).

¹²¹ *The General Agreement on Trade in Services (GATS): Objectives, Coverage and Disciplines*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (last visited May 20, 2024).

¹²² including architectural, integrated engineering and urban planning and landscape services; veterinary services; environmental services; distribution services; construction and related engineering services; tourism services; educational services; life insurance services; services auxiliary to insurance; recreational, cultural and sporting services and air-transport services, etc.

¹²³ WTO Trade Policy Review – Report by India, Nov. 2020, at 6.10.

manpower with adequate future skills in technology driven markets would be very essential. *Skill India*¹²⁴ program has to be given a fillip through its Skill Development Councils creating talent for national and international requirements.¹²⁵

E. Demand

A robust demand which reflects the growth potential for every stakeholder in the supply and consumption chain is the fifth pillar of *Aatmanirbhar Bharat*. Interestingly, ‘demand’ also decides the competitive market. Firms subject to a competitive system must respect two major constraints: demand substitution and supply substitution. A market is competitive if customers can choose between a range of products with similar characteristics and if the supplier does not face obstacles to supplying products or services on that market.¹²⁶

The competition assessment determines both the demand-side substitutability (i.e. of customers) and supply-side substitutability (i.e. of suppliers).¹²⁷ Driving demand for products is very essential for the suppliers and introduction of varied range of products and options would create effective substitutability of the imported products. For example, the demand of imported toys has significantly reduced because of demand of ‘traditional Indian Toys’.¹²⁸ Regulatory easing by the Bureau of Indian Standards (BIS) has been instrumental in this growth by expeditious grant of licenses to MSME toy manufacturers.

One-District One-Product (ODOP) – This initiative is aimed at fostering balanced regional development across all districts of the country. The initiative aims to select, brand, and promote at least One Product from each District (One District - One Product) of the country for enabling

¹²⁴ SKILL INDIA, <https://www.skillindia.gov.in/> (last visited May 20, 2024).

¹²⁵ National Skill Development Corporation (NSDC) works on the PPP Model and caters to 36 skill areas through its Skill Development Councils. Ministry of Skill Development & Entrepreneurship (MSDE) holds 49% of the share capital of NSDC.

¹²⁶ *Definition of Relevant Market*, EUR-LEX, <https://eur-lex.europa.eu/EN/legal-content/summary/definition-of-relevant-market.html> (last visited May 20, 2024).

¹²⁷ In the first case, the question is whether customers for the product in question can readily switch to a similar product in response to a small but permanent price increase (of between 5% and 10%). In the second case, the question is whether other suppliers can readily switch production to the relevant products and sell them on the relevant market.

¹²⁸ Ministry of Commerce & Industry, *Toy Imports Down by 70% and Exports up 61% Over Last Three Years as Make in India Yields Positive Results for the Sector*, PRESS INFORMATION BUREAU (July 05, 2022), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1839393>.

holistic socioeconomic growth across all regions. The ODOP Initiative has identified a total of 1102 products from 761 districts across the country.¹²⁹

Right to Repair – In Shamsheer Kataria case one of the important issues for consideration of CCI was the restriction imposed in supply of spare parts and diagnostic tools/equipment, technical information required to maintain, service and repair the automobiles manufactured by the respective car manufacturers.¹³⁰ This restriction was held to be anticompetitive by the Commission. Interestingly, now under the Consumer Protection Law, the Government has empowered the consumer with the ‘*Right to Repair*’ which requires manufacturers to share their product details with customers so that they can either repair them by self or by third parties, rather than only depending on original manufacturers.¹³¹ This initiative is also contributing to the LiFE (Lifestyle for Environment)¹³² with an objective to reduce e-waste.

VIII. CONCLUSION

India is home to more than 17 percent population of the world. Thus, self-sufficient India is in best interest of the whole world, be it attainment of Sustainable Development Goals (SDGs) or the success of global trade platform. *Aatmanirbhar Bharat* thus would not only lead to the prosperity of India but of the whole world. The constitutional goal of social, economic and political justice requires inclusion of everyone, leaving no one behind. Economic growth is the key to inclusion. As Prime Minister *Shri Narendra Modi* says, “*Without inclusion, real growth is not possible and, without growth the goal of inclusion too cannot be accomplished.*”

Aatmanirbhar Bharat is about converting opportunity from disaster (*Aapada mein avsar*) by change in mindset of people from subsidies dependent to ‘incentive-driven development. The financial inclusion of each citizen and instilling the confidence in them through various schemes to become self-dependent is the aim of *Aatmanirbhar Bharat*. The schemes like Direct Benefit Transfer (DBT) instead of subsidies and free electricity would be the key to progress. Subsidies also exposes the country to international disputes at WTO.¹³³ While there may be

¹²⁹ *One District One Product (ODOP)*, NATIONAL PORTAL OF INDIA, <https://www.india.gov.in/spotlight/one-district-one-product-odop> (last visited May 20, 2024).

¹³⁰ *Shamsheer Kataria v. Honda Siel Cars*, CCI Case No. 3 of 2011, decided on August 25, 2014.

¹³¹ *RIGHT TO REPAIR PORTAL INDIA*, <https://righttorepairindia.gov.in/about-us.php> (last visited May 20, 2024).

¹³² *About the LiFE Campaign*, GOVERNMENT OF INDIA, <https://www.mygov.in/life/> (last visited May 20, 2024).

¹³³ *India – Solar Cells DS456 – Domestic content requirements (DCR measures) imposed by India in the initial phases of India’s Jawaharlal Nehru Solar Mission (NSM) on solar power developers selling electricity to the Government was challenged by United States. A finding was made against India in this matter. See DS456 India*

short-term gains visible with subsidies, there is a long-term loss in various sectors like sugarcane industry.¹³⁴ However, a careful negotiation in the fisheries sector¹³⁵ is being done at WTO to compete with the more mechanized fishing by developed countries. To make the Indian fishing sector *Aatmanirbhar*, a number of measures have been initiated under the Blue Revolution scheme.¹³⁶

India celebrates its *Aazadi Ka Amrit Mahotsav*¹³⁷ - India@75, which included campaigns around nine major themes, i.e., Women and Children, Tribal Empowerment, Water, Cultural Pride, Lifestyle for Environment (LiFE), Health and Wellness, Inclusive Development, *Aatmanirbhar Bharat* and Unity. The *Aazadi Ka Amrit Mahotsav* would conclude on 15th August 2023, however, the vision for India@100 – the *Amrit Kaal* has already been laid down with the objective of empowered and inclusive economy.¹³⁸ The economic agenda for achieving this vision focuses upon (i) facilitating ample opportunities for citizens, especially the youth, to fulfil their aspirations; (ii) providing strong impetus to growth and job creation; and (iii) strengthening macro-economic stability. Thus, the *Aatmanirbhar Bharat* philosophy would be an important foundation stone and the guiding light for the coming 25 years for India.

– *Certain Measures Relating to Solar Cells and Solar Modules*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds456_e.htm (last visited May 20, 2024); It is interesting to note that subsequent to this dispute, India also initiated a complaint against USA regarding certain measures of the United States relating to domestic content requirements and subsidies instituted by the governments of the states of Washington, California, Montana, Massachusetts, Connecticut, Michigan, Delaware and Minnesota, in the energy sector. India won this case at the panel report level and the matter is under appeal. See *DS510: United States – Certain Measures Relating to Renewable Energy Sector*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds510_e.htm (last visited May 20, 2024).

¹³⁴ See India – Measures Concerning Sugar and Sugarcane” (DS579, DS580, DS581).

¹³⁵ Subsidies are prohibited by WTO for Illegal, Unreported and Unregulated (IUU) fishing and overfished stocks. India’s stand on fisheries subsidies is that it is “one of the lowest fisheries subsidisers despite such a large population and one of the disciplined nations in sustainably harnessing the fisheries resources.” Ministry of Commerce & Industry, *The Agreement on Fisheries Subsidies (Agreement) at the WTO Ministerial Meeting to Prohibit Subsidies from being Provided for Illegal, Unreported and Unregulated (IUU) Fishing and Overfished Stocks*, PRESS INFORMATION BUREAU (July 22, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1843952>.

¹³⁶ *Blue Revolution*, DEPARTMENT OF FISHERIES, <https://dof.gov.in/blue-revolution> (last visited May 20, 2024).

¹³⁷ An initiative of the Government of India to celebrate and commemorate 75 years of independence and the glorious history of it's people, culture and achievements; See *Azadi ka Amrit Mahotsav*, <https://amritmahotsav.nic.in/> (last visited May 20, 2024) (the initiative has five themes (*Panch Pran*), i.e. , freedom struggle, ideas@75, resolve@75, actions@75 and achievements@75).

¹³⁸ Ministry of Finance, *Budget 2023-24 Presents Vision for Amrit Kaal- Blue Print for An Empowered and Inclusive Economy*, PRESS INFORMATION BUREAU (Feb. 01, 2023), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1895313>.

NORMS REGULATING AND CONTROLLING PORT, INFRASTRUCTURE AND TOURISM

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Abstract

Ports are one of the most important economic activities providing employment, cultural exchange, including tourism and touristic activities in coastal areas. Ports play an important role in the transport of bulk good through ships from one place to another place. Ports played a significant role during British period in transporting all types of products from India to England. Due to the development of technology, many changes were introduced in the transport of cargo including drones. Drones will supply important products, but they can supply limited products and not in bulk. As a part of the Atma Nirbhar Bharat initiative, government officers, teachers and students will reach out to each and every village panchayat. This would be done in order to ensure that every village becomes self-reliant by harnessing the available resources within the area. Available resource includes natural and artificial ports available in India. Time has come to have a relook at the ports, their conditions, infrastructure, and it is also essential to look in to how these ports will be improving our improving Indian economy and tourism. Establishment of ports, types of ports, governance and control of the ports, and various Indian laws enacted from time to time dealing with ports and their administration have been discussed. The new law introduced by the Union Ministry of shipping, the draft Indian Ports Bill and the Major Ports Authorities Act, 2021 could dilute and encroach on the powers of the State government with respect to the Minor ports and enable their privatization. Further, the environmentalist is of the opinion that Major Port Authorities (MPA) Act, is a draconian law that would eliminate the source of livelihood of fishermen. It will also act as a hurdle to tourism, toddy tappers and other coastal residents. This research article is written keeping in mind the above factors to make the people understand the importance, revenue generation, employment facilities provided by the ports to the public and to critically analyze the new legislation MPA Act, 2021 as draconian law or not and also verify to what extent the idea of Atma Nirbhar Bharat schemes are brought to the doorsteps of public with special reference to ports.

Keywords: Harbour, Port, Docks, Maritime, Hinterland, Coastal, Cruise, Decentralization

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I. INTRODUCTION

Ports play an important role in transport of bulk goods for cheaper price from one nation to another nation. The idea of ports was introduced during British rule for their own benefit. But they became important in our day-to-day life. A port is a harbour or docking place for ships on the coast of the ocean or river. It is there that ships dock to load and unload their cargo or for the purpose of allowing passengers to embark or disembark. It is an area that can accommodate a large number of boats and vessels to convey people or cargo where continuous or periodic shipments of cargo to or from land can happen at the same time. Generally, ports are located at selected sites in order to have access to land and navigable water, to serve for commerce and as shelters from winds and waves. Ports may be said to play a crucial role in the economy of a country. This is because they confer both economic and social benefits to the region where they are located. Trade and commerce is facilitated through ports as water transport is the best and cheapest source of transportation.

Ports are described in various ways. One notion conveys that ports are important interfaces in the supply chain between sea and land transportation.¹ A realistic description provided of ports is that they signify places where rail, truck, barge, ship, and other transport methods, converge. The idea that ports are “historic, commercial, infrastructural assets forming the backbone of an economy,”² focuses on the more functional aspects of ports. These areas also generally characterized by features such as the existence of docks and berths where vessels moor, equipment and personnel are engaged to load and unload the vessels, links to land transportation and cargo storage areas are observable.

Geographically, the Indian peninsula is surrounded by water on three sides, namely by the Arabian Sea on its west, the Bay of Bengal on the East, and the Indian Ocean in the Southern part. All the 3 seas converge at the southern tip namely, Kanya Kumari. Another aspect is that India being situated to the North of the Equator, the temperate climate keeps the waters navigable throughout the year.³

¹ A. BALASUBRAMANIAM, PORTS AND HARBOURS IN INDIA (Technical Report, University of Mysore, 2021).

² Vijay Hiranandani, *Port Operations and Management*, SLIDESHARE (May 10, 2023), <https://www.slideshare.net/VijayHiranandani/port-operations-management-slideshow-17087392>.

³ BALDEO SAHAI, THE PORTS OF INDIA (2017).

India also has a vast coastline spanning more than 7,500 kms in length. With 14,500 km of potentially navigable waterways and the fact that India is strategically located on key international maritime trade routes, the ports have provided great impetus to trade and commerce. These positives have acted as a gateway for an upsurge in India's international trade, which according to available information ranks 17th among maritime countries.⁴ In this research article, the authors explained the foundation, significance, Infrastructure, Governance of ports, Issues and Challenges, Norms regulating & controlling Ports, critical analysis of Port legislations, Ports and tourism, and concluding remarks.

II. FOUNDATION OF PORTS IN INDIA

Historically, ports in India were constructed in locations that were geographically favourable to facilitate the transfer of goods. They had been important throughout different periods of history. The importance given to them varied in degrees according to the trading ambitions of the rulers in power during the respective periods. Records suggest that certain ports occupied a central role for trade purposes in ancient times. Trade was carried on through these ports with some parts of South-East Asia and the Eastern Roman Empire.⁵

Of course, the same cannot be said about ports during the medieval period. Sea ports did not receive much attention then as the Mughals focused more on trade by road than by sea. Records show that the Britishers during their reign in India, made sure to improve ports in India as they used them for trade and commerce. In fact, they were responsible for establishing new ports in different parts of India. Thus, while there was an expansion of ports during British rule in India, the extent to which it happened, depended on the British traders themselves who had monopolized trade and commerce then. It was when India gained independence from the British, that the Government of India took over the control and development of ports in the country.

Both the Indian coasts are studded with ports.⁶ The Indian peninsula being open to the sea on all sides, is at present serviced by 13 major ports, 200 of which are notified minor and intermediate ports. The 13 major ports are located in 9 Indian States. On the west coast of

⁴ Afaq Hussain, *Reforming the Indian Port Sector*, 10(1-3) GLOBAL JOURNAL OF EMERGING MARKET ECONOMIES 73 (2018).

⁵ *Ports for Foreign Trade During Ancient Times*, FORUM IAS (Oct. 25, 2020), <https://blog.forumias.com/ports-for-foreign-trade-during-ancient-times/>.

⁶ Hiranandani, *supra* note 2.

India, there are the ports of Mumbai, Kandla, Mangalore, Jawaharlal Nehru Port Trust, Mormugao, and Cochin. The ports on the east coast are the ports at Chennai, Tuticorin, Visakhapatnam, Paradip, Kolkata, and Ennore. Of these, 12 are Government owned ports and 1 is a private port. Apart from these, there are 187 minor ports. Besides being indispensable for trade, most of the major ports serve the country's strategic needs also. It is heartening to note that around 95 percent of India's export-import trade by volume and 70 percent by value are carried through these seaports.⁷ These figures indicate the extent of contribution of the ports in pushing forward and sustaining the growth of the Indian economy.

The favourable locations of ports and the availability of a long coastline, has made India, a foremost destination for the purpose of executing maritime economic activities. On account of the increasing importance provided to maritime economic activities, cargo and container terminals have developed in the country. Activities that are generally associated with ports include among others, the operation of vessels, cargo handling equipment, locomotives, trucks, vehicles, storage and warehousing facilities as well as the transportation of cargo, passengers and the development and maintenance of supporting infrastructure.

But with the constantly increasing volume of global trade and the inflow of economic activities, certain challenges have emerged that require attention. In particular, the need for advanced and efficient infrastructure facilities at the country's ports is one of the biggest concerns that needs immediate attention and action.

A. Types of Ports

Ports are generally categorized on the basis of their location or on the basis of the cargo they handle. Ports based on their location are subdivided into (i) Inland ports and (ii) Out ports.

(i) Inland Ports: Inland ports as the name suggests, are ports that are not on the coast. They have a river or canal that connects them to the sea. Kolkata situated on the Hoogli River is an example of such port.

(ii) Out Ports: These ports are deep-water ports located outside of the main ports. These basically assist the parent ports by receiving ships that are too large to approach or dock at the parent ports.

⁷ Hussain, *Supra*. Note 4

There are also ports that are classified on the basis of the cargo handled by them. There are generally three kinds of such ports. These are a) Industrial ports b) Commercial ports c) Comprehensive ports. Industrial ports are those that specialize in bulk goods such as grain, sugar, minerals, oil, chemicals, and other such products. Ports that deal with general and not specialized cargo are known as the commercial ports. These ports deal with packaged goods and manufactured items, as well as passenger traffic. The third kind of ports are comprehensive ports that handle enormous volumes of bulk and general cargo. These ports account for the majority of the world's major ports.

India's ports are also divided into two categories they are major and minor ports as discussed above. The Central Government owns and operates the major ports. Whereas state governments own and operate the minor ports.

All these ports contribute to the growth of the economy in more than one way. In the first place, they enable hinterlands to be linked to points overseas. Ports facilitate the transportation of goods to and from the interior hinterlands. In this way, they help increase the volume of international trade. Secondly, most of the world's major cities have grown around ports which result in considerable economic activity. Thirdly, ports also generate employment opportunities both in a direct and an indirect manner. Where employment occurs in activities related to the port there is direct employment. Where employment opportunities are created due to a demand for allied services like banking, insurance, tourism-related activities. The increase in economic activity between ports and the hinterland results in the development of infrastructure.⁸

B. Ports and its infrastructure

Proper port infrastructure is vital to a country's success in trade relations and its consequent growth. It is in fact said to be the key to a nation's development. It is therefore important to ensure that port systems are continually maintained and upgraded as they otherwise face the threat of becoming inefficient and obsolete. Its quality can therefore significantly impact trade.

Access to ports and infrastructure is an important aspect that needs to be kept in mind for the purpose of facilitating the smooth shipment of goods. There are basically two types of infrastructure to be considered:

⁸ BALASUBRAMANIAN, *supra* note 1.

(i) Hard infrastructure which includes roadways, railways, seaports and airports. In addition, ports are required to be equipped with particular facilities such as seawall jetties; berths; wharves; docks; boat landings; marinas; warehouses; storehouses; elevators, grain bins; cold storage plants; terminal icing plants; bunkers, oil tanks; ferries; canals; locks; bridges; tunnels; seaways; conveyors, etc. Access to ports, and infrastructure therefore include the need for both landside and marine infrastructure and services to be in place in the port area.

(ii) Soft infrastructure, on the other hand, includes trade policies, customs procedures, and related institutions.

With the concept of the 'global village' bringing international competitiveness sharply into focus, there is intense pressure on the Indian ports functioning to fine tune their infrastructure, enhance their efficiency and minimize handling costs in keeping with the international trade scenario. Some ports geared up to the situation to meet the new situation by introducing more mechanization, improving methods that would enhance productivity and efficiency among others. But other ports lagged behind without much change in their infrastructure. Upgrading the infrastructure involves high costs, for which public-private partnerships are seen as a better solution.

C. Significance of Ports

Ports are important for transport of passengers and goods from one locality to another locality. Besides this they are also important for numerous other purposes. These are:

(i) Security: It is common knowledge that ports ensure the security of strategic installations - naval bases, nuclear power plants, and satellite and missile launching ranges in the country. In addition, it is possible to keep an eye on maritime traffic. Although monitoring and regulating the movement of these vessels is difficult, nevertheless, it is necessary in the interest of the country.

(ii) Environment: The Indian Ocean is three times warmer than the Pacific Ocean. Proper planning and environmental impact management of port development and operations activities is essential in a country like India.

(iii) Social Inclusive development: Industries need a safe and inexpensive means of exporting finished goods and importing raw materials for inclusive development. Ports help and facilitate this aspect.

(iv) Sustainable livelihood: India is the world's second-largest fish producer, with sustainable livelihood development in the fisheries sector. It is generally the case that all catch must be landed before entering seafood markets. This makes port facilities critical hubs in global supply chains.

D. Challenges to Indian Ports Connectivity

Though ports are very important and boost the economy of the country, many challenges and problems are encountered in their operation. Following are the few important challenge, they are:

- a) **High ship turnaround times:** India's ports have been found to have long ship turnaround times. In Singapore, for example, the typical ship turnaround time is less than a day whereas it takes more than two days.
- b) **Port Congestion:** Port congestion is a serious concern due to container tonnage, a lack of handling equipment, and inefficient operations.
- c) **Infrastructure:** Lack of necessary infrastructure for evacuation from major and minor ports results in sub optimal the transport modal mix. In spite of many new ports in India, the infrastructure does not meet global standards. Inefficient or poor transport services result in higher costs of transportation as well as delays. Challenges faced in respect of ports in existence in the country at present, indicate inadequate road networks within the port area. There is in addition a lack of cargo-handling equipment and machinery, poor hinterland connectivity through rail, road, highways, coastal shipping and inland waterways, a dearth of navigational aids, facilities and IT systems, dredging, including a lack of technical expertise and equipment for handling large volumes. The turnaround time at ports scenario in India is therefore quite appalling. But improvement in port infrastructure can significantly expand and boost trade.

Most Indian container handling ports lack the capability to handle large container vessels due to inadequate depth; a minimum draft depth of 18 meters is needed to enable mother vessels to dock at ports. Weak hinterland connectivity between production centers and gateway ports often leads to higher costs and delays. India's infrastructure generally is in a bad shape and India needs huge investment and rapid economic growth. Port facilities in India have been uneconomic, with a lack of easy financing options for private sector investment.

- d) **Limited Hinterland linkages:** Inefficiency leads to insufficient hinterland connectivity by rail, road, highways, coastal shipping, and inland waterways. This lead to rise in cost of transportation and freight movement.
- e) **Long inspections and scrutiny:** While India's customs procedures are quickly becoming paperless and digital, cargo and other shipping activities continue to be subjected to lengthy inspections and examination.
- f) **Technology Issues and Inadequate Infrastructure:** At Non-Major Ports, there is a lack of acceptable berthing facilities, a sufficient number of berths, and sufficient length for proper berthing of vessels. The majority of non-major ports lack the necessary material handling equipment to permit a speedy turnaround. Inadequate navigational aids, facilities, and IT systems due to a lack of equipment for managing huge volumes.
- g) **Issues with Regulations:** Major and minor ports are governed by distinct authorities. It is found that foreign-flagged ships are not permitted to transport cargo from one Indian port to another, this is a territory reserved for domestic shippers. Environmental clearances and land acquisition issues also pose challenges in this regard.
- h) **Issues with PPP Model:** The majority of port PPPs place - strict restrictions on what private operators can do, mainly in terms of the categories of goods they can handle. Other issues that generally can affect ports are tariff regulation and the lack of a dispute settlement process. Ports are also known for their negative impact on environment. Spills or leaks from the cargo loading and unloading, as well as pollution from oil spills, are widespread during port operations which generally occur due to non- adherence to environmental rules and standards. At the same time, the water discharged during ship cleaning and ballast water discharge pose harm to marine habitats. It has been found that dredging has a negative impact on the environment (increased sedimentation), as well as the productivity of local waters and fisheries.
- i) **Social impact:** There are certain social impacts from Port Development. The majority of port development and initiatives result in displacement of people. Another issue raised by fishing communities is the restriction of access to fishing areas in the vicinity of a port. At the same time, there are also manpower and labour issues wherein the inadequate training and declining manpower quality as well reluctance for reform, turn out to be key concerns.

- j) **Unhealthy Competition:** The establishment of numerous ports in close proximity to each other also results in ports fighting among themselves for the same cargo arrivals. Furthermore, despite shipping and inland water ways being cost-effective, it is found that only a minuscule modal share of 6% is being utilized. It is also found that most of the Indian container handling ports lack the capability to handle large container vessels due to inadequate depth.⁹
- k) **Environmental impact:** Spills or leaks from cargo loading and unloading, as well as pollution from oil spills, are widespread during port operations due to a lack of respect for environmental rules and standards. The water discharged during ship cleaning and ballast water discharge pose harm to marine habitats. Dredging has a negative impact on the environment (increased sedimentation), as well as the productivity of local waters and fisheries.

One cannot lose sight of the fact that the development of ports and their infrastructure calls for huge investment and rapid economic growth. But the development of ports does not get adequate investment in India. It is found that financing options for private sector investment are also not easily available and port facilities have become uneconomical. Long waits for government approvals, environmental clearances, and compliance with coastal regulations also have affected the development of ports in the country.

These challenges however can be met with the adoption of new techniques, new technologies and new infrastructure which involve large sums of money.

III. GOVERNANCE OF PORTS IN INDIA

The Indian Major Ports are directly under the administrative control of the Central Government. They are governed under the Major Port Trust Act, 1963. The Government of India appoints a Board of Trustees to supervise each major port. Their responsibilities include port development, management, and operations.

The Minor/ intermediate ports on the other hand, are managed and administered by the respective maritime State Governments. These are governed under the Indian Ports Act, 1908. The 1908 Act which consists of 69 sections and two schedules, regulates the berths,

⁹ Gaurav J. Sontake, *Ports Infrastructure in India*, UPSC SUPER SIMPLIFIED (Mar. 20, 2021), <https://www.upscsupersimplified.com/ports-infrastructure/>.

stations, anchoring, fastening, mooring and unmooring of vessels. Besides, it also prescribes the rates to be paid in a port other than a Major Port for use of such mooring belonging to the Government. It also regulates catamarans plying or hire and deals with regulating the use of fires and light within any such port. Minor ports, such as those in Gujarat, Maharashtra, and Tamil Nadu, are controlled at the state level by the Port Department or, the State Maritime Board. State Maritime Boards have similar tasks to port trusts, and they also have tariff-setting authority. They also work to induce private investment, giving concession contracts, offering incentives and granting exclusivity rights. After going through the governance and administration of ports.

The normative provisions made to regulate and control ports in India have been discussed below:

IV. NORMATIVE PRINCIPLES TO CONTROL AND REGULATE PORTS IN INDIA

Various laws were introduced in India from time to time. Different laws, byelaws, rules and regulations were made at central as well as local levels. These laws contain norms to control and regulate the functioning and development of ports. Out of the following, three significant legislations introduced in India are The Indian Ports Act, 1908, Major Port Trust Act, 1963 and Major Port Authorities Act, 2021.

1. Indian Registration of Ships Act, 1841
2. The Indian Registration of Ships Act (1841) with Amendment Act, 1850
3. The Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60.)
4. The Indian Ports Act, 1908
5. Merchant Shipping Act, 1958
6. Major Port Trust Act, 1963
7. Major Port Authorities Act, 2021 (MPA Act, 2021)
8. Draft Port Amendment Bill, 2022

Besides the above-mentioned Central legislations to regulate and control, various state legislations were made to regulate and control ports at the state level. Following bye laws and regulations are applicable only to Mumbai port with reference to specific purpose.¹⁰ They are:

1. Board of Trustees of the Port of Mumbai (Procedure at Committee Meetings) Regulations, 1975
2. Port Trusts (Payment of Fees and Allowances to Trustees) Rules, 1981
3. Ware House Bye laws
4. Dock Bye laws
5. Bombay Port Trust (Licensing of Stevedores and Allied Matters) Regulations 1989
6. Mumbai Port Trust Passenger Boat Rules

Unfortunately, all the above legislations, bye- laws and regulations do not deal with liability, dispute- settlement, liability and insurance for damage caused to the victims.

Apart from the 1908 Act, the Major Ports are governed by the **Major Port Authorities Act, 2021** which repealed the earlier Major Port Trusts Act, 1963. In 1997, a **Maritime State Development Council (MSDC)** was created by an **Executive order**, with the Union Minister of Shipping as chairperson and the Ministers in charge of ports of the maritime States/Union Territories (UTs) as members. The MSDC serves as an **Apex Advisory Body to coordinate development** of major ports and non-major ports.

A. MPT Act, 1963

This legislation was made after independence for control, administration and governance of ports. This legislation mainly dealt with Board of Trustees and Committees, Staff of the Board in the administration of ports. Central Government plays an important role in port property, contracts entered, various services and work to be undertaken and Central Government takes initiative in the supervision and control of ports. Further this law also dealt with Tariff Authority for Major Ports, Imposition and Recovery of Rates at Ports, Borrowing Powers of

¹⁰ *Acts and Bye Laws*, MUMBAI PORT AUTHORITY, https://mumbaiport.gov.in/index2_n.asp?slid=118&sublinkid=555&langid= (last visited May 20, 2024).

Board, Revenue and expenditure. This Act also imposes penalties, if any employer¹¹ contravenes the provisions of this legislation.

B. MPA Act, 2021

It is interesting to note that in 2020, the Major Ports Authorities Bill was passed with 84 votes in favour and 44 against. As per the Draft Bill, it was felt that there was need for statutory status to Maritime States Development Council (MSDC) along with wide ranging powers and functions. The Bill intended to make it a permanent body with its own office, staff, accounts and audit. There was some criticism about this provision that a body like the MSDC though necessary, the nature and quantum of its work did not call for a statutory or permanent status. The proposed composition of the MSDC favoured the Union Government. The draft Bill proposed to make 5 Secretaries and 1 Joint Secretary to the Government of India, besides the administrators of the coastal UTs, as members of the MSDC. The vote of an officer would count the same as the vote of a minister. This would set a bad precedent.

The draft Bill received the President's assent on 17th February 2021 after which it became the Major Port Authorities Act, 2021. This Act replaces the Major Port Trusts Act, 1963. This Act aims to provide for the regulation, operation and planning of Major Ports in India and to vest the administration, control and management of such ports upon the Boards of Major Port Authorities and for matters connected therewith or incidental thereto.¹²

The new Act aims to decentralize decision-making and reinforce excellence in major port governance. The Act allows the Board to use its property, assets and funds as deemed fit for the development of the major port. The Board can also make rules on the following: (i) Declaring availability of port assets for port-related activities and services (ii) Developing infrastructure facilities such as setting up new ports, jetties. (iii) Providing exemption or remission from payment of any charges on any goods or vessels. (iv) The role of the Tariff Authority for Major Ports (TAMP) has been redefined and the port Authority has now been given powers to fix a tariff. Bidding can be undertaken by PPP projects. In such cases, the PPP operators will be free to fix tariff- based on market conditions.

¹¹ Employer is treated as public servant.

¹² Major Port Authorities Act, 2021, BYJU's, <https://byjus.com/free-ias-prep/major-port-authorities-act-2021/> (last visited May 20, 2024).

The composition of the Board of Port Authority will comprise of 11 to 13 Members from the present 17 to 19 Members representing various interests. Provision has been made for the inclusion of representatives of State Government in which the Major Port is situated, Ministry of Railways, Ministry of Defense and Customs, Department of Revenue, A Government Nominee Member, a member representing the employees of the Major Port Authority.¹³ A major change that has taken place is regarding the functions of the Board, composition, appointment, terms and conditions, terms, disqualifications, removal.¹⁴ Specific provisions also exist with regard to the management and administration of the port.¹⁵ The powers of the Board find mention from Sections 33 to 44 of the Act. The Act mandates supervision by the Central Government and has made provisions to this effect. The same Act also stipulates the constitution of Adjudicatory Board. Penalties in case of contravention of any of the said provisions has been outlined in Sec. 75 of the Act. is in line with the Prime Minister's Atma Nirbhar Bharat Campaign. It will help India become a global manufacturing and trading hub.¹⁶

Both these legislations only mention about the control, administration and governance aspects. These Acts are silent in the matters relating Dispute Settlement, Accountability and Insurance for damage caused to the victims. There is a criticism about MAA Act, 2021 that this could dilute and impinge on the powers of the State Government with respect of minor ports and enable their privatization. Further, the environmentalist is of the opinion that Major Port Authorities (MPA) Act, is a draconian law that would eliminate the source of livelihood of fishermen. It will also be an impediment to tourism, toddy tappers and other coastal residents. Keeping in mind these drawbacks and to make the law favourable to the common man, the Indian Port Bill, 2022 has been enacted.

C. Indian Port Bill, 2022

To overcome the criticism, the Indian Port Bill, 2022 was drafted with the following objectives and recommendations.

The main objectives of this Indian Port Bill, 2022 is to consolidate and amend the law relating to ports, for the prevention and containment of pollution at ports, to ensure compliance

¹³ *Id.*

¹⁴ The Major Port Authorities Act, 2021, §§ 3-19.

¹⁵ The Major Port Authorities Act, 2021, §§ 20 -32.

¹⁶ BYJU's, *supra* note 12.

with the country's obligation under the maritime treaties and international instruments to which India is a party to take measures for conservation of ports; to empower and establish State Maritime Boards for effective administration, control and management of non-major ports in India, provide for adjudicatory mechanisms for redressal of port related disputes and to establish a national council for fostering structured growth and development of the port sector, and ensure optimum utilization of the coastline of India, as may be necessary, and to provide for matters ancillary and incidental thereto, or connected there with.

The Draft Bill states that, there is a need to provide statutory status to MSDC along with wide ranging powers and functions, The Bill will make it a permanent body with its own office, staff, accounts and audit. A body like the MSDC is necessary, but the nature and quantum of its work do not call for a statutory or permanent status. The proposed composition of the MSDC favors the Union Government and also a bad precedent.¹⁷

In accordance with global port reform strategies, the Central Government should strive for greater decentralization, deregulation, corporatization, and private sector participation. The Central Government should only be responsible for functions like border control, competition policy, port security, environmental protection, and hinterland connectivity. State Governments and city municipal corporations should be provided greater stakes in corporatized major ports.

This Draft Port Bill, 2022 contains same authorities like MSDC,¹⁸ SMB,¹⁹ (constitution, powers and functions) with little statutory status, adjudicatory authorities²⁰ (Powers regarding complaints and resolution of disputes by the State Maritime Board, Establishment of Appellate Tribunal and settlement of disputes and appeals before the Appellate Tribunal and procedure), safety and conservation of ports,²¹ prevention, containment of pollution and response (waste reception and handling of waste).²²

¹⁷ The Draft Bill makes 5 Secretaries and 1 Joint Secretary to the Government of India, besides the administrators of the coastal UTs, as members of the MSDC. The vote of an officer would count the same as the vote of a minister.

¹⁸ The Indian Port Bill, 2022, ch. II, §§ 3-10.

¹⁹ The Indian Port Bill, 2022, ch. V, §§ 19-21.

²⁰ The Indian Port Bill, 2022, ch. VI, §§ 22-28.

²¹ The Indian Port Bill, 2022, ch. VIII, §§ 38-45.

²² The Indian Port Bill, 2022, ch. IX, §§ 46-57.

Nowadays, ports are very important tourist places, attracting tourists from different countries due to cheaper, innovative, and attractive adventurous activities/facilities.

V. PORT AND TOURISM

In recent times, ports provide two types of tourism. Cruise tourism and marine tourism, Impact on environmental, cultural, social & economic, Cruise tourism is an activity that provides economic income to the harbors and creates new jobs. The cruise tourism has an increasing demand in the recent years. Cruise ship visitors have an opportunity to see many countries and cities in a short time and have a vacation on a luxury ship, which has a comfort standard like a holiday village with its historical, cultural, and natural attractions.

Cruise tourism is a kind of holiday including the sea trip, visit of destinations and different activities on board and land. Accommodation of guests and onboard guests spend their leisure time visiting a variety of destinations on a specific route. The aim of cruise tourism is not passenger transport, but host to tourists and the provision of all kinds of services on board. Visit to places close to the harbor and shopping activities are included. Cruise ships offer new innovative activities onboard. Including water parks, surf pools, planetariums, golf and sky-diving simulators, ice-skating rinks, rock-climbing walls, bungee trampolines, self-leveling billiard tables, demonstration kitchens, multi-room villas with private pools, and much more.

Cruise ships are like luxury hotels, have different sizes, and standards. Ships are designed for a wide range of budgets and choices. Cruise trip provides an optimum holiday, it includes visit to different destinations and a variety of activities during the voyage Marine tourism. They are divided in two important categories they are Marine tourism and marine eco-tourism activities.

Marine tourism acts include - travelling on large cruise ships, jet skiing, windsurfing, sport fishing, sailing, beachcombing (searching for shells), surfing and others. Marine ecotourism activities include activities like boating (expedition cruising, sea kayaking, canoeing, ocean rafting), diving and snorkeling, wildlife watching, visiting coastal communities, coastal hiking and reef walking, coastal camping, underwater photography, nature walk etc.

Port tourism includes maritime transport which involves vital infrastructure for the social and economic development of a country. It influences the structure, and pattern of development. The Ministry of Ports, Shipping, and Waterways controls, regulate and govern the maritime transport. It includes within its fold ports, shipping, and waterways sectors further Shipbuilding and Ship-repair, Major Ports, National Waterways, and Inland Water Transport.

Port tourism is very important for the public at grass root level that provides large scale employment at three levels that is conducting and involving tourist in various cruise tourism, maritime tourism activities and maritime transport. Generating employment makes the public self-reliant in the coastal areas leads to *Atma Nirbhar Bharat* idea proposed by the Prime Minister Shri Narendra Modi.

VI. CONCLUSION

Tourism in coastal area fetches revenue necessary for the country's progress. Port development and infrastructure requires crores of investment- only rich and MNC's alone can start the business. Other incidental activities like transport, small scale activities can be initiated by local public with restricted resources. This provides employment to the community at grass root level, this leads to *Atma Nirbhar Bharat* concept. Further the object of the new Act 2021, deals with decentralization of powers at the local levels. In reality, this Act also provides more powers to the Central Government rather that to the local government. Public is of the opinion that the Act,2021 could dilute and invade on the powers of the State government with respect of minor ports and permit their privatization. Further the environmentalist is of the opinion that Major Port Authorities (MPA) Act, would eliminate the source of livelihood of fishermen, obstacle to tourism, toddy tappers and other coastal residents. To make the law suitable for coastal people, to make them self-reliant, Indian Port Bill 2022 has been drawn up.

The Indian Port Bill, 2022 to some extent incorporated adjudicatory authorities in dispute settlement, safety and conservations of ports, and prevention containment of pollution. Present port laws including the Indian Port Bill, 2022, only deal with few aspects like administration, control and governance of port. There is no comprehensive law to deal with all aspects of port and its infrastructure dealing with tourism. Each and every issue is dealt with under different laws making one to approach pillar to post to avail justice. Specific and

comprehensive law is therefore the need of the hour. To encourage international investment in the port industry, environmental approvals, tariff regulations, and land acquisition must all be consistent and executed. It is necessary to connect major and minor ports by rail and road in order to enable smooth multimodal transportation and increase efficiency. It is essential to expand the capacity and improve operational efficiency of minor ports. Further it is mandatory to installing modern cargo-handling processes, scalability in processes, and mechanization of port operations. Technologies such as big data and modern GPS navigation systems are crucial for better port operations in the present situation.²³ The creation of coastal occupants self-reliant and to achieve the concept of Atma Nirbhar Bharat, it is essential that the Central Government must clearly maneuver its framework on the control and regulation of minor ports. so as to protect the livelihood of fisher folk, toddy tappers and other coastal inhabitants.

²³ *Ports Infrastructure – Indian Economy Notes*, PREPP, <https://prepp.in/news/e-492-ports-infrastructure-indian-economy-notes> (last visited May 20, 2024).

REDEFINING ENERGY RIGHTS THROUGH ATMA-NIRBHAR BHARAT SCHEME: A TOOL BOOSTING INDIA'S MARCH TOWARDS A GREEN ENERGY NATION

- (Dr.) Bishwa Kallyan Dash*

Abstract

Economists like Robert Repetto have always placed thrust on development and its relation to the use of resources. And, it has resulted in the mathematical formula that; Development is inversely proportional to environmental resources. This elaborates that; if a state wished to be economically sound, the state has to rely heavily on the utilization of great amount of energy from its natural resources. However, the scientific advancement have exposed the world with alternative possibilities; which not only have motivated us to move from the conventional methods of relying on the energy source towards the clean sources. But, every good thing comes with a 'cost'. And, the simplifier of the term cost is nothing but the ability of the state to adapt, acquire and implement the new technology for cleaner sources of energy. India is not far behind this race. However, India's energy demand is growing exponentially over the last decade. From being an underdog economically, India is on the path of a economic super-power. This has called for a plethora of policy decision including but not limited to the energy needs; which has been taken by the Union Government. These policies coupled with the Aatmabirbhar Bharat scheme, have provided enough impetus to the stakeholders to imbibe the aspirations of the government towards green energy. This paper is looking forward to unfold the aspiration desires and their opportunities.

Key Words: Right to Energy, Energy Convergence, Green Energy, FDI in Energy sector, Atmanirbhar Bharat Scheme

I. INTRODUCTION

Every year, India adds a city the size of London to its urban population, involving vast construction of new buildings, factories and transportation networks. Coal and oil have so far served as bedrocks of India's industrial growth and modernization, giving a rising number of

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Indian people access to modern energy services.¹ This includes adding new electricity connections for 50 million citizens each year over the past decade.

The rapid growth in fossil as a source of energy consumption has also fast-tracked India's annual CO₂ emissions for it to become the third highest in the world. However, India's CO₂ emissions per person puts it near the bottom of the world's emitters, and they are lower still if you consider historical emissions per person. The same is true for energy consumption: the average household in India consumes a tenth as much electricity as the average household in the United States.

India's sheer size and its huge scope for growth means that its energy demand is set to grow by more than that of any other country in the coming decades. In a pathway to net zero emissions by 2070, we estimate that most of the growth in energy demand this decade would already have to be met with low-carbon energy sources. It therefore makes sense that Prime Minister Narendra Modi has announced more ambitious targets for 2030, including installing 500 gigawatts of renewable energy capacity, reducing the emissions intensity of its economy by 45%, and reducing a billion tonnes of CO₂.²

These targets are formidable, but the good news is that the clean energy transition in India is already well underway. It has overachieved its commitment made at COP 21- Paris Summit by already meeting 40% of its power capacity from non-fossil fuels- almost nine years ahead of its commitment and the share of solar and wind in India's energy mix have grown phenomenally. Owing to technological developments, steady policy support and a vibrant private sector solar power plants are cheaper to build than coal ones. Renewable electricity is growing at a faster rate in India than any other major economy, with new capacity additions on track to double by 2026. The country is also one of the world's largest producers of modern bioenergy and has big ambitions to scale up its use across the economy. The IEA expects India to overtake Canada and China in the next few years to become the third largest ethanol market worldwide after the United States and Brazil.³ However, even as it sets its sights on net zero, India faces a number of pressing near-term challenges. The sharp increase in commodity prices

¹ Ananth Chikkatur & Shoibal Chakravarty, *Need for an Integrated Energy Modelling Institution in India*, 43(21) ECONOMIC AND POLITICAL WEEKLY 64 (2008).

² *Id.*

³ Bhabani Sen Gupta, *India in the Twenty-First Century*, 73(2) INTERNATIONAL AFFAIRS (ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS 1944-) 297 (1997).

has made energy less affordable, and tight markets are increasing energy security risks for the world's third largest energy importer. There is still a lack of reliable electricity supply for many consumers. Continued reliance on traditional fuels for cooking causes unnecessary harm to many people's health. Financially ailing electricity distribution companies are impeding the urgent transformation of the sector and high levels of pollution have left Indian cities with some of the poorest air quality in the world.⁴

India already has numerous policies measure in place that – if fully implemented – could address some of these challenges by accelerating the shift to cleaner and more efficient technologies. Subsidies for petrol and diesel were removed in the early 2010s, and subsidies for electric vehicles were introduced in 2019. India's robust energy efficiency program has been successful in reducing energy use and emissions from buildings, transport and major industries. Government efforts to provide millions of households with fuel gas for cooking and heating are enabling a steady transition away from the use of traditional biomass such as burning wood. India is also laying the groundwork to scale up important emerging technologies such as hydrogen, battery storage, and low-carbon steel, cement and fertilizers.

A transition to clean energy is a huge economic opportunity. India is particularly well placed to become a global leader in renewable batteries and green hydrogen. These and other low-carbon technologies could create a market worth up to \$80 billion in India by 2030. Support from the international community is essential to help shift India's development onto a low-carbon path. To reach net zero emissions by 2070, the IEA estimates that \$160 billion per year is needed, on average, across India's energy economy between now and 2030. That's three times today's investment levels. Therefore, access of low-cost long-term capital is key to achieve net zero.⁵

Achieving net zero is not just about reducing greenhouse gas emissions. India's energy transition needs to benefit its citizens, and well-designed policies can limit the potential trade-offs between affordability, security and sustainability.⁶ Green hydrogen will play a major role

⁴ Nandakumar Janardhanan, *Efforts towards Energy Transition: Supply Side Measures Transition to Energy Secure Future: Policies Enabling Energy Transition in India* (Institute for Global Environmental Strategies, Working Paper-CC-2011-09, Feb. 2012).

⁵ Fatih Birol & Amitabh Kant, *India's Clean Energy Transition is Rapidly Underway, Benefiting the Entire world*, IEA 50 (Jan. 10, 2022), <https://www.iea.org/commentaries/india-s-clean-energy-transition-is-rapidly-underway-benefiting-the-entire-world>

⁶ Arunav Guha Roy, *Securing India's Energy Options in an Interdependent World*, 3(2) RENEWABLE ENERGY LAW AND POLICY REVIEW 131 (2012).

in achieving the net zero and decarbonizing the hard-to-abate sectors. India aims to become a global hub for green hydrogen production and exports. India could easily create 5 million tons green hydrogen demand thereby replacing grey hydrogen in the refineries and fertilizer sector. These 5 million tons will result in abatement of 28 million tons of CO₂. This proportion will grow as we fructify green hydrogen economy and will result in 400 million tons of CO₂ abatement by 2050.⁷

II. RIGHT TO ACCESS ENERGY: THE RIGHT BEING FUNDAMENTAL⁸

Energy is a crucial aspect of modern life, as it powers many essential services and devices. In India, access to energy is recognized as a fundamental right, as it is essential for ensuring a decent standard of living for all citizens. This essay will explore the concept of energy as a fundamental right in India, examining the reasons for its importance, the challenges in ensuring access to energy, and the policies and initiatives aimed at achieving this goal. As, access to energy is critical for the economic and social development of a country. In India, energy is used for a wide range of purposes, including powering homes, industries, and transportation. Without access to energy, people are unable to run their businesses or homes, and they cannot access healthcare or education. In short, energy is a prerequisite for a decent standard of living, and it is therefore essential to ensure that all citizens have access to it.

Despite the importance of energy access, many Indians still lack reliable and affordable energy. According to the International Energy Agency, more than 200 million people in India do not have access to electricity, and many more have unreliable access. This lack of access to energy disproportionately affects marginalized communities, including rural populations, women, and low-income households. There are several reasons for this, including a lack of infrastructure, inadequate policy frameworks, and limited financial resources.

To address these challenges, the Indian government has implemented several policies and initiatives aimed at increasing access to energy. One of the most significant initiatives is the *Pradhan Mantri Sahaj Bijli Har Ghar Yojana* (Saubhagya) scheme, which aims to provide electricity connections to all households in India. The Saubhagya scheme has already connected

⁷India's clean energy transition is rapidly underway, benefiting the entire world – Analysis – IEA, <https://www.iea.org/commentaries/india-s-clean-energy-transition-is-rapidly-underway-benefiting-the-entire-world>.

⁸ Sanjit Kumar Chakraborty, *The 'Fundamental' Right to Access Energy: Issues, Opportunities and Challenges in India*, in DR. SAIRAM BHAT (ED.) ENERGY LAW AND POLICY IN INDIA 3 (2016).

millions of households, and it is expected to achieve its target of universal electrification by 2022. In addition to the Saubhagya scheme, the Indian government has also launched several other initiatives aimed at increasing access to clean and renewable energy. These initiatives include the National Solar Mission, which aims to increase the share of solar energy in the country's energy mix, and the *Ujala* scheme, which provides LED bulbs at subsidized rates to households. These initiatives have been successful in increasing access to clean and affordable energy, particularly in rural areas.⁹

Despite these efforts, there are still several challenges in ensuring access to energy for all. One of the main challenges is the lack of infrastructure, particularly in remote and rural areas. Building the necessary infrastructure to provide electricity and other forms of energy can be expensive and time-consuming, and it requires significant financial resources. In addition, there are several regulatory and policy barriers that need to be addressed, including a lack of clarity in regulations, insufficient incentives for private investment, and inadequate support for decentralized energy solutions.¹⁰

To overcome these challenges, there is a need for a comprehensive and integrated approach that addresses the underlying causes of energy poverty. This approach should include measures to increase energy efficiency, promote the use of clean and renewable energy, and provide targeted support to marginalized communities. It should also involve a partnership between the government, private sector, and civil society, with a focus on building the necessary infrastructure and strengthening regulatory frameworks.

It could very well be inferred from here that; access to energy is a fundamental right in India, as it is essential for ensuring a decent standard of living for all citizens. While significant progress has been made in increasing access to energy, there are still several challenges that need to be addressed. By implementing a comprehensive and integrated approach that addresses the underlying causes of energy poverty, India can achieve its goal of providing access to clean, affordable, and reliable energy for all. When the state is all in the process of facilitating energy access to the mass; courts in India are in the process to ascertaining access to energy as

⁹ INTERNATIONAL ENERGY AGENCY, *INDIA ENERGY OUTLOOK 2021: WORLD ENERGY OUTLOOK SPECIAL REPORT (2021)*.

¹⁰ *Id.*

a 'Human Right' under the domain of legal recognition. Here are few instances where the courts have opined in this regard i.e.

- *Tamil Nadu Electricity Board (TNEB)- Madras HC-2013-* wherein the High Court of Madras at Chennai have categorically stated that; "Access to electricity should be construed as a human right"
- *Chhattisgarh High Court¹¹ in its path-breaking judgment have clarified that;* "Access to electricity should be construed as a human right, of course, to the requirements to be satisfied under the Electricity laws. Denial of the same, even upon the satisfying the requirements would amount to violation of Human Rights.
- *2015- Supreme Court of India- (Hindustan Zinc Limited case)-* Rajasthan Electricity Regulatory Commission's (RERC) regulations mandating that certain consumers derive a portion of their energy from renewable source.
- *Madan Lal v. State of Himachal Pradesh 2018¹² (Himachal HC) –* Right to Electricity and Water comes under Art. 21¹³ of the Constitution of India.

III. ENERGY CONVERGENCE IN INDIA

The Indian government has a number of ambitious economic and energy related initiatives including increasing access to electricity ("24X7 Power for All"), greater economic activity from manufacturing ("Make in India") and reducing carbon dioxide emissions. Energy productivity is an important factor in helping to achieve these objectives.¹⁴ India has long recognized the importance of energy convergence and has been working towards achieving it. Energy convergence refers to the integration of multiple sources of energy, such as solar, wind, hydro, and thermal, into a single network to meet the energy demands of a region or country.¹⁵ The goal of energy convergence is to create a more efficient and sustainable energy system that can provide reliable and affordable energy to all.

¹¹ Devashish Tiwari v. State of Chhattisgarh, MANU/CG/0194/2020.

¹² Madan Lal v. State of Himachal Pradesh, MANU/HP/0339/2018.

¹³ India Const. art. 21.

¹⁴ Santosh Singh Raghuwanshi & Rajesh Arya, *Renewable Energy Potential in India and Future Agenda of Research*, 12(5) INTERNATIONAL JOURNAL OF SUSTAINABLE ENGINEERING 291 (2019).

¹⁵ Arun K. Singh, *India - US Relations: Continued Convergence, New Vistas, Managing Differences*, 15(4) INDIAN FOREIGN AFFAIRS JOURNAL 286 (2020).

India is a rapidly developing country with a growing economy, and this has led to an increase in energy consumption. In recent years, India has made significant progress in increasing the share of renewable energy in its energy mix. The country has set ambitious targets for renewable energy, including achieving 175 GW of installed renewable energy capacity by 2022 and 450 GW by 2030.¹⁶

One of the key initiatives taken by the Indian government towards energy convergence is the National Smart Grid Mission. The mission aims to create a modern, efficient, and reliable electricity grid that can integrate renewable energy sources, improve energy efficiency, and reduce transmission and distribution losses. The smart grid will also enable the integration of electric vehicles and energy storage systems, which will further enhance the flexibility and stability of the grid.

Another important initiative is the development of renewable energy parks. These parks will be located in areas with high renewable energy potential and will provide a single platform for the development of multiple renewable energy projects.¹⁷ This will help in reducing the costs associated with the development of renewable energy projects and will also enable better integration with the grid. India has also been promoting the use of electric vehicles to reduce its dependence on fossil fuels. The government has set a target of achieving 30% electric mobility by 2030. To achieve this, the government has introduced various incentives and subsidies to promote the adoption of electric vehicles. The integration of electric vehicles with renewable energy sources can help in reducing the carbon footprint of the transportation sector and can also provide a reliable source of demand for renewable energy.¹⁸

IV. THE MOVE TOWARDS GREEN ENERGY

The World Bank Group is moving to help India deliver on its unprecedented plans to scale up solar energy, from installing solar panels on rooftops to setting up massive solar parks. This will catapult India to the forefront of the global effort to bring electricity to all, mitigate the effects of climate change, and set the country on a path to become the 'India of the future'. The

¹⁶ Enrica De Cian et al., *The Influence of Economic Growth, Population, and Fossil Fuel Scarcity on Energy Investments*, in FONDAZIONE ENI ENRICO MATTEI, CLIMATE CHANGE AND SUSTAINABLE DEVELOPMENT (2013).

¹⁷ Surender Kumar, *Convergence in Electricity Consumption in India: A State Level Analysis*, 49(2) INDIAN ECONOMIC REVIEW 173 (2014).

¹⁸ Jesper Packert Pedersen, *Bolstering European Energy Security* (German Marshall Fund of the United States, 2014).

world must turn to (the) sun to power our future,” India’s Prime Minister Narendra Modi said at the historic COP21 climate conference in Paris last year. “As the developing world lifts billions of people into prosperity, our hope for a sustainable planet rests on a bold, global initiative.”¹⁹ Unveiling its own bold initiative, India pledged that it would derive at least 40% of its energy needs from renewable sources by 2030. This includes plans for the development of 100 GW of solar energy by 2022, an extremely ambitious target considering the world’s installed solar power capacity in 2014 was 181 GW. Supporting India’s solar push is a key part of WBG President Jim Yong Kim’s agenda as he visits the country this week. Over FY 2017, the World Bank hopes to provide more than \$1 billion to support India’s solar plans.

“India’s plans to virtually triple the share of renewable energy by 2030 will both transform the country’s energy supply and have far-reaching global implications in the fight against climate change,” said Kim. “Prime Minister Modi’s personal commitment toward renewable energy, particularly solar, is the driving force behind these investments²⁰. The World Bank Group will do all it can to help India meet its ambitious targets, especially around scaling up solar energy.”

"The world must turn to (the) sun to power our future. As the developing world lifts billions of people into prosperity, our hope for a sustainable planet rest on a bold, global initiative."-Narendra Modi

The World Bank has already approved a \$625 million loan that will support the Government of India’s Grid Connected Rooftop Solar program by financing the installation of solar panels on rooftops across India. The project draws funds together from the Bank, as well as from the Clean Technology Fund of the Climate Investment Funds (CIF) and will mobilize additional funding from public and private investors.

The International Finance Corporation (IFC), the World Bank Group’s private sector arm, is supporting the Indian state of Madhya Pradesh set up the 750-MW ultra-mega solar power project in Rewa. This will be the largest single-site solar power project in the world. IFC will help structure and implement the transaction to help attract investments of about \$750

¹⁹ Ashwini K. Swain, *India’s Green Industrial Policy: Pursuing Clean Energy for Green Growth*, 49(2) ECONOMIC & POLITICAL WEEKLY 19 (2014).

²⁰ Prabhu Suresh, *Green Growth: India’s Environmental Challenge*, 21(1) Harvard International Review 68 (1998).

million. IFC was one of the earliest financiers of wind and solar power in India and helped develop the country's first grid-connected solar power project.²¹

While in India, Kim is also extending support for the International Solar Alliance (ISA). The alliance, spearheaded by India and France at COP21, brings together 121 countries and aims to mobilize a trillion dollars in investments to increase the use of solar energy. By signing an agreement with the ISA in New Delhi, the World Bank Group paves the way for it to partner with the alliance's member countries to help them deliver on their individual objectives.

In India, the World Bank Group (WBG) has a number of initiatives in the pipeline. These include developing solar parks, promoting innovative solutions to generate and store solar power, and providing support for solar mini grids. The Bank's backing will help increase the availability of private financing, introduce new technologies, build capacity for solar rooftop units, and enable the development of common infrastructure to support privately developed solar parks across India. India is already planning to develop one of the largest solar parks in the world. The 2 GW park in the southern state of Karnataka is expected to generate enough electricity to power nearly 1 million households. The park's supply of clean, renewable solar energy will help reduce CO2 emissions by 20 million tons a year and save 3.6 million tons of natural gas which is used to generate electricity. The success of the solar auction for the park highlights the potential for more such large-scale renewable projects in the country.²²

Generating clean renewable electricity is crucial for India where nearly 300 million people – about a quarter of its population – live without access to electricity. Today, India is one of the lowest per capita consumers of electricity in the world; even when people are connected to the electricity grid, they face frequent disruptions.²³ Add to that the projected economic growth and the increase in population, and the demand for energy in India is expected to double by 2040. With around 300 days of sunshine every year, India has among the best conditions in the world to harness solar energy. The rapid expansion of solar power can improve the quality of life for millions of Indians, especially for its poorest citizens. It can also create thousands of jobs in the solar industry and underpin progress in all areas of development,

²¹ Maaïke Okano-Heijmans, & Vishwesh Sundar, *Bridging the Gap: Sustainable Connectivity in EU – India Relations*, (Clingendael Institute, 2018).

²² Niharika Tagotra, *The Political Economy of Renewable Energy: Prospects and Challenges for the Renewable Energy Sector in India Post-Paris Negotiations*, 73(1) INDIA QUARTERLY 99 (2017).

²³ Montgomery Blah, *Commitments Inked in Paris: Can India Deliver by 2020?*, 72(4) INDIA QUARTERLY 343 (2016).

helping the country fulfil its dream of becoming the ‘India of the future;’” said Onno Ruhl, World Bank Country Director in India.²⁴

V. POLICING ENERGY THROUGH ATMA NIRBHAR BHARAT

Aatmanirbhar Bharat, meaning Self-Reliant India, is a national campaign launched by the Government of India to promote self-reliance and reduce dependence on imports. The energy sector is one of the critical sectors that the government is focusing on under this campaign. The government aims to make India self-reliant in energy by promoting the use of renewable energy sources, improving energy efficiency, and reducing dependence on fossil fuels. This report aims to provide an overview of the initiatives taken by the government to promote self-reliance in the energy sector in India.

Initiatives taken by the Government:

1. **Renewable Energy:** The government has set a target of achieving 175 GW of renewable energy capacity by 2022, out of which 100 GW will come from solar energy. To achieve this target, the government has launched several initiatives like the Kisan Urja Suraksha evam Utthaan Mahabhiyan (KUSUM) scheme, which aims to promote the installation of solar pumps for irrigation, and the Pradhan Mantri Kisan Urja Suraksha evam Utthan Mahabhiyan (PM-KUSUM) scheme, which aims to install solar panels on agricultural land to generate solar power.
2. **Energy Efficiency:** The government has launched the Energy Conservation Building Code (ECBC) to promote energy efficiency in buildings. The code mandates that all new commercial buildings should meet certain energy efficiency standards. The government has also launched the UJALA (Unnat Jyoti by Affordable LEDs for All) scheme, which aims to distribute LED bulbs to households at a subsidized rate, promoting energy efficiency.
3. **Fossil Fuel Independence:** The government has launched several initiatives to reduce the dependence on fossil fuels. The government has set a target of reducing the crude oil import bill by 10% by 2022. To achieve this target, the government has launched the National Biofuel Policy, which aims to promote the use of biofuels like ethanol and biodiesel. The

²⁴ Swami Prakash Srivastava & Surat Prakash Srivastava, *Solar Energy and Its Future Role in Indian Economy*, 4 INTERNATIONAL JOURNAL OF ENVIRONMENTAL SCIENCE: DEVELOPMENT AND MONITORING 82 (2013).

government has also launched the Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME) scheme, which aims to promote the use of electric vehicles.²⁵

4. **Research and Development:** The government has set up the National Institute of Solar Energy (NISE) and the National Institute of Wind Energy (NIWE) to promote research and development in the renewable energy sector. The government has also launched the Solar Energy Corporation of India (SECI) and the Indian Renewable Energy Development Agency (IREDA) to facilitate investment in the renewable energy sector.²⁶

A. Energy Sector

(i) Financial Highlights:

- *Liquidity support for distribution companies (Discoms):* A liquidity support of Rs 90,000 crore will be provided to power Discoms. These will be in the form of funds from Power Finance Corporation and Rural Electrification Corporation.²⁷ Discoms will also be provided with state government guaranteed loans exclusively for discharging their liabilities to power generation companies.
- *Coal evacuation:* Rs 50,000 crore will be spent on infrastructure development for evacuation of coal. This includes Rs 18,000 crore worth of investment in mechanized transfer of coal (conveyor belts) from mines to railway sidings.²⁸

(ii) Policy Highlights

- *Safeguarding Consumer Rights:* Inefficiencies of discoms will not be passed on to the consumers. Standards of Service and associated penalties for DISCOMs will be defined prompting discoms to ensure adequate power and avoiding load-shedding.
- *Regulatory assets:* Regulatory assets in the power sector will be eliminated. Regulatory asset is the fund which belongs to discom due to approved tariff hike. This is not realised in revenue as it not passed on to the consumers to avoid instability among them. The discoms are allowed to recover this fund at a later stage from state governments or from consumers in form of an approved surcharge. As of now, significant capital is held in form of regulatory

²⁵ T. A. Kiefer, *Energy Insecurity: The False Promise of Liquid Biofuels*, 7(1) STRATEGIC STUDIES QUARTERLY 114 (2013).

²⁶ *Id.*

²⁷ Ramit Debnath et al., *A Review of Challenges from Increasing Renewable Generation in the Indian Power System* (Energy Policy Research Group, University of Cambridge, 2020).

²⁸ *Id.*

assets across different states which could be used by discoms of the respective states as liquidity.

- *Privatization of power distribution:* Power departments/utilities in union territories will be privatized.
- *Commercial coal mining:* In March 2020, the Mineral Laws (Amendment) Bill was passed, which opened up the coal sector for commercial mining. Auctions will be conducted for allocation of coal mines. Any party can bid for a coal block and sell in the open market. Entry norms will be liberalized and nearly 50 blocks will be offered immediately.

(iii) Legislative Highlights

- *Reduction in cross-subsidy:* The Electricity Act, 2003 will be amended to ensure a progressive reduction in cross-subsidies in the sector. Direct Benefit Transfer (DBT) is being planned for providing subsidy to eligible consumers.²⁹

VI. HIGHLIGHTS OF THE STRUCTURAL REFORMS TO THE ENERGY AND INFRASTRUCTURE SECTOR UNDER THE ATMANIRBHAR BHARAT ABHIYAN³⁰

In a bid to stimulate and strengthen the Indian economy amidst the nationwide lockdown to contain the coronavirus (Covid - 19) pandemic, the Government of India ("Central Government") rolled out an economic package named the Aatmanirbhar Bharat Abhiyan ("Aatmanirbhar Bharat Abhiyan"). The Aatmanirbhar Bharat Abhiyan was released in 5 (five) tranches and consists of targeted relief measures for various sectors. The fourth tranche of the Aatmanirbhar Bharat Abhiyan, which was released on May 16, 2020, primarily dealt with structural reforms relating to the following verticals within the energy and infrastructure sector: (a) coal; (b) power; (c) civil aviation; (d) minerals; (e) social infrastructure, and (f) nuclear energy. The intent behind these reforms is to increase efficiency in these verticals and attract private sector investments in these verticals. A brief outline of the relief measures announced for the energy and infrastructure sectors is discussed below:

²⁹ Government of India, *Part 5: Government Reforms and Enablers*, PRESS INFORMATION BUREAU (May 17, 2020), <https://static.pib.gov.in/WriteReadData/userfiles/Aatma%20Nirbhar%20Bharat%20%20Presentation%20Part%205%2017-5-2020.pdf>.

³⁰ Kush Saggi, *India: Highlights of the Structural Reforms to the Energy and Infrastructure Sector under the Atmanirbhar Bharat Abhiyan*, MONDAQ (June 5, 2020), <https://www.mondaq.com/india/economic-analysis/942934/highlights-of-the-structural-reforms-to-the-energy-and-infrastructure-sector-under-the-atmanirbhar-bharat-abhiyan>.

A. Coal

The Mineral Laws (Amendment) Act, 2020,³¹ promulgated as an ordinance in January 2020, was passed by the Parliament to amend the Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulation) Act, 1957 to ease restrictions on end use and to relax the eligibility criteria for participating in coal auctions. This was primarily done to kickstart the commercial coal mining auction process. To attract private investment in the coal sector, the Central Government has introduced the following measures:

To reduce dependency on import of coal and increase self-reliance in coal production, the Central Government proposes to allow private players in the coal sector, and plans to introduce competition, transparency and private sector participation in the coal sector through a revenue sharing mechanism.³² Further, the Central Government also proposes to liberalize entry norms for private players and offer nearly 50 (fifty) blocks immediately for allocation. The liberalization of entry norms would see the removal of the eligibility conditions apart from upfront payment with a ceiling. The Central Government proposal envisages setting up an exploration-cum-production regime for partially explored blocks, as opposed to the prevailing provision of auction of only fully explored coal blocks. This is expected to allow and incentivize private sector participation in exploration. Additionally, the Central Government has decided to grant incentives by means of a rebate in revenue share if the production occurs earlier than scheduled. The Cabinet Committee on Economic Affairs has approved the adoption of methodology for auction of coal and lignite mines/blocks for sale of coal / lignite on revenue sharing basis and has increased the tenure of coking coal linkage.

To create the required infrastructure to support coal mining, the Central Government has also proposed to infuse INR 50,000 Crores (Rupees fifty thousand crores) for the evacuation of Coal India Limited's target of 1 billion tonnes of coal production by 2023-24 as well as coal to be produced from private blocks. This investment amount includes INR 18,000 Crores (Rupees eighteen thousand crores) worth of investment in mechanized transfer of coal from mines to railway sidings. The Central Government is also planning to incentivize coal gasification and liquefaction through granting rebate in revenue sharing. Both these measures will help in reducing environmental impact.

³¹ The Mineral Laws (Amendment) Act, 2020.

³² *Id.*

The extraction rights of coal bed methane are proposed to be auctioned to private participants from Coal India Limited's mines. Additionally, the Government also proposes to adopt measures to ease business operations in the coal sector - such as mining plan simplification, which will allow for automatic 40% (forty percent) increase in annual production.

To benefit the consumers of Coal India Limited, the Central Government also plans to provide relief worth INR 5,000 Crore (Rupees five thousand crore) in relation to concessions in commercial terms. The proposed measures include reduction of reserve price in auctions for non-power consumers, easing of credit terms, and enhancement of the lifting period.

B. Power

In addition to the measures announced for easing the liquidity pressure on distribution companies ("DISCOMs") on May 14, 2020, the Central Government, with an aim to cut electricity losses below 12% (twelve percent) and to revive the power sector, has introduced the following reforms³³:

(i) Introduction of a new tariff policy

The Central Government intends to roll out a new tariff policy ("Tariff Policy") which will address the following:

- i. *Consumer rights*: The Tariff Policy will ensure that the inefficiencies faced by DISCOMs do not affect the consumers and that consumers have adequate rights. Further, the Tariff Policy will also prescribe standards of service and associated penalties for the DISCOMs. The Tariff Policy will include provisions to ensure adequate power for consumers and penalize DISCOMs for load-shedding.
- ii. *Promotion of the industry*: Progressive reduction in cross-subsidies would be a fundamental aspect of the Tariff Policy. Further, it would also provide for time bound grant of open access. In order to guarantee transparency, the selection of generation and transmission project developers would happen on a competitive basis.
- iii. *Sustainability of the sector*: The Tariff Policy would aim to provide better payment security to the generating companies. Introduction of direct benefit transfer for

³³ Saggi, *supra* note 30.

electricity subsidy and the mandatory usage of smart prepaid meters are also in consideration which will be incorporated in the Tariff Policy. Further, provisions of creation of "regulatory assets" will be excluded from the Tariff Policy.

(ii) Privatization of DISCOMs in Union Territories

The financial distress faced by DISCOMS, and consequent payment delays have had a negative impact on the investment sentiment in the power sector. The bad financial condition of DISCOMs adversely affects their ability to buy power for supply, and the ability to invest in improving the existing distribution infrastructure, consequently impacting electricity distribution quality - past measures such as the Ujwal DISCOM Assurance Yojana have not been very successful in fixing the underlying issues faced by DISCOMs across India.³⁴

To undertake structural reforms in functioning of DISCOMs, the Ministry of Power has been considering the privatization of DISCOMs across the country. Privatization of DISCOMs has been tested in some places in India, such as Delhi, Mumbai, Ahmedabad and Odisha. Under the Aatmanirbhar Bharat Abhiyan, the Central Government has proposed to privatize the DISCOMs in all of India's union territories ("UTs"). DISCOMs in UTs are administered by the Central Government, whereas the ones in the States are not. Accordingly, while the Central Government will privatize DISCOMs in the UTs, it is exploring the option of public-private partnerships ("PPP") for DISCOMs in States.³⁵

It is anticipated that the privatization of DISCOMs will be a significant step towards resolving the structural issues faced by the power sector and is expected to lead to better service to consumers and is also likely to bring about improvement in operational and financial efficiency in power distribution.³⁶

C. Minerals

In relation to the minerals sector, the following measures were announced:

³⁴ Anupam Chatterjee, *Govt Aims to Complete Privatisation of UT Discoms by January 2021*, FINANCIAL EXPRESS (June 10, 2020), <https://www.financialexpress.com/business/industry-govt-aims-to-complete-privatisation-of-ut-discoms-by-january-2021-1986558/>.

³⁵ *Id.*

³⁶ A K Verma & Shalabh Srivastava, *Is Privatization a Panacea for Reforming DISCOMS?*, THE ECONOMIC TIMES (Oct 30, 2020), <https://economictimes.indiatimes.com/industry/energy/power/is-privatization-a-panacea-for-reforming-discoms/articleshow/78911020.cms>.

(i) *Private investments in the mineral sector:* The Central Government has introduced structural reforms aimed at the mineral sector to boost growth, employment and promote use of state-of-the-art technology. These reforms are intended to bring about greater private investments in the sector and are expected to benefit companies involved in the business associated with aluminum, iron ore and limestone. Primarily, the Central Government has planned to introduce a seamless composite exploration-cum-mining-cum-production regime - under the proposed new regime, 500 (five hundred) mining blocks would be offered through an open and transparent auction process. Further, to enhance the competitiveness of the aluminum sector, the Central Government has resolved to conduct joint auctions of bauxite and coal mineral blocks.

(ii) *Policy reforms:* The distinction between captive and non-captive mines is set to be removed to permit the transfer of mining leases and sale of excess unused minerals - this is a very welcome step which is expected to cause better efficiency in mining and production. The Ministry of Mines has been tasked with the responsibility to develop a mineral index for different minerals. Further, the stamp duty payable at the time of award of mining leases is proposed to be rationalized.

D. Nuclear Energy

Under the Aatmanirbhar Bharat Abhiyan, the Centre intends to establish a research reactor under the PPP model for the production of medical isotopes. The Central Government also intends to establish facilities to use irradiation technology for food preservation, which would also be implemented under the PPP model. Additionally, the Central Government intends to set up Technology Development-cum-Incubation Centers to foster synergy between research facilities and tech-entrepreneurs.

E. Civil Aviation

The civil aviation sector has been one of the hardest hit sectors by the ongoing coronavirus pandemic and the nationwide lockdown. Consequently, the airline revenues have plummeted, and the sector is unable to service its fixed costs and other liabilities. Further, despite falling aviation turbine fuel prices internationally, high taxes on fuel have been a pain point for airlines. As a response to the crisis in the aviation sector, the Central Government has proposed the following measures to revive the sector:

(i) Efficient Aerospace management: Currently, only 60% (sixty percent) of the Indian air space is available for usage by the civil aviation sector. Consequently, airlines have been forced to ply on longer routes. Since 2014, the Airports Authority of India ("AAI") had recommended the flexible usage of airspace as a measure to promote sustainability. Subsequently, the Ministry of Civil Aviation has also espoused this view.

The restrictions on the utilization of Indian air space are proposed to be eased in order to make civilian flying more efficient. By encouraging efficient air space management for civil aviation, the Central Government intends to bring about optimal utilization of the airspace and a total benefit of about INR 1,000 Crore (Rupees one thousand crore) per year for the aviation sector. This measure is also expected to have a positive impact on the environment and reduce fuel usage and flight time - it is anticipated that subsequent cost benefits will trickle down to consumers.

(ii) More airports through PPP: The Central Government intends to develop world-class airports in India under PPP in three rounds - adoption of PPP-model for more airports will enable AAI to develop smaller airports.

Under the first round, which is already underway, the AAI had awarded 3 (three) airports out of 6 (six) bids for operation and maintenance on a PPP basis. In this first round, the annual revenue is expected to be INR 1,000 Crore (Rupees one thousand crore) per year and AAI is also expected to receive a down payment of INR 2,300 Crores (Rupees two thousand three hundred crore).³⁷

With regard to the second round, the Central Government has identified 6 (six) more airports. The bid process for the second round is slated to commence immediately. The Central Government expects that additional investment by private players will gather around INR 13,000 Crores (Rupees thirteen thousand crores). Another 6 (six) airports will be put out for the third round of bidding - the announcement from the Central Government does not mention the names of the identified cities for any of these rounds.

(iii) Making India a hub for MRO: The aircraft maintenance, repair and overhaul ("MRO") industry, which forms a core component of the aviation ecosystem, was in focus in the Union

³⁷ Ian Cronshaw et al., *Increasing the Use of Natural Gas in the Asia-Pacific Region* (Council on Foreign Relations, 2017).

Budget. India has a limited MRO industry, which has been disadvantaged by the fact that Indian airlines usually avail MRO services from overseas players.³⁸

As a measure to uplift the domestic MRO industry, the Central Government has promised to take steps to position India as a hub for MRO activities. The Central Government has rationalized the tax regime in respect of MRO. The Government anticipates that aircraft component repair and airframe maintenance segment, which is worth INR 800 crore (Rupees eight hundred crore), is expected to increase to INR 2,000 crore (Rupees two thousand crore) in the next 3 (three) years. The Government anticipates that convergence between the defense sector and the civil MROs will create economies of scale. If India becomes a hub for MRO activities, it will result in savings of precious foreign exchange and will also enable Indian airlines to service their aircraft locally.

F. Social Infrastructure

To boost private sector investments in the social infrastructure projects, the Government of India has allocated INR 8,100 Crores (Rupees eight thousand one hundred crore). The Central Government will enhance the quantum of Viability Gap Funding ("VGF") up to 30% (thirty percent) each of the total project cost as VGF by the Centre and State/Statutory Bodies in respect of social infrastructure projects. For other sectors, VGF support of 20% (twenty percent) each from Central and States/Statutory Bodies shall continue.

Apart from the measures across sectors mentioned above, the Central Government also proposes to introduce incentive schemes for promotion of new 'champion sectors' such as solar PV manufacturing and advanced cell battery storage.

VII. THE CHECKS AND BALANCES UNDER THE PLI SCHEME

Production Linked Incentive (PLI) Schemes are a cornerstone of the Government's push for accomplishing the vision of Aatmanirbhar Bharat. The objective is to make domestic manufacturing globally competitive and to create domestic Champions in manufacturing. The Production Linked Incentive (PLI) scheme is in line with the Make-In-India initiative along

³⁸ Sanjay Kumar Kar, *Renewable Energy Market Developments: A Study of India*, 6(4) RENEWABLE ENERGY LAW AND POLICY REVIEW 238 (2015).

with PM Modi's principle of 'aatmanirbharta'. It will strengthen the foundation of India's path towards self-reliance.

The Union Cabinet chaired by the Prime Minister, Shri Narendra Modi has given its approval to introduce the Production-Linked Incentive (PLI) Scheme in the High Efficiency Solar PV Modules sector under Ministry of New and Renewable Energy and approved financial outlay over a five-year period for INR 4500 crore.³⁹

The PLI scheme will be implemented by the concerned ministries/departments and will be within the overall financial limits prescribed.⁴⁰ The final proposals of PLI for individual sectors will be appraised by the Expenditure Finance Committee (EFC) and approved by the Cabinet. Savings, if any, from one PLI scheme of an approved sector can be utilized to fund that of another approved sector by the Empowered Group of Secretaries. Any new sector for PLI will require fresh approval of the Cabinet.⁴¹

Large imports of solar PV panels pose risks in supply-chain resilience and have strategic security challenges considering the electronic (hackable) nature of the value chain. A focused PLI scheme for solar PV modules will incentivize domestic and global players to build large-scale solar PV capacity in India and help India leapfrog in capturing the global value chains for solar PV manufacturing.⁴²

VIII. CONCLUSION

Managing the clean energy transition would require significant policy support. Prime Minister Modi's commitment to Aatmanirbhar Bharat aims to make India energy independent by 2047. However, India currently imports 90% of its oil and 80% of industrial coal. Oil, gas, and coal prices have shown significant volatility in the past few years due to geopolitical tensions, supply chain shocks, and a demand rebound following the COVID-19 pandemic. Aatmanir bharta means self-reliance. Many people understand it to indicate self-sufficiency. However, energy independence is both impossible and unprofitable. "Strategic autonomy" would be a better

³⁹ Mari Luomi, *The Global Governance of Sustainable Energy: Access and Sustainable Transitions* (International Institute for Sustainable Development (IISD), 2020).

⁴⁰ Jasleen Bhatti & Binit Das, *Manufacturing and Recycling*, in SUNITA NARAIN ET AL (EDS), *INDIA'S RENEWABLE ENERGY GOALS: FACTS ABOUT PROGRESS MADE TILL 2022* (2022).

⁴¹ *Committee Reports*, PRS INDIA, <https://prsindia.org/policy/report-summaries/summary-announcements-aatma-nirbhar-bharat-abhiyaan> (last visited May 20, 2024).

⁴² Cabinet, *Cabinet Approves PLI Scheme to 10 key Sectors*, PRESS INFORMATION BUREAU (Nov. 11, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1671912>.

indication of the goal. The government intends to grow EV sales in India to capture the markets of 30 per cent of private cars, 70 per cent of commercial vehicles and 80 per cent of two- and three-wheelers by 2030. Also, it is targeting production of 5 million tonnes of green hydrogen by splitting water using electricity from renewable sources. Abundant solar energy and local technology will aid this and also reduce carbon emissions. All this towards a Aatmanirbhar Bharat or a self-reliant India that does have to depend on imports for meeting its energy needs. And this could help India achieve energy independence through clean technology by 2047.

Achieving energy independence could offer environmental and public health benefits without compromising economic growth. With an aggressive clean energy transition, over 4 million air pollution-related premature deaths could be avoided between 2023-2047. Managing the clean energy transition would require significant policy support. The policy ecosystem needs to have five pillars: deployment mandates for commercial / cost-effective clean technologies that provide the economies of scale, financial support for emerging technologies, long-term infrastructure planning, accelerating/scaling domestic manufacturing, and planning for a just transition.

GROUND HANDLING SERVICES AT INDIAN AIRPORTS: A CHALLENGE TO THE ATMA NIRBHAR BHARAT VISION?

- Harsha N* & Kajal Garg**

Abstract

Ground handling services (“GHS”) are necessary for an aircraft’s arrival and departure from an airport. The GHS industry currently has many foreign players, and this is an area that permits no room for error. Any incident involving a mistake due to the GHS would be a challenge for aviation passengers’ and industry safety and security. GHS would not configure itself in the manufacturing mandate of Make in India as it is a service sector with no manufacturing involved. With the projected growth rate in the aviation industry and the Prime Minister emphasising that Aerospace and Defense shall be the two pillars for making Atmanirbhar Bharat, it is crucial to examine the sector’s challenges wherein GHS is one of the essential services at an airport. The clarion call from the Prime Minister for Atma Nirbhar Bharat has received acknowledgement in various sectors but will face challenges from within, as in the case of Group D-1 airports tender and is there a possibility to balance the interest of the foreign players permitted under the FDI Policy. The policy decisions and the law must work together to ensure that the Atmanirbhar Bharat helps India fly and that the GHS is an enabler in the flying mission. This paper will examine the economic, legal, and policy challenges GHS agencies face in implementing Atmanirbhar Bharat.

Keywords: Aviation, Ground Handling, Atmanirbhar Bharat, FDI Policy, Airports

I. INTRODUCTION

Flying is considered the safe and fastest mode of transportation, and concerted efforts have to be put in to maintain and further improve the highest possible levels of safety in the aviation sector. The rapid increase in air traffic across the world brings new challenges, and they have to be resolved in a time-efficient manner to ensure that the increased traffic can be handled safely and smoothly by minimising chances for both human and mechanical failure to the extent possible.

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Given the crucial importance of ensuring the safety standards of Air Passengers among the various players, the ‘Ground Handling Service Agency’ is one of the players in ensuring the safety standards. GHAs caters to one of the essential functioning of flight operation, starting from the Check-in facility of the travellers to the deportation and landing of a particular flight and making the air carrier available for its next flight journey.

II. GROUND HANDLING SERVICES AT AIRPORTS

Ground Handling Services¹ refers to all the services which are provided to facilitate an aircraft flight for its effective journey i.e., ranging from **Customer Services Functions** like ticketing, check-in, oversize baggage, baggage sorting, special need handling etc. to **Ramp Services** like baggage and freight services, toilet and water services, aircraft cleaning, catering etc. to **maintenance** like the engineer performs routine inspection and rectify minor maintenance to an aircraft etc., In brief, the Ground handling services would generally include:

- i. Welcoming passengers at the time of travelling.
- ii. Handling the goods, cash and Passenger counter.
- iii. Providing necessary flight information to the passengers.
- iv. Providing passengers with an easy and comfortable experience.
- v. Check-in, boarding and deposition procedures.
- vi. Handling and Coordinating with staff around the aircraft during its stopover.
- vii. Prepare and handle of the weather condition, flight plan, fuel, and other important information.
- viii. Providing an aircraft during a stopover.
- ix. Manage load and unload goods and baggage
- x. Observe Customer Safety with Security Procedures
- xi. Handing and repairing mechanical faults.

From the above list of activities, it can be observed that the work is labour-intensive and a necessary function in the modern perspective of civil aviation. It can also be deciphered that the

¹ The Airports Authority of India (Ground Handling Services) Regulations, 2018, Reg. 2(b) (“ground handling” means services necessary for an aircraft’s arrival at, and departure from, an airport other than air traffic control and it includes– (i) ramp handling including activities as specified in Schedule-I; (ii) traffic handling including activities as specified in Schedule-II).

activities have to be carried out without any mistakes, and GHS would ensure that the aircraft's arrival and departure is time-efficient and safe.

Extract from the Executive Summary presented by India at the ICAO Assembly.²

“Ground handling is a critical activity at an airport and acts as an interface between the Airport and the airlines. Ground handling plays an important role in improving efficiency at the Airport and has been increasingly seen as a key part of airport operations rather than just a profit stream. As such, it is prudent to view ground handling from a strategic perspective rather than just from a financial perspective.”

The extract highlights a few essential characteristics in defining the approach towards GHS in India. GHS in India is considered a critical operational activity that the strategic partner must efficiently execute.

III. ATMANIRBHAR BHARAT

Atmanirbhar Bharat is translated as ‘Self-reliant India’. The Hon’ble Prime Minister of India launched this vision when the country struggled to fight against the deadly pandemic caused by Covid-19. This vision was launched to manage the economic disruption caused by the pandemic. The objective was/is to make the country and the people self-reliant, self-sufficient and Independent in all areas like manufacturing, services etc. Although the mission of Atmanirbhar Bharat was launched to combat the vaccination crisis during the pandemic, later on, it developed drastically, and today many sectors can be seen performing in the same field with different dimensions.

As per FICI’s Civil Aviation Report of 2019, AIATSL, AISATS, Celebi, Bird, GGI, Menzies Bobba, IndoThai and Bhadra are the major GHA in India and these account for almost 80% of the revenue market share.³ In 2017 Air India’s wholly owned ground-handling services subsidiary Air India Air Transport Services Ltd (AIATSL) drew more interest from potential bidders than the core airline business, and two companies, the Bird Group and Celebi Holdings, were interested in buying AIATSL.⁴

² Economic Commission, *Economics of Airports and Air Navigation Services – Policy Implementation of Ground Handling Services at Indian Airports* (ICAO Working Paper, Presented at ICAO Assembly – 40th Session, Agenda Item 33, Presented by India, A40-WP/381 2019).

³ FICCI, VISION 2040 FOR THE CIVIL AVIATION INDUSTRY IN INDIA 95 (2021).

⁴ Surajeet Das Gupta, *What Makes Air India's Ground-handling Arm More Desirable than Airline?*, BUSINESS STANDARD (Sept. 26, 2017), https://www.business-standard.com/article/companies/what-makes-air-india-s-ground-handling-arm-more-desirable-than-airline-117092500398_1.html.

As per IATA quoted in FICI's Civil Aviation Report of 2019, approximately 50% of the aircraft turnarounds are handled by third-party GHAs globally, and it is expected to reach 70% by 2022.⁵ In contrast, in India, most leading airlines currently handle most of their ground-handling operations independently. The contrast was to the contrary⁶ prior to the notification of Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2007, by which Airports Authority of India intended to streamline the process of ground handling in the exercise of powers conferred under Section 42 of the Airports Authority of India Act, 1994. It can be concluded that the position was that when there were no obligations recognised under the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2007 the airlines were inclined to outsource GHS to a third party. The contrast needs further analysis, but this paper will not explore this perspective in greater detail. The Indian Concession Philosophy of GHA⁷ has been based on the following:

- (a) Design of concession structure from a strategic, financial and operational perspective.
- (b) Keeping a level playing field between self-handling airlines and GHAs; and
- (c) Focus on efficiency, safety and service quality levels at the airports.

In order to ensure that India is in a position to dominate this position, there need to be concentrated efforts. There is also a need to create a space for GHAs from around the world to be a part of the growth of the Indian aviation sector.⁸

According to the Annex 9 of the Chicago Convention, every Contracting State must permit aircraft operators to choose the agency and method of providing GHS as a

⁵ FICCI, *supra* note 3, at 95.

⁶ *Oveyam Ranjan v. Union Of India*, W.P. No. 28303 of 2010 and 11910 of 2011, decided on Mar. 12, 2013 (Mad. HC) (“...airline companies, which were supposed to be doing the job of ground handling themselves, were really outsourcing the work to third parties without the consent or permission of AAI...”).

⁷ ICAO Working Paper, *supra* note 2.

⁸ Sukalp Sharma, *India Could Become Top Aviation Market Globally by Decade-End: Civil Aviation Secretary Bansal*, INDIAN EXPRESS (Mar. 21, 2023), <https://indianexpress.com/article/business/aviation/india-could-become-top-aviation-market-globally-by-decade-end-civil-aviation-secretary-bansal-8509562/>; PTI, *Air India, Indian Aviation Market & Tailwinds of Growth*, THE ECONOMIC TIMES (Feb. 19, 2023), <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/air-india-indian-aviation-market-tailwinds-of-growth/articleshow/98065915.cms>.

recommended practice.⁹ Thereby India is obligated to permit, subject to reasonable limits and obligations, the exercise of the right by the airline to choose the GHS provider.

IV. CHALLENGES: GHS AND THE AATAMNIRBHAR BHARAT

Higher service standards drive the market, and the passengers choose the airports which can deliver these expectations.¹⁰ This stresses the importance of ensuring the quality of ground handling services.¹¹ The services of GHS impact passenger satisfaction significantly, and airports strive to have repeat customers, as the same leads to an identifiable pattern of demand for service. Airports should be able to deliver and exhibit managerial competencies in GHS activities.

The airline industry faces the challenge of labour. GHS also face a challenge of labour, and now because as per the GHA regulations, only permanent labour¹² can be hired in these services even though in all other activities, we could hire contractual labour that too even from other activities of airports and airlines, but the same is not allowed for in the ground handling services. So, the ground handling agencies of overseas countries could not hire employees from India on a short-term basis which is a significant setback for implementing the Atma Nirbhar Bharat vision's policies in this sector.

The exploitation of labour in the Aviation sector is evident in the literature that points out the same. In some parts of the world, including the Gulf region, there is no payment of income tax or social security contribution, and this is an advantage in these aviation markets¹³ Andrea Trimarchi also points out that there are similar non-commercial advantages in certain regions.¹⁴

⁹ "6.5 Recommended Practice. – Each Contracting State should, subject to relevant regulations and within the limitations established by the airport operator due to constraints caused by limited space or capacity, permit aircraft operators to choose how, and by whom, their ground handling operations should be carried out".

¹⁰ Philipp Boksberger, *Passenger Behaviour*, in ANDREAS WITTMER ET AL., *AVIATION SYSTEMS, MANAGEMENT OF THE INTEGRATED AVIATION VALUE CHAIN* 293 (2d edn., Springer 2021).

¹¹ *Id.*

¹² The Airports Authority of India (Ground Handling Services) Regulations, 2018, Reg 5 ("Security Protocol. - (1) All ground handling services shall be provided only through the regular employees of the entities permitted under these regulations; (2) No hiring of employees through handling contractor or manpower supplier shall be permitted").

¹³ ANDREA TRIMARCHI, *INTERNATIONAL AVIATION LABOUR LAW* 102 (2022) (citing John F. O'Connell, *The Rise of the Arabian Gulf Carriers: an Insight Into the Business Model of Emirates Airline*, 38 *JOURNAL OF AIR TRANSPORT MANAGEMENT* 43 (2011)).

¹⁴ *Id.*

De Wit demonstrates the following:¹⁵

“Emirates labour costs result from a two-tier salary system. Low wages are indeed paid for labour intensive low-skill activities, such as ground handling, catering, logistics, and call centres. This labour is sourced from the cheap markets in Central and South Asia. High wages are paid to international professionals like pilots. These wages are complemented by additional expatriate packages to provide family health care, housing, transportation, education and pension needs”

The differential salary is an acceptable practice that is permissible in the eyes of the law based on one’s skill and experience. The challenge is that differential salary must not be based on different elements, such as one group receiving family health care, housing, education and pension and the other receiving only wages. The two-tier salary system referred to above exploits labour and would not be permissible in India.

Abeyratne refers to the decline of focus towards safety due to increased competition. Critical services required for aviation safety, such as efficient ground handling and precise engineering, were outsourced, with no guarantee of maintaining previously demanded levels of flight safety.¹⁶ This is a cause of concern as the entire purpose of increasing competition is to ensure greater options for GHS.

As stated, before the ICAO Assembly, one of the outcomes expected in India from implementing GHS is to reduce aircraft damage and ground handling incidents.¹⁷ However, as *Abeyratne* refers to the decline in safety due to competition, it needs consideration and deliberation.

The Australian Federal Court in July 2021 ruled that Qantas Airways Limited’s outsourcing of ground handling workers was partly driven by a desire to avoid industrial action, which is a breach of the Fair Work Act, 2009.¹⁸ Qantas failed to prove to the Court that

¹⁵ De Wit, *Unlevel Playing Field? Ah Yes You Mean Protectionism*, 41 JOURNAL OF AIR TRANSPORT MANAGEMENT 2, 27 (2013).

¹⁶ Ruwantissa Abeyratne, *Competition in Air Transport – The Need for a Shift in Focus*, 33(1–2) TRANSPORTATION LAW JOURNAL 29, 32 (2005– 2007).

¹⁷ ICAO Working Paper, *supra* note 2.

¹⁸ Paul Karp, *Federal Government to Intervene in Transport Union’s High Court Fight Against Qantas*, THE GUARDIAN (Jan. 24, 2023), <https://www.theguardian.com/australia-news/2023/jan/24/federal-government-to-intervene-in-transport-unions-high-court-fight-against-qantas>.

the decision to outsource the ground handling crew was a commercial decision due to financial losses.¹⁹

Similarly, in India, there is already a protectionist measure under the Airports Authority of India (Ground Handling Services) Regulations, 2018, mandating that only regular employees must be engaged for the GHS by any agency operating in the Airports in India. Compared to the position of law in Australia that only in case of financial losses can there be outsourcing in India, there can be no outsourcing in GHS.

The reason for the said provision of regular employees under the Airports Authority of India (Ground Handling Services) Regulations, 2018 can be traced to the multiple rounds of litigation that pertaining to Cargo Workers²⁰ at the Madras Airport. The decision in this matter is a landmark judgment, and the challenges it posed to the Airports Authority of India with regard to all the GHS workers would have pushed them to mandate the clause of regular employees.

Mike Brown points out that:

“Some airports are moving towards a common-use model for stands and equipment: pooling of ground handling equipment meaning less need for the manoeuvring of vehicles to load and unload, strict enforcement of stand allocation rules, data sharing between airport and air carriers and deploying innovation to improve turnarounds such as Artificial Intelligence (AI)”²¹

This development needs due consideration by the policymakers currently focusing on two elements one standard of equipment to be owned, and the other is the space allocation on the Airport Premises.²² Policymakers need to get out of the traditional role of rent collectors and permit innovation in aviation, which might help in aircraft turnaround.

¹⁹ Transport Workers' Union of Australia v. Qantas Airways Limited, [2021] FCA 873; Geoff Baldwin, *Qantas Outsourcing Heading to High Court as Airline Loses Appeal*, STACKS LAW FIRM (Jun. 23, 2022), <https://www.stacklaw.com.au/news/employment-law/qantas-outsourcing-heading-to-high-court-as-airline-loses-appeal/>.

²⁰ International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 (the Hon'ble Supreme Court of India explained the expression, 'Exercise of control and supervision').

²¹ MIKE BROWN, STRATEGIC AIRPORT PLANNING 62 (2022).

²² The Airports Authority of India (Ground Handling Services) Regulations, 2018, Reg. 6 ((3) All agencies concerned shall ensure the use of state-of-art equipment and best practices in line with the International Air Transport Association Airport Handling Manual; (4) The airport operator shall, as far as may be, provide adequate parking space for the equipment required for ground handling purpose, within the airport premises on mutually agreed terms and conditions”).

A. Security Concerns

As per Reg 3 of the 2018 regulations, domestic airline operators and scheduled helicopter operators are free to carry out self-handling at all airports, including civil enclaves. The current regulation reads that domestic airline operators and scheduled helicopter operators may carry out ground-handling activities solely for self-handling at all airports, including civil enclaves.²³

For foreign airlines, it is provided in clause 2 of rule 3 itself that they may also undertake self-handling in respect of passengers and baggage handling activity, excluding security functions at the airport terminal. Full self-handling is allowed for those foreign airlines with which India has a bilateral Air Transport agreement or Air Services agreement containing a clause permitting self-handling by the designated airlines.²⁴ The 2020 Amendment permits foreign airlines to carry out security functions subject of the Bureau of Civil Aviation Security.

The effects of a liberalised air transport market and air transport practices such as aircraft leasing arrangements, cross-border airline mergers and acquisitions, outsourcing ground handling and engineering by air transport operations involving multiple parties, and code-sharing can raise serious safety concerns.²⁵ The Hon'ble High Court at Madras in *Dani Aviation Services Private Ltd. v. Union of India*,²⁶ the license of the appellant (Srilankan Airlines Limited) to provide the ground handling services was revoked by the Government as the security of the passengers was threatened, even though, according to Mr. Sivakumar Sinnarajah is otherwise very clear and that he has not at all involved in any of the LTTE operations rather he was the victim. The State stated in the counter that the security verification of the company was found to be adverse.

Security concerns have also been highlighted in the regulations with regard to having only regular employees.²⁷ This might be controversial when the agency does not consider the

²³ The Airports Authority of India (Ground Handling Services) Amendment Regulations, 2023.

²⁴ The Airports Authority of India (Ground Handling Services) Amendment Regulations, 2020.

²⁵ NILGUN OZGUR, GLOBAL GOVERNANCE OF CIVIL AVIATION SAFETY 75 (2023).

²⁶ *Dani Aviation Services Private Ltd. v. Union of India*, W. A. No. 145 of 2010, decided on Feb. 03, 2010 (Mad. HC).

²⁷ The Airports Authority of India (Ground Handling Services) Regulations, 2018; Press Trust of India, *Govt Allows Domestic Private Carriers to do Ground Handling*, HINDUSTAN TIMES (Dec 30, 2017), <https://www.hindustantimes.com/india-news/govt-allows-domestic-private-carriers-to-do-ground-handling/story-P3v88ekrWtpRManbTr8flM.html>.

labour involved in regular employees. The landmark judgment in this aspect is *Air Cargo Workers*²⁸ and *Dani Aviation*.

B. Diplomatic Issues

The Indian Government agreed to permit US airlines to conduct self-handling in 2020²⁹ the interesting aspect is that the news report carries that Indian Government agreed to this based on diplomatic pressure on Indian Government. The US had raised objections that India not permitting self-handling by US airlines is in violation of the Air Services Agreement of 2005 between India and the US.³⁰ Even though reciprocity was recognised, the interesting aspect is that Air India at the time stated that this would be an opportunity that could be utilised in the future.

It is interesting to note here that Air India did not conduct self-handling prior to the US prohibiting such practice in 2019.³¹ The 2020 amendment³² to the Airports Authority of India (Ground Handling Services) Regulations, 2018 aligns with the US demand to be permitted to carry out self-handling. This might appear to be a case of diplomatic pressure, but it is an enforcement of the terms of the Air Services Agreement. India might not be able to take advantage of the situation as per the Air Services Agreement, but the rate of growth of the aviation sector in India might fuel the exercise of this right by Indian Airlines.

²⁸ *International Airport Authority of India v. International Air Cargo Workers' Union*, (2009) 13 SCC 374.

²⁹ Jagriti Chandra, *India Amends Rules to Let U.S. Airlines do Their Own Ground Handling, Union Cabinet Gave in-principle Nod, Extra Security Measures to be Imposed*, THE HINDU (Jan. 12, 2020), <https://www.thehindu.com/news/national/india-amends-rules-for-us-airlines/article30546158.ece>.

³⁰ Article 8. 3. Each designated airline shall have the right to perform its own ground-handling in the territory of the other Party ("self-handling") or, at its option, select among competing agents for such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self handling were possible.

³¹ Ifrah Mufti, *In a Tit-for-tat Move, US Bars Air India From Managing Ground Operations at its Airports US Govt Retaliates Against India's Decision to not Permit the Country's Airlines to Handle Their Own Ground Operations at Indian Airports*, THE PRINT (Aug. 02, 2019), <https://theprint.in/india/in-a-tit-for-tat-move-us-bars-air-india-from-managing-ground-operations-at-its-airports/271359/>.

³² Amendment dated 19.03.2020 ("Provided that, the full self-handling, including security functions, shall be allowed to be undertaken by the designated airline of a country having a bilateral Air Transport Agreement or Air Services Agreement with India containing a clause permitting self-handling by the designated airlines, at any airport in India available to such airline(s) as a point of call under the bilateral Agreement, except at civil enclaves of defence airports, subject to the condition of compliance with additional security measures as may be made by the Ministry of Civil Aviation from time to time and implemented under oversight of Bureau of Civil Aviation Security").

C. Essential Service at Airport

The validation of essential service is that an aircraft has to turn around, and the passengers or cargo has to be moved. As per National Civil Aviation Policy, 2016³³ (NCAP), The Government of India has decided that it will coordinate with state Governments to include ground handling services under Essential Services Management Act, 1968 (“ESMA”). Interestingly, Regulation 2(b) of the Ground Handling Services, 2018, while defining the Ground Handling Services, describes this service as one of the essential services at the Airport.

The Essential Services Maintenance Act, 1968 defines essential services include ‘...any service connected with the operation or maintenance of aerodromes, or with the operation, repair or maintenance of aircraft’. The Government will coordinate with State Governments to include the following under ESMA Act 1968: ground handling, catering and aircraft fuelling.³⁴ This would ensure that there is no obstruction to airport operations. The entire purpose of GHS is to ensure that the Airport can function, and GHS would ensure the transportation of passengers and delivery of cargo, which, if obstructed, would affect the normal life of the community.

Even though ESMA is seen as an anti-labour movement tool, it is essential in the case of GHS. The extent of the impact in case of a strike by GHS will not be limited to the Airport but will risk the entire airspace and the aircraft in the air. This might lead to grave danger of life as it risks the aircraft operations carrying passengers ICAO Annex also recognises GHS as an essential service at the Airport.

D. GHA Tender Litigation

The Airport Authority of India as per the power given to them under section 42 of the Airport Authority of India Act, 1994, framed the regulations (Ground Handling Service) Regulations 2018. However, the regulations do not provide the eligibility criteria for giving the Services of Ground Handling Services.

Airports Authority of India is a Category-I Mini-Ratna Public Sector Enterprise. The Authority is mandated under the Act, among other things, to manage the airports, civil enclaves and aeronautical communication stations efficiently (other than airports and airfields

³³ National Civil Aviation Policy, 2016.

³⁴ *Id.*

belonging to, or subject to the control of, any armed force of the Union). The Authority i.e. the Airport Authority of India invites tender for license issuance for the agency for providing Ground Handling Services. So, the Authority only sets out the criteria for granting these licenses. One of the criteria that the Authority set is of 2020 tender process under which the eligibility criteria laid down comprises two components-

1. Technical Qualifications, and
2. Financial Qualifications.

The Technical Capacity for evaluating tender experience in the preceding 7 (seven) years will qualify as eligible experience. The Bidders should have at least 36 (thirty-six) months' experience providing three of the seven Core Ground Handling Services. Seven core services include aircraft handling, aircraft servicing, loading and unloading, cargo handling at the airside, terminal services, flight operations and service transport. The Financial Capacity for purposes of evaluation is that Bidder must have a positive Net Worth and, in any of the last three financial years, an annual turnover of Rs. 30 crores (thirty crores).³⁵

The Division Bench of the Delhi High Court, in the matter between the *Centre For Aviation Policy v. Union of India*³⁶ on 14 July 2021, quashed the tender floated for GHS at 49 airports under the Group D-1 category based on financial criteria prescribed. The High Court observed that the terms and conditions of the tender not only stare in the face of the proclaimed Atmanirbhar policy but also mocks it. This observation by the Delhi High Court raises particularly severe concerns and the need to identify the direction of the Ministry and its agencies in driving forward the Atmanirbhar Bharat policy. There were concerns raised with eligibility for entities under the MSME category, and that the tender eligibility criteria were not in favour. The Court arrived at the conclusion that it is evident that the financial criteria are to prohibit micro-enterprises.

³⁵ Later modified to 18 Crores.

³⁶ *Centre For Aviation Policy v. Union of India*, W.P.(C) 5722/2020 decided on 14.07.2021 (Delhi HC) ("Fair competition, the anvil upon which the ratio of the aforesaid decision rests, becomes an equally important consideration in the facts of the present case. The decisions to cluster the airports and fix an exorbitant and prohibitive Annual Turnover criterion appeared to have been taken in a complete vacuum; they were an antithesis to the Atmanirbhar Bharat policy, far removed from a rational nexus with the national civil aviation policy of the respondent no.1 or, any meaningful explanations. The impugned conditions also stare in the face of the MSME Order of 2018.").

However, the judgement of the Hon'ble Delhi High Court was set aside by the Supreme court in an appeal in the case *Airport Authority of India v. Centre for Civil Aviation, Safety and Research*³⁷ on two grounds: (a) Centre for Civil Aviation, Safety and Research has no locus standi as it neither filed the tenders nor the writ petition was not in the nature of Public Interest Litigation; and (b) the freedom of contract and held that the terms and conditions of the Invitation to Tender are within the domain of the tenderer/tender-making Authority and are not open to judicial scrutiny unless they are arbitrary, discriminatory or mala fide. As per the settled position of law, the terms of the Invitation to Tender are not open to judicial scrutiny, the same being in the realm of contract. The Government/tenderer/tender-making authority must have a free hand in setting the terms of the tender.

So, from the above, it is clear that the judgment of the Delhi High Court was reversed by the Supreme Court only on technical grounds, and nothing was deliberated regarding the observation of the High Court wherein it was observed that the conditions of tender mocks the Atma Nirbhar Bharat policy of the Government. The Supreme Court of India could have provided the reasons for the MSME Order not applying to the tender.³⁸ According to the AAI's stand during the judicial proceedings was that the objective of the tenders for Group 'C', 'D1' and 'D2' airports were not to oust small players but sought to exclude GHAs, which lack expertise, infrastructure, used casual and unskilled labour in a workforce which allowed them to offer better rates as compared to other GHAs.

If the reasonable classification test is applied, the technical and financial criteria in the tender document were based on eliminating agencies lacking expertise or infrastructure or employing casual labour or unskilled labour. On further analysis, it can be established that the grounds are a risk of non-compliance with the GHA Regulation. If an agency is not having the requisite infrastructure or employs casual labour, then the said agency would violate GHA Reg 5 and Reg 6. The ground of expertise would be determined in the tender process, and the market would eliminate the one who lacks expertise. Any agency would have to ensure that they have skilled labour. If not, the market would push out the agency for lack of professional service. It could probably be the case that AAI has experience dealing with such agencies. Else

³⁷ *Airport Authority of India v. Centre for Civil Aviation, Safety and Research*, 2022 LIVELAW (SC) 814.

³⁸ *Id.* ("MSME orders of 2012 and 2018 is concerned, the same can always be subject to the fulfilment of other conditions of the tender documents. Even otherwise, selecting GHS for providing GHS cannot be equated with the procurement of any goods and services that form the crux of the MSME orders").

it could be the assumption that an agency would violate the GHA Regulations and provide services that the market would not continue utilising the services. The challenge for AAI would be that it is the Government's undertaking. They will have to ensure that the necessary GHAs are appointed at every Airport under their operation, and appointing such inexperienced agencies would risk aviation operations.

E. FDI Policy GHS

The FDI Policy permits investment in GHS at 100% under the Automatic Route, bringing in competition from around the Globe in GHS. GATS annexe on air transport and aviation does not cover GHS. Thereby the Indian Government can decide the agencies to be permitted to provide the GHS at Indian Airports. The Airports Authority of India (Ground Handling Services) Regulations, 2018 governs the GHS at Indian airports. The GHS Reg regulation of the equipment used by GHA should be as per the standard prescribed under the International Air Transport Association Airport Handling Manual. Will the domestic players face any challenges due to the internationally prescribed standards, and can the principle of harmonisation be challenged in the aviation service industry?

The Supreme Court of India, while deciding the period of limitation and interpreting the Limitation Act, 1963 and the Carriage by Air Act, 1972, interpreted harmoniously, keeping in mind not only the domestic law but also the purpose and object of the Convention, which is to bring about the unification of Rules relating to International Carriage by Air.³⁹ Regulation 6(3) The Airports Authority of India (Ground Handling Services) Regulations, 2018, provides that all GHAs shall ensure state-of-art equipment and best practices in line with the International Air Transport Association ("IATA") Airport Handling Manual. The question is, do we extend the same principle of harmonisation to the equipment and best practices?

The domestic players, like those who would have participated based on the Centre for Civil Aviation, Safety and Research affidavit,⁴⁰ might have created the opportunity for new GHAs. With FDI being permitted in GHS, any foreign entity can provide services at Airports in India, and this might create an opportunity for domestic players to get exposure to international best practices. The mandate of IATA with regard to the equipment and the impact

³⁹ M/S Bhagwandas B. Ramchandani v. British Airways, 2022 LIVE LAW (SC) 645.

⁴⁰ The Centre for Aviation Policy v. Union of India, W.P.(C) 5722/2020 decided on 14.07.2021.

on the domestic GHA is an area of concern. The Global North-South divide in this mandate of IATA needs more significant consideration from the perspective of harmonisation.

The larger perspective of the IATA mandate of equipment needs consideration. Can India place itself in the position of being Atmanirbhar with regard to the manufacture of this State-of-the-art equipment? The GATS Annex on Air Transport Services has not addressed GHS.⁴¹ The challenge is that in certain Airports, providing the necessary physical infrastructure to all the GHAs intending to operate there might be a challenge. This might again increase the charges for GHS due to resource scarcity at Airports. It would be necessary for the State to ensure that they regulate the competition of the GHAs at the Airports within their jurisdiction.

V. CONCLUSION

The purpose of GATS is to ensure that there is a move towards progressive liberalisation and transparent conditions. There are similar demands concerning GHS, and the submission of the policy approach of India before the ICAO is evidentiary to that proposition. The challenge of Atmanirbhar Bharat in GHA are multifold. As discussed above, some of them are (1) Labour issues; (2) Attracting Investments; (3) Creating Global GHA in India; (4) Liberalisation of the Market in foreign countries; (5) Creating Hubs for Manufacturing GHS equipment; and (6) Global acceptance of the GHS equipment manufactured in India.

The opportunity to capture the Global market is possible with policies oriented to create the marketplace for such activities in India and then export the same across the Globe. It is no denying that outsourcing and sub-contracting of GHS is a practice in Aviation. The opportunity to intensify competition and enterprises move towards a competitive spirit must be the policy orientation of the Government. Lastly, the offerings of Indian GHS across the Globe should be one of the policy adoptions by the Indian Government under the larger vision of Atmanirbhar Bharat.

⁴¹ Ruwantissa Abeyratne, *Ground Handling Services at Airports as a Trade Barrier*, 42 JOURNAL OF WORLD TRADE 261, 276 (2008).

ROLE OF COOPERATIVE FEDERALISM IN INDIA: A CATALYST FOR ACHIEVING ATMANIRBHAR BHARAT

- Vijay Tyagi* & Gaurav Kumar**

Abstract

The intricate connection between cooperative federalism and Atmanirbhar Bharat is a foundational element within India's contemporary governance landscape. Cooperative federalism, involving the division of powers and responsibilities between the central and state governments, assumes a pivotal role in effectively addressing diverse regional needs. At the core of this synergy is the concept of Atmanirbhar Bharat, centered on the pursuit of self-sufficiency, with the primary goal of reducing reliance on imports while bolstering domestic production. Cooperative federalism serves as the linchpin for realizing the objectives of Atmanirbhar Bharat.

However, in this journey, several challenges must be acknowledged and addressed. Geographical disparities, political divisions, bureaucratic impediments, and infrastructural deficiencies require focused attention. Striking the right balance between individual self-sufficiency and global interconnectedness is paramount. On a global scale, nations are presently reassessing the implications of globalization and placing increased emphasis on strategic self-reliance. It is within this evolving global landscape that effective and well-structured cooperative federalism establishes the groundwork for achieving self-sufficiency. This involves navigating the complexities of strategic trade and collaboration. Consequently, achieving a delicate equilibrium between autonomy and international engagement becomes paramount within this dynamic global context.

Keywords: Atmanirbhar, Self-sufficiency, Cooperative federalism, Globalization.

I. INTRODUCTION

This article provides an in-depth analysis of the topic at hand and sets its issues, challenges, and perspectives. Cooperative federalism has become a prominent characteristic of India's governance framework, exerting significant influence on the country's socio-economic and political environment. Simultaneously, the concept of Atmanirbhar Bharat, often known as "Self-Reliant India," embodies a strategic perspective with the objective of diminishing India's

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reliance on imports and promoting indigenous manufacturing across many industries.¹ This extensive study, aims to thoroughly examine the intricate correlation between cooperative federalism and Atmanirbhar Bharat. It will analyse the significant aspects, obstacles, and viewpoints pertaining to this crucial association.

II. COOPERATIVE FEDERALISM

Prior to delving into the complexities surrounding the role of cooperative federalism in the attainment of Atmanirbhar Bharat, it is imperative to grasp the fundamental concept of cooperative federalism. Cooperative federalism refers to a governance framework wherein the distribution of powers and responsibilities is jointly undertaken by the central government and state governments within a federal nation. In the context of India, characterised by its extensive range of cultures, languages, and regions, the concept of cooperative federalism has significance not just as a constitutional principle but also as a pragmatic need.²

Cooperative federalism in India is not solely confined to a legal or political concept, but rather represents a pragmatic and essential approach to government. Within the framework of Atmanirbhar Bharat, it assumes a pivotal role in the realisation of objective of self-reliance. Cooperative federalism in India enables the utilisation of the country's extensive resources, diverse strengths, and the combined knowledge of its central and state governments to promote domestic production, innovation, and entrepreneurship. This approach enables states to assume a crucial role in attaining self-sufficiency while also ensuring that local circumstances and requirements are appropriately addressed.³

Cooperative federalism in India fundamentally emphasises the collaborative and synergistic association between the central and state governments, wherein both institutions collaborate to tackle shared difficulties and foster comprehensive development. This strategy facilitates the consolidation of resources, knowledge, and endeavours to address intricate challenges that encompass diverse geographical areas and administrative domains.

¹ Priya Chacko, *Disciplining India: Paternalism, Neo-liberalism and Hindutva Civilizationalism*, 99(2) INTERNATIONAL AFFAIRS 551, 559-560 (2023).

² S. P. Aiyer, *India's Emerging Co-operative Federalism*, 21(4) INDIAN JOURNAL OF POLITICAL SCIENCE 307 (1960).

³ Akhtar Majeed, *India: A Model of Cooperative Federalism*, in ANN WARD & LEE WARD (EDS), THE ASHGATE RESEARCH COMPANION TO FEDERALISM 503 (2009).

Cooperative federalism further recognises the inherent advantage of states in effectively addressing localised matters and comprehending the distinct challenges they face. Hence, it confers authority upon states to formulate judgements that are customised to their particular need while upholding the overarching ideal of Atmanirbhar Bharat.

III. ATMANIRBHAR BHARAT: A CONCEPTUALIZATION OF NATIONAL SELF-RELIANCE

The Indian government has launched a bold initiative called as Atmanirbhar Bharat, with the goal of increasing self-sufficiency and decreasing the country's dependency on imports. The goal of this enormous project is to convert India into a dominant force in domestic production, innovation, and entrepreneurship across a wide range of sectors, including manufacturing, agriculture, healthcare, and technology.⁴

The AatmaNirbhar Bharat Abhiyan, which was initiated in May 2020, with a range of ambitious strategies and policy changes, demonstrates the government's steadfast dedication to fostering economic autonomy and self-sufficiency in India. However, the successful implementation of these efforts may face obstacles if the business ecosystem in India fails to sufficiently cater to the requirements of a rapidly growing and emerging economy.⁵

The concept of Atmanirbhar Bharat entails the implementation of a range of reforms encompassing economic, industrial, and regulatory transformations. The execution of these reforms is effectively ensured through the important role of cooperative federalism. States, as key actors involved in the process of reform, has the ability to actively engage in the formulation of policies that are tailored to their specific local circumstances. Moreover, they possess the capacity to assume a crucial function in the surveillance and assessment of the consequences of reforms at the local level, furnishing essential input for the adjustment of strategies if required. The key ideas underlying the notion of Atmanirbhar Bharat are as follows:

1. The goal of economic reform is to establish legislative reforms that promote a favourable environment for enterprises of all sizes to succeed and contribute significantly to the broader economy.

⁴ P. Nandan & B. T. Prathima, *Athma Nirbhar Bharat: A New Self Resilient India*, 11(1) M.S. RAMAIAH MANAGEMENT REVIEW 18-22 (2020).

⁵ Dr. Smita Dubey & Dr. Harish K. Dubey, *Atmanirbhar Bharat Abhiyan: An Analytical Review*, 10(7) DOGO RANGSANG RESEARCH JOURNAL 27 (2020).

2. Improving infrastructure, especially transportation, power, and digital connection, is critical for increasing domestic output inside the country.
3. Local manufacturing promotion is a fundamental component of the "Make in India" programme, which aims to boost domestic output, reduce dependency on imports, and stimulate the development of export-oriented industries.
4. Research and innovation promotion means giving resources to the progress of research and development, with a special focus on critical fields such as healthcare, defence, and technology.
5. The concept of agricultural transformation encompasses the modernization of agricultural practises, the augmentation of farmers' income, and the assurance of food security. This is achieved through many initiatives, such as the "Aatmanirbhar Krishi" programme.⁶

IV. THE INTERPLAY: COOPERATIVE FEDERALISM AND ATMANIRBHAR BHARAT

This article primarily examines the relationship between cooperative federalism and the Atmanirbhar Bharat initiative in India. The notion of cooperative federalism, which serves as a fundamental tenet of India's governance, is intricately linked with the quest of Atmanirbhar Bharat. In order to have a comprehensive understanding of the significance of cooperative federalism in attaining this vision, it is imperative to analyse the pivotal concerns, viewpoints, and procedures that facilitate the realisation of this collaborative synergy.

Cooperative federalism serves as a mechanism for promoting the fair and balanced allocation and distribution of resources between the central government and individual states. The distribution of resources has particular significance while endeavouring to foster self-sufficiency across diverse industries. States frequently possess distinctive resources, encompassing both natural and human capital, which can be effectively utilised to assist towards the realisation of Atmanirbhar Bharat. States that possess abundant mineral resources can significantly contribute to the advancement of local industries, including manufacturing and metallurgy. Cooperative federalism is a governance approach that entails the central

⁶ Pushpa Singh, *Management of the Pandemic: Agriculture, Food Management and Resilience During Covid-19 in India*, 67(3) INDIAN JOURNAL OF PUBLIC ADMINISTRATION 324 (2021).

government providing support to states in the responsible utilisation of their resources, hence yielding benefits for the entire nation.

This cooperation encompasses various domains, including labour laws, taxation, and regulatory frameworks. The alignment of these policies at both the national and regional levels promotes a favourable business climate, facilitating investment, the generation of employment opportunities, and the expansion of domestic sectors.

Recognising the interdependence of states within India is crucial when promoting self-reliance. Cooperative federalism facilitates the mitigation of trade obstacles and regulatory disparities across states, hence enhancing the ease of conducting commercial activities across state borders. The facilitation of inter-state trade and commerce is of utmost importance for the advancement of domestic industry. This component is in line with the overarching goal of Atmanirbhar Bharat, as it enables firms to tap into wider markets and achieve economies of scale, hence enhancing production efficiency.

The collaboration between the central government and states encompasses the mobilisation of resources and the building of infrastructure. The central government has the capacity to offer monetary assistance and specialised knowledge to states in order to facilitate the construction of essential infrastructure required for achieving self-sufficiency. Infrastructure development plays a key role in the foundation of Atmanirbhar Bharat. This encompasses investments in several sectors such as transportation networks, energy generation, digital connection, and healthcare facilities. By employing the principles of cooperative federalism, these investments can be deliberately formulated and implemented, so guaranteeing their alignment with the aim of self-reliance.

V. EDUCATION, HEALTHCARE AND MANPOWER

The significance of a strong healthcare system and the necessity for indigenous manufacturing of essential medical products were highlighted by the COVID-19 pandemic. Cooperative federalism can enhance intergovernmental collaboration between the central and state governments, thereby bolstering healthcare infrastructure and fostering advancements in medical technology through research and development. States have the potential to collaborate with the central government in order to enhance healthcare infrastructure, provide training for healthcare practitioners, and allocate resources towards research and advancements in the

healthcare domain. The cooperation not only serves to augment self-sufficiency within the healthcare sector, but also equips the nation to effectively address forthcoming healthcare obstacles.⁷

An essential component of self-sufficiency further involves the cultivation of a proficient labour force that effectively addresses the requirements of burgeoning sectors. Cooperative federalism facilitates the alignment of education and skill development programmes at the state level with the particular requirements of industries that are deemed essential for achieving self-sufficiency. As an illustration, states have the potential to engage in collaborative efforts with the central government in order to construct vocational training centres, enhance pre-existing educational institutions, and develop curricula that prioritise practical skills that are pertinent to the demands of the job market. This method guarantees that the labour force is adequately prepared to make valuable contributions to the expansion of domestic industry.⁸

VI. OBSTACLES IN PATH OF SELF-SUFFICIENCY

Effective coordination and consensus-building are essential components of cooperative federalism, which necessitates the involvement of numerous stakeholders, including the central government, 28 states, and 8 union territories. The process of attaining a shared vision and objectives can be intricate and require a significant investment of effort. India exhibits considerable regional inequalities in terms of resources, levels of development, and capacities.

The task of reconciling these discrepancies while striving for self-sufficiency presents a formidable obstacle. States that have little resources may necessitate additional help and assistance in order to actively engage in the Atmanirbhar Bharat initiative. The efficacy of cooperative federalism hinges upon the presence of political will exhibited by both the central and state administrations. The presence of divergent political ideologies and conflicting agendas might occasionally impede the attainment of efficient collaboration.⁹

Further the presence of bureaucratic impediments and administrative procedures at both the central and state levels might pose challenges to the efficient execution of policies and

⁷ Ranjith P.V. & Ajay Massand, *Role of Atmanirbhar Bharat In Revitalisation of Supply Chain In India*, 27(1) JOURNAL OF CONTEMPORARY ISSUES IN BUSINESS AND GOVERNMENT 115 (2021).

⁸ PRAVEEN TIWARI, *INNOVATE INDIA: A ROADMAP FOR ATMANIRBHAR BHARAT* (2021).

⁹ Biplob Ghosh, *Co-Operative Or Coercive Federalism: The Way To Tackle The Health Emergency In India*, 10(10) INTERNATIONAL JOURNAL OF SCIENTIFIC AND RESEARCH PUBLICATIONS 366 (2020).

projects that are crucial to the realisation of Atmanirbhar Bharat. The issue of infrastructure gaps, encompassing deficiencies in connectivity and logistics, continues to be a significant obstacle that requires attention and resolution.

In order to facilitate uninterrupted trade and foster the expansion of industries, it is imperative for cooperative federalism to encompass the task of bridging these gaps. The pursuit of Atmanirbhar Bharat is characterised by various obstacles and intricacies, yet it is also accompanied by the prospect of advancement, progress, and overall welfare of the nation. By adhering to the principles of cooperative federalism, India has the potential to strategically navigate towards achieving self-reliance in a manner that is all-encompassing, environmentally sustainable, and attuned to the desires of its vast population of over 1.4 billion individuals.

VII. GLOBAL DIMENSION: NEED FOR BALANCE APPROACH

The concept of cooperative federalism, the Atmanirbhar Bharat initiative, and the global trend towards self-reliance are interconnected themes that have gained significant attention in recent times. The global community is currently engaged in a significant reassessment of the concept of globalisation within the domains of international politics, trade, and environmental policies.

In recent years, there has been a notable shift in the global approach to trade and cooperation among nations.¹⁰ While there was once a prevailing inclination towards open and liberal policies, an increasing number of countries are now placing greater emphasis on enhancing self-sufficiency and minimising reliance on external sources. This trend is particularly evident in sectors that are considered crucial for national security and are deemed strategically significant. The issue of nations' capacity to independently determine their trajectory, devise strategies for development, secure funding, and execute measures to tackle their distinct challenges while protecting their sovereignty and national interests has emerged as a central topic of global discourse. The recent trend towards self-reliance has been accelerated by significant events such as the COVID-19 pandemic, the Russo-Ukrainian war, and the evolving geopolitical landscape in Europe and Asia, particularly China's assertive stance.

For several decades, the process of liberalising the global economy and advocating for free trade has been widely regarded as the pinnacle of economic progress. This paradigm gained

¹⁰ Udaita Ghosh, *Covid-19 and the Aspiration of Atmanirbhar Bharat*, 13(2) JOURNAL OF POLITY & SOCIETY 143 (2021).

prominence, especially after the establishment of the World Trade Organisation (WTO). Nevertheless, the failure of these models to achieve desired results has led countries around the world to shift their focus away from a wide-ranging market-oriented strategy for global integration. In contrast, they are currently embracing strategic trade and investment policies. The phenomenon of this inward shift is particularly notable in key sectors, including agriculture, defence, and the manufacturing of vital pharmaceuticals.

The emergence of regional and strategic multilateralism has become a significant phenomenon in contemporary international relations. There has been a notable resurgence of regional and strategic multilateralism in the international arena, as nations endeavour to readjust their global involvement. The prominence of alliances such as BRICS and QUAD has increased as nations establish novel trade routes and engage in collaborative partnerships. The regional arrangements are indicative of the dynamic nature of global cooperation, wherein nations are progressively prioritising the protection of their strategic interests.

VIII. THE HAZARDS OF RELIANCE ON EXTERNAL SOURCES

The excessive dependence on external sources of capital, knowledge, and markets has rendered nations vulnerable to a multitude of difficulties. It is worth noting that the reliance on foreign aid and investment as a means to drive economic growth can potentially result in the accumulation of significant external debt burdens, commonly known as a 'debt trap.' Furthermore, this interdependence can lead to the gradual erosion of a nation's sovereignty, as international entities exert significant influence over the formulation of domestic policies. The experience of Sri Lanka serves as a reminder of the potential risks associated with such circumstances. As a result, countries worldwide are increasingly acknowledging the necessity of achieving a nuanced equilibrium between fostering collaboration on a global scale and prioritising the establishment of self-sufficiency. The concept of self-reliance, previously regarded as a limited and isolationist ideology, is now widely accepted as an essential condition for achieving long-term economic viability.

IX. THE PROGRESSION OF INDIA'S PURSUIT OF SELF-RELIANCE

India has enthusiastically adopted self-reliance as a fundamental national value, as evidenced by various initiatives such as 'Make in India.' This principle is applicable to critical industries such as healthcare, defence, and energy. The concept of self-reliance is supported by a

comprehensive legal framework, which encompasses both international and national dimensions, with a particular focus on advancing national interests. The assessment of India's self-reliance policy is crucial in examining its impact on resource mobilisation, economic growth, employment generation, and global mobility.

The 'Make in India' initiative implemented by India serves as a demonstration of its dedication to achieving self-sufficiency. The primary objective of this initiative is to facilitate the growth of domestic manufacturing, decrease reliance on imports, and strengthen the country's export-oriented sectors. At the core of this endeavour lies the notion of 'Atmanirbhar Bharat' or 'Self-Reliant India,' an ambitious aspiration with the objective of positioning India as a prominent force in domestic production, innovation, and entrepreneurship across various sectors such as manufacturing, agriculture, healthcare, and technology on a global scale.

The Role of Cooperative Federalism is a significant aspect to consider in the context of governance and intergovernmental relations. The symbiotic relationship between cooperative federalism and Atmanirbhar Bharat constitutes the core of India's pursuit of self-reliance. Cooperative federalism, characterised by the collaborative relationship between the central government and state governments, assumes a crucial role in the attainment of self-reliance objectives. This collaborative effort encompasses various domains, ranging from the allocation of resources to the coordination and alignment of policies.

Cooperative federalism facilitates the fair allocation of resources between the federal government and individual states. The allocation of resources assumes increased importance in the endeavour to achieve self-sufficiency across multiple sectors. States frequently possess distinct resources, whether they are natural or human capital, that can be utilised to foster self-sufficiency. For example, regions abundant in mineral resources have the potential to greatly enhance local sectors such as manufacturing and metallurgy. Cooperative federalism promotes the provision of central government aid to states for the purpose of responsibly managing resources, thereby yielding benefits for the entire nation.

It is essential that there is policy coordination and alignment for ensuring that various policies are harmonised and synchronised to achieve a common goal or objective. This involves the coordination and alignment of different policy initiatives, strategies, and actions across multiple sectors or levels of government. The Atmanirbhar Bharat initiative prioritises the coordination and alignment of policies to foster economic growth and achieve self-sufficiency.

Cooperative federalism facilitates the efficient coordination of policies across diverse domains, encompassing areas such as labour laws, taxation, and regulatory frameworks. This alignment facilitates investment, the generation of employment opportunities, and the expansion of domestic industries at both the national and regional scales.

The decentralised nature of decision-making enables states to devise strategies for sectoral development, infrastructure expansion, and skill enhancement by leveraging their unique strengths and available opportunities. States that possess a robust agricultural foundation have the opportunity to prioritise the modernization of their farming methods, thereby making significant contributions to both food security and the promotion of employment in rural areas. This serves as a crucial component of achieving self-sufficiency.

Decentralised decision-making is a fundamental characteristic of the cooperative federalism model. Acknowledging the fact that states possess superior capabilities to tackle localised concerns and comprehend their distinct challenges, this approach grants states the authority to customise strategies according to their specific requirements, thereby promoting the broader objectives of Atmanirbhar Bharat. States that possess strong agricultural foundations have the capacity to prioritise the modernization of farming practises, thereby making substantial contributions to both rural employment and food security.

It is essential to acknowledge that inter-state collaboration that refers to the cooperative efforts and partnerships established between different states or regions, which is essential to address common challenges, promote mutual interests, and achieve shared. Cooperative federalism promotes inter-state collaboration within a nation, thereby addressing barriers that could impede commercial transactions and cultivating a sense of self-sufficiency. The simplification of cross-state economic activities through the elimination of trade barriers and the reduction of regulatory disparities between states is a crucial factor in the development of domestic industries.

The promotion of increased collaboration between states is in line with the fundamental goal of Atmanirbhar Bharat, facilitating businesses in their ability to access expanded markets and attain economies of scale. The allocation of resources and the establishment of critical infrastructure are collaborative obligations that are jointly undertaken by the central government and individual states. The financial aid and expert guidance by the central government facilitates the construction of essential infrastructure by states, thereby promoting

self-reliance. Investments encompass a wide range of industries, such as healthcare facilities, digital connectivity, energy generation, and transportation networks. When implemented through the framework of cooperative federalism, these investments effectively align with the objective of fostering self-sufficiency.

X. CONCLUSION

The achievement of sustainable development necessitates the delicate equilibrium between self-sufficiency and sustainable development. The potential negative outcomes that may arise from an excessive focus on self-reliance, to the detriment of environmental considerations and social equality, should not be overlooked.

The pursuit of self-reliance should not be misconstrued as a desire to isolate oneself from the global economy. Achieving a harmonious equilibrium between domestic production and global integration is a multifaceted endeavour that necessitates meticulous policy development.

The prioritisation of self-reliance necessitates a cautious approach to prevent the adoption of excessive protectionist measures, as this could result in detrimental consequences and international seclusion. It is imperative to recognise and uphold the advantages of global integration that are attained through the process of globalisation, even as nations undertake extensive policy reforms. India possesses a notable advantage in the pursuit of self-reliance due to its increasing confidence in the public sector. However, it is imperative to acknowledge that the concept of self-reliance has prompted numerous nations to adopt elevated tariffs and anti-dumping policies as a means of safeguarding their domestic industries.

In order to enhance India's ranking in the 'Ease of Doing Business' index and foster an environment conducive to self-reliance initiatives, it is crucial to implement reforms in both substantive and procedural laws. The implementation of substantive law reforms will establish a comprehensive and resilient legal framework that fosters a sense of trust and assurance among investors, while also ensuring the protection of their rights. The influence of procedural law reforms on Ease of Doing Business rankings is significant, as they directly affect the

enforcement of contracts, which is a crucial factor in evaluating the business-friendliness of a jurisdiction.¹¹

In conclusion, the current global trend of embracing self-sufficiency in response to changing geopolitical dynamics and economic obstacles is having a transformative impact on the global power structure. The pursuit of self-reliance should be approached with discretion, considering the benefits of global integration. The progress of India in achieving self-reliance serves as a representative example of this developing paradigm, wherein its accomplishments depend on achieving a harmonious equilibrium between independence and international collaboration.

The achievement of self-reliance is facilitated by the presence of strong legal frameworks and comprehensive systemic reforms that enhance investor trust and cultivate a favourable atmosphere for sustainable economic development. In the current situation, the concept of cooperative federalism assumes a crucial position in the pursuit of the vision of Atmanirbhar Bharat and the cultivation of self-sufficiency, both at the domestic level and in the international arena.

¹¹ Ajay Massand et al., *Atmanirbhar Bharat: Economic, Legal, And Social Aspects*, 11(6) INTERNATIONAL JOURNAL OF MANAGEMENT 1042 (2020).

PART C

A CRITICAL APPRAISAL OF DAP-2020: THE DILUTION AND RESUSCITATION OF INDIA'S DEFENCE OFFSET POLICY

- Anuja Shah* & Kartik Kalra**

Abstract

DAP-2020, the policy containing the Indian Government's latest stance on defence offsets, takes the radical step of discontinuing them from the negotiated contracting realm altogether, confining them solely to competitive tendering. This step, taken in context of successive CAG reports pointing to offsets' inefficacy in inducing technology transfers or investment flowbacks, aligns with scholarly consensus on the offset regime's minimal economic logic, especially in context of negotiated contracting. Its maintenance of status quo in retaining offsets' applicability to competitive tendering – while a cautious approach – also aligns with the absence of definitive economic evidence against their efficacy therein. The dilution of the offset policy by confining it to competitive tendering, we argue, carries the potential to resuscitate its hitherto moribund nature.

Keywords: DAP-2020, Defence Offset, Procurement, Single Vendor Case, self-reliance

I. INTRODUCTION

Discourse on defence offsets spurs up every few years, given successive critical reports of the Comptroller and Auditor General (“CAG”) showing empirical evidence against their efficacy.¹ This was the case in 2012, when a “deviation from the offset provisions as prescribed in the Defence Procurement Procedure” was noted, constituting the policy’s “fail[ure] to achieve its objective”;² and the recent 2020 report, which noted that the offset policy brought in

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¹ See, *inter alia*, COMPTROLLER AND AUDITOR GENERAL OF INDIA, REPORT NO. 17 OF 2012-13, UNION GOVERNMENT (DEFENCE SERVICES) AIR FORCE AND NAVY (Compliance Audit, 2012); Krishan Kaushik, *CAG Flags Pending Defence Offset Deals: Dassault, Boeing, Russian ROE in List*, THE INDIAN EXPRESS, <https://indianexpress.com/article/india/cag-flags-pending-defence-offset-deals-dassault-boeing-russian-roe-in-list-6615263/> (last updated Sept. 26, 2020).

² COMPTROLLER AND AUDITOR GENERAL OF INDIA, *supra* note 1, at 20; The Report also noted that in five contracts, pre-built equipment without any value addition was accepted as satisfying the offset agreement, in violation of DPP-2011.

“negligible Foreign Direct Investment” since its introduction, and that Indian defence entities had “not acquired any high technology so far”³

In light of successive exacting reports of the CAG highlighting the offset policy's inefficacy, radical changes were introduced via the Defence Acquisition Procedure, 2020 (“DAP-2020”). In all policies since 2005, the offset clause has been applicable to all forms of defence agreements, irrespective of whether they were arrived at via a process of governmental negotiation or competitive tendering. The former kind of agreement – where the government does *not* offer sellers an opportunity to compete for the contract by demonstrating their lowest prices – is referred to as an ab-initio Single Vendor Case (“SVC”). In this mode of contracting, the government chooses a vendor by itself, and negotiates with them individually to derive a contract price and the offset value. In the latter kind of agreement based on tendering, defence equipment is acquired competitively – the government asks all sellers to provide the lowest possible price for the relevant equipment and selects the seller making the best bid, which may also comprise the highest offset value. Chances of obtaining the contract are, therefore, positively correlated with a high offset value.

DAP-2020 has changed the scope of applicability of India's offset policy, constraining it solely to competitive tendering, and removing it altogether from domain of SVCs. This article locates this radical change within scholarly work on the efficacy of defence offsets and argues that constraining the offset policy solely to competitive tendering is a wise policy change – one that takes cognizance of the structural and market-based impediments towards effecting offsets in SVCs. In order to do so, *firstly*, we evaluate the nature and functioning of India's offsets, alongside the market models most suitable for their efficacy; *secondly*, we evaluate the history of defence offsets in India in light of competitive and SVC models of contracting, tracing their evolution from the 1960s till 2016; *thirdly*, we present defence offsets as a form of competitive tendering-based government procurement, and show the possible economic efficacy of offsets therein; *fourthly*, we present defence offsets as a non-competitive form of government procurement (in SVC cases), and show the structural inefficacy of offsets thereunder; and

³ COMPTROLLER AND AUDITOR GENERAL OF INDIA, REP. NO. 20 OF 2019, PERFORMANCE AUDIT REPORT ON MANAGEMENT OF DEFENCE OFFSETS (2020); See also Amit Cowshish, *Defence Offset Policy Yielding Diminishing Returns Despite Various Amendments*, THE WIRE (OCT. 05, 2020), <https://thewire.in/government/defence-offset-policy-changes-dap-2020>; Snehash Alex Philip, *CAG Report Flags Vendors' 'Dilly-dallying' on Offsets Deals, Cites Rafale as Example*, THE PRINT (Sept. 23, 2020), <https://theprint.in/defence/cag-report-flags-vendors-dilly-dallying-on-offsets-deals-cites-rafale-as-example/509229/>.

fifthly, we locate the radical changes introduced by DAP-2020, arguing that it reinvigorates India's moribund offset regime through ceasing it in SVC cases.

II. NATURE AND FUNCTIONING OF OFFSET CONTRACTS

Offsets are a general contracting phenomenon with deep historical roots.⁴ Within the contracting paradigm, they constitute a form of reversed consideration: A buys two units of an entity from B for Rs. 500, and A's act of buying imposes an obligation on B to purchase something from A, the value of which would depend on their negotiated agreement. The notion of one's investment *flowing back* to them holds a psychological appeal for contracting parties, especially in high value transactions in an economic market that can be characterized as monopsonist.⁵ When a single country purchases equipment that multiple sellers are competing to sell, the country purchasing it can demand that the seller use its consideration value in an economically meaningful endeavour within the host country.⁶ The problem, however, is that perfectly monopsonist markets are rarely found, especially in context of defence contracting. In this section, *firstly*, we explore the nature and characteristics of defence offsets; and *secondly*, we evaluate various market models, locating the negotiation paradigm where offsets can best be used to advantage state buyers.

A. Nature and Characteristics of Defence Offsets

Conceptually, offsets are a form of flow-back: they entail the use of consideration value to confer an additional advantage on the original buyer.⁷ The primary incentive for the seller in monopsony-like markets remains the acquisition of a high-value contract, while in markets with multiple buyers, the seller also requires the offset to entail a meaningful bargain for them. Consider, for example, India's recent offset agreement with Dassault Aviation, whereby it committed to purchase thirty-six Rafale jets for nearly Rs. 60,000 crore.⁸ This agreement's

⁴ See Sandeep Verma, *Offset Contracts Under Defence Procurement Regulations in India: Evolution, Challenges and Prospects* (H.C.M. Rajasthan State Institute of Public Administration, Jaipur Occasional Paper No. 16, 2009).

⁵ Travis Taylor, *Using Procurement Offsets as an Economic Development Strategy*, in JURGEN BRAUER & PAUL DUNNE (EDS), *ARMS TRADE AND ECONOMIC DEVELOPMENT: THEORY, POLICY AND CASES IN ARMS TRADE OFFSETS* 34 (2004).

⁶ Stefan Markowski & Peter Hall, *Mandatory Defense Offsets – Conceptual Foundations*, in JURGEN BRAUER & PAUL DUNNE (EDS), *ARMS TRADE AND ECONOMIC DEVELOPMENT: THEORY, POLICY AND CASES IN ARMS TRADE OFFSETS* 48 (2004).

⁷ *Id* at 50; See also Taylor, *supra* note 5, at 35.

⁸ Dinakar Peri, *France Has Delivered All 36 Rafale Jets to India: French Envoy*, THE HINDU (July 15, 2022), <https://www.thehindu.com/news/national/france-has-delivered-all-36-rafale-jets-to-india-french-envoy/article65643887.ece>.

offset requirements related to roughly 50% of the contract value,⁹ and in accordance with the Defence Procurement Procedure, 2016, entailed a transfer of technology (“ToT”) discharging 30% of Dassault’s offset obligations.¹⁰ Within a few years, however, Dassault struck significant bargains with the Ministry of Defence (“MoD”) concerning the fulfilment of its offset obligations, via which it has largely circumvented them.¹¹ CAG highlighted this non-fulfilment by Dassault in its 2020 report, which MoD considered a testament to the existing offset policy’s failure, especially in its ToT form to SVCs.¹² In this case, therefore, it is foreseeable that Dassault’s disinterest in fulfilling ToT obligations was premised in a lack of incentives, for this contract’s background conditions were such that contractual self-enforcement became its primary thrust. We discuss the role of contractual self-enforcement in the following section.

Further, some scholars have categorized offset models based on the destination where offset value is allocated into three¹³: *first*, if the offset value is spent on endeavours wholly connected to the initial purchase, the offset is “direct”; *second*, if the offset value is spent largely within the military domain but its exact locus is unspecified, it is “semi-direct”; and *third*, if the locus of spending the offset value is absolutely unspecified, and could include both civilian and consumer goods, the offset is indirect.¹⁴ There have been multiple attempts at locating India within this paradigm, and most authors concur on its convergence with the “semi-direct” characterization.¹⁵ Consider, for example, the list of items on which the offset value can be discharged as mentioned in the DAP-2020: small arms, howitzers, armoured vehicles and defence aircrafts, all of which are military equipment.¹⁶ India’s policy, therefore, best falls within the “semi-direct” category: in any offset agreement that India enters, the seller must

⁹ Ashish Dangwal, *Explained: What Are The Offset Obligations For Which Rafale-Maker Dassault Aviation & Missile Giant MBDA Have Drawn India's Wrath?*, THE EURASIAN TIMES (Dec. 22, 2021), <https://eurasianimes.com/explained-what-are-the-offset-obligations-for-which-rafale-maker-dassault-aviation-missile-giant-mbda-have-drawn-indias-wrath/>.

¹⁰ Ministry of Defence, Government of India, Defence Procurement Procedure, 2016, Appendix D to Chapter II, Defence Offset Guidelines, at 68, para 3.1(c) (stating: “(c) Investment in kind in terms of ToT to Indian enterprises for the manufacture and/or maintenance of eligible products...could be through joint ventures or through the non-equity route for co-production, co-development and production or licensed production of eligible products and eligible services...”).

¹¹ Scroll Staff, *Rafale Deal: Dassault Aviation Yet to Meet Offset Commitments of Contract, CAG Tells Parliament*, SCROLL.IN (Sep. 24, 2020), <https://scroll.in/latest/973932/rafale-deal-dassault-aviation-yet-to-meet-offset-commitments-of-contract-cag-tells-parliament>.

¹² Kaushik, *supra* note 1.

¹³ See Verma, *supra* note 4, at 5.

¹⁴ *Id.* at 20.

¹⁵ *Id.* at 21.

¹⁶ Ministry of Defence, Government of India Defence Acquisition Procedure, 2020, Annexure VI & Appendix E [hereinafter DAP, 2020].

mandatorily invest the offset value in these avenues, removing the seller's discretion.¹⁷ This is also aligns with DAP-2020's objectives, for its primary aim is to "leverage the capital acquisitions and technology to develop Indian [the] defence industry".¹⁸

B. Market Models and the Functioning of Offsets

The monopsony model is the most optimal for any country purchasing defence equipment, for it maximizes its bargaining power due to the unavailability of other buyers.¹⁹ Sellers, in pursuit of contracting with the buyer-state, are encouraged to lower prices until all others relent – the higher the offset value, the greater the chance of contracting.²⁰ Smith argues that most states can be considered monopsonists when they enter the market for defence equipment, for "they can influence which firms are in the market by directing procurement".²¹ Markowski and Hall, however, hold that even in a highly monopsonist market, there exist more effective and carefully designed alternatives to defence offsets capable of fulfilling the buyer-state's goals of cost reduction²²:

"If, in contrast, X (buyer) does have significant market power vis-à-vis Y (seller), the puzzle is why it would restrict its freedom to use it as flexibly as possible. This is what happens when it operates a mandatory scheme requiring a fixed proportion a of arms imports to be offset through countertrade (with an associated "no-price padding" demand that suppliers may well not comply with). A mandatory scheme might achieve as good an outcome for X as an unencumbered competitive tender – but that would be a coincidence."

In other words, in case a country is indeed a true monopsonist, why must it not use this monopsony power to minimize the contracting cost in the first place – or enter a more flexible arrangement for cost-reduction – instead of tying itself to receive a proportion of the contracting value back? They make an additional point concerning price padding, which refers to clauses prohibiting the inflation of the contracted price for accommodating the value lost in offsets. Despite such clauses, Markusen notes that contract value would rise when offsets are introduced.²³ We discuss this in the next section. Further, other than considerations of political

¹⁷ *Id.*

¹⁸ DAP, 2020, Defense Offset Guidelines, para 1.1.

¹⁹ Markowski & Hall, *supra* note 6 at 52.

²⁰ LAXMAN BEHERA, DEFENCE OFFSETS: INTERNATIONAL BEST PRACTICES AND LESSONS FOR INDIA 16-17 (2015).

²¹ R.P. Smith, *Defence Procurement and Industrial Structure in the U.K.*, 8(2) INTERNATIONAL JOURNAL OF INDUSTRIAL ORGANIZATION 185 (1990).

²² Markowski & Hall, *supra* note 6 at 52.

²³ Ann Markusen, *Arms Trade as Illiberal Trade*, in JURGEN BRAUER & PAUL DUNNE (EDS), ARMS TRADE AND ECONOMIC DEVELOPMENT: THEORY, POLICY AND CASES IN ARMS TRADE OFFSETS 82 (2004).

expedience or tradition, Markoswi and Hill argue, the indomitable presence of the offset in defence contracting discourse is unjustified.²⁴ Brauer and Dunne agree, arguing that empirical evidence strongly suggests the inefficacy of defence offsets to meet a country's aims of technological development or economic growth.²⁵ They propose that political considerations are the primary drivers of offsets, not the economic value they possess.

III. HISTORY AND EVOLUTION OF OFFSETS-BASED CONTRACTING IN INDIA

In the previous section, we discussed the nature of defence offsets, India's offsets as constituting a semi-direct kind, and the market models where offsets function best. In this section, we evaluate the history of defence offsets in India, and attempt to rationalize the recent decision of their removal from the SVC domain based on India's historical experiences therewith. In doing so, *firstly*, we evaluate the early days of offsets, noting the shift from an "indirect" to a "semi-direct" variety of policy; and *secondly*, we evaluate its evolution from 2011 to 2016, noting the changes from an indirect to a semi-direct variety of offsets.

A. Early Days: From 1960s till 2008

Behera proposes that defence offsets in India had long been functioning via a regime of ad-hocism, and that DPP-2005 served as a codification of this ad-hoc criteria to determine the eligibility and qualifications of offset partners.²⁶ Following the Sino-India War of 1962, there arose an immediate consciousness of defence reform and capital acquisition, which prompted offset contracting. While information of early-day offsets is shrouded in secrecy, scholars still impute significant value to India's loss in the 1962 war prompting a spree of defence modernization.²⁷

DPP-2005 attempted to do away with a regime of absolute ad-hocism, instead bringing it to limited ad-hocism.²⁸ The policy stipulated that all international defence agreements, whether SVC or competitive, must necessarily involve offsets when the import value was above Rs. 300 crore. The value of the offset was 30% of the contract price, which could be discharged

²⁴ Markowski & Hall, *supra* note 6 at 56.

²⁵ Jurgen Brauer & J. Paul Dunne, *Introduction*, in JURGEN BRAUER & PAUL DUNNE (EDS), *ARMS TRADE AND ECONOMIC DEVELOPMENT: THEORY, POLICY AND CASES IN ARMS TRADE OFFSETS* 2-3 (2004).

²⁶ BEHERA, *supra* note 20, at 19.

²⁷ Thomas Mathew, *Essential Elements of India's Defence Offset Policy - A Critique*, 3(1) *JOURNAL OF DEFENCE STUDIES* 19 (2009).

²⁸ BEHERA, *supra* note 20, at 19-20.

via direct purchases of India-manufactured products or foreign investment in Indian PSUs engaged in defence infrastructure. Policies enlarging avenues for offset spending, as discussed above, relate to indirect offsets. There is significant scholarly unanimity on their inefficacy, based generally on two reasons: *first*, the statistical difficulty in mapping their fulfilment; and *second*, the inclusion of routine business as an offset fulfilment that would have occurred even without the impugned offset contract.²⁹ When the seller is conferred with absolute liberty to decide the avenue of spending, the possibility of misuse is significant due to the diversion of funds in any Indian business activity, whether real or fraudulent. It is also immensely difficult to track, for the offset's fulfilment in various avenues can be demonstrated with ease. On the second issue, it is obvious that the use of an indirect offset to spur economic growth would be meaningless *but for* that economic growth: if the business activity would have occurred *anyways*, why make an offset contract that considers this business activity to constitute the offset contract's fulfilment? Behera points to this foregone conclusion, arguing that states' ignorance towards pre-existing business masquerading as offset fulfilment is responsible for their inefficacy³⁰:

“First and foremost, countries seeking offsets hardly ask the question as to whether offsets really bring in new business. Evidence suggests that a business, which would have taken place without an offset contract, is normally accepted as a valid offset transaction.”

It must also be noted that the choice of indirect offsets made by DPP-2005, while definitely an error in design, was also a product of its circumstances. Watson proposes that for contracts of a largely self-enforcing nature, parties' bargaining positions are of extreme importance.³¹ For countries that cannot negotiate high offset values due to weaker bargaining positions, it is likely that the negotiated offset is indirect. Sellers have a natural preference towards indirect offsets due to minimal accountability, and DPP-2005 acquiesced thereto. On this basis, therefore, the use of indirect offsets by DPP-2005 was destined to be sub-optimal.

²⁹ Lloyd J. Dumas, *Do Offsets Mitigate or Magnify the Military Burden?*, in JURGEN BRAUER & PAUL DUNNE (EDS), *ARMS TRADE AND ECONOMIC DEVELOPMENT: THEORY, POLICY AND CASES IN ARMS TRADE OFFSETS* 21, 25 (2004); See also BEHERA, *supra* note 20, at 87.

³⁰ BEHERA, *supra* note 20, at 16-17.

³¹ Joel Watson, *Contract and Game Theory: Basic Concepts for Settings with Finite Horizons* (University of California at San Diego, Economics Working Paper Series qt0wx67671, 2006); See also Joel Watson, *Contract and Game Theory: Basic Concepts for Settings with Finite Horizons*, 4(3) *GAMES* 457 (2013).

Next came DPP-2006, which defined the offset policy's aims as inducing a move towards self-reliance in defence production.³² It marked a shift from its 2005 counterpart in applying offsets both to "Buy (Global)" and "Buy and Make with Transfer of Technology" types of contracts but continued the application of offsets to both SVC and competitive types of contracts. It continued the quantum of offsets the same as DPP-2005, which stood at 30% of contract value when it exceeded Rs. 300 crore. It also marked a shift from DPP-2005 concerning the domains where offset value can be realized, making a shift from indirect to semi-direct offsets. Now, offsets had to be realized within the defence sector, either via a direct purchase of equipment from Indian Defence Public Sector Undertakings, direct foreign investment in Indian defence industries, or an investment in other Indian companies engaged in research or development and have been certified accordingly by the Defence Offset Facilitation Agency, which was also a creation of DPP-2006.³³

DPP-2008 made further improvements, specifying the range of products eligible to have the offset value discharged.³⁴ It introduced some complexity to the "Buy (Global)" mode of contracting, introducing the concept of "Indigenous Content": the offset, in these situations, would come into play only when the final product sold had Indian content below 50% of its total cost. When the imported material was such that it did not constitute half the content of the final product, however, offsets would be inapplicable. For contracts involving ToT, offsets would continue applying, which stood at 30% of the contract value of at least Rs. 300 crores.

This evolution of the domains where offset value can be spent, from indirect to semi-direct, might reflect changes in relative bargaining positions, and a rise in India's status as an arms importer. In the following sub-section, we make this argument, laying the ground for the DAP-2020's analysis in Section III.

B. Towards Self-Reliance: From DPP-2011 till 2016

DPP-2011 is largely considered a continuation of the scheme of things as they existed in 2008.³⁵ Behera notes the primary disappointment with DPP-2011, which was the non-binding nature of scheduled products as the sole available avenues to claim the fulfilment of

³² Defence Procurement Procedure, 2006, at 6, para. 2.

³³ *Id.* Procedure for Implementing Offsets" Provisions, at 35-37, paras. 2.1 to 2.5 & 3.

³⁴ Defence Procurement Procedure, 2008, at 43-55.

³⁵ See BEHERA, *supra* note 20, at 25-26.

offsets.³⁶ This meant that while the policy was facially semi-direct, in reality, it still functioned as indirect. This was remedied by DPP-2013, which is widely regarded as a significant step in the direction of entrenching the aims of the offset policy as self-sufficiency in matters of defence.³⁷ The policy officially became semi-direct with DPP-2013, with the set of items available to satisfy offset obligations explicitly laid out and made mandatory.³⁸ Additional nuance was added in light of practical considerations of the large swathe of sub-contractors involved with the vendor, who were also made eligible to satisfy offset obligations. The primary responsibility of the main vendor, however, was kept intact, and they were considered wholly liable for any shortfall in the offset amount's collection. Borrowing from the interim Defence Offset Guidelines, 2012, multipliers were introduced for the satisfaction of offsets, indicating a concretization of Indian policy aims to derive particular outcomes using offsets.³⁹

Indian Offset Partners, the entities eligible to receive international investment for the satisfaction of offsets, were delineated, and priority was accorded to Micro, Small and Medium Enterprises therein.⁴⁰ This was done using multipliers: if a company must satisfy its offset obligations with India worth Rs. 100 crore, and if it chooses to expend the same in an MSME entity that has a multiplier value of 1.50, it would have to expend Rs. 67 crore instead of the original 100. This was a wise policy measure, for it had the capacity to determine the avenues where offsets must be directed. This would spur economic development in general, and give rise to an industrial base, constituting a step towards the achievement of defence self-sufficiency.

The next significant policy was promulgated in 2016, which was controversial because it raised the threshold contract value from Rs. 300 to Rs. 2,000 crore for making offsets applicable.⁴¹ It would be important to note that this rise in value was applicable equally to SVCs and competitive tendering, requiring the offset value's fulfilment for both. The 30% rule was tampered with a little, making space for the reduction of the offset value in accordance with the amount of indigenous content of the equipment being imported.⁴² The semi-direct nature of

³⁶ *Id.* at 25.

³⁷ Defence Procurement Procedure, 2013, at 43 [hereinafter DPP, 2013].

³⁸ DPP, 2013, Defence Offset Guidelines, Appendix D, Annexure VI, at 58.

³⁹ DPP, 2013, at 46.

⁴⁰ *Id.* at 44.

⁴¹ Defence Procurement Procedure, 2016, Defence Offset Guidelines, at 67, para 2.1.

⁴² *Id.* para 5.10.

the offset scheme, alongside the list of items against which offsets can be availed, were continued from DPP-2013.

This was the trajectory of the evolution of India's offset policies from the 1960s till 2016. Using this background, we shall now build our argument on the wisdom in the inapplicability of offsets to SVC cases, constraining their use solely to contracts reached via competitive tendering.

IV. DEFENCE OFFSETS AS COMPETITIVE GOVERNMENT PROCUREMENT

Government spending is a key segment of a country's economic growth, and has also been a prime destination for economic malpractices, diversion of funds, kickbacks and financial embezzlements.⁴³ Given the extreme susceptibility of government spending towards corruption and other market inefficiencies, designing a wise procurement policy is considered key for a competitive, well-functioning system of state spending.⁴⁴ Now, given that the market model where defence contracting occurs does not constitute a perfect monopsony, it is essential that the relationship between the buyer-state and the (generally) competitive sellers be navigated without market inefficiencies such as corruption and kickbacks, which have historically plagued defence contracting.⁴⁵ In order to navigate this relationship, scholars propose the introduction of state accountability and competitive practices within government procurement. In this section, *firstly*, we evaluate Schooner's theory of government procurement, arguing that competition is a key value of the defence offsets' efficacy; and *secondly*, we evaluate models of reverse-auctions in public procurement, locating defence offsets therein.

A. Role of Competition in Procurement

Schooner presents a range of justifications often provided for a system of public procurement, arguing that much of procurement systemically suffers from conceptual incoherence of the ends being sought.⁴⁶ In other words, it does not function with cognizance of a predestined goal, and is, instead, conceptually ad-hoc. In proving this point, he takes nine oft-cited principles of

⁴³ N. RAM, WHY SCAMS ARE HERE TO STAY: UNDERSTANDING POLITICAL CORRUPTION IN INDIA (2017).

⁴⁴ Marco Celentani & Juan-José Ganuza, *Corruption and Competition in Procurement*, 46 EUROPEAN ECONOMIC REVIEW 1273 (2002).

⁴⁵ PRAKASH PRAVEEN SIDDHARTH, *Tackling Corruption in Transnational Defense Procurement: Problems of Identification and Attribution* (Daniel K. Inooye Asia Pacific Center for Security Studies, Research Reprint 2014).

⁴⁶ Steven L. Schooner, *Desiderata: Objectives for a System of Government Contract Law*, 11 PUBLIC PROCUREMENT LAW REVIEW 103 (2002).

government procurement, arguing that while each may have some value of its own, it is instead the simultaneous effectuation of multiple purposes that must ideally define the purpose of public procurement. The most important of these principles, however, is that of *competition*:

“[W]e believe that, as a general rule, our government enjoys access to the best contractors, lowest prices, most advanced technology, favourable contract terms and conditions, and the highest quality goods and services. We think this is so because our system, for the most part, encourages participation by the widest possible pools of potential competitors; it consistently demonstrates that competitors will be impartially considered for award of our contracts; and it treats all contractors in a manner that balances appropriate risks.”

The conceptual underpinnings of competition in the procurement process concerns the state’s role as a trustee of public resources that are a national asset. Thus, in context of the use of the first-come-first-serve system of allocation of spectrum, the Supreme Court remarked the following in *Centre for Public Interest Litigation v. Union of India*:⁴⁷

75. “However, as they constitute public property/national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good.”

The same observations have been reiterated by the Court in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*, where the Court has held that the distribution of state resources must be in accordance with certain criteria, for which auctions may be a suitable, yet not mandatory mode⁴⁸:

107. “Therefore, a State action [of resource distribution] has to be tested for constitutional infirmities qua Article 14 of the Constitution: the action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India.”

⁴⁷ *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1.

⁴⁸ *Natural Resources Allocation, In re, Special Reference No. 1 of 2012*, (2012) 10 SCC 1.

Given the overarching presence of the principle of competition in the general procurement process, the offset regime can may function best within this ecosystem. We offer reasons for the optimal functioning of defence offsets within a competitive ecosystem in the following section.

B. Defence Offsets as Reverse Auctions

Unlike a traditional auction where buyers bid to obtain a commodity for the highest possible price, a reverse auction entails bidding among sellers to reduce the contracting price to the greatest extent as the condition to obtain the contract.⁴⁹ It must be noted, however, that unlike classic government procurement, defence contracting involves the evaluation of a set of composite criteria to determine the eligible seller. In general, however, offsets have historically played a decisive role in deciding the eligible seller, and it would be wise to consider a higher provision of offsets as being positively correlated with a contracting outcome.

Under the DPP-2020, like its 2016 and 2012 counterparts, the offset agreement is entered into via a sealed-cover process: information of the bidding value of all sellers is mutually unavailable, and each must make its bid in accordance with what it deems the highest possible offset. Within a sealed cover offset bid, there can either be a system of a first-price auction or a second-price auction: in the former, when the seller with the highest offsets wins the bid, they must commit to paying the offset value that they have offered; and in the latter, when the seller with the highest offsets wins, they must pay the offset value that the second-highest seller has bid.⁵⁰

In both these systems within sealed-cover contracting, the mutual unavailability of information is the primary driver to raise offset values and obtain the contract. In a situation of one-to-one contracting undertaken via negotiation instead of tenders, however, the sealed-cover mode of contracting and its mutual unavailability of information is longer applies, and sellers do not have an incentive to raise offset values in anticipation of another raising these values beyond them. In a situation of this kind, we propose, the applicability of principles of competitiveness to raise the offset value is minimal, and Markowski and Hall's take on the availability of alternative negotiation models applies. We explore this in the following section.

⁴⁹ Lawrence Ausubel, *Auction Theory for the New Economy*, in DEREK JONES (ED.), *THE NEW ECONOMY HANDBOOK* 124 (2003).

⁵⁰ See PAUL MILGROM, *PUTTING AUCTION THEORY TO WORK* (2004).

V. DEFENCE OFFSETS AS NON-COMPETITIVE GOVERNMENT PROCUREMENT

In the previous section, we have analysed the possible effective uses of offsets in a system consisting of multiple sellers with the mutual unavailability of information, all of whom wish to provide the highest offset value to obtain the contract. In an alternative system of bargaining that does not involve the unavailability of information of another seller's quoted offset values, or one where there is no other seller because of the negotiation's direct nature, offset values' driving up may prove futile. In this section, we consider the second situation – one that involves a direct negotiation on prices of defence equipment – arguing that the application of principles of competitive procurement thereunder is negligible. In order to do so, *firstly*, we show that offsets' application is unwarranted in negotiated agreements due to the immense likelihood of price-padding and the availability of alternative avenues to meet the ultimate goals of defence offsets, i.e., technological development; and *secondly*, we argue that geopolitical and other considerations within the negotiating paradigm often trump offsets, which end up becoming an ancillary necessity instead of a primary driver behind the contract.

A. Futility of Offsets in Negotiated Agreements

Given the compulsory applicability of offsets to both procurement-based and negotiated agreements, the state must necessarily negotiate on offsets even when it can use alternative cost-reduction mechanisms. Markowski and Hall propose that when a state can truly be considered a likely monopsonist, it has no rational basis to negotiate solely using offsets, given their mandatory and fixed character.⁵¹ Using an offset, it can obtain a written guarantee of a counter-investment of a proportion of the present contract value, but would be unable to reach the seller's lowest contracting value due to constant threats of price-padding.⁵²

Price-padding is a mechanism of price-inflation used by contracting parties to inflate the contract price, accommodating possible future increases in costs.⁵³ This is the primary trouble with offsets – sellers are aware of the mandatory nature of future spending when they enter into offset agreements, and thereby have incentives to raise the contract price. When

⁵¹ See Markowski & Hall, *supra* note 6, at 52.

⁵² *Id.* at 51.

⁵³ Travis K. Taylor, *Countertrade Offsets in International Procurement: Theory and Evidence*, in MURAT A. YÜLEK & TRAVIS K. TAYLOR (EDS.), *DESIGNING PUBLIC PROCUREMENT POLICY IN DEVELOPING COUNTRIES: HOW TO FOSTER TECHNOLOGY TRANSFER AND INDUSTRIALIZATION IN THE GLOBAL ECONOMY* 15 (2012); Jean-Jacques Laffont & Jean Tirole, *Cost Padding, Auditing and Collusion*, 1992(25-26) *ANNALS OF ECONOMICS AND STATISTICS* 205.

sellers undertake this price-increase, market power shifts from the buyers to sellers, who effectively compel the state to pay higher in order to reach an offset agreement. While some states have attempted to outwit sellers by inserting “no price-padding” clauses, such clauses’ efficacy is questionable, for the state may be unable to determine the contract price’s constituents with exactitude, precluding a genuine assessment of the quantum of price-padding. Preventing price-padding becomes more difficult for the buyer-state in negotiated agreements, for the seller does not have to depend on other sellers’ cooperation to undertake price-padding successfully. In anticipation of future spending motivated by the offset agreement, the seller may increase the contract price unilaterally.

Clearly, this is against the interests of the buyer-state. However, in a market where there are many sellers and a single buyer-state, the use of the offset may again prove unwise. In this situation, the state may instead use its monopsony power to lower the contract price further, for it may not wish to afford the seller *any* opportunity to undertake price-padding. In general, therefore, the offsets’ use in negotiated agreements is unwise due to the looming danger of price-padding, and in agreements based on tendering, the use of the offset may take away alternative modes of cost-reduction, including those that simply reduce cost while eliminating scope of price padding.

B. Defence Offsets as Parasitic on Geopolitical Considerations

The influence of geopolitics in defence contracting is significant, for the choice of the contracting seller in SVCs is not made solely by reference to the contract price or offset value. Even in competitive tendering, there can be other considerations at play. The 2020 CAG Report, for example, highlights that Dassault, albeit selected to supply defence equipment to India, was not the lowest bidder.⁵⁴ An examination of the SIPRI Fact Sheet, 2021 reveals that Russia, France and Israel have consistently served as the largest exporters of arms to India,⁵⁵ and the rise of the US as an arms supplier to India has been recent.⁵⁶ There are likely geopolitical reasons for India's consistent defence imports from these countries, since it is improbable that offset-related and general economic considerations alone have driven this historical trend.

⁵⁴ See Snehash Alex Philip, *Dassault Was Not the Lowest Bidder – CAG Report Contradicts Modi Govt on Rafale*, THE PRINT (Feb. 13, 2019), <https://theprint.in/defence/dassault-was-not-the-lowest-bidder-cag-report-contradicts-modi-govt-on-rafale/192183/>.

⁵⁵ Diego Lopes da Silva et al., *Trends in World Military Expenditure, 2021* (SIPRI Fact Sheet, April 2022).

⁵⁶ *Id.*

Given the applicability of past DPPs to most of India's presently standing agreements that contained mandatory offset requirements, all SVC-based agreements above the value of Rs. 300 crores (for all DPPs before 2016) or above Rs. 2000 crores (for DPPs thereafter) were subject to defence offsets. Offsets, therefore, were not a relevant determining criterion in selecting vendors at many occasions, and functioned as a mandatory add-on to geopolitical and other considerations decisive in determining vendors. Given the predominance of geopolitical considerations in selecting vendors, the scope for price-padding might have been raised even further based on the erosion of the buyer-state's market powers, and the latter could instead have used effective alternative mechanisms of reducing the contract value instead of offsets.

In sum, therefore, the offset becomes parasitic on a plethora of other considerations in SVC-based agreements. It becomes a mandatory add-on instead of a meaningful contributor in deciding the vendor, and also increases the scope for price-padding given the pre-existing loss of the buyer-state's market power in SVCs. In the following section, we evaluate the radical changes introduced by the DAP-2020 and argue that they are a legitimate mode of reinvigorating India's moribund offset regime by confining their applicability solely to competitive contracting.

VI. DAP-2020: THE DEATH OF SVC OFFSETS AND THE REINVIGORATION OF THE OFFSET REGIME

A critical report of the CAG, highlighting the inefficacy of offsets was tabled before Parliament in 2020. It proposed, inter alia, that only a fifth of the total offset value committed by contractors between 2005 and 2018 had been claimed to be fulfilled, and that out of this fifth, only half the claims were accepted by the government.⁵⁷ This meant that only a tenth of the committed offset values have been discharged by vendors, with the rest subject to further negotiations or penalties.⁵⁸

In response to the report, the government acted swiftly, introducing key changes to the offset regime. It promulgated the DAP-2020, which removed offsets altogether from the

⁵⁷ Joe C Mathew, *Defence Offset Policy Performance Dismal: CAG*, BUSINESS TODAY (Sep. 24, 2020), <https://www.businesstoday.in/latest/economy-politics/story/defence-offset-policy-performance-dismal-cag-273706-2020-09-23>.

⁵⁸ *Id.*

domain of SVCs.⁵⁹ Now, no negotiated agreement between India and a chosen vendor would be subject to a mandatory offset, and all SVCs would stand excluded from its scope. In tendering-based agreements above Rs. 2000 crores, however, defence offsets' applicability would subsist. This policy change, we propose, aligns with scholarship assessing the economic wisdom of offsets discussed above, which unanimously finds offsets to make little economic sense when applied to SVCs.

As discussed in Section III, Markowski and Hall argue that offsets have their greatest applicability when the buyer-state enjoys a great degree of monopsonist power. Based on this observation, they enquire into the wisdom in using offsets as a policy measure based on the buyer-state possession of significant monopsonist power. Given the mandatory nature of the offset agreement and the fixed proportion of the investment agreed to serve as a flow-back, why must the buyer-state not use alternative modes of further reducing the contract price (or demanding a greater quantity of defence equipment)? Given the retention of defence offsets in tendering-based agreements with a value above Rs. 2000 crore, this critique may still apply. Other scholars, however, hold that offsets, instead of being constrained to values above a threshold of Rs. 300 crore (for DPPs before 2016) or Rs. 2000 crore (for the DPP/DAP thereafter), should have a larger domain of application by reducing the minimum contract value. Behera, for example, has also noted that India is one of the few countries having a modest offset percentage value at 30% of the contract value, while Canada and Malaysia demand 100% of the contract value as offsets.⁶⁰ On the wisdom in applying offsets to competitive tendering, therefore, there does not exist consensus of the variety that exists for SVCs. The retention of the offset policy's applicability to tendering-based agreements, therefore, is justified in the absence of solid empirical evidence against their efficacy.

In sum, therefore, the radical change of diminishing the scope of offsets is a wise policy measure, aligning with the vast scholarly criticism levelled against their efficacy. DAP-2020, therefore, takes cognizance of structural and market-based impediments that constrained the efficacy of India's offset policy since its codification in 2005, and adopts a cautious path in retaining the policy's applicability to tendering-based agreements.

⁵⁹ DAP, 2020, Defence Offset Guidelines, at 108, para 2.1.

⁶⁰ See BEHERA *supra* note 20, at 86.

VII. CONCLUSION

On this basis, therefore, we submit that DAP-2020 is a step in the right direction to reinvigorate India's moribund offset regime through the removal of SVCs therefrom. It takes into consideration India's flailing experience with defence offsets over the years, alongside scholarly work unanimous on the inefficacy of defence offsets in fulfilling its objectives of spurring economic growth or developing indigenous industries. There are structural and market-based impediments preventing the successful use of offsets in SVCs, many of which are also commonsensically derivable. DAP-2020 takes cognizance of these in removing offsets from the domain of SVCs, and lays down the path for an economically sound and practically workable policy that does not suffer from the malaise of having only a tenth of the promised offsets fulfilled.

In sum, we submit that DAP-2020 is a step in the right direction, radical in its decision on SVCs and cautious in its continuation of offsets to tendering-based agreements. In causing the selective death of SVC-based offsets, it serves as a path towards the reinvigoration of India's offset policy.

ANALYZING INDIAN STARTUPS THROUGH THE PRISM OF INNOVATION AND INVESTMENT – THE WAY FORWARD

- Jaibatruka Mohanta*

Abstract

India today is the third largest start-up ecosystem in the world. It is expected to witness a year-on-year growth of a consistent 12 – 15 percent. In the year 2018, India witnessed about 50,000 start-ups; amongst them, 8,900 – 9,300 were technology based. Thus, as in many other regions of the world, start-ups have attracted more attention in the past decade. Their numbers are growing steadily, and they are now universally acknowledged as significant generators of growth and employment. While start-ups will guide India into the next decade of innovation and technological advancements, they can provide significant solutions and serve as a catalyst for socio-economic development and transformation through innovation and scalable technology. However, the majority of the technology-driven start-ups do not even sustain the nascent five years in the market. One of the prime reasons can be attributed to the lack of innovation in these business models and products at large. A survey conducted by Forbes revealed that 77% of venture capitalists think that Indian start-ups lack a unique business model or a new technology for the market. Another aspect is the 'Angel tax' problem, which has recently plagued the Indian start-up sector that comes next. Angel tax is an income tax that must be paid on money collected by unlisted businesses through the issuance of shares. Thus, a gift tax also must be paid by the investors who provide the money to these businesses on the excess sum. Therefore, the key pillars of the self-reliant economy needs to be analyzed thoroughly.

In lieu of the above context at hand, the authors of this paper will analyze the aspects which can boost the innovation regime in India first. The second aspect will touch upon the model on how Indian businesses can learn from other economies in terms of innovation and not emulation of successful global business models. The third aspect of the paper shall analyze on the existing schemes of the government of India and how the same can be harnessed to its full potential. Towards the end the focus will be on how the judiciary can play a role in ensuring that the Intellectual Property rights of Indian business are protected and promoted. Lastly, the authors will leave the readers with insights on how domestic players can play a role in attracting global buyers to India.

Key words: Start-up, Innovation, Indian, Investors, Global, Business, Government schemes.

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I. INTRODUCTION

Like many other countries, India has recognised start-ups' significance in driving innovation, economic growth, and job creation. However, sustaining emergent start-ups in India has been challenging due to various factors, including a lack of infrastructure, limited access to finance, and bureaucratic hurdles. This situation highlights the need for a robust regulatory regime that can create a favourable environment for start-ups to thrive.

Firstly, a favourable regulatory environment can help address the issue of limited access to finance faced by start-ups. Start-ups often require significant financial support in their early stages to scale their operations and bring innovative products and services to the market. A regulatory regime that promotes venture capital investment, seed funding, and other forms of early-stage financing can provide a much-needed boost to the start-up ecosystem in India.¹ Furthermore, simplifying tax procedures, creating tax incentives for investors, and reducing bureaucratic barriers to investment can help increase the flow of funds into start-ups. Secondly, a supportive regulatory regime can promote the growth of infrastructure needed to support start-ups. Infrastructure such as incubators, accelerators, and co-working spaces are critical for providing start-ups with the necessary resources, mentorship, and networking opportunities. A favourable regulatory environment can incentivize private investors and corporations to invest in infrastructure development, which can help create a thriving start-up ecosystem in India.² Lastly, a supportive regulatory regime can help mitigate the challenges associated with navigating bureaucratic hurdles. Start-ups often face compliance and regulatory requirements challenges, which can be especially difficult for emerging start-ups with limited resources. A regulatory environment that is transparent, streamlined, and user-friendly can help start-ups navigate regulatory requirements more efficiently and effectively.³

In conclusion, a supportive regulatory regime is crucial for creating a favourable environment for start-ups in India. Such a regime can help address the challenges faced by start-ups in accessing finance, promote infrastructure development, and mitigate bureaucratic

¹ Kawai Masahiro, *Making Small and Medium Enterprises Competitive: A Case Study of the Philippines* (Asian Development Bank Institute, Working Paper Series, 1145, 2020), <https://www.adb.org/sites/default/files/publication/612516/adbi-wp1145.pdf>.

² *PM Interacts with Beneficiaries of Pradhan Mantri Garib Kalyan Anna Yojana in Gujarat*, PRESS INFORMATION BUREAU (Apr. 09 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1741812>.

³ *Optimizing the Regulatory Environment*, UNCTAD, <https://unctad.org/topic/enterprise-development/entrepreneurship-policy-hub/2-Regulatory-Environment> (last visited May 22, 2024).

hurdles. A favourable regulatory environment is necessary for promoting innovation, economic growth, and job creation in India's start-up ecosystem.⁴

II. ROLE OF STARTUP INCUBATORS IN PROMOTING INNOVATION IN INDIA

India has a dynamic economic infrastructure and thus requires Business Enabling Environment⁵ for business (be it MSMEs or Startups). For that, the aspect of security and guarantee of funds is essential. As the world marches towards globalisation, the country may enable the investment climate to flourish. The climate will thrive only when the startups withhold their stand in the country.⁶ Their foothold is constantly maintained by the incubators, whose role cannot be ignored.

A startup requires support from the backend for it to flourish and develop. That's where Startup incubators⁷ come into the picture. They are experts in the field of business and are adapting to the present technological advancements to cope with the emerging times, becoming a source of economic development in the country. Further, the support from incubators might come in the form of technology resources and guidance, start-up funding, connections and networks, co-working spaces, lab resources, mentoring, and advisory assistance.⁸ The startups have been incentivised at various levels, i.e., Startup India's flagship programmes, including the Credit Guarantee Scheme for Startups (CGSS),⁹ the Startup India Seed Fund Scheme (SISFS),¹⁰ and the Fund of Funds for Startups (FFS),¹¹ provide assistance to businesses at various phases of their life cycles. The startup incubators have found their

⁴ Neeraj Tyagi, *Role of Start-ups in the Growth of the Economy in India*, TIMES OF INDIA (Dec. 02, 2022), <https://timesofindia.indiatimes.com/blogs/voices/role-of-start-ups-in-the-growth-of-the-economy-in-india/>.

⁵ PRESS INFORMATION BUREAU, *supra* note 2.

⁶ Ranjay Gulati & Alicia DeSantola, *Start-ups that Last*, HARVARD BUSINESS REVIEW 54 (Mar. 2016), <https://hbr.org/2016/03/start-ups-that-last>.

⁷ *What is a Business Incubator?*, BRITISH BUSINESS BANK, <https://www.british-business-bank.co.uk/finance-hub/what-is-a-business-incubator/> (last visited May 22, 2024).

⁸ *Portfolio of Incubators Approved under the Startup India Seed Fund Scheme*, SEED FUND SCHEME, <https://seedfund.startupindia.gov.in/portfolio> (last visited May 22, 2024).

⁹ *Credit Guarantee Scheme for Start-ups (CGSS)*, NCGTC, [https://www.ncgtc.in/en/product-details/CGSS/Credit-Guarantee-Scheme-for-Start-ups-\(CGSS\)](https://www.ncgtc.in/en/product-details/CGSS/Credit-Guarantee-Scheme-for-Start-ups-(CGSS)) (last visited May 22, 2024).

¹⁰ *Id.*

¹¹ Special Correspondent, *Cabinet Approves PLI Scheme for Pharmaceuticals, IT Hardware*, THE HINDU (Feb. 24, 2021), <https://www.thehindu.com/news/national/cabinet-approves-pli-scheme-for-pharmaceuticals/article33924395.ece>.

recognition under these schemes; the incubators are selected based on the evaluation. The incubators further select the startups based on certain parameters.¹²

The government recently launched, under the government's "Startup India" initiative, the Department for Promotion of Industry and Internal Trade (DPIIT) has introduced the first version of the "National Incubator Capacity Development Program," a practical training programme to assist startup incubators in growing sustainably.¹³ The training programme will give the incubators three months of mentoring and advising help in addition to knowledge resources and tools for growing companies. The initiative will organise master classes and workshops on administering the Startup India Seed Fund Scheme as well as create customised business models for incubators (SISFS). Moreover, the government has allocated a corpus of Rs. 477.25 Crores to 133 Incubators to foster their growth.¹⁴

Under Atal Innovation Mission (AIM), the government aims to set up Atal Incubation centres (AICs) with robust infrastructure and systemic guidelines for nurturing the startup community in the country.¹⁵ They have holistic facilities to boost startups, ranging from guidance to marketing under the same hub.

They are established as per sector-specific domains such as manufacturing, education, health, agriculture etc., and promote innovation in such domains. They also facilitate business training programmes for entrepreneurs. Usually, the assistance by the incubators is not a single-stage process. It has several dimensions, i.e., the Pre-incubation stage, incubation stage and accelerator stage. During the pre-incubation stage, the incubation centre will evaluate the feasibility of the project and that the entrepreneur is stepping in the right direction for initiating his startup idea.¹⁶ The incubation stage is where the startup gets a boom and requisite

¹² Supriya Sharma & Neharika Vohra, *Indian Business Incubation Ecosystem: A Multilevel Analysis*, in SARFRAZ A MIAN ET AL. (EDS.), *HANDBOOK OF RESEARCH ON BUSINESS AND TECHNOLOGY INCUBATION AND ACCELERATION* 260 (2021).

¹³ *DPIIT Launches the First Edition of the National Incubator Capacity Building Program to Accelerate the Growth of the Indian Startup Ecosystem*, BUSINESS STANDARD, https://www.business-standard.com/content/press-releases-ani/dpiit-launches-the-first-edition-of-the-national-incubator-capacity-building-program-to-accelerate-the-growth-of-the-indian-startup-ecosystem-123031400876_1.html (last updated May 14, 2023).

¹⁴ Ministry of Commerce & Industry, *Rs. 477.25 Crore Approved to 133 Incubators Under the Startup India Seed Fund Scheme (SISFS)*, PRESS INFORMATION BUREAU (Feb. 03, 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1895966>.

¹⁵ *What is an Incubator?*, ATAL INNOVATION MISSION, <https://aim.gov.in/what-is-an-incubator.php> (last visited May 23, 2024).

¹⁶ *The Different Stages of Incubation for Startups*, FASTER CAPITAL, <https://fastercapital.com/content/The-Different-Stages-of-Incubation-for-Startups.html> (last updated Apr. 24, 2024).

infrastructure; the incubation centre facilitates the funds from various schemes, thus, increasing their financial awareness and making the project commercially viable. A start-up will undergo a highly structured methodology of reformation throughout the accelerator stage, which will also prepare them to approach an investor and make a pitch. The Budget 2023 saw the establishment of the Agricultural Accelerator Fund to incentivise agricultural-based startups.¹⁷

A. The Kerala Model

The Kerala Model cannot be ignored while dealing with the success stories of the Incubators in promoting efficient BEE in the country.¹⁸ Before the launch of the Startup India Scheme, the state had its own policies to uplift the startup regime with the launching of the Kerala Startup Mission (KSUM),¹⁹ wherein the satisfaction level of the startup entrepreneurs is traced on a five-point scale. The success of the incubator depends on the physical work which the pandemic halted. It was difficult to resemble the same amount of sheerness virtually.

B. Case Study of CIIEO (Centre for Innovation Incubation and Entrepreneurship)

It started working as an incubator (from an academic centre) as the startup ecosystem thrived.²⁰ They launched India's first accelerator programme iAccelerator²¹ and ran a programme by the name 'the power of Ideas' to inculcate the notions of the training and acceleration programmes. It also established INFUSE²² ventures and addressed critical issues in the funding of the startups. To further enhance its aim, it launched Bharat Inclusion Seed Fund.²³ Moreover, it stuck to its vision of training incubators across the country. Interestingly till date, it has funded over 150 startups.

¹⁷ Mini Tejaswi, *Accelerator Fund will Drive Agriculture Towards Innovation, Optimisation of Resources*, THE HINDU (Feb. 02, 2023), <https://www.thehindu.com/business/budget/accelerator-fund-will-drive-agriculture-towards-innovation-optimisation-of-resources/article66460172.ece>.

¹⁸ DATA LABS, THE STATE OF KERALA STARTUP ECOSYSTEM (2019), <https://startupmission.kerala.gov.in/report/lqqPVqZM5E0x>.

¹⁹ Jyotsna Thomas & George K.I., *Incubation Centres and Start-ups: A Study on Kerala's Start-up Ecosystem*, 47(1) SMALL ENTERPRISES DEVELOPMENT, MANAGEMENT & EXTENSION JOURNAL 43 (2020).

²⁰ Centre for Innovation, Incubation & Entrepreneurship, Policy and Framework (IIT, Dhanbad, Sep. 2016), <https://ciie.iitism.ac.in/files/CIIE-POLICY.pdf>.

²¹ *iAccelerator*, IMBUTO FOUNDATION, <https://www.imbutofoundation.org/iaccelerator/> (last visited May 22, 2024).

²² INFUSE VENTURES, <https://www.infuseventures.in/> (last visited May 22, 2024).

²³ BHARAT INCLUSION SEED FUND, <https://bharat.fund/inclusion/bisf.html> (last visited May 22, 2024).

Thus, incubators have an immense potential to fill the wide gap in the functioning of Businesses, which requires initial capital for a head start. However, the success of the incubator depends on the physical work which the pandemic halted. It was difficult to resemble the same amount of sheerness virtually. Be that as it may, they have to be precise about their configurations and missions. The government shall not ignore its mandate to sustain the high maintenance cost of these incubators so that the latter does not compromise with the human resource needs. Incubators have to have adequate training to heal the startups from the initial shocks as they aim to expand. Mentorship, funding, or any technical hindrances shall not encounter their way.²⁴

They fund the startups but they show their extra influence and dominance which may not enable the free decision-making power of the startups which shows their grey area.²⁵

C. Facts and Figures of Closed Entities

Despite the growing ecosystem, many startups fail to survive the challenges that come with building a successful business. In 2022 alone, several startups in India shut down, highlighting the challenges that entrepreneurs face in this dynamic market. This portion will analyze closed startup trends in India, drawing on data from TechCrunch's article 'Remembering the Startups We Lost in 2022'.²⁶ Additionally, it will substantiate the reasons for startup failure in India using research from Harvard Business Review.

According to TechCrunch's report, over 20 startups shut down in India in 2022. The reasons cited for the closures included insufficient funding, market saturation, and lack of innovation. Startup failure rates further support these findings, stating that 90% of startups fail due to a lack of market need, insufficient funding, or poor team dynamics.²⁷ Insufficient funding is a significant challenge for startups in India. Many entrepreneurs struggle to secure the necessary capital to fund their ventures. According to a report by KPMG, only 1% of

²⁴ Avantika Bhardwaj & Akshat Hawelia, *What is the Role of Business Incubator in Startups?* STARTUPTALKY (Jan. 30, 2024) <https://startuptalky.com/role-business-incubator/>.

²⁵ Centre for Internet & Society, *Technology Business Incubators: An Indian Perspective & Implementation Guidance Report*, <https://cis-india.org/internet-governance/blog/technology-business-incubators.pdf> (last visited May 22, 2024).

²⁶ Brian Heater et al., *Remembering the Start-ups We Lost in 2022*, TECH CRUNCH (Dec. 20, 2022), <https://techcrunch.com/2022/12/20/remembering-the-startups-we-lost-in-2022/>.

²⁷ Archie Bandyopadhyay, *A Turbulent Year for Indian Start-ups Draws to a Close with Little to Cheer*, FINANCIAL EXPRESS (Jan. 02, 2023), <https://www.financialexpress.com/industry/a-turbulent-year-for-indian-startups-draws-to-a-close-with-little-to-cheerspan-stylefont-family-calibri-font-size-16ptspan/2933826/>.

startups in India receive angel or seed funding, and only 0.2% receive venture capital.²⁸ This lack of funding makes it difficult for startups to scale and compete with established players in the market.

Market saturation is another challenge faced by startups in India. The country's startup ecosystem is growing rapidly, with new companies emerging every day. As a result, some markets become saturated, making it challenging for startups to differentiate themselves and gain market share. This challenge is particularly evident in the e-commerce and food delivery sectors, where established players dominate the market. A lack of innovation is also a significant issue for startups in India.²⁹ Many startups fail to differentiate themselves from their competitors, leading to a lack of market demand for their products or services. This issue is particularly prevalent in the technology sector, where new startups often struggle to develop unique offerings that can compete with established players.

Research from Harvard Business Review supports these findings, highlighting several reasons why startups fail. According to the report, the most common reasons for startup failure include a lack of product-market fit, poor team dynamics, insufficient funding, and market saturation.³⁰ Additionally, the report notes that startups often struggle to adapt to changing market conditions, such as shifts in consumer preferences or emerging technologies.

In conclusion, startups in India face several challenges that can lead to failure, including insufficient funding, market saturation, and a lack of innovation. These challenges are particularly prevalent in the technology, e-commerce, and food delivery sectors, where established players dominate the market. To succeed, startups must focus on developing unique offerings that differentiate them from their competitors, securing adequate funding to scale their operations, and adapting quickly to changing market conditions.³¹ Despite the challenges, India's startup ecosystem continues to grow and evolve, offering new opportunities for entrepreneurs to build successful businesses in the years to come.

²⁸ *KPMG in India's Emerging Giants Programme*, KPMG, <https://kpmg.com/in/en/home/industries/emerging-giants.html> (last visited May 22, 2024).

²⁹ Tom Eisenmann, *Why Start-Ups Fail*, HARVARD BUSINESS REVIEW (May-June 2021), <https://hbr.org/2021/05/why-start-ups-fail>.

³⁰ *Id.*

³¹ Kyril Kotashev, *Startup Failure Rate: How Many Startups Fail and Why in 2024?*, FAILORY, <https://www.failory.com/blog/startup-failure-rate> (last updated Jan. 09, 2024).

D. The Feasibility of Promoting Start-Ups based on Increased Competitions, and the Various Challenges Encountered

Promoting start-ups through increasing competition is a viable strategy for India, but it comes with its own set of challenges and feasibility concerns. Here are some points to consider:

Reasons for the Feasibility of this strategy³²:

- **Presence of a large market:** India has a massive population of over 1.3 billion people, which provides a large potential customer base for start-ups. This makes it easier for new businesses to establish themselves and grow.
- **Favourable government policies:** The Indian government has introduced several initiatives to support start-ups, such as the Start-up India program, which offers tax benefits and funding options to new businesses.
- **Availability of funding:** There is a growing number of venture capital firms, angel investors, and crowdfunding platforms that are willing to invest in promising start-ups in India.

Challenges that could Potentially be Encountered³³:

- **Limited resources:** Most start-ups in India are bootstrapped, which means that they have limited financial resources. This makes it difficult for them to compete against larger, more established players in the market.
- **Lack of skilled labour:** There is a shortage of skilled labour in certain industries, which makes it difficult for start-ups to find the talent they need to grow and scale.
- **Infrastructure issues:** India's infrastructure, such as transportation and communication networks, can be unreliable and inconsistent, which can make it difficult for start-ups to operate efficiently.

Overall, promoting start-ups through increasing competition is a feasible strategy for India, but it will require a concerted effort from both the government and the private sector to

³² Xheneta Sopjani, *Challenges and Opportunities for Startup Innovation and Entrepreneurship as Tools Towards a Knowledge-based Economy: The Case of Kosovo* (Thesis, Rochester Institute of Technology, 2019).

³³ *Id.*

overcome the challenges and create an environment that is conducive to start-up growth and success.

E. How the Startups that have Closed can be Brought Together for Closer Cooperation?

Collaboration between failed or closed startups can be a powerful tool for innovation and growth. However, not all these combination startup ventures succeed and many eventually close.³⁴ Despite this, there are still ways to bring them together for closer cooperation and a working mechanism that can benefit both parties i.e., the startup and corporate collaboration culture. According to a white paper by the World Economic Forum, "Collaboration between Start-ups and Corporates", one approach is to create a platform or network that connects startups and corporates.³⁵ The platform can serve as a meeting point for these two groups, providing opportunities for collaboration, networking, and knowledge-sharing. By bringing together startups and corporates, the platform can create an environment where innovation can flourish, and new ideas can be developed. Another approach, as suggested in a research article titled "Building Bridges between Start-ups and Corporates: A Framework for Collaborative Innovation", is to create a framework that outlines the different stages of collaboration between startups and corporates.³⁶ This framework can help both parties to understand each other's needs and capabilities, and to identify areas of common interest where they can collaborate effectively.

Examples of successful collaboration between startups and corporates can be found in various industries. For instance, Breezy HR, a hiring, and recruitment software provider, partnered with Spark Hire, a video interviewing platform, to offer a seamless hiring process.³⁷ The collaboration enabled Breezy HR to enhance its product offering and provide a more comprehensive solution to its customers. Similarly, Lyft, a ride-hailing company, collaborated

³⁴ Sean Brown et al., *Collaborations between Corporates and Start-ups*, MCKINSEY & COMPANY (May 10, 2021), <https://www.mckinsey.com/capabilities/strategy-and-corporate-finance/our-insights/collaborations-between-corporates-and-start-ups>.

³⁵ Martina Larkin & Derek O'Halloran, *Collaboration Between Start-ups and Corporates: A Practical Guide for Mutual Understanding* (World Economic Forum Working Paper, January 2018), https://www3.weforum.org/docs/WEF_White_Paper_Collaboration_between_Start-ups_and_Corporates.pdf.

³⁶ Thomas Kohler, *Corporate Accelerators: Building Bridges Between Corporations and Startups*, 59(3) BUSINESS HORIZONS 347 (2016).

³⁷ Gemma Lavers, *7 Successful Startup Partnership Examples*, BREEZY (Mar. 16, 2022), <https://breezy.io/blog/startup-partnership-examples>.

with General Motors (GM) to develop autonomous vehicles.³⁸ The partnership enabled Lyft to leverage GM's expertise in manufacturing and engineering while GM gained access to Lyft's extensive customer base.

In totality, although startups that have closed may no longer be operational, there are still ways to bring them together for closer cooperation and a working mechanism. Creating a platform or network that connects startups and corporates, developing a framework for collaborative innovation, and identifying areas of common interest are just a few examples of how this can be achieved. By collaborating, startups and corporates can benefit from each other's expertise and resources, leading to new ideas and innovation that can drive growth and success.³⁹

III. THE INFORMATION ASYMMETRY BETWEEN STAKEHOLDERS IN THE START-UP ARENA: SOME REASONS TO ELIMINATE IT

There is an information asymmetry between various stakeholders in the field of science and technology in India. This is due to several factors. *First*, there is often limited access to scientific research and data, particularly for those outside academia or research institutions. This can limit the ability of policymakers, investors, and the public to make informed decisions about science and technology.⁴⁰ *Second*, the distribution of resources for scientific research and development is often unequal, with some institutions and regions receiving more funding and support than others. This can create information asymmetry between those with access to greater resources and those without.⁴¹ Lastly, there is often a lack of communication and collaboration between different stakeholders in the field of science and technology, such as researchers, policymakers, and the public. This can lead to misunderstandings and a lack of consensus on scientific issues. This problem is compounded by the language barriers which comprise an innate characteristic of a diverse country like India. This barrier can make it

³⁸ Associated Press, *General Motors Invests \$500m in Ride-hailing Company Lyft*, THE GUARDIAN (Jan. 04, 2016), <https://www.theguardian.com/business/2016/jan/04/general-motors-gm-invests-500-million-ride-hailing-company-lyft>.

³⁹ VALERIE MOCKER ET AL., WINNING TOGETHER: A GUIDE TO SUCCESSFUL CORPORATE-STARTUP COLLABORATIONS (A Report by Nesta, 2015), <https://ec.europa.eu/futurium/en/system/files/ged/43-nesta-winning-together-guidestartupcollab.pdf>.

⁴⁰ *Id.*

⁴¹ Enyang Besong Susan & Manases Mbengwor Natu, *A Critical Review of Information Asymmetry in the Business Cycle: How Digital Ledge Technology Can Transform and Sustain the Business Cycle*, 1(7) PLOS SUSTAINABILITY AND TRANSFORMATION e0000024 (2004).

difficult for scientific information to be communicated effectively across different regions and communities. Therefore, there is a grave need to eliminate such information asymmetry in the field of science and technology. Information asymmetry can hinder the progress of scientific research by limiting access to crucial information, data, and resources.⁴²

By eliminating information asymmetry, researchers can work more collaboratively and share information more freely, leading to faster scientific progress and breakthroughs. This can promote innovation and broaden access to funding and investment opportunities as well—investors and entrepreneurs can make more informed decisions about which technologies and research projects to support, leading to more significant advances in science and technology.⁴³

Most importantly, bridging the information gap that exists between various stakeholders will reinforce public trust in the value of scientific development. Public trust in science and technology is essential for the successful implementation of new technologies and scientific advancements. By eliminating information asymmetry, the public can have a more accurate and complete understanding of scientific research and its potential benefits and risks.⁴⁴

IV. STRATEGIES FOR COMMERCIALISING KNOWLEDGE IN INDIA TO PROMOTE START-UPS

India has a vast pool of knowledge resources in the form of research and development activities in various domains such as science, engineering, and technology. However, the commercialization of this knowledge is not at par with global standards. Therefore, there is a need to develop strategies to promote the commercialization of knowledge and boost start-ups in India.⁴⁵

One of the ways to promote commercialization of knowledge is through technology transfer. This can be achieved by creating mechanisms that encourage the transfer of technology from research institutions to start-ups.⁴⁶ For instance, technology licensing offices can be established in universities and research institutes to facilitate technology transfer. These offices can identify promising research projects that can be commercialized and connect

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Team MyGov, *Startup India: What It Means for the Youth*, MYGOV BLOG (Feb. 01, 2022), <https://blog.mygov.in/editorial/startup-india-what-it-means-for-the-youth/>.

⁴⁶ *Id.*

researchers with entrepreneurs who can help them bring their inventions to market. Furthermore, collaborations between industry and academia can facilitate the commercialization of knowledge. Industry partners can provide financial and technical support to start-ups, while researchers can offer their expertise and knowledge. Such collaborations can help start-ups access resources and expertise that they may not have otherwise.⁴⁷

A. The Intellectual Property Rights Angle

Intellectual property rights (IPR) can also play a significant role in promoting commercialization of knowledge. India's IPR regime needs to be strengthened, and the process of obtaining patents needs to be simplified. This can encourage researchers to file patents for their inventions, which can help them protect their intellectual property and attract investment.⁴⁸

Promoting the commercialization of knowledge can boost start-ups in India. The government, research institutions, and industry should collaborate to develop mechanisms that encourage technology transfer, promote entrepreneurship, strengthen IPR, and facilitate collaborations between industry and academia.

B. What the Indian Start-Up Regime can Borrow from the United States SBIR

The United States Small Business Innovation Research (SBIR) program is a federal government initiative that provides funding and support to small businesses to encourage research and development of innovative technologies.⁴⁹ Under the SBIR program, participating federal agencies set aside a portion of their research and development budgets to fund small businesses with innovative research ideas. The program is structured in three phases, with funding amounts increasing as the research progresses. Phase I provides funding for proof-of-concept research, Phase II provides funding for the development of a prototype, and Phase III involve the commercialization of the product or technology.⁵⁰

India can draw several lessons from the US SBIR program. The SBIR program is designed to support small businesses, which are often the source of innovative ideas but may lack the

⁴⁷ Brown et al., *supra* note 34.

⁴⁸ Anubhav Mishra, *The Role of Intellectual Property Rights in Economic Development*, KHURANA & KHURANA (Mar. 10, 2021), <https://www.khuranaandkhurana.com/2021/03/10/the-role-of-intellectual-property-rights-in-economic-development/>.

⁴⁹ SMALL BUSINESS INNOVATION RESEARCH, <https://www.sbir.gov/> (last visited May 22, 2024).

⁵⁰ *Id.*

resources to fund research and development. India can also support small businesses through similar initiatives, providing funding and support to encourage innovation and entrepreneurship. The SBIR program also supports high-risk, high-reward projects that have the potential to yield significant benefits. India can also focus on similar projects that have the potential to address critical societal challenges and promote economic growth.

Further, the SBIR program fosters collaboration between government agencies and the private sector, leveraging the strengths of both to support innovative research. India can also encourage collaboration between government agencies and the private sector to promote innovation and economic growth.⁵¹

The SBIR program is structured in three phases, with funding amounts increasing as the research progresses. This approach encourages small businesses to focus on developing their ideas and technologies through a phased approach. India can adopt similar approaches to support research and development in various sectors. As evidenced above, the United States Small Business Innovation Research program is an excellent example of how a government initiative can support innovation and entrepreneurship. India can draw valuable lessons from the SBIR program to support small businesses, promote high-risk, high-reward projects, encourage collaboration between government agencies and the private sector, and adopt structured funding approaches.⁵²

V. WHAT LIES IN THE NEAR FUTURE?

A. India's Potential to Drive Global Innovation: The GII's Predictions

The Global Innovation Index (GII) report has predicted that India has the potential to become a global driver of innovation. The report highlights India's strengths in various areas such as a large pool of scientific and engineering talent, a thriving start-up ecosystem, and a growing digital economy.⁵³

⁵¹ Ravindra Abhyankar, *The Government of India's Role in Promoting Innovation Through Policy Initiatives for Entrepreneurship Development*, 4(8) TECHNOLOGY INNOVATION MANAGEMENT REVIEW 11 (2014).

⁵² OECD, *Enhancing the Contributions of SMEs in a Global and Digitalised Economy* (Meeting of the OECD Council at Ministerial Level, Paris, June 7-8, 2017), <https://www.oecd.org/mcm/documents/C-MIN-2017-8-EN.pdf>.

⁵³ *Global Innovation Index 2022: What is the Future of Innovation-Driven Growth?*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, https://www.wipo.int/global_innovation_index/en/2022/ (last visited June 20, 2024).

To achieve this potential, India must prioritize investment in research and development, particularly in emerging technologies such as artificial intelligence and biotechnology. Additionally, India should focus on building a robust innovation ecosystem by promoting collaboration between industry, academia, and government, investing in infrastructure such as incubators and research parks, and supporting start-ups and small businesses. India should also prioritize improving the quality of education and workforce development, particularly in STEM fields, to build a skilled and innovative workforce. Finally, India should prioritize policies and initiatives that promote innovation and entrepreneurship, such as tax incentives, regulatory reforms, and intellectual property protection.⁵⁴

With the implementation of these measures, India can unleash its potential to drive global innovation and build a vibrant, dynamic economy. This will not only benefit India but also contribute to global innovation and growth.

B. The TIDE Programme- Promoting the Expansion of Emerging Technologies

The Ministry of Electronics & Information Technology (MeitY) in India has launched the Technology Incubation and Development of Entrepreneurs (TIDE) 2.0 programme to promote technology entrepreneurship in the country.⁵⁵ This program aims to provide financial and technical support to incubators that support start-ups primarily engaged in using emerging technologies such as the Internet of Things (IoT), Artificial Intelligence (AI), Blockchain, Robotics, etc. It seeks to create an enabling environment for technology start-ups by providing them with necessary support and resources such as mentorship, access to funding, technical expertise, and infrastructure. Additionally, it will also provide opportunities for them to showcase their innovations and connect with potential customers and investors.

The feasibility of this initiative is promising, as India has a rapidly growing start-up ecosystem and a large pool of talented entrepreneurs. The TIDE 2.0 program can leverage this ecosystem to create an environment conducive to the growth of technology start-ups, particularly those focused on emerging technologies. The program can also help address challenges such as access to funding, mentorship, and technical expertise. It has the potential to help build a pipeline of innovative start-ups that can contribute to India's economic growth

⁵⁴ Ministry of Commerce & Industry, *Initiatives under “Make in India” and “Startup” Programmes*, PRESS INFORMATION BUREAU (July 23, 2021), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1738170>.

⁵⁵ *Technology Incubation and Development of Entrepreneurs (TIDE 2.0)*, MEITY STARTUP HUB, <https://msh.meity.gov.in/schemes/tide> (last visited June 20, 2024).

and development, by fostering collaboration between industry, academia, and government, and leading to the development of cutting-edge technologies that can address critical societal challenges.⁵⁶

VI. THE WAY FORWARD

Encouraging Indian startups through investment and innovation is crucial for the growth and development of the Indian economy. Encouraging funding opportunities, promoting incubators and accelerators, facilitating partnerships, creating a favourable regulatory environment are some of the ways discussed above that can contribute to the growth of startups in the Indian market. To enhance the smooth functioning of startup, the following pointers would help lead the way forward of the Indian startup ecosystem.

A. Encouraging Collaboration for Startups

Encouraging small entities to collaborate is a good way to increase the chances of survival for startups. This is because collaboration allows small entities to pool their resources,⁵⁷ share knowledge and expertise, and take advantage of each other's strengths to achieve common goals. However, it is important to note that collaboration may not always come naturally, and there may be barriers that prevent small entities from working together effectively.

One way that government policy can encourage collaboration among small entities is by providing funding or grants for collaborative initiatives. For example, the government could offer seed funding to groups of small entities that are willing to work together on a project or innovation. This funding could be used to cover the costs of research and development, or to hire additional staff to work on the project.⁵⁸

Another way that the government can encourage collaboration is by providing networking opportunities for small entities. This could involve organising events or conferences where small entities can meet and exchange ideas, or creating online platforms where small entities can connect and collaborate virtually.⁵⁹ In addition, the government could

⁵⁶ *Id.*

⁵⁷ Will Kenton, *Strategic Alliances: How They Work in Business, With Examples*, INVESTOPEDIA, <https://www.investopedia.com/terms/s/strategicalliance.asp> (last updated Feb. 29, 2024).

⁵⁸ Ashwini & Anik Banerjee, *List of Government Schemes to Support Startups in India*, STARTUP TALKY (Apr. 9, 2023), <https://startuptalky.com/list-of-government-initiatives-for-startups/>.

⁵⁹ Kenton, *supra* note 57.

provide tax incentives for small entities that collaborate. For example, small entities that work together on a project could be eligible for tax credits or deductions, which would help to offset the costs of collaboration and encourage more small entities to work together.

One example of encouraging collaboration for startups by the Indian government is the establishment of Atal Innovation Mission (AIM), a flagship initiative of the Government of India under the NITI Aayog. AIM aims to promote a culture of innovation and entrepreneurship in India by providing support to startups and incubators.^{60, 61}

B. Helping domestic players to attract global buyers to India

Attracting global buyers to India can be a significant challenge, but domestic players can play a crucial role in promoting the country as a viable destination for international business.⁶² To attract global buyers the domestic players can build a strong supply chain, that can efficiently cater to the demands of international buyers. This includes improving logistics, developing robust quality control mechanisms,⁶³ and providing timely deliveries. Such measures can enhance the reputation of Indian businesses and create a positive impression on global buyers. Secondly, Indian businesses can leverage innovation and product development to attract global buyers. By investing in research and development, businesses can create new and unique products that cater to the specific needs of international buyers. This can help in developing a competitive edge and attracting global buyers. Thirdly, Indian businesses can collaborate with international trade associations and chambers of commerce to gain access to global markets. By participating in international trade shows, exhibitions, and events, businesses can network with global buyers and explore new business opportunities. Lastly, Indian businesses can provide excellent customer service to international buyers to build long-term relationships. This includes providing prompt responses to inquiries, addressing complaints quickly and efficiently, and offering after-sales support. Such measures can create a positive image of Indian businesses and help in attracting repeat business from global buyers.

⁶⁰ Tim Mazzarol, *6 Ways Governments Can Encourage Entrepreneurship*, WORLD ECONOMIC FORUM (Dec. 29, 2014), <https://www.weforum.org/agenda/2014/12/6-ways-governments-can-encourage-entrepreneurship/>.

⁶¹ ATAL INNOVATION MISSION, *supra* note 15.

⁶² Gagneet Kaur, *Rebuilding the Potential of MICE in India*, ECONOMIC TIMES (Oct. 27, 2022), <https://travel.economictimes.indiatimes.com/amp/news/tourism/mice/rebuilding-the-potential-of-mice-in-india/95112735>.

⁶³ THE WHITE HOUSE, BUILDING RESILIENT SUPPLY CHAINS, REVITALIZING AMERICAN MANUFACTURING, AND FOSTERING BROAD-BASED GROWTH (100-Day Reviews under Executive Order 14017, June 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf>.

One example of Indian government helping domestic players to attract global buyers to India is the organization of the "India International Trade Fair" (IITF) by the India Trade Promotion Organization (ITPO). The IITF is an annual event held in New Delhi, which provides a platform for domestic players to showcase their products and services to a global audience. The fair attracts a large number of visitors, including foreign buyers, importers, and investors, who are interested in sourcing products from India.

The Indian government also offers various incentives and support to domestic players to participate in the fair, such as financial assistance for travel and accommodation, and subsidies for exhibition space. This helps to reduce the cost of participation for domestic players and makes it easier for them to attract global buyers to India. Through events like the IITF, the Indian government is promoting the "Make in India" initiative and helping domestic players to tap into global markets, which is crucial for the growth and development of the Indian economy.

C. Protection and Promotion of Intellectual Property Rights

The Indian Judiciary can play a significant role in enforcing IPR laws to protect the rights of Indian businesses.⁶⁴ Firstly, it can ensure that patents, trademarks, and copyrights are not infringed upon and that the rightful owner of these properties is protected. The judiciary can also impose penalties and fines on those who violate IPR laws.⁶⁵ Secondly, in case of IPR disputes it can suggest alternative methods of dispute resolution, such as mediation and arbitration to economise on the time and cost involved of the parties.⁶⁶ Thirdly, the judiciary can motivate businesses to invest in research and development, which can lead to the creation of new technologies, products, and services. Recognizing and protecting the rights of inventors and creators will inevitably lead to innovation. Fourthly by enforcing IPR laws, the judiciary can create a conducive environment for businesses to thrive, attracting foreign investment and promoting economic growth.⁶⁷

⁶⁴ Sudhir Ravindran, *Intellectual Property Role of the Judiciary*, ALTACIT GLOBAL, <https://www.altacit.com/ip-management/intellectual-property-role-of-the-judiciary/> (last visited June 20, 2024).

⁶⁵ Bipul Kumar, *Criminal Prosecution for Copyright and Trademark Violation*, KHURANA & KHURANA (May 26, 2022), <https://www.khuranaandkhurana.com/2022/05/26/criminal-prosecution-for-copyright-and-trademark-violation/>.

⁶⁶ Sukrati Gupta, *Alternative Dispute Resolution and the Law of Intellectual Property*, IPLEADERS (Oct. 30, 2021), <https://blog.ipleaders.in/alternative-dispute-resolution-and-the-law-of-intellectual-property/>.

⁶⁷ S. Ravindra Bhat, *Innovation and Intellectual Property Rights Law – An Overview of the Indian Law*, 30(1) IIMB MANAGEMENT REVIEW 51 (2018).

One example of the Indian government and judiciary protection and promotion of intellectual property rights is the establishment of the Intellectual Property Appellate Board (IPAB) in 2003. The IPAB is an independent tribunal that hears appeals against decisions made by the Indian Patent Office, the Indian Trademark Office, and the Geographical Indications Registry. The IPAB was established to provide an efficient and specialised forum for the adjudication of intellectual property disputes. Its jurisdiction includes patents, trademarks, copyrights, and geographical indications.

In addition, the Indian judiciary has taken several steps to protect and promote intellectual property rights. For example, in 2019, the Delhi High Court issued a landmark judgment in favor of Christian Louboutin,⁶⁸ the famous luxury shoe brand, in a trademark infringement case. The court held that Louboutin's signature red sole is a distinctive and recognizable feature of its shoes and is entitled to trademark protection. The Indian government has also launched various initiatives to promote awareness and enforcement of intellectual property rights, such as the Startups Intellectual Property Protection (SIPP) scheme, which provides financial support to startups for filing patents, trademarks, and designs.

VII. CONCLUSION

In conclusion, the Indian startup ecosystem has come a long way in recent years, but there is still much room for improvement. Encouraging collaboration among small entities through government policies can create a more conducive environment for startups to thrive. The judiciary also has a crucial role to play in protecting and promoting intellectual property rights, which are essential for the success of startups. Lastly, domestic players must focus on developing innovative solutions and building strong partnerships to attract global players and compete on a global scale. By implementing these strategies, India can continue to foster a vibrant startup ecosystem and achieve its goal of becoming a global hub for innovation and entrepreneurship.

⁶⁸ Christian Louboutin SAS v. Nakul Bajaj, 2018 SCC OnLine Del 11744.

FOREIGN DIRECT INVESTMENT IN STRATEGIC SECTORS FOR GOVERNANCE OF SOVEREIGN RESOURCES

- Gayathri Gireesh* & Swati Mohapatra**

Abstract

The strategic sector in India is broadly based on four important criteria on National Security, Critical infrastructure, financial services and mineral resources. The government policy, legislations and administrative mechanisms has emphasized utmost importance to facilitate and develop the manufacturing industries in the core strategic sector as a matter of sovereign resources for sustainability. The various policy and legislative initiatives in the form of “Make in India” “Product Linked Initiatives schemes” for manufacturing industries and “FDI investment” for easy accessibility of finance and technology is foremost among the continuous reforms that the government is in the process of achieving the most coveted sustenance in management of sovereign resources. Along with the domestic reforms, the country’s international commitments through the climate adaptability inventiveness and most crucial aspect of data management have to be comprehensively elucidated.

The authors in this article interpret, scrutinize and synthesize the government initiatives through the prism of FDI in core strategic sectors. The authors, in broad terms, identify the various strata of resource governance through public asset management (National infrastructure Pipeline policy, National monetization scheme) and core sector management through FDI investments to promote manufacturing industries. Make in India, the flagship program launched in in 2014, for facilitating investments to make “competitive innovations” and “best in class manufacturing “for economic resources management is vital for capacity and nation building. The continuing strata of reforms has made government procurement regime becoming more accessible in lines with PMI (preference to Make in India Policy)

The Methodological approach has been terms of various facets of global and domestic capital investments and improved strategy for competitive manufacturing by domestic companies. More so with contract management aspects, the procurement regime involves procurement solicitations through “empowered decision making” with intention of making sovereign resources more resilient and sustainable. The Fundamental aim of this article is that the FDI in strategic sector investments should focus on governance of capital and technology infrastructure.

Keywords: Foreign Direct Investment, Strategic Sector, Make in India, Product Linked Incentive

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I. INTRODUCTION

The strategic sector self-reliance in terms of resources management is the most important aspect of a politically independent nation. The definition of strategic resources has many facets to it and shall be defined “as an industry that the government considers it to be very important for the country’s economy and territorial integrity.” The strategic sectors considered crucial for the sovereignty of the Nation are: (i) Defence; (ii) Energy with special emphasis to coal sector; (iii) Mines and Minerals; (iv) Highways and Transport. To enable these sectors, the other sectors which are crucial to take into consideration are: (a) Critical Infrastructure; and (b) Data management and accessibility.

Any industry or an industrial sector is considered to be strategic if “it has large innovative spill overs and if it provides a substantial infrastructure for other firms in the same or related industries”¹ The government had classified Central Public Sector Enterprises (CPSEs) as ‘strategic’ and ‘non-strategic’ on the basis of industrial policy that keeps being defined from time to time. To define the strategic sectors in terms of its functionalities and development aspects is more pertinent at this juncture. The following can be key aspects: -

- Emphasizing on Defence Land, coal, Minerals, Data as sovereign resource, means the government has the authority over its usage and maintenance.
- Sectoral asset restructuring must have portability of usage and accessibility amongst the sectors considered to Sovereign Strategic Sectors. Eg: - Data Sovereignty
- The government functionality of Strategic Sectors shall be interpreted to be state exclusivity in terms of access to land, State ownership and policies supported by the legislations. Eg: - Make in India and Procurement Policy.
- Equitable financial and resources allocation to different sectors be made, retaining the government ownership and providing services through regulated conditions. Eg: - Asset Monetisation
- Infusing liquidity through non-debt financial capital availability. Eg: - FDI

¹ *What are Strategic and Non-strategic Sectors of Industries*, CIVILS DAILY, <https://www.civildaily.com/news/what-are-strategic-and-non-strategic-sectors-of-industries/> (last visited May 20, 2024).

II. INFRASTRUCTURE DEVELOPMENT AND GOVERNANCE

Infrastructure² is correlated to the performance of economic growth and availability of land capital becomes the most important aspect of government revenue and functioning. Land Capital is associated with investment led growth, access to market and materials. The Government of India undertook a first-of-its-kind and a whole-of-government exercise in FY 2019-20, to lay the infrastructure vision for the country. Budget 2021-22³ has laid out a three-pronged strategy for enhanced and sustainable infrastructure financing which primarily involves creation of institutional structures like National Monetisation Pipeline⁴ and National Infrastructure Pipeline. Then the process of listing the available asset and their categorisation will be ascertained for the green field and brown field with the thrust on monetising the assets. With the available assets, the government strategizes the enhanced share of Capital expenditure in Central and State budgets. Under Budget 2023-24, the capital investment for infrastructure increased by 33% (Rs.10 lakh crore, US\$ 122 billion)⁵ which is 3.3% of the GDP, which means that the physical assets like roads infrastructure, buildings, manufacturing machinery units and other fixed assets have been earmarked to be the potential growth sectors. The State governments have been incentivised with interest free loans to bring up the investment in their respective states. This would increase the growth performance of States and cities to undertake urban planning reforms for an efficient land use and transit-oriented development. This capital outlay also means infusing liquidity into banks through various measures undertaken by RBI for monitoring the capital expenditure behaviour.

This Initiative promotes in increasing liquidity available to banks. In May 2020, the Monetary Policy Committee (MPC) decreased the repo rate from 4.4% to 4%. The MPC also

² The Union Budget FY 2023-24 has envisaged 7 key priorities or 'Saptarishis' viz., Inclusive Development, Reaching the Last Mile, Infrastructure and Investment, Unleashing the Potential, Green Growth, Youth Power and Financial Sector; See Ministry of Road Transport & Highways, '*Infrastructure & Investment: Improving Logistics Efficiency with PM GatiShakti National Master Plan*', PRESS INFORMATION BUREAU (Mar. 04, 2023), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1904263>.

³ Ministry of Finance, *Key Highlights of Union Budget 2021-22*, PRESS INFORMATION BUREAU (Feb. 01, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1693907>.

⁴ Union Minister for Finance and Corporate Affairs on 23 August 2021 launched the asset monetisation pipeline of Central ministries and public sector entities as 'National Monetisation Pipeline'.

⁵ *Union Budget 2023-2024: Priority 3: Infrastructure & Investment*, INDIANFOLINE (Mar. 21, 2024), https://www.indianfoline.com/article/budget-highlights/union-budget-priority-infrastructure-investment-1675242872074_1.html.

decreased the reverse repo rate from 3.75% to 3.35%.⁴⁸ The CRR (Capital Reserve Ratio) was decreased from 4% to 3% in March 2020, for a period of one year.⁷ This was to provide liquidity support of Rs 1.37 lakh crore to banks. The initiative was also to provide liquidity to mid-sized companies and Non-Banking Financial Companies. RBI announced Targeted Long-Term Repo Operations (TLTRO)⁸ to provide Rs one lakh crore of liquidity to Non-Banking Financial Companies (NBFCs), Micro-Finance Institutes (MFIs) and other eligible business holdings in March, 2020.

The Public Sector Enterprise Policy of India has classified sectors as Strategic⁹ and Non-Strategic. The non-strategic sectors shall be under the Disinvestment Policy¹⁰ with Air India becoming the major disinvestment accepted by the Cabinet Committee on Economic Affairs. Disinvestment and privatisation have been one of the major fiscal management policies by the government as and when the situation arises. While governments lead the initiative of meeting the massive infrastructure upsurge with a continuous effort to fill the budgetary deficit, it is widely accepted that governments cannot fund this level of investment requirement for the economic growth. In order to bridge the deficit, the public sector units have delved into various options like, public private partnerships (PPP), private finance initiatives, value capture financing¹¹ debt financing and public asset disinvestments. India has undergone very significant process of liberalisation from the year 1991 and has moved towards the market oriented with enhanced private sector development. Thus, the government in its words says that unlocking the value of existing assets is to be done through varied investments with an objective of planned and equitable growth.

A. Sovereign Resources and FDI

Another important imperative for the non-debt capital availability is through the Foreign Direct investment. The FDI forms the major policy oriented budgetary investment in

⁶ *Governor's Statement – May 22, 2020*, RESERVE BANK OF INDIA, https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3859.

⁷ Reserve Bank of India, Notification, Maintenance of Cash Reserve Ration (CRR), RBI/2019-20/191, DOR. No. Ret.BC.49/12.01.001/2019-20 (Notified on Mar. 27, 2020).

⁸ *Press Releases: Reserve Bank Announces Targeted Long-Term Repo Operations 2.0 (TLTRO 2.0)*, RESERVE BANK OF INDIA (Apr. 17, 2020), <https://www.rbi.org.in/commonman/English/Scripts/PressReleases.aspx?Id=3207>.

⁹ Strategic sector includes Atomic energy, space, defence, trans and telecom, power, petroleum, coal, other minerals, banking, insurance and financial services will be classified as strategic sector.

¹⁰ Strategic disinvestment involves sale of a substantial portion of the government's shareholding in a Central Public Sector Enterprises (up to 50% or more) along with transfer of management control.

¹¹ Ministry of Urban Development, Value Capture Finance Policy Framework, 2017.

manufacturing sectors along with technology innovations and upgradation. The institutional investment forms the long-term recurring capital generating the financial resources for continuing and conducive prototypes. The “intent and objective” as the consolidated FDI framework says, is to provide a supplementary source of capital, technology and skill which is very pertinent for growth. As per the Ministry of Finance, the FDI forms the 2% to 3% of the GDP¹² through various investment. The FDI also necessitates the identifying global investors for sectoral investment, which presupposes environment aspects of resilience. FDI in India has grown consistently since liberalization and is an important component of foreign capital as it infuses long term sustainable capital in the economy and contributes development of strategic sectors with greater innovation, competition and employment creation amongst other benefits.¹³

The Liberalisation phase of the Indian Economy has an important aspect of FDI which is the major source non-debt financial resources in financial and core asset restructuring for economic development. The government has a policy framework on FDI which intends to be transparent and comprehensible in term of sectoral investment for the capital restructuring. As enumerated, the authors would put forth the deliberations that through the crucial investment, the FDI enables efficiency in management of the resources of core sectors to have, infrastructure development, climate resilience technology and data management.

According to the Department for Promotion of Industry and Internal Trade (DPIIT), foreign direct investment (FDI) equity inflows to India reached US\$ 72.12 billion in 2020-21 (until January 2021) while the cumulative FDI equity inflows to the country from April 2000 to January 2021 reached US\$ 545.0 billion.¹⁴The necessity to channelize the FDI inflows for the economic activity and to promote investment in the activities of climate resilient technologies have huge potential. The likes of renewable energy and even the coal mining transformation to climate adaptability, the technologies of data management shall be made possible through the framework formalised by the FDI policy circular. Importantly the sectors

¹² *FDI Statistics*, DEPARTMENT OF PROMOTION OF INDUSTRY AND INTERNAL TRADE, <https://dpiit.gov.in/publications/fdi-statistics> (last visited May 20, 2024); See also Ministry of Commerce & Industry, *Initiatives to Boost Domestic and Foreign Investments*, PRESS INFORMATION BUREAU (Dec. 16, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1782353>.

¹³ Department for Promotion of Industry and Internal Trade, Consolidated FDI Policy, 2020, at 5 (DPIIT File No. 5(2)/2020) [hereinafter FDI Policy, 2020].

¹⁴ *India: Snapshot*, INDIA BRAND EQUITY FOUNDATION, <https://www.ibef.org/economy> (last visited May 20, 2024).

have the government route¹⁵ and automatic route¹⁶ defined based on the requirements under the Make in India Scheme balancing the national security facets.

B. Green FDI

The green capital on investments is required for the sustainable development, growth and innovation. The green FDI as it is called through the enabling policies is to be made beneficial to the investors as this encourages investment in climate sustainable manufacturing and services industries. The important aspect of FDI is development of technology that focuses on climate resilience and has huge potential for climate adaptation which are necessary for the core sectors of defence, mining, renewable energy and along with Make in India.¹⁷ The FDI is generally acknowledged as an important supplementary source of financing. The Clean development Mechanism which was from the Kyoto protocol has resulted in worldwide initiative to promote technologies for green growth of economy. The Trade liberalisation also contributes for green goods. The Environmental Goods Agreement (EGA)¹⁸ is accepted as one of the major goals in WTO and OECD Green Growth Strategy¹⁹

C. Asset Monetisation

Asset Monetisation is a sectoral planned blueprint by the Government to achieve the growth impetus in terms of both GDP and land transformation having in principle proposed action plan for land usage for optimum revenue generation. It has two inextricably linked facets²⁰ which is through the leasing of assets or divestment of certain rights over the existing assets. Another element is the reinvesting in new infrastructure. The Government strategizes monetization based on domestic reforms, international comity of sovereign states, climate negotiations and most importantly procurement and contractual aspects. The Process and

¹⁵ FDI Policy, 2020, at 10, para 2.1.24 ('Government Route' means the entry route through which investment by a person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval).

¹⁶ *Id.* at 7, para 2.1.4 ('Automatic route' means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government).

¹⁷ Stephen S. Golub et al., *Defining and Measuring Green FDI: An Exploratory Review of the Existing Word and Evidence* 9 (OECD Working Papers on International Investment 2011/02).

¹⁸ *Environmental Goods Agreement (EGA)*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/envir_e/ega_e.htm (last visited May 20, 2024).

¹⁹ OECD, *Towards Green Growth: A Summary for Policy Makers May 2011* (Brochure prepared for the OECD Meeting of the Council at Ministerial Level, May 25-26, 2011), <https://www.oecd.org/greengrowth/48012345.pdf>.

²⁰ *National Monetisation Pipeline (NMP)*, NATIONAL PORTAL OF INDIA, <https://www.india.gov.in/spotlight/national-monetisation-pipeline-nmp> (last visited May 20, 2024).

Policy of Monetization is a contemporary and ingenious method along with traditional method of resources generation and resurgence for achieving to become a welfare state. Infrastructure development includes Infrastructure monetization, Public Asset restructuring, Digital Resources Mapping and Standardization as part of the strategy. The effectiveness of land monetisation is based on the concept of territorial sovereignty in political terms and the concept of eminent domain along with the doctrine of public trust in legal and jurisprudential terms. The structural framework of monetization is not just value addition or appraisals of existing infrastructure or the mere privatization policy. It involves:

- a) Identification of Capital assets which is done through the National Monetisation Policy and National Infrastructure Policy
- b) Sectoral Assets Classification involves National Security characteristics
- c) Government Estimation of Property and Revenue is through monetisation
- d) Mixed Economic system and Types of Investment includes the FDI

Monetisation has various facets and therefore land capital investment is major significant feature of governance policy for sovereign resources wherein the land becomes both the dominant and collateral advantage in infrastructure governance. The Value addition through diversified investments is required for conservation and its enhancibility in terms of Gross Domestic product and Gross Domestic Capital Formation.

Asset Monetisation, as envisaged here, entails a limited period license or lease of an asset, owned by the government or a public authority, to a private sector entity for periodic consideration. In this context, National Monetisation Pipeline (NMP provides "visibility" on the volume of assets to be monetised and the potential value that can be unlocked)²¹ was announced in the Union Budget 2021-22 and NITI Ayog²² developed the National Monetisation Pipeline. National Monetisation Pipeline (NMP) has been planned to be the co-terminus for the National Infrastructure Pipeline (NIP). NMP formulates the baseline for the

²¹ Parliament Library And Reference, Research, Documentation And Information Service, *National Monetisation Pipeline* (Reference Note No. 63/RN/Ref/November/21), https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/06122021_144235_102120474.pdf.

²² *National Monetisation Pipeline (NMP)*, *supra* note 20 (NITI Aayog has developed the pipeline, in consultation with infrastructure line ministries, based on the mandate for 'Asset Monetisation' under Union Budget 2021-22. NMP estimates aggregate monetisation potential of Rs 6.0 lakh crores through core assets of the Central Government, over a four-year period, from FY 2022 to FY 2025).

asset owning ministries for monitoring the investment performance and the data availability on potential assets.

D. Core Asset Monetisation²³

Investment, as measured by Gross Fixed Capital Formation (GFCF)²⁴, has on an average been 30% as a component of GDP in the previous 5-year period i.e. FY 2017 – FY 2022. This capital formation has been led by public investment programmes such as Bharatmala, Sagarmala, Dedicated Freight Corridor, Jal Shakti and Pradhan Mantri Awas Yojana etc. Agencies such as National Highways Authority of India have installed such mechanisms for fund raising²⁵ and new infrastructure creation is an example of Asset monetisation in National Highways

III. MONETISATION MODELS THROUGH CONTRACT MANAGEMENT²⁶

Asset Monetisation can be undertaken through different modes of instruments. The following tools act as incumbent components in contracts.

1) **Direct Contractual Models** which involves Brownfield PPP²⁷ Concessions in the manner of

- Operate–Maintain–Transfer Concession,
- Toll Operate Transfer concession
- Operate–Maintain–Develop Concession

²³ *Id.*

²⁴ MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, NATIONAL ACCOUNTS STATISTICS-SOURCES & METHODS 203 (2007) (“25.1 Gross capital formation (GCF) refers to the aggregate of gross additions to fixed assets (i.e., fixed capital formation), increase in stocks of inventories, hereinafter referred to as change in stocks during a period of account and net acquisition of valuables.” This helps to analyse the predicted infrastructure and performance of investment. This provides valuable add-ons to the existing assets).

²⁵ The infrastructure investment trust sponsored by National Highway Authority of India (NHAI) to support Government of India's National Monetization Pipeline, has raised a sum of Rs 1,430 crore from domestic and international investors through placement of its units, for part funding its acquisition of three additional road projects from NHAI. See Ministry of Road Transport & Highways, *NHAI InvIT Raises Funds Through Follow-on Issuance*, PRESS INFORMATION BUREAU (Oct. 12, 2022), <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1867211>.

²⁶ *Public Private Partnership (PPP)*, MINISTRY OF ROAD TRANSPORT AND HIGHWAYS, <https://morth.nic.in/public-private-participation-ppp> (last visited May 20, 2024).

²⁷ CW Team, *Road Ministry Urges PPP for Quality Highway Projects*, CW CONSTRUCTION WORLD (Sep. 06, 2023), <https://www.constructionworld.in/transport-infrastructure/highways-and-roads-infrastructure/road-ministry-urges-ppp-for-quality-highway-projects/44113>.

2) Leasing: - For instance the Department of Public Procurement in the year 2020 introduced the component of leasing where the lessor is an Indian entity and is the owner of the asset, and Lessee being another category of acquisition of manufacturing units or equipment. This system replaces huge sum of initial capital disbursement for periodic rental payments, allows for faster acquisition of capability to reduce administrative costs.

3) Infrastructure Investment Trust (InvIT)²⁸ is another mechanism which is innovative financial instrument, which enables participation in infrastructure financing through a stabilised liquidity instrument. InvITs provide an opportunity to invest with predictable cash flows and dividends. InvITs were introduced in India in 2014 and employed by infrastructure asset owners to have pool in of money from a diverse set of investors Real estate assets are land and capital-intensive assets which require substantial amount of investments by the developer. Real Estate (Regulation and Development)2016 Act²⁹ has brought in accountability and transparency in this segment. In this context, REIT (Real Estate Infrastructure Trusts) structure has been able to provide an effective and robust corporate governance framework with clearly delineated roles and responsibilities.

In the aspect of Financial Management and restructuring through Fiscal Policy the Finance Act 2021 has enabled amendments in the Securities Contracts (Regulation) Act, 1956 for recognising InvITs, REITs as “securities”. The related amendments in SARFAESI Act and Recovery of Debts due to Banks and Financial Institutions Act have also been undertaken under the Finance Act, 2021³⁰. Under the recently institutionalised Scheme for Special Assistance to States for capital expenditure for FY 2021-22, incentives shall be provided for asset monetisation and disinvestment by State government entities.

²⁸ *Infrastructure Investment Trusts (InvIT)*, NATIONAL STOCK EXCHANGE OF INDIA, <https://www.nseindia.com/products-services/infrastructure-investment-trusts-invite> (last visited May 20, 2024).

²⁹ *Real Estate (Regulation and Development) Act (RERA) Progress: The Journey of Increasing Trust*, INDIA BRAND EQUITY FOUNDATION (June 14, 2023), <https://www.ibef.org/blogs/real-estate-regulation-and-development-act-rera-progress-the-journey-of-increasing-trust>.

³⁰ The Finance Act, 2021.

IV. KEY RECENT IMPERATIVES FOR FDI AND INFRASTRUCTURE DEVELOPMENT AND THE ATMANIRBHAR SCHEME

A. National Security

Atmanirbhar Bharat Abhiyan (ANBA) is one such step that will encourage the domestic players to be a part of the security industry's ecosystem. It provides benefits to the Micro, Small and Medium Enterprises (MSMEs) to further excel their participation in the security industry. Historically the defence manufacturing and research have been the forte of Government-run enterprises in India. Ordnance Factory Boards (OFB) and Defence PSUs were manufacturing the weapons and systems for Armed Forces. "The DPP-2016 and Defence Acquisition Procedure 2020³¹ profiles priority emphasis given to indigenous procurement and most procurement avenues impose conditions of Indian ownership (i.e., FDI capped at 49%) and Indian control to qualify as an eligible vendor"³² The joint ventures (JVs) formed in the sector have been licensed low-end technology or produce simple parts and components. Also, under the new policy increasing the participation of Indian industries in defence production would be expanded in this sector. The domestic manufacturers are able to access to raw materials, special types of minerals and software at affordable rates. The FDI up to 74% shall be permitted for companies which are seeking new industrial licenses. Up to 74% government route is permitted whenever it is likely to access modern technology and innovation.³³ The Defence ministry has the target of achieving 70% self-reliance in the defence equipment.³⁴ The DPP 2020 has aimed at providing impetus to MSMEs by entailing procurement of products designed and developed by MSMEs and start-ups.

³¹ Ministry of Defence, *Promotion of MSMEs in Defence Sector*, PRESS INFORMATION BUREAU (Mar. 28, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1810448>.

³² Anuj Prasad & Anandita Kaushik, *View: Making India 'Atmanirbhar' in the Defence Sector*, THE ECONOMIC TIMES (June 23, 2020), <https://economictimes.indiatimes.com/news/defence/view-making-india-atmanirbhar-in-the-defence-sector/articleshow/76531944.cms>.

³³ **Foreign Investments** in the Defence Sector shall be subject to scrutiny on grounds of National Security and Government reserves the right to review any foreign investment in the Defence Sector that affects or may affect national security.

³⁴ Payal Mehta, *Achieving Self Reliance in Indian Defence: Just a Vision or Possible Reality*, VR SIMULATION NEWS & INSIGHTS (Mar. 20, 2024), <https://www.linkedin.com/pulse/achieving-self-reliance-indian-defence-just-vision-possible-gupta-5s2ef/>.

B. Make in India³⁵ and Defence Industry

In recent times, a number of sector-specific regulatory measures have been rolled out to promote the broader Make in India agenda within the defence sector with the ultimate aim of achieving self-reliance in defence. The list of defence products requiring an ‘industrial license’ (to be obtained prior to commencing manufacture and as part of FDI conditionalities) has been rationalised and the validity of the industrial licence (where required) has also been increased from 3 years to 15 years. The Public Procurement (Preference to Make in India) Order 2017 grants general purchase preference in government tenders to local suppliers. The objective of this order is to procure locally as much as possible, with a view of achieving maximum indigenisation across sectors and industries.

C. Mineral Resources

India’s rapidly growing economy currently has two important aspects in terms of supply stability i.e. oil, and rare earths minerals. The two constraints are closely related to each other. The rare earth minerals are essential for green energy generation as well as for green technologies like LEDs and Electric Vehicles, apart from these chemicals and defence industry. The effective use of rare earth minerals is India’s nuclear energy program espousing the long-term aim of using Thorium as a nuclear fuel. The mineral-rich beach sands were brought under the ambit of “prescribed substances” in the Atomic Energy Act, 1962, granting the Central Government a monopoly. This self-imposed restriction has been extended further under the Atomic Mineral Concession Rules, 2016, which flow from the 2015 Amendments to the Mines and Minerals (Development and Regulation) Act, 1957. The two read together to make the picture much clearer: ranging from Beryllium and Lithium, rare earths such as Titanium and Niobium have also been handed over to India’s atomic agencies and the FDI allowed is 100% government route³⁶ signalling the monopoly. But the Mining and Exploration of metal and non-metal ores including diamond, gold, silver and precious ores has the 100% automatic

³⁵ For defence procurement, the local procurement preference discussed above, is achieved via certain prioritised categories of procurement – i.e. Buy (Indian-IDDMM) (i.e. Indigenously Designed, Developed and Manufactured) and the ‘Make’ procedures of procurement. The Defence Acquisition Procedure, 2020 (“DAP 2020”) which governs capital acquisition for the defence sector, sets out certain categories (methods/routes) under which the Ministry of Defence undertakes capital procurement. Once products are designed and developed under Make in India, they are procured by the Ministry of Defence under either the Buy (Indian-IDDMM) or Buy (Indian) category (as applicable).

³⁶ FDI Policy, 2020.

route but excluding titanium bearing minerals and its ores subject to the Mines and Minerals (Development & Regulation) Act, 1957 Under the Atma Nirbhar Bharat Scheme, the Ministry of Mines has called for promotion of private investments in the mineral sector, improve efficiency of mineral production.

D. Energy sector: Promotion for Commercial Mining in Coal Sector³⁷

Coal to be considered as a strategic resources and efforts to make it environmental efficiency is very important. Target of Coal Ministry is to minimize import of thermal coal and to make the country Atmanirbhar in the sector. Coal accounts to 55% of the energy needs in India. “Over 80% of India’s energy needs are met by three fuels: coal, oil and solid biomass. Coal has underpinned the expansion of electricity generation and industry, and remains the largest single fuel in the energy mix”³⁸ Although coal has been substantially attributed to the carbon emission and global climate change in the wake of energy security and self-sufficiency, it means the major player in the energy mix in the energy requirements in the country. The efforts have been made for the cleaner technologies. One such step is the coal gasification. The adoption of gasification technology³⁹ in India intends to revolutionize the coal sector.

The import of Natural Gas, Methanol, Ammonia and other essential product are major factors in energy security.⁴⁰ The coal gasification strategy will increase the output and is expected to make significant contributions to the nation's development by reducing imports. This also has the potential to reduce carbon emissions and fostering sustainable practices, contributing to our global commitments towards a greener energy. Any foreign company is not eligible to participate in auction for commercial mining as per existing FDI policy. However, companies incorporated in India are eligible to participate. But 100% FDI in the automatic route has been allowed in the sale of coal and Coal mining activities after the Government

³⁷ *Acts Rules and Policies*, MINISTRY OF COAL, <https://coal.nic.in/en/acts-rules-policies> (last visited May 20, 2024).

³⁸ *India Energy Outlook 2021: Energy in India Today*, INTERNATIONAL ENERGY AGENCY, <https://www.iea.org/reports/india-energy-outlook-2021/energy-in-india-today> (last visited May 20, 2024).

³⁹ Coal gasification as a power-generation technology is gaining popularity due to the ready global availability of the raw material (coal), as well as positive environmental issues associated with this technology over other combustion technologies; See Nicola J. Wagner et al., *Coal Gasification*, in ISABEL SUAREZ-RUIZ & JOHN C. CRELLING (EDS), *APPLIED COAL PETROLOGY: THE ROLE OF PETROLOGY IN COAL UTILIZATION* 119 (2008).

⁴⁰ Currently, India imports approximately 50% of its Natural Gas, over 90% of its total Methanol consumption and around 13-15% of its total ammonia consumption to cater to the domestic demand.

reviewed it in 2019. This is subject to the provisions of the Coal Mines (Special Provisions) Act, 2015 and Mines and Mineral (Development & Regulation) Act, 1957

E. Renewable Energy Resources

India's has planned a renewable energy target of installing 175 gigawatts (GW) capacity by 2022. FDI of up to 100% is allowed in the renewable energy industry under the automatic route, with no prior government approval needed. To meet the renewable energy target and to have energy mix, the Ministry of Power has identified 81 thermal units which will replace coal with the renewable energy by 2026. Government has recently declared its intention to increase customs duty to 40 per cent to discourage import of modules, and thereby incentivising local production in India.⁴¹ The Total FDI inflow in the power sector reached the US\$16.57 billion between April and December 2022⁴² India's installed renewable energy capacity has increased 396% in the last 8.5 years and stands at more than 159.95 Giga Watts (including large Hydro), which is about 40% of the country's total capacity (as on 31st March 2022). The Product Linked Incentive scheme in Solar PV manufacturing with financial outlays of INR 24,000 crores introduced. Government has recently declared its intention to increase customs duty to 40 per cent to discourage import of modules, and thereby incentivising local production in India.

F. Critical Information Infrastructure⁴³

Data Management⁴⁴: The Data management means the use of technologies by the government for data utilisation and leveraging technology for improved statistical systems. The GOI under the IT Act 2000 has the power to declare any data, database, IT network communications, as vital for government functioning. The database of various sectors like Defence, Power and

⁴¹ Urvi Srivastava, *Energy Sector and Atmanirbhar Bharat: Challenges And Prospects*, BUSINESS WORLD (Dec. 15, 2020), <https://businessworld.in/article/energy-sector-and-atmanirbhar-bharat-challenges-and-prospects-354032>.

⁴² *Power Sector in India*, INDIA BRAND EQUITY FOUNDATION, <https://www.ibef.org/industry/power-sector-india> (last visited June 20, 2024).

⁴³ Information Technology Act, 2000, § 1; National Critical Information Infrastructure Protection Centre (NCIIPC) is an organisation of the Government of India created under Sec 70A of the Information Technology Act, 2000 (amended 2008), through a gazette notification on 16th Jan 2014 based in New Delhi, India. It is designated as the National Nodal Agency in respect of Critical Information Infrastructure Protection; See NATIONAL CRITICAL INFORMATION INFRASTRUCTURE PROTECTION CENTRE, <https://nciipc.gov.in/> (last visited June 20, 2024).

⁴⁴ *Data Management And Analysis, And Frontier Technologies*, NITI AAYOG, <https://www.niti.gov.in/verticals/data-management-and-analysis> (last visited June 20, 2024).

Energy, Banking and financial services, Telecom and Transport are called the Critical Information Infrastructure. The scrutiny of the contractual aspects of FDI investments in strategic sector is contemporaneous and appropriate. The Data Mapping practices is made on an increased administrative efficiency of the data driven approach to policy making. The Government being the largest repository of public data, the mapping of practices is to be prioritized to maximize the Public Asset value. This is a process of catalysing the Public and Private sectors data availability for integrated implementation. This has a regulatory framework of National Policy on open data standards (Meta Data Standards)⁴⁵ and the National e governance Plan for transparency and accountability for public utility service. Government is the largest repository of “Big Data”⁴⁶ and it is also becoming the collaborative institution to trade the strategic asset called the “Data” under specific conditions-based on Data User and Accessorily Policy 2022.

This forms an important part of revenue generation for the government and adds on to the GDP. There must be long term devise through the Legislative, executive and Judiciary to be on par with the digital dominant countries. Another crucial aspect is to be focussed on the government initiatives through DAU policy is the aspect of data breach by the government agencies during the data portability and the data trading. India is becoming a technology enabled economy and digital vulnerability economy. The structured financing models (including the FDI pathways) should have clear guidelines for data portability for the various stakeholders through legislations. The existing rules regarding the data management, portability and monetisation are: (i) The Digital Personal Data Protection Act, 2023;⁴⁷ (ii) S.43 of the IT Act;⁴⁸ (iii) RBI rules and notifications⁴⁹ on data storage, Data sovereignty and

⁴⁵ Metadata standard is an important document on the indicators. Metadata help in standardization of data of indicators across the country and it can also be used by International agencies for integrating data from India to the global framework. See *Metadata of National Indicator Framework*, MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION, <https://www.mospi.gov.in/metadata-national-indicator-framework> (last visited June 20, 2024).

⁴⁶ Troy Segal, *What Is Big Data? Definition, How It Works, and Uses*, INVESTOPEDIA (Feb. 13, 2024), <https://www.investopedia.com/terms/b/big-data.asp> (Big data refers to the large, diverse sets of information that grow at ever-increasing rates. It encompasses the volume of information, the velocity or speed at which it is created and collected, and the variety or scope of the data points being covered).

⁴⁷ The Digital Personal Data Protection Act, 2023.

⁴⁸ *Id.* § 43.

⁴⁹ *FAQs: Storage of Payment System Data*, RESERVE BANK OF INDIA (June 26, 2019), <https://www.rbi.org.in/commonperson/English/Scripts/FAQs.aspx?Id=2995>.

localization; (iv) Foreign Exchange Management Act on⁵⁰ cross border transactions; and (v) Judicial Interventions.⁵¹

V. CONCLUSION

The FDI forms a valuable path for the resource governance. The Sovereign resources as enumerated in this writing has been managed effectively as it crucially involves the national security aspects. Clear guidelines have to formed by the Government as to what shall be the preconditions for the Government route as it is absolutely a matter of national security. Government route in all sectors has a uniform policy of Make in India vision which is has an effective impact on MSMEs. The Energy security is the major concern as the energy mix has to be balanced with surge in demand and environment consideration. The government must have a proportionate mix of energy through renewables and non-renewable sources of energy, with a rider that energy form the Coal sector has to be monopolised on par the atomic energy sector. In matter of sustenance of the infrastructure growth the FDI formulation has been clear in terms of sectoral allocation. The Land ownership rights remains with government and the economic value ascertained shall have the benefit of private participation.

These necessitates the innovation in cleaner technologies. The Vijay Kelkar committee in 2012 suggested asset monetisation deriving the road map for fiscal consolidation. The committee emphasised that privatisation is not the only propulsion force for the fiscal management and monetisation amplifies the value which is inherent in the assets which are either underutilised or unutilised for creating sources of revenue for revenue. The structured partnership in the contractual framework is different in monetisation and privatisation as monetisation involve the ownership within the government and private entities having the de-risked assets. Therefore, the vast infrastructure roadmap by the government has to be efficiently supported by the FDI in the matter of sovereign resources management for the noble ideology of equitable development and welfare state.

⁵⁰ FEMA regulates current account transactions, which are mostly commercial and business activities. These transactions include goods and service payments and receipts, education and medical remittances, and travel costs. FEMA liberalises remittance programs, allowing individuals and corporations to conduct current account transactions within restrictions.

⁵¹ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

EXPORT-ORIENTED ECO-FRIENDLY PRODUCTS OF HEREDITARY ARTISANS AND THE NEED TO PROMOTE THEIR CRAFTSMANSHIP

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Abstract

Artisans both hereditary and traditional are an indispensable part of Indian society and culture. Though they have a lot of talents useful for their development and have huge potential to support the nation's economic development, their talents and the scope of their capabilities are yet to be explored and utilized in the proper way. Though there are a lot of government schemes and initiatives, the benefits of all of them do not reach the poor ignorant artisans, many of them still live in with superstitious practices. There have not been many sincere serious efforts to bring them to the forefront till recently. Even if there are programmes by various governmental agencies, most of the artisans can not make use of them due to their deficiencies. Therefore, there is a special need to reach out to them and improve their entrepreneurial abilities to tap them for greater growth of the economy and inclusive development of these marginalized groups. To achieve this, this paper suggests a nationwide empirical study to find out the socio-economic and educational realities of these hereditary and traditional artisan communities and based on the findings, necessary correctional measures are to be made urgently. To carry out the above, a separate ministry for artisan affairs is needed.

Keywords- Hereditary artisans, traditional artisans, inclusive development, Economic growth, Ministry for Artisan Affairs.

I. INTRODUCTION

Hereditary and traditional artisan communities are a peculiar feature of Indian society. Hereditary artisans are different from traditional artisans. The occupations of the hereditary artisans are conferred on them by inheritance. It is received as a lineage, a direct descent from ancestors. The Hereditary legacy of crafting skills passed on from father to son in their particular profession.¹ Some of the major occupations of hereditary artisans were performed by a certain sect of hereditary artisans called *Vishwakarma*, from time immemorial. Traditional on

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¹ VIJAYA RAMASWAMY (ED), IN SEARCH OF VISHWAKARMA 3 (2019).

the other hand exists in or is part of a tradition, long established. It need not be received as a lineage.

Vishwakarma were the people who acquired creative skills through hereditary means of the generational dispensation of socio-engineering in artistry and craftsmanship.² Carpenters, Brass-workers, founders, sculptors, and goldsmiths find themselves among other manufacturers as potters, weavers, and cane and bamboo craftsmen, for which the classical theory of Varna categories does not provide a reference.³ These occupational groups were considered “*Viswakarmakula*”. Though their work was predominantly materialistic and associated with technology, it had an element of spirituality also in it.⁴ They were the architects and engineers of ancient India and were an indispensable part of Indian society.⁵ It was they who were instrumental in the construction of beautiful temples, palaces and similar other structures with stones and wood, they were the makers of attractive ornaments with gold and silver, pottery, statues and sculptures with bronze and metals, tools and implements with iron etc.⁶ “*They are the Brahmans who create the five pillars of material culture on which society rests and by which it is distinguished from nature, it means that, for life’s essentials, the world depends on the Viswakarmas*”.⁷

The constructions and the products made by them are replete with marvelous skills. It is this magnificent skill of these artisans of yesteryears that attracts thousands of tourists every day to the country. But the talents of these skilled artisans were not properly recognized in independent India and the plight of many of these occupational communities is pathetic even today. Underutilization of the capabilities of these artisanal communities is a great loss to the economy too. When we think about the implementation of the Prime Minister’s vision of “*Atmanirbhar Bharat*” for the inclusive development of the nation, the role these indigenous communities can play is significant.

² VP Raghavan, *Heritage and Culture in a Creative Economy: The Vishwakarma Craftsmanship in Kerala* (Part of unpublished Project Thesis, Indira Gandhi National Centre for the Arts).

³ JAN BROUWER, *THE MAKERS OF THE WORLD: CASTE, CRAFT AND MIND OF SOUTH INDIAN ARTISANS* 14 (1995).

⁴ Kenneth M. George & Kirin Narayan, *Technophany and its Publics: Artisans, Technicians, and the Rise of Vishwakarma Worship in India*, 81(1) *JOURNAL OF ASIAN STUDIES* 3 (2022).

⁵ Suganthy Krishnamachari, *Artisans – Indispensable Part of Ancient Society*, *THE HINDU* (Apr. 16, 2020), <https://thehindu.com/society/history-and-culture/artisans-indispensable-part-of-ancient-society/article31356763.ece>.

⁶ *Crafts of South Indian States*, INDIA NETZONE, https://www.indianetzone.com/16/crafts_south_indian_states.htm (last visited June 20, 2024).

⁷ George & Narayan, *supra* note 4, at 14.

II. NEGLECTED AND UNDERUTILIZED POTENTIAL

The major reasons for the neglect of these occupational groups were the advent of the British and the introduction of products from England to India during the British period. This resulted in the declining importance of these sects of Indian hereditary artisans in several fields. Pre-colonial India had favorable foreign trade due to excellence in indigenous production. Indian artisans were famous all over the world for their skills. There was large-scale production of cotton and silk, jute, dyestuffs, mineral and metallic products like arms, metal wares and oil. India, towards the end of the 18th century, was undoubtedly one of the main centres of world trade and industry. This status of India was destroyed during colonial times. Thus, the artisans began to face serious challenges to their existence.

To protect the interest of these occupational groups and for the self-reliance and self-sufficiency of the nation, Mahatma Gandhi proposed a basic education system for India, in which the promotion of all hereditary and traditional occupations was given due importance. The basic education system Gandhiji proposed was to support the reconstruction of Indian villages in a sustainable manner. But in independent India, the ideas of Mahatma Gandhi on basic education were not accepted or considered.

Similarly, C Rajagopalachari, the last Governor General of India, is also said to have advocated for giving special consideration to the children of these hereditary artisan communities to give modern training in the respective fields of engineering. But he was severely criticized by many stating that it would only help the continuance of the caste system. He was even nicknamed as “the modern Manu”.⁸ Though his arguments had positive and negative elements, unfortunately at that time the positive aspects were overlooked. It was also heard from the older generation that this idea of catching them young and training in the area of their heredity and aptitude, attracted the Soviet administration of that time and they re-modelled their education system accordingly and reaped great positive results. Unfortunately, it did not happen in independent India to date. Perhaps caste-based discrimination and inhuman exploitation and oppression were the major reasons for the criticism and total avoidance of this suggestion.

⁸ Ancient Indian scholar who wrote the text “Manusmriti” which advocates ' the "Varna system".

It is well known that the caste system in India had the drawbacks mentioned above. Otherwise, it had its good features; the most important features among them were training from the family itself and efficiency in skills and its continuity through generations. Those who have expertise and aptitude in such areas will have the capability to produce a wide variety of products, especially long-enduring eco-friendly products very useful for people everywhere.

There are number of products the hereditary artisans are still producing and are capable of supplying to the market, starting from wooden spoons, knives, and vessels for voyages and the manufacture of gold, and diamond ornaments. Unfortunately, many of these hereditary artisan communities who have immense potential to generate millions of employment opportunities and foreign exchange are neglected in the independent Indian society. Once their talents are recognized and promoted, they will be able to contribute much to the national income in a tremendous way. The products they can make, can be marketed in the domestic and international markets. Any efforts to boost them will not only help to improve the pathetic living conditions of the poor but also will contribute to the nation's GDP.

The Indian artisans are spread over the length and breadth of the country which is observed in villages, towns and cities. The objects designed, crafted and made by them can acquire markets in western countries that attract huge foreign exchange.⁹ Many of these products manifest India's rich and diverse cultural tradition. Owing to its beauty, dignity, style and aesthetics, the legacy of the nation's craft tradition always enjoys special recognition and distinction.

III. THE NEED TO PROTECT AND IMPROVE ARTISAN COMMUNITIES

Most of these hereditary artisan communities are living in a closed economy. Therefore, their problems are invisible to society. They live in their faith and tradition and are ignorant about modern technological developments and the development of social norms. For them, the biggest barrier is a capital investment and lack of entrepreneurial and marketing skills required for the modern world. The marketing, sale and distribution of their products are mainly through personal networks and middlemen. These enterprises by the Indian artisans can deliver strong economic contributions and greater social inclusion, provided they have the right

⁹ *Indian Handicrafts Industry & Exports*, INDIA BRAND EQUITY FOUNDATION, <https://www.ibef.org/exports/handicrafts-industry-india> (last visited June 20, 2024).

kind of support, particularly in fostering innovation and exploring new markets. They need recognition and support.¹⁰ Their skills are part of intangible heritage. The goal of safeguarding, as with other forms of intangible cultural heritage is to ensure that the knowledge and skills associated with traditional artistry are passed on to future generations so that crafts can continue to be produced within their communities, providing livelihoods to their makers and reflecting creativity.¹¹

As mentioned earlier, due to industrialization, the importance of the traditional jobs of these hereditary artisans has declined to a great extent. They became bankrupt because of automation; they lost their age-old vocation, which was their only source of livelihood. In this process, these original hardworking household entrepreneurs got converted into mere labourers or workers in various other fields or their fields. The status of these makers of the world was reduced to class of workers, menial labourers in unorganized sectors, and jobless or part-time workers. They could not become owners or entrepreneurs in their traditional art or business in the contemporary economy. They were reduced to mere workers with the system snatching the ownerships or entrepreneurship business enterprises respectively. Despite traditional knowledge and expertise in the respective areas of business, they are reduced to daily labourers. The startling truth is that the hereditary artisans are increasingly losing their job opportunities as a result of modernization, mechanization, globalization and also through the onslaught of industrial giants in the manufacturing and marketing fields.¹²

The products of these traditional craftsmen have a huge market and market potential abroad and in the domestic market. To keep the traditional craft alive, the artisans must understand entrepreneurship, designs, marketing, trade fairs and participation thereof, understanding of the profit and loss and pros and cons involved in the global market, interact with consumers explaining them the products and the details, meaning and stories behind them. This inspires the customers and establishes a connection between art and the buyer. This also helps the artisans know the consumer's likes and dislikes. Price fixation is another very important area of study especially when it is meant for export in the global market.

¹⁰ Anandana Kapur et al., *Why India Needs to Empower its Artisan Economy*, INDIA DEVELOPMENT REVIEW (Jan. 27, 2022), <https://idronline.org/article/livelihoods/why-india-needs-toempower-its-artisan-economy/>.

¹¹ *Traditional Craftsmanship*, UNESCO INTANGIBLE CULTURAL HERITAGE, <https://ich.unesco.org/en/traditional-craftsmanship-00057> (last visited June 20, 2024).

¹² Natalie Gupta, *A Story of (Foretold) Decline: Artisan Labour in India* (Brooks World Poverty Institute, University of Manchester, BWPI Working Paper 156, 2011).

According to an IMARC Group report, handicrafts are flourishing in India on account of the low capital investments. The sector is one of the largest employment generators in India and accounts for a significant share of the country's exports.¹³

However, the artisans face challenges such as inaccessibility of funds, low penetration of technology, absence of market intelligence, and poor institutional framework of artisan groups. Over the years, many artisans have moved to urban centres, seeking low-paying and unskilled employment. To address these challenges and to develop and promote the sector, the government's National Handicraft Development Programme is being implemented by the Office of the Development Commissioner (Handicrafts). Presenting the Union Budget 2021, Finance Minister Nirmala Sitharaman also proposed the exemption on the import of duty-free items as an incentive to exporters of handicraft items to give a boost to the sector.

IV. THE CONSTITUTIONAL VALIDITY AND IMPORTANCE

In India, the importance of traditional handicrafts becomes more appealing because of its rich heritage and diverse culture. Article 29 of the constitution guarantees the fundamental right to the individual to protect his culture and heritage. In respect of handicrafts, it is important to have a distinction between traditional and technical handicrafts. The protection can only be provided to handicrafts as they are a major source of the custom of any society, and it is a prima facie responsibility of the legislature to protect the rich custom of India.

Given the *Indra Sawhney v. Union of India*¹⁴ case, by the analysis, any Hindu caste is found to be occupationally, socially, educationally and economically backward it should be regarded as eligible for benefit under Article 16(4) because it would be within constitutional sanction. The court has clearly stated in the case that the people who are engaged in hereditary or traditional occupations are regarded as the category of weaker sections. The Mandal Commission report also raised an opinion to protect these traditional artisans as they come within the category of other backward castes.

The Constitution provides for the protection of monuments under Article 49, Directive Principles of State Policy, which states: "*Protection of Monuments, Places, and Objects of National*

¹³ *India Handicrafts Market to Grow at 6.7% During 2024-2032, Impelled by Increasing Demand for Handicrafts Products*, IMARC GROUP (Oct. 17, 2022), <https://www.imargroup.com/handicrafts-market-india>.

¹⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

Importance – ‘Every monument, location, or object of aesthetic or historic interest, recognised by or under the law passed by Parliament to be of national importance, shall be protected by the State from spoliation, disfigurement, destruction, removal, disposition, or export, as the case may be.’ Protection of Cultural Heritage: *The Preservation of National Heritage is a duty imposed by the Constitution of India under Article 51 (A), Fundamental Duties, – It states that- ‘It shall be the duty of every citizen of India to value and preserve the rich heritage of our composite culture.’* This is clear and has expressly mentioned the preservation and protection of national heritage which depict India’s culture so there is always a great need for the artisan communities who were behind the making or creation of these historical monuments or objects need to be protected from extinction and even these communities should be brought to light.

Under the Constitution of India Handicrafts falls under State subject. Every state is expected to ensure the promotion and protection of valuable crafts culture prevailing in the state. Traditional crafts are next to agriculture in providing employment which increases its importance immensely. It is the means of livelihood for millions of artisans in India. The Central government through various developmental schemes plays the role by supplementing their efforts.

V. MEASURES TAKEN BY THE CENTRAL GOVERNMENT

1. Baba Saheb Hastshilp Vikas Yojana (AHVY): This is a cluster specific scheme meant for promoting traditional crafts of India. This is made for sanctioning projects to the interested agencies and assigned with the accountability of carrying out all the specialized interventions.
2. Under Dastkar Shashktikaran Yojna, the programme enables community empowerment to mobilize artisans into self-help groups.
3. Under SFURTI SCHEME (Scheme of Fund for Regeneration of Traditional Industries) - The objectives of the Scheme are as follows: (i). To organize the traditional industries and artisans into clusters to make them competitive and provide support for their long-term sustainability and economy of scale; (ii). To provide sustained employment for traditional industry artisans and rural entrepreneurs.
4. Periodic training of Artisans is needed to enhance their skills and provide them with livelihood.

5. General and miscellaneous supports should be extended by the Self Help Groups (SHGs) to the artisans under Cluster Programme.
6. *Mega Cluster Scheme*: The objective of this scheme includes employment generation and improvement in the standard of living of artisans. This programme follows a cluster-based approach in scaling infrastructure and production chains at handicraft res, specifically in remote regions, where the sector is largely unorganised and has not evolved to adopt modern developments. Under this scheme, clusters are identified by the Handicrafts Mega Cluster Mission (HMCM) via central and state agencies for upskilling and development.
7. *Marketing Support and Services Scheme*: This scheme provides interventions for domestic marketing events to artisans in the form of financial assistance that aids them in organising and participating in trade fairs and exhibitions across the country and abroad. Financial assistance is also provided for the social and welfare needs of artisans. Craft awareness, demonstration programmes and buyer-seller meets are other key aspect of this programme to ensure integrated, inclusive development of the sector. Another component of this scheme is increasing publicity and promoting brands in print and electronic media to improve visibility.

These schemes fall under the government's National Handicraft Development Programme, which is being implemented by the Office of the Development Commissioner of Handicrafts. Apart from these there are schemes and initiatives like National Skill Development Corporation, Pradhan Mantri Kaushal Vikas Yojana (PMKVY), Rozgar Mela, Pradhan Mantri Kaushal Kendras (PMKK), School Initiatives and Higher Education, Pre-Departure Orientation Training (PDOT).¹⁵

VI. INTELLECTUAL PROPERTY RIGHTS

Handicrafts are items made by hand, often with the use of simple tools and generally artistic and or traditional. According to the TRIPS agreement, traditional handicrafts were sought to be protected by way of geographical indications under national laws. The Geographical Indications of Goods (Registration and Protection) Act, 1999 provides a mechanism for the

¹⁵ *Schemes & Initiatives Through NSDC*, MINISTRY OF SKILL DEVELOPMENT AND ENTREPRENEURSHIP, <https://msde.gov.in/en/schemes-initiatives/schemes-initiatives-through-nsdc> (last visited June 20, 2024).

registration of GIs and elucidates on the concept of an authorised user and registered proprietor, both of whom can initiate action for infringement. In this effort of registration, government plays an important role as it can register the traditional handicrafts by itself becoming the prima facie holder of the traditional handicrafts as most of the craftsmen who make these handicrafts are ignorant about the value of their creation, in this way by becoming prima facie holder it not only protects traditional handicrafts but also the right of craftsman in realizing the value of their creation.

Indian Handicrafts products have always been in demand in the international market but due to lack of any standardized quality; lack of innovation in terms of products; designs and utilitarian value as per the changing fashion trends; fluctuating customer tastes and acceptable universal norms, the overseas market for these craft products is coming to stagnation. The view of craftspeople are outmoded and in need of modernisation.¹⁶ To sustain its share in the global market, Indian Handicrafts need to adapt and innovate as to changing global demands. Protection of crafts through intellectual property laws like GIs and Certification Marks has raised hopes of Indian craftspeople to protect their innovations and their tradition from piracy and thus help them earn more in the international market. This has encouraged Indian artisans to diversify their product range and adopt new and innovative designs. Most of the craft artisans follow traditional designs and patterns being practiced for years and do not want to experiment much with the designs. But with the strengthening of the Intellectual Property Regime, Craft entrepreneurs are willing to innovate in designs as they know that their creation shall be adequately protected and will not be copied by their competitors hence they will be the sole beneficiary of their creativity. That the new developments in design education for artisans have a positive impact on their confidence in seeing themselves as unique powerful creators in the industry.¹⁷

¹⁶ Ruth Clifford, *Balancing Local Tradition and Global Influences: Design and Business Education for Traditional Artisans in Kachchh, India* (Textile Society of America Symposium Proceedings 1075, 2018).

¹⁷ Megha Chauhan, *Who are the Artisans: A Case for Their Creative and Cultural Identities* (Global Fashion Conference, 2020), https://gfc-conference.eu/wp-content/uploads/2021/02/CHAUHAN_Who-are-the-Artisans-A-case-for-their-creative-and-cultural-identities.pdf.

A. Case Study: Lucknow Chikan–Poor Efforts to Get Artisans Registered as Authorized Users of GI¹⁸

The capital city of Uttar Pradesh has the distinction of producing one of the best embroideries in the world – Chikankari. The craft employs about 250,000 artisans, 95% of whom are women in rural areas. It's also a source of livelihood for about one million non-artisans. Direct export of chikan brings in an estimated \$12.5 million per year to the state. The GI registration was expected to bring a distinct identity and increased market for the craft. However, it is ironic that although Chikankari was the first craft from UP that applied for the GI certification and also got it, the artisans working in this sector are yet to get a complete benefit. This is due to the sluggish attitude of the Craft Promotion Authorities of the State Government towards organizing all the workers working in the Chikankari sector and creating awareness about the GI Indications Act. Most of the artisans do not know that they need to get themselves registered as an authorized users of GI to avail the benefits of GI status to the craft.

VII. THE ARTISANS (WELFARE AND PROMOTION) BILL, 2015¹⁹

The bill is aimed to provide for the establishment of a Board for the welfare and promotion of cultural and traditional handicrafts in the country and further to provide institutional and financial assistance to the artisans living in rural areas and for matters connected therewith. The object of the bill was that in rural areas many talented people create extremely creative and productive products through their art. But unfortunately, due to the non-availability of resources, low market exposure, lack of awareness, financial disability and no institutionalization support, these artisans face significant problems as they neither get fair prices for their products, nor they can showcase their artwork at a broader prospect. The Bill seeks to provide for the welfare and promotion of traditional and cultural art of the country and to provide institutional and financial support to the artisans to improve their social status in such a way that more employment and economic activities can be carried out in rural areas.

- Clause 3 of the Bill seeks to provide for the constitution of an Artisans (Welfare and Promotion) Board for the Welfare of artisans in rural areas.

¹⁸ Parnil Verma, *Protection and Promotion of Indian Handicrafts Through Intellectual Property Rights*, https://www.academia.edu/7927875/PROTECTION_AND_PROMOTION_OF_INDIAN_HANDICRAFTS_THROUGH_INTELLECTUAL_PROPERTY_RIGHTS (last visited June 20, 2024).

¹⁹ The Artisans (Welfare and Promotion) Bill, 2015.

- Clause 4 provides for the setting up of art centres and other facilities for artisans.
- Clause 5 provides for the constitution of the Artisans (Welfare and Promotion) Fund.

It is estimated that an annual recurring expenditure of about rupees one hundred core is likely to be involved from the Consolidated Fund of India. Strongly formulating such acts from the authorities enables the persons from the background of artisans to remain in their communities and build many more wide varieties of things with the help of modernized techniques and can still hold on to those traditional cultures and may be able to pass this culture to generations and generations.

In May 2020, PM Narendra Modi gave a call for Atmanirbhar Bharat or a self-reliant India which shall stand on the five pillars of Economy, Infrastructure, Technology, Demand, and a Vibrant Demography. The Ministry of Minority Affairs's "Hunar Haat" is a platform for products made by traditional artisans and craftsmen. It is becoming an effective platform to strengthen the 'Atmanirbhar Bharat' and 'Vocal for Local', the then Union minister Mukhtar Abbas Naqvi said "Magnificent indigenous products of master artisans are the 'local pride' and have come in for 'global praise' for 'Hunar Haat'". It will help in promoting and encouraging indigenous products of master artisans and craftsmen. Every corner of the country has a traditional and ancestral legacy of indigenous products and this legacy, which was on the verge of extinction, has got a boost after Prime Minister Narendra Modi pitched for 'swadeshi'.

Similarly, the Tribal Ministry in collaboration with the Ministry of External Affairs has taken initiative to promote Indian tribal arts and crafts across the globe. The Tribal Co-operative Marketing Development Federation of India (TRIFED), a national body under the control of the Ministry of Tribal Affairs, has set up an Atmanirbhar Bharat Corner or exhibition space showcasing Indian tribal arts and crafts in 75 countries. The space will include tribal art and craft as well as natural and organic products. Catalogues and brochures showcasing the richness and variety of tribal products are also a part of the exhibit. Being a national nodal agency, TRIFED works extensively to help market and promote India's rich legacy of indigenous products like handicrafts, handlooms, and other produce. Its newest initiative aims at increasing awareness and promotion of traditional arts and crafts.²⁰

²⁰ CH Sruthi & T Ramesh, *Thematic Issues on Status and Position of Artisans in India*, 20(10) IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE, ver. 3, at 5 (2015).

VIII. VISWAKARMA VILLAGES

The Government of India has officially declared that the Ministry of tourism will establish five hundred Viswakarma villages across the country. Ms Roopindar Brar, Additional Director General of the tourism department has officially declared it in a function held in Dubai. After independence this is for the first time there is such an initiative from the side of the government of India. Earlier in Kerala, there was such a programme launched by the Government of Kerala. But it could not so far be materialized. To make it a reality, the main stakeholders of the project, the Hereditary and traditional artisan community members are to be given awareness. All others who have an interest and aptitude in these occupations also must be made aware of this. There shall be a nationwide awareness programme to sensitise these groups of people in this respect.

IX. INCLUSIVE DEVELOPMENT

In all these cases, the beneficiaries of all these changes shall not only be the industry, but the common people, especially the labouring class also must get the advantages. Governmental policies and programmes must be helpful for inclusive development. According to the 2011 Census, 68.84% of the total population of India lives in villages, therefore any strategy for national development must be associated with the development of its rural areas.²¹ Only when the purchasing power of the poor and common people is raised, the market economy and business will be improved. Therefore, all the measures for the improvement of these artisans will generate more employment, income and foreign exchange.

For the achievement of inclusive development and adequate representation for all different segments of Indian society, a proper understanding of their current situation is necessary. The biggest problem while implementing the developmental schemes is the lack of proper knowledge about handicraft units and the number of artisans.²² To find out the reality of Indian society, and the socioeconomic and educational backwardness of all the different groups in India, a nationwide empirical study is required. Census based on caste is the best way for it or a separate study to this effect has to be undertaken by the central government. Only when the government of India appointed the Sachar committee, the real situation of the

²¹ Amisha Shah & Rajiv Patel, *Problems and Prospects of Rural Handicraft Artisans*, 12(3) RESEARCH GURU: ONLINE JOURNAL OF MULTIDISCIPLINARY SUBJECTS 72 (2018).

²² Sruthi & Ramesh, *supra* note 20.

Muslim community was revealed. It enabled the government to take appropriate measures for the development of the Muslim community in the country. Likewise, for the achievement of inclusive development for all the people in India, their current situation must be scientifically studied. For which a caste-based census is a must.

A caste census is not merely geared to the reservation issue; a caste census would bring to the fore many issues that any democratic country needs to attend to, particularly the number of people who are at the margins, or who are deprived, or the kind of occupations they pursue. A caste census, which will generate exhaustive data will allow policymakers to develop better policies, and implementation strategies, and will also enable a more rational debate on sensitive issues. Our Constitution too favours conducting a caste census. 'Article 340' mandates the appointment of a commission to investigate the conditions of socially and educationally backward classes and make recommendations as to the steps that should be taken by governments.

Caste is not only a source of disadvantage; it is also a very important source of economic advantage in our society in the prevailing circumstances since almost every caste relates to trade. What we need is to eliminate caste-based discrimination. When the socio-economic and educational standards of any community are improved, caste-based discrimination will slowly disappear. During the past seventy-five years of independence, we were able to reduce the rigours of the caste system to a certain extent. Still, the system and its ill effects persist all over India. It will take its own time to disappear from the scene. The best way is to utilise its positive aspects for economic development.

X. THE NEED FOR A MINISTRY FOR ARTISAN AFFAIRS

Despite the several schemes of the governments, most of the artisans are not coming to the limelight. There shall be certain concerted efforts to bring them to the forefront. Special efforts for directly meeting them and educating them about the opportunities, organizing them in self-help groups, through cluster formation, and giving them training in the modern ways of manufacturing, designs, entrepreneurship, marketing, managing, finance etc. with stipends and other benefits, providing them seed funds and other financial assistance and grants, are necessary for transforming them into good designers, entrepreneurs and marketing experts. Their status will have to be raised from mere labourers to entrepreneurs. For the successful

implementation of all these, a separate ministry has to be formed for Artisan Affairs. Such a Ministry has to look into the all-round development of the hereditary and traditional artisans by coordinating different departments engaged in various developmental activities relating to the field of artisans. The planning commission of India in the year 2005, in its report of the Inter-Ministry Taskforce on Technological, Investment and Marketing Support for Household and Artisanal Manufacturing, as item number 1 in para 12.04 of its Chapter 12 on Institutional Aspects has recommended, “A new department for the Artisans and household manufacturing may be carved out by consolidating under one department all the activities of different departments about this sector”.

At both the rural and urban levels, workshops should be organised to enhance the skills and knowledge of the people. Skill showcase, design education, and creative and product development workshops can be followed up with pricing, marketing, branding, micro-finance etc. These workshops can help artisans eradicate the communication gap between the two representations of society and bring in a better understanding of demand and supply. It also initiates traditional art awareness. These awareness programmes will also initiate collaborations between the artisans and the urban designer and brands to explore the opportunities together. Through these kinds of initiatives and activities, we can save our crafts and promote our traditional craft nationally and globally with the various art and craft forms to find a place in the dynamic art culture of the world. These initiatives will bring out the traditional craft and also introduce hidden talents in India.

The government is moving with Atmanirbhar Bharat. “India that is Bharat” has to become an economic superpower. At the same time, inclusive development of all citizens must have greater priority in the development agenda. According to an Oxfam report, the Richest 1 per cent of Indians own 40.05 per cent of the wealth. And the bottom 50 per cent own only 3 per cent of the wealth. Growth and development are different. Along with the growth of GDP, the human development index also must grow. All the policies and programmes must align with this ideal. The caste-ridden Indian society is being transformed into a modern Democratic Secular one. In actual practice, it is a slow process. It will take much more time for the nation to reach such a great reality. In its transformative stage, the above-mentioned measures are necessary. Ultimately it will reach a stage where casteism is annihilated. Dr. B.R. Ambedkar stated that if India had to attain a place of pride among the comity of nations, caste would have

to be annihilated first. The 21st century is the right time to solve India's caste question, which would otherwise extract a heavy price, not just sociologically, but also politically and economically, and make us fall behind in the development index.

XI. CONCLUSION

A nationwide empirical study to understand the reality of the status of all the artisans especially that of the hereditary artisans is suggested. Secondly, a separate Ministry for Artisan Affairs must be formed to look into the matter of the overall development of the artisans and also to co-ordinate various programmes and schemes of different departments of the Central and State Governments.

A COMPARATIVE ANALYSIS OF THE ATMANIRBHAR BHARAT POLICY WITH WTO POLICIES IN INTERNATIONAL TRADE

- Prateek A* & Aadit Shah**

Abstract

Over the last decade, economic self-sufficiency has been at the forefront of debate, with nations all over the globe prioritizing the optimization of resources to reach a stage of self-reliance. Recent developments within the national polity about international trade have revealed that economic systems built on short-sighted economic policy are susceptible to instability, which can cause a nation's markets to collapse. India is ahead of the curve as it already has a practical policy framework to attain self-sufficiency. This framework, titled the "Atmanirbhar Bharat Policy", contains numerous areas that require improvement. The policy primarily lacks involvement with international trade, viewed through the lens of self-reliance. This doctrinal research shall concern itself with looking at the 'five trenches' that Finance Minister Smt. Nirmala Sitaraman and Prime Minister Narendra Modi provided in their iconic speech on self-reliance in May 2020. To strengthen self-sufficiency further, suggestions shall be delivered using legislative and non-legislative methods. Viable proposals shall be provided that attempt to enhance self-sufficiency through means of legislation and non-legislative practice. These suggestions shall rely upon the WTO principles on trade and self-sufficiency enshrined in the Principles of the World Trade Organization. Furthermore, we shall further rely upon recent trends in trade observed between the European Union and China. Considering this, an effective model shall be evolved, presenting a viable alternative that would align with national aims and objectives.

Keywords- WTO, Atmanirbhar Bharat, Self-sufficiency, International Trade, Economic Policy

I. INTRODUCTION

The authors in this paper attempts to cover a few key components. The Atmanirbhar Bharat scheme, and the 'Make in India' movement, were flagships of the self-reliance movement within the country and came with a great focus on implementation. The authors also examine the viability of this scheme through the eyes of international trade. Principles in the WTO and opinions of eminent economists in the field shall help formulate our impression of this scheme. The final objective is to propose certain constructive suggestions to add to the current policies

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to drive them in a direction that we believe more effectively points towards the end goal of a self-reliant India or alternatively adds to the literature on the matter and open up avenues for further exploration.

II. MAKE IN INDIA: THE PROBLEMS AND THE FIVE TRANCHES

Our country's greatest strength has been indigenous handicrafts, considered our main selling point throughout history. During colonial times, when the hand-stitched cloth was the trademark and identity of our country, colonial powers stopped its export to make way for and popularize the machine-made alternative. It was primarily in response to this, along with other colonial oppressions, that the sentiments and later the term 'Atmanirbhar Bharat' was first coined in 1905 with the onset of the Swadeshi movement. It was Subhash Chandra Bose who championed this campaign alongside JRD Tata. The Bombay Plan sought to make India self-sufficient by increasing the state's role in all aspects of the economy.¹

The idea of self-reliance has always possessed much glamour within India, promising self-made riches and complete control over domestic markets. This notion motivates the state and the people to act. It is, therefore, no surprise that the same has been recently incorporated within the Make in India Campaign.²

The Government finally launched this campaign in 2014, intending to try to develop India into an international export hub. Although the plan was ambitious eight years ago, it lacked the structural necessities to be successful as a wide-spanning and viable economic policy. The fundamental issues manifested here were as follows:

The nation's labour laws from that time even till now have done little to guarantee even basic rights to the individual.³ Many economists have regarded our labour laws as redundant. They stipulate how these may very well be a significant reason hindering the fulfilment of the

¹ Sanjaya Baru, *Self-Reliance to Dependence in Indian Economic Development*, 11(11) SOCIAL SCIENTIST 34,46 (1983).

² Prime Minister's Office, *PM Gives Clarion Call for Atmanirbhar Bharat*, PRESS INFORMATION BUREAU (May 12, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1623391>.

³ INTERNATIONAL TRADE UNION CONFEDERATION, 2022 ITUC GLOBAL RIGHTS INDEX: THE WORLD'S WORST COUNTRIES FOR WORKERS (2022).

Make in India initiative and have suggested reforms. These luminaries have gone as far as to provide a few suggestions to reform the status quo.⁴

To make matters worse, the labour laws applicable to the country have now been faced with an even bigger hurdle in the creation of the four consolidated labour codes. These codes were put in place to do away with much of the complications that came with the massive amount of labour laws present currently. However, the Code on Wages,⁵ the first of the four to be introduced has still not been fully enacted. While the notification of the bill becoming a law has been duly forwarded, the law itself is silent in its manifestation. Therefore, the four consolidated codes remain relatively unimportant for consideration when looking at the applicability of labour laws in the nation.

Furthermore, another key issue in the labour legislation lies in the great diversity that exists within the working class of different states in our nation. One only needs to look to the difference in working hours and other ancillary considerations such as the professional tax applicable to different states to conclude this point.⁶ Therefore, a serious consideration that needs to be looked at is the question of whether a centralized legislation shall even be supportive of the final goal of such a legislation.

Another key problem indicated lies regarding the wording of most labour legislation in the present day in general. As has been noted, while the world moves towards more inclusive setups, the legislation on labour itself still remains fully in the view of a binary gendered setup, which yields a grey area.⁷

Finally, it is also key to consider whether the legislation is prepared to address more modern forms of labour. With the increased role of the internet and other sources of networking, it has become more common for the common folk to transfer to the 'gig work' sphere. It is therefore imperative that any policy suggestion considers the ramifications of the current set of labour legislation on this new sector of labour.

⁴ Shurly Tiwari, *Labour Law reforms in evolving context of Make in India*, INTERNATIONAL SCHOOL OF MANAGEMENT STUDIES, <https://www.isme.in/labour-law-reforms-in-evolving-context-of-make-in-india/> (last visited June 20, 2024).

⁵ The Code on Wages, 2019.

⁶ *Professional Tax*, SIMPLIANCE, <https://www.simpliance.in/professional-tax> (last visited June 20, 2024).

⁷ Madhu Damodaran & Animay Singh, *Transgender and Labour Law: A Grey Area*, SIMPLIANCE (Nov. 4, 2020), <https://www.simpliance.in/blog/transgender-persons-and-labour-law/>.

The second is the veritably impossible tax regime of India. The hasty implementation of the Goods and Services Tax (GST) and the Note Ban have dented Indian economic growth and adversely affected the informal sector. Additionally, implementing the GST has proven to be a difficult challenge. Moreover, the ad hoc changes to the tax slabs applicable to commodities have also been disastrous.⁸

The third and perhaps most critical issue is the unavailability of infrastructure. Make in India has fundamentally become an extensive manufacturing project.⁹ The primary necessity for the manufacturing sector to be successful is the availability of infrastructure. The trouble with below-average infrastructure is that it can affect productivity. Problems in one infrastructure category can have a ripple effect that influences the entire economy.¹⁰

Any country ultimately requires funds to build industries, which in turn points towards the need for infrastructure. Economists believe that stringent labour regulations and constrictive land acquisition laws make it difficult for India to attract investors to the manufacturing sector.¹¹

Furthermore, the availability of power above what is currently at Indian disposal is necessary, without which the programme will not succeed.¹² To elaborate, India is running short of power with a deficit of 5.1%. The Comptroller and Auditor General (CAG) has also recently claimed a loss of \$37 billion due to a lack of transparency in allocating coal blocks.¹³

The government has the commendable aim of making more power in India. However, this means improving production efficiency in India regardless of sector. To achieve this goal,

⁸ Express Web Desk, *Manmohan Singh on Note Ban: 'It was an Organised Loot, Legalised Plunder; Broke the Back of Small Businesses'*, INDIAN EXPRESS (Nov. 07, 2017), <https://indianexpress.com/article/india/manmohan-singh-gst-demonetisation-note-ban-narendra-modi-4926385/>.

⁹ *Make in India Largely for India, Says Raghuram Rajan*, FINANCIAL EXPRESS (Dec. 13, 2014), <https://www.financialexpress.com/opinion/make-in-india-largely-for-india/18616/>.

¹⁰ *The Importance of Infrastructure to Manufacturing and the U.S. Economy*, MARLIN STEEL WIRE, <https://www.marlinwire.com/blog/importance-of-infrastructure-to-manufacturing-us-economy> (last visited June 20, 2024).

¹¹ Servaas Storm, *Labor Laws and Manufacturing Performance in India: How Priors Trump Evidence and Progress Gets Stalled 7-24* (Institute of New Economic Thinking Working Paper Series No. 90, 2019).

¹² IANS, *We Never Claimed 'Zero Loss' in Coal Block Allocation: Chidambaram*, Deccan Herald (Aug. 27, 2012), <https://www.deccanherald.com/india/we-never-claimed-zero-loss-2356449>.

¹³ COMPTROLLER AND AUDITOR GENERAL OF INDIA, DRAFT PERFORMANCE AUDIT REPORT: ALLOCATION OF COAL BLOCKS AND AUGMENTATION OF COAL PRODUCTION BY COAL INDIA LIMITED (2012).

the government has implemented an ambitious plan to reinforce and enhance the country's infrastructure to achieve this goal.¹⁴

We must also pay heed to improving human capital as it constitutes another major issue for the country. Our considerations in this regard need to be holistic in its application. This requirement spans from a need for an enhanced and reachable healthcare system and nutritional requirements both in the quality and quantity required. Also, proper sanitation systems and a viable education system that is appropriate for the nation must be developed. When considering the education problem, it is also necessary to train in skills that have value in the labour market. Finally, it is also essential to consider the opportunity for improvement within the firm as a desirable addition to the policy.¹⁵

Paraphrasing the sentiment of most economists, the advocacy for export pessimism is ill-founded and may be problematic. Instead, counsel against an export-led strategy that involves subsidizing exporters with cheap inputs and an undervalued exchange rate must be advised, simply because it is unlikely to be as effective at this juncture. While taking ideas from our neighbours may be probative, blindly copying what has worked for them shall not achieve our goals, as times and domestic factors are drastically different.¹⁶ A classic example of this is China's cheap-quality-product export model, which shall be briefly discussed later in this paper.

In the quest to find a genuinely self-reliant policy, the government has gone to great lengths to work out an effective and complete mechanism. Recently, this policy has manifested in the '*Five Tranches*'.

Eight years after its implementation, Nirmala Sitaraman, the Finance Minister, has launched this plan to help the ailing economy recover from the widespread damage caused by the Pandemic. The Prime Minister announced the same in his 20 Lakh crore package given under Prime Minister Narendra Modi's '*Aatmanirbhar Bharat Abhiyaan*' initiative. These

¹⁴ *Professional Tax*, *supra* note 6.

¹⁵ *Id.*

¹⁶ ET Now, *Raghuram Rajan on Why India Shouldn't Follow China's Path & Put All Eggs in the Manufacturing Basket*, THE ECONOMICS TIMES (Apr. 22, 2022), <https://economictimes.indiatimes.com/markets/expert-view/raghuram-rajan-on-why-india-shouldnt-follow-chinas-path-put-all-eggs-in-the-manufacturing-basket/articleshow/90987163.cms>; See also ET Now, *Raghuram Rajan at IEC 2022: Let's Not Follow China When Comes to Manufacturing*, YOUTUBE (Apr. 21, 2022), <https://www.youtube.com/watch?v=KRn7f0t743s>.

tranches critically try to overcome a hurdle that Raghuram Rajan and the critics or advisors of the Initiative once foresaw.

Significant chunks of India's economy are derived from micro, small, and medium-sized enterprises. These enterprises are responsible for employing over 11 crore people. The first trench was to provide *support* and *relief* to them. The central idea was to infuse liquidity into these enterprises to allow them access to more disposable funds. Entrepreneurs and employees would effectively invest these funds to stimulate the economy positively.¹⁷

The second tranche was aimed at promoting human capital in the country. It attempted to formulate a means of providing free food to the migrant and daily wage labourers, 5 kg of grains per person and 1 kg Chana per family per month free for two months, to fortify food security and curb the toll of the pandemic on them.¹⁸

The third tranche mainly involved governance and administrative reforms, which included setting up of a Rs. 1 lakh crore Agri Infrastructure Fund; the formalization of Micro Food Enterprises, a Rs. 15,000-crore Animal Husbandry Infrastructure Development Fund; Rs. 4,000 crore for promotion of herbal cultivation; and a Rs. 500 crore scheme to promote beekeeping.¹⁹ Agriculture, as India's primary source of export and most comprehensive source of employment, employing over 50% of the country's working population, does not contribute to the GDP proportionally. The investments made in this sector aimed to utilize them better to maximise industry effectiveness.²⁰

The fourth and fifth packages were for land and labour utilization improvement and involved liquidity of cash flows. Furthermore, it aimed to ease laws on mining and other such activities. However, the policy itself envisioned these points as stressors instead of considering them in a novel or otherwise unique outlook.²¹

¹⁷ Express Web Desk, *Full Break-up of All Five Tranches Announced by FM Nirmala Sitharaman*, THE INDIAN EXPRESS (May 17, 2020), <https://indianexpress.com/article/india/economic-relief-package-break-up-five-tranches-6414076/>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

III. WORLD TRADE ORGANIZATION PRINCIPLES

The W.T.O (World Trade Organization) principles majorly influence the world's view of International Trade. The focus on free transactions between all trading nations is most often referenced among these principles.²² It aims to prohibit protectionism and isolationism, behaviour that often occurs due to self-reliance aimed at protecting against external intervention.²³

To further explain the ideal of this principle, trade barriers between specific countries, or in general, are not well received. The exception is a few niches laid out within the policy itself.²⁴

Examining 'how one state could harmonise WTO free trade principles grounded on comparative advantage driven by the quest for self-sufficiency?' guides one to the opinions of eminent scholars in the field. Achieving true self-sufficiency would require national production to incorporate all national consumption completely.²⁵ The state can only achieve this if it builds trade barriers to cease foreign intervention. A stringent import control system would characterize such barriers. Such a system must be compounded with a collection of subsidy plans²⁶ that would refute WTO's principles in every case.

The disjointed view that appears on balancing import restriction with free market liberalization policies is a foundational problem in most economies that attempt to move towards self-sufficiency. If not for the M.F.N (Most Favoured Nations) exceptions²⁷ that specifically allow certain product discriminations, balancing these two extremes would be impossible.

Thus, modern states opt to sacrifice economically self-sufficient action in favour of vast swathes of their national market being saturated by external entities. Alternatively, as in the

²² *Principles of the Trading System*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm (last visited June 20, 2024).

²³ RAJ BHALA, *INTERNATIONAL TRADE LAW: A COMPREHENSIVE TEXTBOOK* 80 (5th ed. 2019).

²⁴ Express Web Desk, *supra* note 17.

²⁵ Vasilii Erokhin, *Self-Sufficiency versus Security: How Trade Protectionism Challenges the Sustainability of the Food Supply in Russia*, 9(11) SUSTAINABILITY 1939 (2017).

²⁶ John Beghin et al., *The Cost of Food Self-Sufficiency and Agricultural Protection in South Korea* (European Integration Online Papers, Feb. 2002).

²⁷ Baru, *supra* note 1.

example of the Philippines, South Korea, and to a lesser extent, India, taking aid from the MFN exceptions, erect specific trade barriers to reduce external invasion into local markets.

As the pandemic has taught us, solely depending upon foreign and external product supply may not be sustainable in the long run.²⁸ Thus, it becomes increasingly imperative for entities to look inward to expand national and international prospects. Alternatively, it is impractical to depend solely on internal resources and supply to feed the growing demand perpetually. This makes one idea more desirable against the stagnant ideals of the current status quo specialization.

Specialization is an idea wherein a state becomes the sole exporter or the sole viable exporter of one, or a set of, products demanded internationally. This model is what China's global reputation portrays.²⁹ While the example of the Chinese economy brings an implicit assumption of success, it does not necessarily suggest that specialization is a perfect solution to the problems at hand. The practical viability of the idea will remain in question unless it is definitively answered contextually.

To formulate a policy framework that sufficiently fits the Indian markets, a multi-faceted approach is necessary. Only catering to one of the points of criticism shall not merit any improvement to the system.

In this manner, it is possible to fit self-sufficiency and meaningful international trade into the same paradigm while incorporating the W.T.O principles. To successfully combine the two, it is integral to refer to the exceptions given under the principles³⁰ and attempt to formulate, where possible, policy structures to furnish national product requirements. A feasible method to this may be through identifying countries at a relatively similar economic level to establish a mutually beneficial and viable exclusive trade treaty for the supply of that particular product. Such a treaty shall fall neatly within the MFN exceptions referred to above³¹ and equally fall within the 'Most beneficial for less developed nations'³² ideal incorporated within the same principles.

²⁸ KEVIN ZHANG, CHINA AS THE WORLD FACTORY 24 (2006).

²⁹ Karel Eloit et al., *A New Era for Manufacturing in China*, MCKINSEY QUARTERLY, June 2013, https://iberchina.org/files/China_A_new_era_manufacturing_Mckinsey.pdf.

³⁰ ASIF H. QURESHI, INTERPRETING WTO AGREEMENTS: PROBLEMS AND PERSPECTIVES 132 (2d edn., Cambridge University Press, 2015).

³¹ *Principles of the Trading System*, supra note 22.

³² *Id.*

IV. THE CASE OF THE EUROPEAN UNION (EU)

In our exploration of comparative states, it may be helpful to observe and understand the workings of the EU in recent years, specifically its withdrawal from the Chinese product markets. This action can help determine possible policies and programmes that may apply to the current setup.

Referring to this example provides a set of important factors to consider. For instance, to detach from one product supply setup, the process must be gradual to prevent economic instability and fear. Furthermore, massive preparation and build-up is essential to stabilize the economy. In the EU, tremors of this preparation could be felt starting in 2013,³³ with the issues compounding at an undefeated rate.³⁴ Furthermore, in 2021, the EU's Industrial Strategy Statement cut back on Chinese products in as many as six categories.³⁵ Additionally, economies are receptive to external influence, and in the EU, external forces were seen in 2022 when the EU exchanged sanctions with China initiated by the EU's new sanction regime.³⁶

All factors considered, there is no doubt that the EU has endeavoured to economically withdraw from the Chinese product market in specific product subsets,³⁷ with many strategies employed to make up for the slow withdrawal from a vital resource supplier.

Another key takeaway from the EU is their attempt to find an alternative to China, indicating the importance of Chinese goods in their market.³⁸ They plan to diversify supply partners and create an economic bloc alliance to fortify their internal markets. This shall strengthen their economic trade presence.³⁹ Furthermore, through this integrated plan, a

³³ Yu Chen, *EU-China Solar Panels Trade Dispute: Settlement and Challenges to the EU 4* (European Institute of Asian Studies, June 2015).

³⁴ *EU Requests Two WTO Panels Against China: Trade Restrictions on Lithuania and High-Tech Patents*, EUROPEAN COMMISSION (Dec. 7, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7528.

³⁵ *Updating the 2020 Industrial Strategy: Towards a Stronger Single Market for Europe's Recovery*, EUROPEAN COMMISSION (May 5, 2021), https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1884.

³⁶ Matthew Parry, *Chinese counter-sanctions on EU targets* (European Parliament, PE 690.617 – May 2021).

³⁷ European Commission, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=China-EU_-_international_trade_in_goods_statistics (last visited Jan 9, 2023).

³⁸ *China-EU – International Trade in Goods Statistics*, EUROPEAN COMMISSION, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=China-EU_-_international_trade_in_goods_statistics (last visited June 20, 2024).

³⁹ *EU Unveils Strategy to Reduce Dependency on China*, ECONOMICS INTELLIGENCE UNIT (May. 18, 2021), <https://www.eiu.com/n/eu-unveils-strategy-to-reduce-dependency-on-china/>.

foothold on functioning stable supply chains is attainable considering their integration with Germany.⁴⁰

The relevance of this to the Indian example is twofold. Firstly, the EU's move is replicable, which means that specific takeaways shall prove helpful for the creation of our recommendations. Secondly, it is in the best interests of Indian self-reliance to emulate the EU in certain core parameters. For instance, it is wise for the Indian polity to think outside the limited scope of production within national territory due to the finiteness of resources and the different methods to use them. It is sometimes better to transact for requirements and needs.

For India to obtain similar benefits, it is necessary to consider a similar approach, i.e., striking alliances. Such an action can achieve desired results through two avenues. First, geographically closer states considering national needs. Alternatively, and possibly more viably, striking alliances with states at a similar level of development. Such partnerships shall prove mutually beneficial and, therefore, more stable in the long run. This partnership can be through bilateral or multilateral treaties to fulfil both economic needs and aspirational goals. Furthermore, such treaties can circumvent the WTO's free trade requirements⁴¹ while also obtaining the benefits of isolationism without any of its drawbacks.

V. RECOMMENDATIONS

This portion of the paper is focused on evolving a coherent set of policy recommendations. It is, of course, a given that the solutions offered may not be directly applicable in the form presented, as the primary aim in raising them is to add to the literature on the subject. The policy suggestions shall be presented in a general manner to apply to the economy as a whole.

A. Human Capital

Firstly, the most critical problem of unequally developed human capital must be addressed. India is a nation that is well known for its population. While often brought up in most speeches on development, not much seems to be done in the way of actively utilizing human resources in a manner that will serve the economy. At present, the workforce is not well situated to deal with rising economic needs. This is because some health-related programmes are unreachable.

⁴⁰ *Supply Chains*, FEDERAL MINISTRY FOR ECONOMIC COOPERATION AND DEVELOPMENT, <https://www.bmz.de/en/issues/supply-chains> (last visited June 20, 2024).

⁴¹ *Principles of the Trading System*, *supra* note 22.

However, the workforce problem is not as monochrome as presented. This is because various issues come interwoven with it. From sanitation to healthcare, each of these problems works to debilitate or otherwise hamper the workforce.

While many have paraded education systems as the solutions to these problems, such a suggestion is neither currently viable nor can it be assumed to be a genuine need for the current economy. To truly understand this problem let us look at a brief illustration.

X is a small supermarket, employing over 20 workers. There seems to be no educational differences between the workers, and all of them don't seem to have any task to accomplish. Three of the workers are needed to operate the cash depot. The rest only exist to provide aid to customers in need. This is a microcosm of the human workforce within our nation. While there seem to be more than enough people to go around, each not so different in skill level to the other, there still seems to be a massive issue in harnessing this force. To solve this issue of what is in essence overcrowding, if we were to distribute workers that are not manning the payment booth into 3 categories. The first five take the role of guides to all those that require it, the other five take the role of purveyors of goods for those that have completed their purchase. The final seven can then play the role of delivery agents to those that have purchased more goods than they can safely take home, or alternatively those that have purchased remotely.

This is not a unique way to deploy workers, but it is nonetheless effective. Furthermore, it can also work without an extensive need for training or education solely because the workers in this context are using skills that they already have.

Thus, as suggested above, a policy of effective deployment needs to be encouraged that shall be industry-specific. At the same time, the educational obstacle can also be solved if apart from a mere focus on vocational training, a further emphasis is placed on quick, efficient and essential skilling, that could occur by way of apprenticeship. This apprenticeship could then be offered through small and medium tie-ups with local enterprises that can be arranged at a municipal or district level. These apprenticeships could then therefore focus on many tangible skill training programmes that run in parallel to working segments so as to function as a method of constant upliftment.

B. Infrastructure

The prospect of infrastructure is another consideration provided for within our recommendations. Suggestions on this subset shall be explored keeping the Telecommunication sector in mind.

In a mere decade, the telecommunication sector has taken over the entire country. This is no small feat because, unlike any other sector, the telecommunication industry's infrastructural requirements are very superficially visible. A classic example of such infrastructural displays are the telecom towers. These towers needed to be generously scattered to ensure effective coverage in every part of the country. Such coverage was a necessity for the success of this industry. The noteworthy thing here is that this rapid infrastructural development was driven completely by private individuals with an entrepreneurial spirit. In a country with a largely active private sector, development thrives with innovation coming in from all avenues. Such innovation was encouraged and exacerbated by government action as well.

The government's role in this was to both encourage as well as ensure that the general health and welfare of the country was not compromised. Our country as a socialist one, necessitated measures that considered the status and plight of the poor and less advantaged as well.

With all of this in mind, the core of our suggestion here comes into focus which is to devise a cogent strategy to both improve the infrastructure of the nation while at the same time not compromising on the interests of the private producer.

Industrialists and entrepreneurs can be required to put a percentage of their company's profits in lieu of annual Corporate Social Responsibility (CSR) to be used for building roads in villages for better transportation and connectivity.

Large initiatives may make for interesting headlines but results frequently fall short of expectations, thus such projects that are over-ambitious at conception need to be avoided. Infrastructure development needs to be implemented effectively on the ground and must take into account the demands of the surrounding community. This is challenging to accomplish with a centralised project. Locally focused projects may appear less remarkable, but when

combined, they have the ability to impact people's lives more quickly and effectively. Thus, these initiatives need to be gradual, persistent and overall microscopically considered.

Alongside these locally cantered programmes, notions of transparency and structure need to be embodied throughout. As stated above, the focus of our infrastructural plans needs to be in not choosing the fanciest outcome, but in fact choosing the most efficient for the circumstances of the environment.

C. Labour laws

As has been repeatedly reiterated within this paper, Labour is India's most important asset. Thus, for India as a country, there can be no doubt that worker protection and welfare must be a priority. However, it must also be acknowledged that such rules often, undermine the owner's ability to do business. Such an unbalanced system often creates a structure of disincentives that invariably leads to stunted corporate growth, fewer employment opportunities and openings and therefore hurts the overall prospects of all the parties involved.

As an attempt to consolidate the laws, the Parliament approved three eagerly awaited "Labour Codes" on September 23, 2020. To be clear, these codes acted almost solely to compile all pre-existing laws on these topics, condensing them into three main codes being: the Industrial Relations Code, 2020⁴²; Occupational Safety, Health (OSH) and Working Conditions Code, 2020⁴³; and the Social Security Code, 2020⁴⁴. Moreover, they added a few obligations for employers as well as a few new protections and rights for workers. These codes were in addition to the Code on Wages⁴⁵, an initial code, that was passed into law in 2019.

Considering the nature of the laws, they generally belonged to the concurrent list,⁴⁶ save for the labour regulations surrounding mine workers and oil field workers⁴⁷. Due to this placement, it is determinative that the state as well as the centre may choose to make laws on most of these subjects, with the central legislation winning any clash that is to occur.

The new codes even though have been portrayed as reforms, still have their own fair share of issues. There remains a lot of ambiguity in the laws which are to be employed as the

⁴² The Industrial Relations Code, 2020.

⁴³ The Occupational Safety, Health and Working Conditions Code, 2020.

⁴⁴ The Code on Social Security, 2020.

⁴⁵ The Code on Wages, 2019.

⁴⁶ India Const., Schedule VII.

⁴⁷ *Id.*

current codes have not repealed the existing laws on the matter and the particulars of incorporation have not been clearly laid out.

The problem arises where the state laws are more in line with local interests but are not able to exercise this inherent knowledge owing to the existence of national laws on the subject. Furthermore, as has been stated above the current law has not taken steps to repeal prior existing law while the code's preamble wishes to suggest a consolidation and amendment. Thus, if state law were in line with standards of the pre-existing law, they would still not be completely safe from constitutional overriding. Thus, in this regard the legislative status of the prior laws need to be clearly communicated and resolved.

Consideration needs also to be taken in deciding whether a clause that vests predominance to state law over the central law would be a valuable inclusion to the codes, considering the state's familiarity to the issues that may be occurring within regions more intimately under their purview. Finally, it is also worth considering the possibility of incorporating all labour related laws under a single umbrella code that shall contain all manner of requirements that exist.

D. International relations

In addition to the various domestic solutions offered above, we must also briefly delve into the international sphere so as to assure stable and realistic self-reliance. Through what has been laid out prior, we hope a convincing argument has been brought to refute the conventional understanding of the viability of a wholly closed economic system being the means of achieving self-reliance reliably.

In this international arena it is necessary to do away with the mentality that bulk-export is the way forward for the nation. This is because such a model is premised on massive investments that yield little returns. The Indian model shall not be able to capture the mass produced but poor quality product market, without a massive influx of investment. Such an investment shall be ill spent considering that the Return on Investment from the formulation of such a sector cannot justify its creation.⁴⁸

⁴⁸ Joachim Wagner, *Exports and Firm Profitability: Quality Matters!* (University of Luneburg, Working Paper Series in Economics No. 296, 2014).

At the same time, as previously discussed, the importance of international relations also plays a key role. While it may be economically infeasible to achieve the conventional self-reliant ideal characterized by a multi-product focus. In its place a more stable system may be the need of the hour. As has been explored above, it may prove pertinent to take inspiration from the European Union to accurately formulate beneficial trade relations.

In this regard, it may be enriching to formulate a collection of comprehensive treaties with countries placed at a similar level of economic development so as to encourage exclusivist product development as well as to formulate a stable means of product focus, in this regard therefore India can focus primarily on its specialization without worrying about being cut off from important resources necessary for sustenance and development. In addition, it may prove equally beneficial to negotiate with friendly neighbouring countries to create the infrastructure necessary for the smooth exchange of necessities. Such an initiative would do wonders to promote the trade requirements of the state in concordance with these allied states. In this way, it may be viable to slowly draw out domestic producers in fields of Indian expertise to begin to extensively contribute to the national economy.

VI. CONCLUSION

Through what has been presented here, it is hoped that a fundamentally comprehensive idea is derived on what we believe the problems with the Atmanirbhar Bharat policy are. This paper has attempted to provide a set of suggestions to change the policy in a direction that merits consideration to achieve what has been envisaged as the core goals of the policy. While it is true that self-reliance is an admirable goal, the current policies seem to fail at taking the final steps of achieving true success. Furthermore, the policy seems to fail in its outlook on international trade, and more importantly how to exploit such an international setup so as to achieve maximum desirable results.

FDI AS A CATALYST OF SELF-RELIANCE: AN INDIAN PERSPECTIVE

- Prof. (Dr.) D. Mukhopadhyay* & Akhlesh Kumar**

Abstract

India adopted an open market policy, after switching over from a four decades old protective and closed economic system, in the early 1990s since she was suffering from the inherent limitations of protective economic system adopted as an element of the first Industrial Policy of 1951, a part and parcel of the Five-Year Plans. The Country's forex reserves had reached a very vulnerable magnitude in the late 1980s and early 1990s because of lack of competitiveness of the Indian goods and services in terms of the high cost of production and least quality consciousness against the benchmark set by international markets. Further, plants and equipment needed modernization and upgraded technical know-how, production and distribution system demand the skilled and efficient workforce. Exacerbating this techno-economic incapability, India was also facing a severe trade deficit and an adverse balance of payments and since the volume and value of export was significantly lesser in magnitude than the volume and value of imports the consequence of which made India contemplated for overhauling of the existing production, distribution, and logistics systems and revamping of the national economy in order to make hassle free movement of capital and workforce both in domestic and international markets. A substantial quantum of investment was the need of the hour for boosting up industrialization and creating new markets which required investors' friendly industrial climate and ease of doing business ecosystem. India adopted market driven economic policy of 'Liberalization, Privatization and Globalization (LPG) in 1991-1992 by removing resections in attracting foreign investment in order to transfuse more blood into the economy through the formats of Foreign Direct Investment (FDI) and Foreign Institutional Investors (FIIs). As an immediate measure, India prioritized financial markets reform. Consequently, financial markets' appetite ignited for mobilizing more financial resources. Economy began to absorb more capital and upgraded technology, moved forward from the state of being stagnant and earned the tag of 'Emerging Economy' in international market. Country's Forex Reserves crossed \$600 billion in Mid-2021 from almost scratch when LPG policy was initiated. FDI is observed to be playing a pivotal role in making India recovered from 1991-1992 economic crisis and achieved the status of 'Emerging Economy'. India's mission is to achieve 'Self-reliance (Aatmanirbhar Bharat)' in time bound manner. Under the given scenario, this paper sketched FDI's instrumental role in making India self-reliant using 1991-92 to 2021-22 time series data.

Keywords: Foreign Direct Investment, Self-Reliance, Aatmanirbhar Bharat, Emerging Economy, Capital, FDI, FII, LPG

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I. INTRODUCTION

One indicator of increasing economic globalization is the amount of foreign direct investment. India is one of the developing economies in the world where investment has always been a problem. The world is becoming more interconnected, and every nation is loosening restrictions on investment from nations that have a lot of capital resources. The developed nations are concentrating on expanding into new markets where there is a large supply of labour, potential for products, and high profits. As a result, emerging markets have turned into a battleground for foreign direct investment (FDI). India has liberalized its FDI policy considerably since 1991, following a somewhat restrictive policy. Increasing inflows have come with this liberalization.¹ The sectoral composition, sources, and entry methods of foreign direct investment (FDI) have all changed as a result of the liberalization. Multinational Enterprises (MNEs) have also increased their investments in software development and in global R&D centers established in India to take advantage of India's locational advantages in knowledge-based industries.

The host country can benefit from increased pressure on its domestic industry to compete with the foreign entity, thereby improving the industry as a whole, or by having a demonstration effect on other entities considering investing in the host country. The investor benefits by receiving higher returns for his investment than he would have received for the same investment in his country.

India has experienced sustained growth in FDI. India is also emerging as a potential alternative investment destination for China. India's vast market will continue to attract investments looking for a market, despite the setback caused by the COVID-19 pandemic. The domestic economy will benefit from an increase in the flow of investments from abroad. It's important to determine whether these investments' profits will be evenly distributed across the nation. State-by-state differences in FDI inflows can worsen inequality and lead to unbalanced growth.

¹ Aradhna Aggarwal, *Liberalisation, Multinational Enterprises and Export Performance: Evidence from Indian Manufacturing* (Indian Council for Research on International Economic Relations, Working Paper No. 69, 2001).

II. HISTORICAL OVERVIEW

The Industrial Policy Resolution, issued by the Indian government in 1948, must be the primary focus of policymakers' efforts to improve FDI flow to the country's regions and ensure balanced regional growth across the nation. The Industrial Policy Resolution was published a few years later in 1956. The industries (Development and Regulation) Act, 1951 (IDRA) was enacted by the government between those two periods to control and regulate private sector development. The Monopolies and Restrictive Trade Practices Act (MRTP Act) was enacted in 1969. The Foreign Exchange Regulation Act (FERA) of 1973 is an additional piece of legislation that has had an impact on industrial policy.

These measures did not affect the country's industrial growth; Instead, they caused systemic inefficiencies, distortions, and rigidities, which led to poor performance and sluggish growth in Indian industries from 1950 to 1980. Especially after the middle of the 1970s, the policy regime promoted a highly protective trade policy and rigid labour laws. It also aimed for a strong public sector and limited private investment. Additionally, it sought to promote regional development in a balanced manner and the small-scale sector. Policy instruments were designed to increase public investment and purposeful diversification within the industrial sector up until the middle of the 1960s. The import-substitution system got a lot more complex and domestic regulatory structures got stronger after the middle of the 1960s. During the 1980s, there were some experiments with domestic deregulation that paid off in increased productivity and an acceleration of growth to 7% per year.²

As the New Industrial Policy, 1991 was announced on July 24, 1991, India implemented the most drastic liberalization measures by following as per the conditions outlined by the IMF's Structural Adjustment Facility in the 1990s. By eliminating industrial licensing, reducing the public sector's role, reducing MRTP limits, and encouraging technology and foreign investment, the policy deregulated the industrial economy. From 1991 to 1997, industrial, trade, tax, and other macroeconomic management-influencing policies underwent rapid and extensive reforms.

India regained momentum in 2001 to open the economy to foreign competition, improve the environment for private investment, and develop infrastructure. By abandoning

² ISHER JUDGE AHLUWALIA, *INDUSTRIAL GROWTH IN INDIA: STAGNATION SINCE MID-SIXTIES (1985)*.

the complicated import licensing system and making an open commitment to lowering import tariff rates, trade policy reforms broke with the past in a big way. After a ruling by the World Trade Organization dispute settlement panel on a complaint brought by the US, India finally began to remove the quantitative restrictions on consumer goods and agricultural products in 2001. Foreign institutional investors were also permitted to invest in equity on the Indian stock market.³

III. FROM ‘MAKE IN INDIA’ TO ‘ATMANIRBHAR BHARAT’

The flagship “Make in India” campaign launched in 2014 by the Union government is guided by competitive federalism principles. It is based on the premise that the economy will benefit from FDI inflows by transforming India into a global manufacturing hub. It aims to maximize the potential of India’s human, financial, physical, social, and natural capital base. Foreign direct investment (FDI) is more long-term and beneficial to the local economy than foreign institutional investment. Knowledge, managerial abilities, and capabilities are among the long-term effects of FDI; improved designs for products; quality enhancements; channels for products’ international marketing; and incorporation into worldwide supply chains.⁴

FDI has the potential to spur economic growth, create jobs, and result in technological and knowledge spill overs for a developing nation like India.⁵ In contrast to the early post-Keynesian and neo-classical literature, which focused on technical progress and savings and investment, respectively, as the primary drivers of economic growth, proponents of the endogenous growth theory in economics have placed an emphasis on investments in human capital.⁶ The key ingredients for attracting FDI includes human capital, and research and development, both of which contribute to economic growth.⁷ However, the trade regime, labour costs and the size of the host market, workforce education, infrastructure and

³ Montek S. Ahluwalia, *Economic Reforms in India since 1991: Has Gradualism Worked?*, 16(3) JOURNAL OF ECONOMIC PERSPECTIVES 67 (2002).

⁴ Vani Archana et al., *Impact of FDI in India: State-Wise Analysis in an Econometric Framework*, 14(2) GLOBAL JOURNAL OF HUMAN-SOCIAL SCIENCE (E) ECONOMICS 15 (2014).

⁵ Chanchal Kumar Sharma, *Federalism and Foreign Direct Investment: How Political Affiliation Determines the Spatial Distribution of FDI Evidence from India* (German Institute of Global and Area Studies, Working Paper No. 307, 2017).

⁶ E. Borensztein et al., *How Does Foreign Direct Investment Affect Economic Growth?*, 45 JOURNAL OF INTERNATIONAL ECONOMICS 115 (1998).

⁷ V.N. Balasubramanyam et al., *Foreign Direct Investment and Growth in EP and IS Countries*, 106(434) THE ECONOMIC JOURNAL 92 (1996).

macroeconomic stability all plays a role in how FDI affects growth and welfare in different economies.

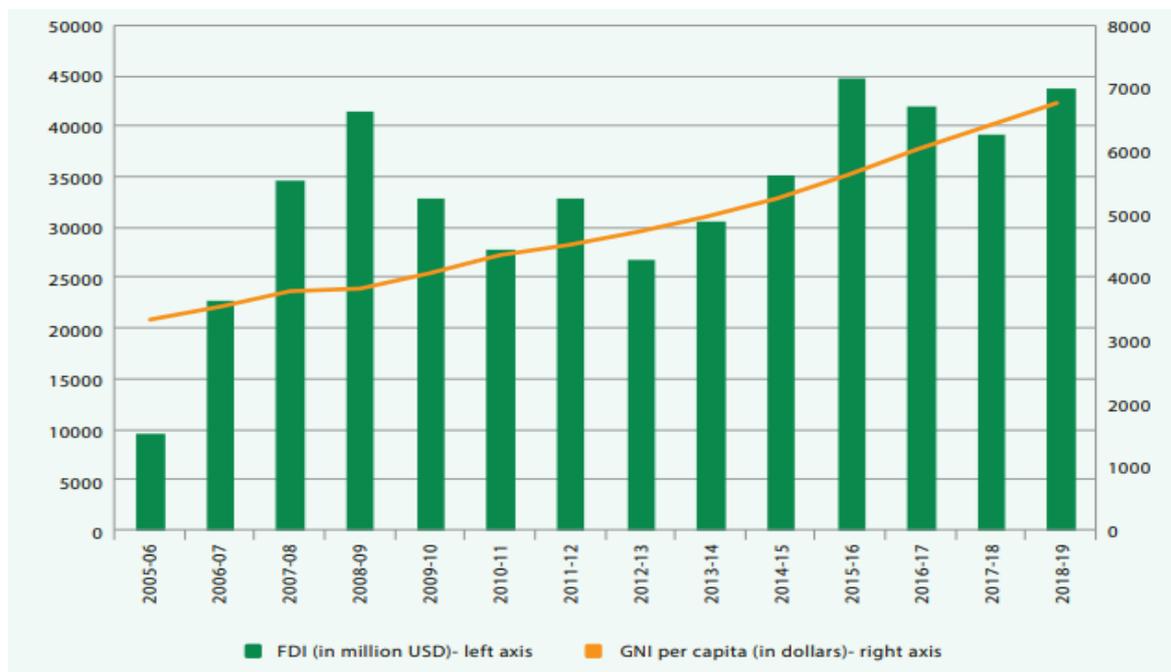


Fig. 1: Trends in India's FDI and Gross National Income (GNI) Per Capita⁸

FDI does not, of course, automatically translate into human capital. For FDI effect on capital formation and economic expansion, the host nation must have a minimum level of human capital.⁹ The process of technological advancement becomes endogenized into the economic system as a result of the connections that exist between FDI and human capital.¹⁰ As FDI flows accompany R&D, education, training, and investments in knowledge creation, externalities prevent physical capital and labour from experiencing diminishing returns to scale. As a result, other parts of the economy benefit from these spill overs as well.¹¹ The backward and forward linkages that are created when a Multinational Company (MNC) establishes a foreign affiliate in the host nation facilitate technology diffusion and productivity growth. In addition to technological spill overs, FDI flowing through multinational corporations boosts industrial sector productivity by increasing competition. Thus, FDI inflows fuel economic expansion through the highly nonlinear interaction between technology diffusion and the formation of human capital. In turn, increased economic growth provides the

⁸ Source: Reserve Bank of India, *Database on Indian Economy: Macro Economic Aggregates*.

⁹ Brian K. Ritchie, *Foreign Direct Investment and Intellectual Capital Formation in Southeast Asia* (OECD Development Centre Working Paper No. 194, 2002).

¹⁰ RAJAT ACHARYYA & SAIBAL KAR, *INTERNATIONAL TRADE & ECONOMIC DEVELOPMENT* (2014).

¹¹ Magnus Blomstrom & Ari Kokko, *FDI and Human Capital: A Research Agenda* (OECD Development Centre Working Paper No. 195, 2002).

foundation for future FDI inflows. Figure 1 examines the connection between FDI and greater national economic growth. The FDI inflow and India's per capita gross national income are shown in the graph. It demonstrates that FDI inflows have increased overall and that per capita income has increased over time. However, more in-depth analyses will be required to determine whether an increase in FDI volumes is responsible for an increase in per capita income or the other way around. Sure, there is some evidence that FDI and economic expansion are positively correlated.

“Atmanirbhar Bharat” may appear to discourage international trade and foreign investment in India's current situation. However, as this paper demonstrates, FDI is a catalyst for the economy's production and consumption efficiency. As a result, in the midst of the pandemic, a rise in “economic nationalism” such as Atmanirbhar Bharat, will need to be contained so that inefficiencies in domestic production are not safeguarded at the expense of domestic consumers, who are known to have greater bargaining power.¹²

IV. CURRENT SCENARIO

On December 9, 2022, (Defence Minister) Rajnath Singh stated at an event in New Delhi that India has developed into a self-assured and self-reliant nation that believes in working together for the benefit of all, but does not allow outside interference in its internal affairs. He credited Prime Minister Narendra Modi's diplomacy, credibility, and leadership abilities for transforming India's international image into one of an agenda-setter. India now occupies a prominent position on the global high table. The world recognizes and values our self-respect and peace-loving nature.

Around 44% of 1,200 global business leaders in developed economies planned to invest in India for the first time or more in 2021. Gross inflows of foreign direct investment (FDI) rose to \$83.6 billion in FY 2022 from \$82 billion in FY 2021.

With a high vaccination rate, recovery stimulus packages, and programs for foreign investment, investor confidence has increased. In addition, the nation shares the green and transition assets of global money managers' commitment to a serious sustainability agenda.

¹² Udit Mishra, *Explain Speaking: Why Atmanirbhar Bharat Abhiyan Should Not Make India Turn Away From International Trade*, THE INDIAN EXPRESS (June 16, 2020), <https://indianexpress.com/article/explained/atmanirbhar-bharat-abhiyan-india-international-trade-6459157/>.

India's economy will grow significantly in the future thanks to FDI. Not only is it a crucial non-debt financial resource, but it also serves as a conduit for top investors to transfer technology. The country's competitive advantage on global platforms will increase as a result.

The government has relaxed FDI regulations in several some money industries, including energy, energy PSU, defence, and stock exchanges, among others, in recent years. India's employment growth is aided by foreign investors' access to technical expertise and lower wages.

It speeds up the construction of infrastructure, boosts agricultural productivity, and improves the country's export performance. In addition, mobilizing India's forex reserves relies heavily on FDI. As a result, the Reserve Bank of India which is the central bank can maintain stable forex rates and create favourable economic conditions for the country's growth with increased forex reserves. India's climate goals have also been driven by foreign direct investment (FDI).

Over \$1.18 billion in FDI was brought into the renewable energy sector during the first nine months of FY 2021-22. In general, foreign direct investment (FDI) promotes competitiveness and enables the introduction of additional goods and services to the consumer market. In turn, this encourages the nation's growth.¹³

V. CONCLUSION

India has the potential to become the world leader in manufacturing and production due to its large population. The government's call for an economy that is "self-reliant" demonstrates that it is aware of India's potential. However, as we enter the Fourth Industrial Revolution, it is crucial to embrace technology. Technological spill over is a direct consequence of increased FDI inflows. While it is essential to make investments in R&D and innovation, the advantages of FDI should not be overlooked. According to the findings of this study, foreign direct investment (FDI) has the potential to change the game for India in the wake of the pandemic by making the country more appealing to businesses and not just by offering financial incentives.

¹³ Dhiraj Relli, *\$83 Bn in FY22: FDI Will Play a Significant Role in India's Future Economic Development*, THE ECONOMIC TIMES (June 26, 2022), <https://economictimes.indiatimes.com/markets/stocks/news/83-bn-in-fy22-fdi-will-play-a-significant-role-in-indias-future-economic-development-dhiraj-relli/articleshow/92470054.cms>.

The Indian government's stance on FDI has been examined in light of the patterns and trends in FDI inflows during the 1990s, as well as its impact on a few development parameters. The country's FDI inflow patterns and trends have changed as a result of the shifting policy framework. Despite the fact that the amount of FDI flowing into the country has increased, the majority of it has gone into the soft technology and consumer goods industries, with less of it going into manufacturing and technology-intensive industries than in east Asian nations. Although foreign direct investment (FDI) has increased in importance as a source of capital and output generation, its impact on direct investment and growth is mixed because some FDI inflows may crowd in domestic investments while others may crowd out domestic investments.

There is a positive correlation between improvements in these parameters and business-friendly conditions, according to this analysis. Future FDI policies must be based on these principles, and policymaking must take into account this interconnection. A region's business climate is positively impacted by a robust socioeconomic environment. It makes investments less susceptible to unanticipated social, political, and environmental conflicts. Sustainable development has the potential to reduce state disparities at the sub-national level.

States that have been experiencing delays in FDI inflows must take economic and political measures to improve the creation of favourable conditions. States with higher performance tend to compete with one another, while states with lower performance tend to stick to their own group. As a result, the current government's competitive federalism policy cannot automatically guarantee that all states will develop. It will only result in an increase in the concentration of FDI among a select few states under the business-as-usual scenario.

However, these aspects are inseparably linked to global events. Investments in sub-national economies like India will be negatively impacted by an unprecedented blow to the global economy that will have repercussions across the entire economic system. After the COVID-19 pandemic, there is no doubt that the global economic order, investment patterns, and globalization trends will be revised, at least for a few years. Compared to previous forecasts, research indicates that the downward pressure on FDI will be between 5% and 15%, and the predicted global recession¹⁴ that the world will experience may spare India and China in

¹⁴ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *IMPACT OF THE CORONAVIRUS OUTBREAK ON GLOBAL FDI* (2020).

comparison to the other developing nations.¹⁵ Indeed, as the COVID-19 pandemic has been altering global economic processes, the People's Bank of China (PBoC) raised its stake in India's largest non-banking mortgage provider, the Housing Development Finance Corporation (HDFC) Bank, from 0.8 percent to 1.01 percent. Following this, New Delhi decided to amend its FDI policy by making government approval mandatory for any foreign investment from countries that share land borders with India to curb "opportunistic takeovers" of domestic Indian firms.¹⁶

It is anticipated that the MNEs' profits will be more at risk in emerging economies than in developed economies. The automotive industry, the airline industry, the energy industry, and the basic materials industry would be the hardest hit. To lessen the negative effects of such occurrences, investments must take environmental, social, and governance factors into account.¹⁷ An investment's resilience to external risks will increase and investments will be prevented from engaging in unethical practices. As a result, a sustainable development-based competition for FDI among Indian states will guarantee long-term economic growth and an equitable distribution of FDI profits.

¹⁵ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *THE COVID-19 SHOCK TO DEVELOPING COUNTRIES: TOWARDS A "WHATEVER IT TAKES" PROGRAMME FOR THE TWO-THIRDS OF THE WORLD'S POPULATION BEING LEFT BEHIND* (2020).

¹⁶ Harsh V. Pant, *India Fires a Salvo at China*, OBSERVER RESEARCH FOUNDATION (Apr. 22, 2020), <https://www.orfonline.org/expert-speak/india-fires-a-salvo-at-china-65011>.

¹⁷ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *supra* note 14.

INDIGENISATION OF DEFENCE SECTOR TOWARDS SELF-RELIANT INDIA: ROLE OF LAW AND TRADE

- M K Mrudula*

Abstract

With various stakeholders vying for power in all arenas, defence has emerged as one of the most crucial niches for nations to declare their dominance. The world powers are decided on various factors including their defence capacity and economic competency. Being the 2nd largest populated country in the world, India has one of the largest military forces. The Indian defence sector is significantly interrelated to the economy. The latest initiative of the Indian Government, Atmanirbhar India, envisages an independent and self-reliant India with defence as one of the identified areas for growth. Though India has been ranked as one of the leading nations with self-reliant arms production capabilities among the Indo-Pacific nations, it is also the second largest importer of arms. This raises concerns about the actual capability of India towards achieving self-reliance, establishing defence production as a cardinal point of development towards self-sufficiency. This paper delves into the opportunities for indigenization in the defence sector and the legal scope for such development. A doctrinal method has been adopted and data has been collected from secondary resources. The paper analyses the present status of the defence sector and its import and export strategies. The Government's initiatives, schemes and policies for the promotion of self-reliance in defence have been studied to get a better understanding of the current scenario. To achieve self-reliance, it is necessary to not only emerge as a key producer of defence machinery but to become a key exporter. This paper studies the laws in place at the national and international levels in terms of trade related to defence. It further critically analyses the challenges for indigenization in the defence sector. An attempt has been made to discern the lacunae in law and possible suggestions have been supplied as speculative solutions for the same.

Keywords: Defence, Indigenisation, Self-reliance, Trade, International Law

I. INTRODUCTION

The world today has become extremely competitive with each nation vying to establish itself as a superpower. Such rivalrous frenzy have made the importance of self-reliance crystal clear. This is a pressing need for India and the government has also acknowledged it with the introduction of Atmanirbhar Bharat scheme. With self-reliance in mind, the Indian defence

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sector emerges as one of the most important areas of development. The intricate relationship between the Indian economy and the defence sector calls for bold and innovative advancements. It has been recognised that indigenisation and trade are at the crux of such growth. This paper delves into the role played by the two and how it may be enhanced further, keeping in mind the present framework and challenges.

II. DEFENCE & ECONOMY

India has the 2nd largest army in the world with over 1.3 million active service personnel.¹ The defence sector plays a significant role in the Indian economy. It is the fourth largest in the world and the second largest among emerging economies. The sector has been growing at a steady pace in recent years, driven by both domestic and foreign demand for Indian-made military equipment. Nevertheless, India is also the 5th largest military spender in the world.² The Indian defence market is projected to reach US\$26 billion by 2026, at a CAGR of 7.5% during the forecast period. The growth is driven by an increase in defence spending, modernization of the armed forces and the government's emphasis on indigenization of defence production.

India's defence sector has traditionally been heavily dependent on imports, with a significant share of defence equipment procured from foreign countries. India is solely responsible for about 11% of global arms sale.³ However, the government has implemented a number of import and export strategies to achieve this goal, and the present trade status in the Indian defence sector reflects these efforts. One of the main steps towards promoting the defence sector is the 'Make in India' initiative. The government has also increased the FDI limit in defence production from 49% to 74% with the condition of technology transfer.⁴ This has led to an increase in foreign investment in the sector and has led to the development of the domestic defence industry. Many foreign companies are interested in investing in the Indian defence sector, as it is seen as a growth market with a large domestic demand. This foreign

¹ PETER N VARGHESE, *AN INDIAN ECONOMIC STRATEGY TO 2035: NAVIGATING FROM POTENTIAL TO DELIVERY* 292 (2018).

² *Id.*

³ *Atmanirbhar in Defence*, GEEKS FOR GEEKS (Oct. 28, 2022), <https://www.geeksforgeeks.org/atmanirbhar-in-defence/>.

⁴ Ministry of Commerce & Industry, Press Note No. 4 (2020 Series), Review of Foreign Direct Investment (FDI) Policy in Defence Sector, DPIIT File No. 5(8)/2020-FDI Policy (Issued on Sept. 17, 2020).

investment can help to boost the Indian economy by providing additional funding for research and development, manufacturing, and other activities.

The defence sector also has a significant impact on the Indian economy in terms of exports. India has been exporting defence equipment to several countries and has been focusing on increasing its defence exports. The government has set a target of US \$5 billion for defence exports by 2025.⁵ Defence exports not only lead to the development of the domestic defence industry but also provide a source of foreign exchange for the country. The defence sector has a direct impact on the economy through the creation of jobs. The sector is a major employer in the country,⁶ with many people working in the manufacturing, research and development, and service sectors. Additionally, defence companies are often major contributors to the local economy, providing jobs, taxes, and other economic benefits to the communities in which they operate.

In addition to its economic advantages, the defence industry is vital to maintaining national security. India must maintain a robust defence capability as it becomes a more significant economic and political force on the world stage. This entails spending money on the newest tools and technology as well as educating and training staff to use and maintain it. However, the sector also has its share of challenges. One of the main challenges is the high cost of defence equipment. This can be a significant burden on the economy, as it diverts resources away from other areas such as education, healthcare, and infrastructure. Another challenge is the lack of transparency and accountability in the defence sector. At present, it is viewed as a “black hole” for government funding. The government should take steps to increase transparency and accountability in the sector to ensure that the funds allocated to the sector are being used efficiently and effectively.

At present, the primary share of the defence sector in the economy is due to its imports and exports. The government has devised several import and export strategies that are highly dynamic and a significant part of larger umbrella initiatives. To understand the challenges in

⁵ TNN, *Defence Exports to be \$5bn by 2025, Says Rajnath Singh*, TIMES OF INDIA (Oct. 21, 2022), <https://timesofindia.indiatimes.com/city/ahmedabad/defence-exports-to-be-5bn-by-2025-says-rajnath-singh/articleshow/94998266.cms>.

⁶ Anurakti Sharma, *India's Ministry of Defence is the World's Biggest Employer with 2.92 Million People: Report*, TIMES NOW NEWS (Oct. 29, 2022), <https://www.timesnownews.com/mirror-now/in-focus/indias-ministry-of-defence-is-the-worlds-biggest-employer-with-2-92-million-people-report-article-95166273>.

place, it is first necessary to discuss the significant strategies and the current predicament of trade in the defence sector.

III. IMPORT AND EXPORT STRATEGIES

One of the main import and export strategies implemented by the Indian government is the “Make in India” initiative, which aims to promote domestic production in the defence sector. The project promotes domestic and international businesses to finance and produce defence equipment in India.⁷ The “Strategic Partnership” approach, which establishes a framework for the private sector to play a significant role in the design, development, and production of defence equipment in India, has also been implemented by the government.⁸ According to data from the Department for Promotion of Industry and Internal Trade, the Make in India initiative has been successful in luring both domestic and foreign businesses to participate in the defence sector, with FDI in the sector rising to \$5.86 million in 2020–21.⁹

Another import and export strategy implemented by the Indian government is the “Indigenously Designed, Developed and Manufactured (IDDM)” category. This aims to give priority to domestically designed and manufactured equipment in defence procurement. This is expected to increase investment and talent in R&D.¹⁰ The government has set a target of indigenously designing and developing 30% of defence equipment by 2025. The Indian government has been actively marketing defence equipment exports in addition to growing local production. By 2025, defence exports should account for 2% of GDP, according to the 2018 Defence Exports Strategy (DES).¹¹ The DES 2018 places a strong emphasis on finding new export markets and working together with other nations to jointly develop and build

⁷ *Make in India*, INDIAN BRAND EQUITY FOUNDATION, <https://www.ibef.org/economy/make-in-india> (last visited June 20, 2024).

⁸ Laxman Kumar Behera, *An Assessment of the Strategic Partnership Model in Defence Industry*, MANOHAR PARIKAR INSTITUTE FOR DEFENCE STUDIES AND ANALYSIS (Jun. 2, 2017), https://www.idsa.in/idsacomments/strategic-partnership-model-in-defence-industry_lkbehera_020617.

⁹ *Foreign Direct Investment (FDI)*, INDIAN BRAND EQUITY FOUNDATION, <https://www.ibef.org/economy/foreign-direct-investment> (last visited June 20, 2024).

¹⁰ PTI, *IDDM will be a Game Changer in Defence Production: Report*, THE ECONOMIC TIMES (Jul. 11, 2018), <https://economictimes.indiatimes.com/news/defence/iddm-will-be-a-game-changer-in-defence-production-report/articleshow/51601753.cms>.

¹¹ *Strategy for Defence Exports*, MINISTRY OF DEFENCE, GOVERNMENT OF INDIA, <https://www.ddpmod.gov.in/sites/default/files/STRATEGY%20FOR%20DEFENCE%20EXPORTS.pdf> (last visited June 20, 2024).

defence equipment. According to data from the Ministry of Defence, this has led to an increase in defence exports, with a growth of 27% in defence exports in 2019-20.

The present trade status in the Indian defence sector reflects these efforts. According to data from the Ministry of Defence, India's defence exports have increased from INR 1,521 crores in 2016-17 to INR 8,434.84 crores in 2020-21.¹² Currently, the country's defence exports stand at INR 4,794.13 crores (US\$ 583.13 million) in FY 2022-23 (until September 5, 2022).¹³ India has also signed defence cooperation agreements with several countries, including the United States, Russia,¹⁴ and Israel,¹⁵ to jointly develop and produce defence equipment. According to the data from Defence Ministry, India has signed defence cooperation agreements with over 53 countries, which include agreement for transfer of technology, joint R&D, co-production and co-development of defence products.¹⁶

The present trade status in the Indian defence sector reflects the efforts of the government, with an increase in defence exports and collaborations with foreign countries to jointly develop and produce defence equipment. The government's efforts will help India to achieve strategic autonomy and reduce its dependence on foreign countries for its defence needs. One of the major programmes by the government aimed at the country's progress is the "Atmanirbhar Bharat" scheme. Several of the above mentioned strategies of the government fall under this scheme.

IV. SELF-RELIANCE & AATMANIRBHAR

Self-reliance, also known as "Atmanirbhar Bharat" in India, has been a key focus of the Indian government in recent years, particularly in the defence sector. This campaign launched by the Indian government in May 2020 is an effort to indigenise manufacturing, reducing the dependency on foreign imports and encourage the citizens to be self-reliant in all aspects.¹⁷

¹² Dinakar Peri, *The Growth of India's Defence Exports*, THE HINDU (Dec. 17, 2021), <https://www.thehindu.com/news/national/the-growth-of-indias-defence-exports/article37966675.ece>.

¹³ *Defence Manufacturing Industry in India*, INDIAN BRAND EQUITY FOUNDATION, <https://www.ibef.org/industry/defence-manufacturing> (last visited Jan. 28, 2023).

¹⁴ *India-Russia Defence Cooperation*, EMBASSY OF INDIA - MOSCOW (Dec. 6, 2021), <https://indianembassy-moscow.gov.in/india-russia-defence-cooperation.php>.

¹⁵ Sameer Patil, *The Deepening of India-Israel Defence Ties*, OBSERVER RESEARCH FOUNDATION (Jun. 7, 2022), <https://www.orfonline.org/expert-speak/the-deepening-of-india-israel-defence-ties/>.

¹⁶ *India's Defence Collaborations*, INDIAN BRAND EQUITY FOUNDATION (Oct. 14, 2022), <https://www.ibef.org/blogs/india-s-defence-collaborations>.

¹⁷ *Aatmanirbharta in Defence*, INDIAN BRAND EQUITY FOUNDATION (May 11, 2022), <https://www.ibef.org/blogs/aatmanirbharta-in-defence>.

Initiatives such as ‘Make in India’ and ‘Strategic Partnership’ are a part of this scheme. Some other strategies to promote indigenisation in the defence sector includes Mission DefSpace, Innovations for Defence Excellence (iDEX), SRIJAN portal, etc.¹⁸ The concept of Atmanirbhar rests on 5 major pillars, viz., economy, infrastructure, systems, vibrant demography and demand.¹⁹

Some of its prominent features are summarised as follows:

- *Encouraging domestic production:* Atmanirbhar Bharat seeks to advance indigenous manufacturing across a number of industries, including defence. This is accomplished through programmes like the “Make in India” initiative, which entices local and international businesses to invest in and produce defence equipment in India.
- *Reducing dependence on imports:* Atmanirbhar Bharat seeks to decrease dependency on imports by boosting domestic production across a number of industries, including defence. This could lower the cost of defence imports for the nation and raise the proportion of homegrown weapons in the armed services.
- *Promoting the private sector:* Atmanirbhar Bharat seeks to encourage private sector involvement in a number of industries, including the defence industry. The “Strategic Partnership” approach, which establishes a framework for the private sector to have a significant role in the design, development, and manufacturing of defence equipment in India, is one project that does this.
- *Developing indigenous technology:* Atmanirbhar Bharat seeks to produce indigenous technology across a number of industries, including the defence industry. The formation of defence research and development (R&D) organisations like the Defence Research and Development Organization (DRDO) and the Defence Research and Development Laboratory are examples of projects that accomplish this (DRDL).
- *Increasing exports:* Atmanirbhar Bharat wants to boost exports across a number of industries, including the defence industry. This can contribute to the domestic defence industry’s growth and act as a source of foreign cash for the nation.

¹⁸ *Atmanirbharta in Defence: Know About the Major Indigenisation Initiatives*, NEWSONAIR (Dec. 13, 2022), <https://newsonair.com/2022/12/13/atmanirbharta-in-defence-know-about-the-major-indigenisation-initiatives/>.

¹⁹ INDIAN BRAND EQUITY FOUNDATION, *Supra* note 16.

- *Support to MSMEs:* The programme offers assistance to micro, small, and medium-sized businesses (MSMEs) to help them become independent. This includes giving credit, help with technology, and instruction.
- *Infrastructure development:* The scheme also focuses on infrastructure development in sectors such as power, transport, and communication to create a robust ecosystem for manufacturing and trade.
- *Technology Transfer:* The scheme emphasizes technology transfer from foreign companies to Indian companies to promote domestic manufacturing of defence equipment.
- *Investment in R&D:* The scheme encourages investment in research and development in the defence sector to promote innovation and technology in the sector.

There are various benefits to promoting self-reliance in the defence sector.²⁰ Atmanirbhar Bharat can help India to achieve strategic autonomy and reduce its dependence on foreign countries for its defence needs. This can also help to create a strong and sustainable defence industrial base in India, which can lead to the creation of jobs and economic growth. Additionally, it can also help India to become a leading player in the global defence market, providing an opportunity for India to export its defence equipment and technologies to other countries.

In order to further its agenda of a self-reliant India, the Indian government has developed several policies and regulations. Further, there are other aspects which play a role in controlling trade in the defence sector. The varied, and at times contradicting aspects, have resulted in trade being a tricky concept for the defence sector.

V. LEGAL FRAMEWORK

Trade and production in the defence sector is governed by a complex and inadequate national and international laws. These laws have a significant impact on the indigenization of the defence sector in India. At the national level, the defence sector in India is governed by several laws and policies. Some of the significant ones have been elucidated further:

²⁰ GEEKS FOR GEEKS, *supra* note 3.

- *Defence Procurement Procedure (DPP) 2016*: The DPP is a set of guidelines issued by the Ministry of Defence (MoD) that governs the procurement of defence equipment in India. The primary objective of this is to promote indigenisation by showing a preference for Indian companies over foreign ones. This has however now been replaced by the DAP 2020.
- *Defence Acquisition Procedure (DAP) 2020*: The DAP 2020 has been envisaged as the harbinger of Atmanirbhar in defence production.²¹ This contains several new chapters and regulations such as leasing equipment.²² This allows the Indian army to access the latest technology and equipment without paying a large upfront capital investment. The DAP also strives for transparency and has introduced several new rules that are pro-transparency in the procurement process.
- *Defence Procurement Manual (DPM)*: The DPM is a detailed manual that provides further guidance on the implementation of the DPP. The first version was released in 2009. After several revisions, the latest version of 2020 has indigenisation of the defence sector in mind and aims to simplify the processes involved and facilitate participation in R&D projects.²³ This manual is viewed as a positive step towards encouraging private participation in every step, viz., design, development, test & evaluation, manufacturing and after-sales support.²⁴
- *Defence Offset Policy*: According to the Defence Offset Policy, foreign businesses that receive contracts from the Indian government worth more than Rs 2,000 crore (\$270 million) are required to contribute a certain percentage of those funds in the country's defence industry.²⁵ This policy intends to promote technology transfer and the growth of the Indian defence sector.

²¹ Amit Cowshish, *Will the Defence Acquisition Procedure 2020 Make India Self-Reliant in Defence Production?*, THE WIRE (Sep. 30, 2020), <https://thewire.in/government/dap-2020-india-defence-production-dpp-2016>.

²² Ministry of Defence, *Defence Acquisition Procedure 2020*.

²³ PTI, *Rajnath Singh Unveils New Version of DRDO's Procedure Manual to Engage Private Sector in Defence R&D*, THE ECONOMIC TIMES (Oct. 20, 2020), <https://economictimes.indiatimes.com/news/defence/rajnath-singh-unveils-new-version-of-drdo-procurement-manual-to-engage-private-sector-in-defence-rd/articleshow/78771062.cms>.

²⁴ W. Selvamurthy and Sneha Nair, *View: The Defence Procurement Manual 2020 is a Step Towards Attaining 'AatmaNirbhar Bharat'*, THE ECONOMIC TIMES (Oct. 28, 2020), <https://economictimes.indiatimes.com/news/defence/view-how-the-defence-procurement-manual-2020-is-a-step-towards-attaining-aatmanirbhar-bharat/articleshow/78912690.cms>.

²⁵ *India's Defence Offset Policy – A Comprehensive Analysis*, FINANCIAL EXPRESS (Aug. 9, 2022), <https://www.financialexpress.com/defence/indias-defence-offset-policy-a-comprehensive-analysis/2623186/>.

- *Make in India:* The Make in India project seeks to promote domestic manufacturing and draw international investment in order to promote manufacturing in India. This project intends to improve the proportion of indigenous content in defence equipment and encourage the manufacture of defence equipment in India.
- *Strategic Partnership (SP) Model:* The Strategic Partnership (SP) Model intends to encourage alliances between Indian businesses and international defence powerhouses for the country's defence equipment manufacturing.²⁶ This strategy aims to lessen India's reliance on imports by strengthening its domestic defence industry.
- *Industrial Licensing:* Industrial licences are issued by the Directorate for Promotion of Industry and Internal Trade (DPIIT) for the production of defence equipment.²⁷ The Industrial Licensing strategy seeks to simplify the licencing procedure while boosting the production of defence equipment in India.

In addition to national laws, the defence sector in India is also governed by various international laws and agreements. India has made several leaps in the global stage by becoming a member of several important defence regulation groups:

- *Wassenaar Arrangement:* The Wassenaar Arrangement is an international export control regime that regulates the trade of conventional weapons and dual-use goods and technologies. India is a member of the Wassenaar Arrangement,²⁸ which means that it is subject to the export controls of the member countries. This agreement could limit the export of certain defence items that are produced in India. Such a membership has also opened up opportunities for Indian defence industries to export their products to member countries and also established India as a responsible stakeholder in the global arena.²⁹

²⁶ Ministry of Defence, Strategic Partnership Model in Defence Acquisition, PRESS INFORMATION BUREAU (Mar. 12, 2018), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=177295>.

²⁷ *Industrial Licensing Policy in Defence Sector*, DEPARTMENT OF DEFENCE PRODUCTION, <https://www.makeinindiadefence.gov.in/pages/industrial-licensing-policy-in-defence-sector> (last visited June 20, 2024).

²⁸ Indrani Bagchi, *After MTCR, India Joins Elite Multilateral Weapons Export Control Regime Wassenaar Arrangement*, TIMES OF INDIA (Dec. 8, 2017), <https://timesofindia.indiatimes.com/india/after-mtcr-india-joins-elite-multilateral-weapons-export-control-regime-wassenaar-arrangement/articleshow/61978541.cms>.

²⁹ Rajeswari Pillai Rajagopalan & Arka Biswas, *Wassenaar Arrangement: The Case of India's Membership* 10 (ORF Occasional Paper No. 92, 2016).

- *United Nations Register of Conventional Arms*: The United Nations Register of Conventional Arms is a voluntary reporting system that requires member countries to report their arms imports and exports. India is a signatory to this agreement and reports its arms imports and exports.
- *Missile Technology Control Regime (MTCR)*: The MTCR is an international export control regime that regulates the transfer of missile technology.³⁰ India joined the MTCR in 2016, which has helped it improve its missile capabilities and given it access to cutting-edge missile technologies from other members. It also implies that it is subject to export restrictions imposed by the member nations. Experts have also raised concerns about its implications on any independent missile development programmes and space programmes in the future.
- *Nuclear Suppliers Group (NSG)*: This agreement regulates the export of nuclear material and technology. It prevents the acquisition of nuclear supplies by countries other than those who have actually been recognised as nuclear weapons state.³¹ India's membership to the NSG in September 2008, has enabled Indian defence industries to export certain nuclear-powered systems and technologies to member countries.
- *Arms Trade Treaty (ATT)*: This international treaty governs the exchange of conventional weapons, including small arms, light weapons, and ammunition. It strives to stop the flow of weapons to nations where they might be used to support terrorism, foment war, or violate human rights. Nonetheless, several Indian analysts have expressed concern about the ATT's possible effects on India's defence procurement and indigenization initiatives. Some have suggested that the agreement may constrain India's access to particular technologies and weapons as well as its capacity to transfer weaponry to allies.

The various laws and policies governing the Indian defence sector have a significant impact on the indigenization process. The government needs to ensure that the defence sector is in compliance with these laws and agreements, while also working to streamline the legal framework and make it more conducive to the development of the domestic defence industry.

³⁰ Ian Anthony, *Multilateral Export Controls*, in SIPRI YEARBOOK 2002: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY 745 (2002).

³¹ *Id.* at 752.

The recent developments have opened up new opportunities for India. However, they also pose their own set of challenges which must be addressed at the earliest.

VI. CHALLENGES TO INDIGENISATION

To indigenise the defence sector is an ambitious but not an impossible task. As with any major progressive process, it becomes necessary to address the existing legal lacunae and any other challenges as the case may be in order to plan an effective development strategy.

One of the crucial legal challenges faced by the defence sector in India is the issue of intellectual property rights (IPR). Defence is largely dependent on technology. Several companies are hesitant to transfer their technologies and share their knowledge with Indian companies without adequate protection for their IP rights. Owing to the ambiguous and often perplexing nature of the laws in India coupled with the complex nature of most government processes, this can be a major obstacle to the development of the domestic defence industry in India. The Indian government has recognised the importance of IPR in defence and initiated “Mission Raksha Gyan Shakti” in 2018 with the principal purpose of boosting IPR in defence sector.³² The government also set up an IP Facilitation Cell to aid in the same.³³ However, according to a report by the Confederation of Indian Industry (CII), India ranks 36th out of 45 countries on the Intellectual Property Rights (IPR) Index, which highlights the need for improvement in this area.³⁴

Another legal challenge facing the indigenization of the defence sector in India is the issue of procurement. The procurement process in India can be complex and time-consuming, which can be a major obstacle to the development of the domestic defence industry in India. This has given India the reputation of being one of the harshest and most difficult markets for

³² MINISTRY OF DEFENCE, MISSION RAKSHA GYAN SHAKTI SAMVAD: INTELLECTUAL PROPERTY FOR SELF-RELIANCE IN DEFENCE, <https://www.ddpmod.gov.in/sites/default/files/pdfupload/E-MAG%20MRGS%20SAMVAD%203RD%20EDITION.pdf>.

³³ *Industrial Licensing Policy in Defence Sector*, DEPARTMENT OF DEFENCE PRODUCTION, <https://www.makeinindiadefence.gov.in/pages/industrial-licensing-policy-in-defence-sector> (last visited June 20, 2024); *Intellectual Property (IP) in Defence*, DEPARTMENT OF DEFENCE PRODUCTION, <https://www.makeinindiadefence.gov.in/pages/intellectual-property-ip-in-defence> (last visited June 20, 2024).

³⁴ PTI, *India Ranks 40 Out of 53 Countries on Global Intellectual Property Index*, TIMES OF INDIA (Feb. 5, 2020), <https://timesofindia.indiatimes.com/business/india-business/india-ranks-40-out-of-53-countries-on-global-intellectual-property-index/articleshow/73967857.cms>.

vendors.³⁵ The government has been making efforts to streamline the procurement process. However, such efforts are meagre and do not compensate for the demand or meet the needs to ensure efficiency and transparency of the procurement process. According to a report by the Comptroller and Auditor General (CAG) of India, the average time taken for procurement of defence equipment is around 60 months,³⁶ which is much higher than the global average of 36 months. The ex-Army Chief General Navarane acknowledged the poor status of Indian procurement process and opined that “Indian procurement processes have not kept pace with the requirements over time.”³⁷ There are also high chances and opportunities for corruption and bribery in every stage of the existing defence procurement process which poses a huge red flag to interested parties.³⁸

Another major challenge is the issue of compliance with international treaties and agreements. India is a signatory to various international treaties and agreements such as the Wassenaar Arrangement, the Missile Technology Control Regime, and the Nuclear Suppliers Group. These agreements and treaties have implications on the defence sector, and the government needs to ensure that the indigenization of the defence sector is in compliance with these agreements and treaties. For example, India’s membership to the Wassenaar Arrangement, which controls the export of conventional arms and dual-use goods and technologies, could limit the export of certain defence items that are produced in India.³⁹

Additionally, the laws and regulations related to defence production and procurement are complex and dynamic in nature, and it can be challenging for companies to navigate the legal landscape. This can lead to delays in the procurement process and can discourage companies from investing in the domestic defence industry. The legal framework for defence procurement in India is governed by the Defence Procurement Procedure (DPP) which was later replaced by the Defence Acquisition Procedure (DAP) and the Defence Procurement

³⁵ Rahul Bedi, *World May Have Changed But India’s Defence Procurement Regime Is Still a Bureaucratic Behemoth*, THE WIRE (Mar. 22, 2022), <https://thewire.in/security/little-has-changed-and-indias-defence-procurement-regime-is-still-a-bureaucratic-behemoth>.

³⁶ Ministry of Defence, Draft DPP-2020, https://www.mod.gov.in/sites/default/files/draftdppnew200320c_0.pdf (last visited June 20, 2024).

³⁷ Amit Cowshish, *It’s Not Enough to Criticise India’s Defence Procurements. We Need Viable Alternatives*, THE WIRE (Aug. 11, 2021), <https://thewire.in/security/india-defence-procurements-general-mm-naravane>.

³⁸ Prashant Mara & Devina Deshpande, *Anti-bribery and Corruption in Defence Procurement in India: Risks and Mitigation measures*, LEXOLOGY (Apr. 6, 2021), <https://www.lexology.com/library/detail.aspx?g=440012c5-74ef-429d-9dbb-468c345ba49b>.

³⁹ Bagchi, *Supra* note 28.

Manual (DPM) which are subject to regular revisions and updates, which can make it difficult for companies to keep up with the changing regulations.⁴⁰ The latest DAP 202 has also been observed to be complex, confusing and even more convoluted than its previous counterpart.⁴¹

Indian government has been prone to make unpredictable and sudden changes to its policies which leave the vendors perplexed and wary of the Indian markets.⁴² Investors value stability in any new venture. The necessity for stability is exponentially higher in the defence sector owing to the long gestation period of projects and the higher capital required for acquisition of technology and R&D. Constant policy changes and delayed decision-making processes can adversely affect the investment opportunities. The defence budget is not enough to meet the current demands. This presents a pressing need to bolster private investment and accelerate the indigenisation process.⁴³ Thus, it is clear that it is imperative to immediately deal with the various challenges faced by the Indian defence sector. The government must take active measures to ensure the smooth and successful transition towards a self-reliant India.

VII. WAY FORWARD

The various challenges that have been laid out are merely branches of a single, common issue: the lack of a comprehensive national legal framework to regulate the indigenisation process of the defence sector. The existing laws, as elucidated before, are aimed only at specific areas and there is no holistic coverage. Indigenisation is a concept that exists only in the policies, guidelines and progressive thoughts of the government. However there is nothing to guide the people towards adopting measures which would cumulatively lead to indigenising the defence sector. The concept of indigenisation is not a singular effect. Various multiple facets would each be a building block towards the overall outcome. When all these aspects are brought under a single umbrella, i.e., one national framework, it makes it easier to monitor and execute the policies envisioned by the government. The various aspects that this prospective national framework would deal with are as follows:

⁴⁰ *Cowshish*, *Supra* note 21.

⁴¹ *Id.*

⁴² *TIMES OF INDIA*, *Supra* note 34.

⁴³ *DHRUVA JAISHANKAR, THE INDIGENISATION OF INDIA'S DEFENCE INDUSTRY (2019)*.

- *IPR regulation:* Providing clear and precise terms of IPR ownership would present the key players with an opportunity to enter the field with confidence. It also prevents any complications that may arise in the future.
- *Simplification of the procurement process:* The defence procurement process may be further simplified and made user-friendly. Under the guise of making it more efficient, the DAP 2020 suffers from being more complex than ever. Further, providing one-to-one support may further gain the trust of vendors in Indian markets.
- *Compliance with international treaties and agreements:* The law must be drafted in such a way that it does not violate any of the international treaties or conventions to which India is a party. It must find a balance between personal growth and maintaining the international standards.
- *Relaxation of entry barriers and incentives:* India may further look into providing attractive incentives to promote foreign investment and relax the existing entry barriers. Again, simplification of the paper-work process would be greatly beneficial for all concerned parties. India has been mindful of this and liberalised its FDI policies.⁴⁴
- *Adoption of long-term policies:* Assuring the investors of stability is indispensable in promoting self-reliance. This can be achieved only through long-term policies which would not change significantly over short periods of time. This requires futuristic thinkers to be actively involved in the policy making process. The government could invite ideas from students, academicians and other experts in the field in order to promote inclusivity and innovative suggestions
- *Knowledge transfer:* A program aimed exclusively at knowledge transfer at the international level could be introduced. The program may even be expanded over different sectors. India may exchange its advancements in a particular sector with another country for superior technology or intellectual assistance to promote self-reliance in the defence sector. A mutually beneficial system with special incentives might encourage countries to come forward in nurturing a world where there is free exchange of knowledge with time.

⁴⁴ Ministry of Defence, *Reforms in Defence Sector: Propelling Private Sector Partnership (2014-2021)*, PRESS INFORMATION BUREAU (Dec. 16, 2021), <https://pib.gov.in/FactsheetDetails.aspx?Id=148594>.

- *Streamlining existing laws:* When introducing a new national legal framework, care must be taken in ensuring that all other relevant laws are also amended to match. Preventing conflict of laws is important to ensure the harmonious functioning of the newly introduced law. Any unnecessarily complex rules or laws could be repealed in favour of the new framework.
- *National Atmanirbhar for Defence Committee:* Formulation of new laws in addition to the existing ones will not make a difference without a body to monitor the same. At present, there exists no committee that is solely dedicated towards supervising the indigenisation process in the defence sector. Such a committee would oversee all process related towards achieving Atmanirbhar in the defence sector, which includes the aforementioned suggestions. The committee would be responsible for the effective implementation of the new framework. It may comprise of experts in the field, private and public actors, public-welfare oriented individuals with the relevant experience, etc. The committee would have its own dispute settlement mechanism and enjoy self-autonomy free from any political influence. The committee should be divided into sub-committees for its efficacious functioning.

Such a multi-angle approach would cover all issues and provide a solitary solution. It also increases the comprehensibility of the various rules involved in the defence sector, cancelling out the complex nature of defence policies. Such friendly approaches would contribute towards expediting the indigenisation process.

VIII. CONCLUSION

Defence is one the most important and crucial pillars of any country. To depend on others for the amelioration of our defence is to trust the country's security on the goodwill and mercy of other nations. In the words of A.P.J. Abdul Kalam "Do we not realize that self-respect comes with self-reliance?" Trade is one of the significant ways by which we can improve not just our economy or our defence industry but also our international standing. India is fast emerging as a key player in world politics. To solidify its place in the global arena, a strong and self-reliant defence sector is a pivotal factor.

Atmanirbhar Bharat envisions an idealistic India that is to be the reality in the recent future. The way towards this reality must be paved with proactive approaches. Law plays a

critical role for any developmental program. The same applies to the defence sector. The inadequacy of the current legal framework has resulted in several challenges and complications starting from the complex procurement process to the lack of proper implementation of the existing policies. The advent of a new legal framework that consolidates all Atmanirbhar projects for the defence sector into one, with a dedicated committee to oversee its functioning, so that it could be the cardinal step towards a progressive India. An all-inclusive approach is the need of the hour to make our Mother India stand strong and self-reliant.

SELF-RELIANCE: THE CORNERSTONE OF GEOPOLITICS AND GEO-ECONOMICS – A TRAVERSE THROUGH BRICS AND QUAD

- Sharon Singh*

Abstract

By enduring imperialism for over two centuries, the Indian populace was emboldened to discover their identity, eventually from which emanated the constituent elements of Swadeshi and Swaraj. The contemporary idea of an Atmanirbhar Bharat is a resurrection of this identity. As opposed to the directed struggle against the exploitative force of imperialism, the present-day multipolarity no longer jurisdictionally confines the consequences of any economic development. The epochal nature of globalization and recession demonstrated how closely geo-economics and geopolitics were related to one another. In 1991, India adopted the LPG policy and since then it has embarked on a progressive economic journey. However, due to compelling circumstances including the pandemic, the Ukraine-Russia war, the USA-China trade tensions and the expansionist policy of China, Indian policymakers have been impelled to make lasting structural amendments. While retaining strategic autonomy, India is focusing on building self-reliance in order to best serve its interests. As neo-liberalism faces serious challenges, the demonstration of State power requires deeper attention so that an enabling face of globalization can help in achieving collective economic growth.

Keywords: globalization, geopolitical, geo-economic, trade, self-reliance

I. INTRODUCTION

The conscious collective endeavor of the Indian populace to determine their innate national strength in order to be *on their own* can be traced back to the Indian freedom struggle. Entwined in politico-economic considerations, imperialism paved the way for self-discovery and contributed towards conceiving the idea of a singular, collective entity called India. As the last vestiges of British colonialism sowed seeds of the labyrinthine relationship between *Swaraj* and *Swadeshi*, the idea of indigenous production of goods based on locally sourced materials was envisioned to provide an impetus to the conception of an economically independent nation supported by robust self-governing institutions. Configuring the contemporary relevance of

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national economic strength in a geopolitically volatile world is the base on which the 21st century thought of a self-reliant or Atmanirbhar Bharat is premised.

This symbiosis was maximized by globalization whereby American liberal ideology posited market integration and trade expansion as fundamental economic forces. The phenomenon of laissez-faire capitalism emphasized upon free flow of goods based on the factors of demand and supply. Gradually, the pursuit of this economic model blurred geographical connotations of manufacturing and sale and helped pave way for the global integration of markets. Such deep and widespread market integration expanded global trade.¹

In order to help locate the economic centrality of self-reliance, a speedily developing 21st century world order offers a fecund opportunity to evaluate this relationship between geopolitics and geo-economics. A related concern is that asserting equivalence between self-reliance, deglobalization and protectionism is not fundamentally prudent. Undoubtedly the conventional model of globalization is being re-evaluated and re-assessed giving rise to the idea of a *truncated form of globalization*,² according to which the opposing forces of de-globalization and globalization would co-exist, even if in a staggered and abridged manner, nonetheless writing-off the economic relevance of globalization demands deeper prescience.

II. GEOPOLITICAL CLIMACTERICITY OF GLOBALIZATION

Globalization has deepened jurisdictional association and facilitated exchange of a plethora of material and non-material possessions, yet as the global recession of 2008 demonstrated this *immense spider web*³ is unevenly spread. The impact of the Global Financial Crisis provided impetus to the growth of deglobalization and protectionism.⁴

In a globalized world, recession proved to be an inflection point as -

1. No sooner had India embraced a liberal economic order than the geopolitical ruffle forced recalibration of the domestic demand and consumption policy. The Indian economy was impacted in three significant ways – impacts on financial market, on trade

¹ See *Trends in Global Export Value of Trade in Goods from 1950 to 2022*, STATISTA, <https://www.statista.com/statistics/264682/worldwide-export-volume-in-the-trade-since-1950/> (last visited June 20, 2024).

² T V Paul, *The Specter of Deglobalization*, 122(840) CURRENT HISTORY 3 (2023).

³ *Globalization*, NATIONAL GEOGRAPHIC, <https://education.nationalgeographic.org/resource/globalization> (last visited June 20, 2024).

⁴ Paul, *supra* note 2.

flow, and on exchange rate system. The trade in both merchandise goods and services was negatively affected and saw a steep downturn.⁵

2. While the US and other capitalist economies situated in Europe were heavily impacted by recession, a ray of hope was seen in the economic grouping of BRICS. The strong trade links between BRICS nations and developing countries; and the former grouping's economic stability in the post-recession phase had contributed to the overall positive performance of the global economy. Notwithstanding the economic prosperity of the BRICS, the predominant concern has been the expanding Chinese footprint, both within and outside this grouping.⁶

Geopolitically, this phase signaled the erosion of USA's hegemonic influence, concomitantly paving way for an Asian Century with an expanding influence of China. American pride in the idea of capitalism was challenged by the mass relocation of manufacturing bases of companies to Asian countries which propelled economic growth of the latter. That being the case, in today's multipolar world, functional co-existence among multiple small powers would meaningfully satisfy the dream of an Asian century.⁷

III. CONFLUX OF GEO-ECONOMICS AND GEOPOLITICS

The gradual decline of American influence has led to the emergence of a non-Westphalian order, portends a decisive shift of economic heft towards Asia. For Asia, globalization has been the key reason for its rapid economic advancement yet the 'openness' of the Asian economies has also made them vulnerable to economic turbulence occurring within the geographical frontiers of Western nations.⁸

Closer home, the confluence of geopolitics and geo-economics was validated by the national policy on Liberalization, Privatization and Globalization (LPG).⁹ Before 1991, India was relatively isolated from global economic trends yet due to systemic weaknesses, it

⁵ Rajiv Kumar & Pankaj Vashisht, *The Global Economic Crisis: Impact on India and Policy Responses* (ADBI Working Paper Series No. 164, 2009).

⁶ Manmohan Agarwal et al., *BRICS: The 2008 Financial Crisis and Economic Performance*, 3(2) BRICS JOURNAL OF ECONOMICS 21 (2022).

⁷ Happymon Jacob, *India's Dilemmas in an Asian Century*, THE HINDU (Jan. 02, 2023), <https://www.thehindu.com/opinion/lead/indias-dilemmas-in-an-asian-century/article66327383.ece>.

⁸ Ben S. Bernanke, *Asia and the Global Financial Crisis*, THE FEDERAL RESERVE OF THE UNITED STATES (Dec. 24, 2022), <https://www.federalreserve.gov/newsevents/speech/bernanke20091019a.htm>.

⁹ The great variety of the world offered the opportunity for co-operation and learning and a way to measure ourselves against. (GOVERNMENT OF INDIA, ECONOMIC SURVEY, 1992).

experienced frequent economic fluctuations. With the adoption of the above-mentioned policy, the Indian economy underwent massive changes.¹⁰ This structural amendment exposed India to a new economic thought called *neo-liberalism*, whose attributes were competitiveness and openness.¹¹

Post-1991, the Indian economy developed deeper relations with the outside world, and this multi-faceted exposure of the Indian economy to the international economy helped increase the value of Indian GDP from 1.1% in 1990-91 to 7.5% in 2015-16.¹² Increased participation in the global economy made India privy to multiple economic benefits like trade expansion, higher value of market share, and diversification of export basket.¹³ As a result, the developmental challenges faced by India including unemployment, non-inclusive and unsustainable growth, weak governance regime, infrastructural limitations, apathy towards social sector found some resolution.

But over the last two decades, globalization has faced stiff resistance from a new geo-economic order.¹⁴ Despite its various advantages, the most glaring drawback of globalization has been the pervasiveness of global inequalities which seem to be about as great today as they were at the peak of western imperialism back in the early 20th century.¹⁵ Thus, the seed for an Atmanirbhar Bharat has found fertile ground in a world dotted by a host of unfavorable circumstances like a crippling free trade regime and rising protectionism, global supply chain disruptions due to COVID-19 pandemic and most recently the volatility in the international markets due to the Russia-Ukraine war. Due to these developments, it seems that the neo-liberal consensus of inter-dependence and non-discrimination under international economic law is in peril.¹⁶

¹⁰ Priya Chacko, *The New Geo-Economics of a "Rising" India: State Transformation and the Recasting of Foreign Policy*, 45 (2) JOURNAL OF CONTEMPORARY ASIA 326 (2015).

¹¹ In the post-Cold War era, neo-liberalism denoted non-discrimination in international economic relations and peaceful settlement of disputes through neutral international courts. Economic and security interests remained independent of each other.

¹² Sanket Ravan, *Impact of LPG on Indian Economy*, 1 (4) PRIME INTERNATIONAL RESEARCH JOURNAL 21 (2014).

¹³ *Chapter 1: Challenges and Opportunities of India's Enhanced Participation in the Global Economy*, OECD ECONOMIC SURVEYS: INDIA 2019, <https://www.oecd-ilibrary.org/sites/04b94da4-en/index.html?itemId=/content/component/04b94da4-en> (last visited June 20, 2024).

¹⁴ Prabhash Ranjan, *In U.S. Actions, the Worry of Global Trade Lawlessness*, THE HINDU (Dec. 23, 2022), <https://www.thehindu.com/opinion/op-ed/in-us-actions-the-worry-of-global-trade-lawlessness/article66293604.ece>.

¹⁵ LUCAS CHANCEL ET AL., WORLD INEQUALITY REPORT (2022).

¹⁶ Prabhash Ranjan, *The Crisis in International Law*, THE HINDU (Jan. 07, 2023), <https://www.thehindu.com/opinion/lead/the-crisis-in-international-law/article66346154.ece>.

Dubbed as a *confidence measure* to unleash our capabilities and to do what we can do,¹⁷ the promise of an Atmanirbhar Bharat stands tall on the following five grounds –

1. A quantitatively measurable and a target-based approach has replaced the erstwhile gradualist approach towards economic transformation.
2. While aiming at employment generation, infrastructural development is envisioned to be the basis of a modern India.
3. Leveraging technology to improve quality of governance.
4. Channelizing the energy, talents and capabilities of a vibrant demography.
5. Fully capitalizing on the twin aspects of demand and supply by strengthening all stakeholders in the supply chain.¹⁸

Accordingly, the growing domestic narrative in support of self-reliance is based on the cumulative effect of various geopolitical events.

IV. PURSUIT OF SELF-RELIANCE: ADOPTING A *MEANS* TO AN END

Being a mixed economy, India did not wholly adopt the Western liberal-capitalist order and chose to exercise effective capital controls. This regulatory autonomy affords decisional flexibility in balancing national and strategic priorities. As such, *the autonomy enjoyed by India buttresses the relationship between its geo-economic and geopolitical decisions.*

1. As the present focus of self-reliance is to build a modern India, it is willing to play a meaningful role in the global economy by effectively *merging domestic demand and consumption policy with the global supply chains*. Consequently, to ensure a self-sustaining and a self-generating growth for India, it becomes essential to locate the significance of *efficiency, equity and resilience* in the realm of self-reliance.
2. The current idea of self-reliance rests on strengthening domestic manufacturing and investment while *straddling the principles of multi-alignment and strategic autonomy*. *Prabhash Ranjan* opines that the hitherto independent tracks of economy and security

¹⁷ Dr S Jaishankar, Minister of External Affairs, Government of India.

¹⁸ *PM Modi Calls for Self-reliant India, Lays Down 5 pillars*, THE TIMES OF INDIA (May 12, 2020), <https://timesofindia.indiatimes.com/india/pm-modi-lists-5-pillars-of-self-reliant-india/articleshow/75700425.cms>.

have begun to emerge, heralding a new geo-economic world order.¹⁹ Since the early days of independence, India has followed the principle of strategic autonomy, and this foreign policy imperative assumes greater significance in the present-day world order that is marked by constant geopolitical unpredictability. Thus, the fulfilment of India's economic pursuits cannot be expected to happen in isolation rather they can be achieved through an active engagement with other global powers. India's membership of various international groupings including BRICS and QUAD testifies this assertion.

3. In the fields of health and economy, the challenges emanating from the pandemic have nudged India to tweak the model of multi-alignment to *pointed alignment* so as to identify specific countries which hold the potential to play a critical role in serving India's economic and strategic interests. On the basis of the opportunity afforded by the pandemic, India is actively seeking to build an alternative supply chain network with like-minded nations.²⁰
4. India's pursuit of self-reliance is consistent with a *rules-based global order* where economic relations between countries are based on co-operation and collaboration rather than coercion and intimidation. The COVID-19 pandemic diplomacy illustrates how values of peace, co-operation and mutual trust take precedence for India.

The COVID-19 pandemic has made it amply evident that compartmentalizing the domains of geopolitics and geo-economics is no longer reasonable. Proposing that "*self-reliancism*" can possibly shape our shared future,²¹ I argue that contextualizing self-reliance amid the sinuous relationship between geopolitics and geo-economics calls for a convergence of their respective objectives.

V. ATMANIRBHAR BHARAT: THE INDIAN MODEL OF SELF-RELIANCE

The propinquity between countries has certainly led to economic prosperity but its management has been severely hamstrung. The deep and multi-faceted inter-linkages between countries produce two important implications, one on the national policy and second on a

¹⁹ Professor and Vice-Dean, O P Jindal Global University, Haryana, India.

²⁰ Jagannath Panda, *Modi's Self-reliant India has Key Foreign Policy Aspects*, ASIA TIMES (Oct. 18, 2022), <https://asiatimes.com/2020/07/modis-self-reliant-india-has-key-foreign-policy-aspects/>.

²¹ E K Ogundowole, *Self-reliancism: An Ideology in the Making*, 20 WORLD FUTURES 135 (1985) (E K Ogundowole opines that self-reliancism will emerge as an ascendant ideology to both capitalism and socialism and affect our shared future, both of advanced and new states).

nation's ability to maneuver its economy. The expanded nature of interaction adds to the existing internal disturbances, as now, the national decision makers are required to cope with both internal and external disturbances. To this extent, national management is weakened due to inter-dependence.²²

More often than not, the economic progress of China is cited as an outstanding example for other countries to emulate. Even when China developed the Belt and Road Initiative, it had acknowledged the importance of self-reliance by adopting the model of *consumption led-growth*. It was widely believed that an export-driven growth policy had a higher probability of failing as such a policy would be easily influenced by a volatile and an uncertain external sector. Similarly, in the Indian context, self-reliance implies a robust domestic economic system based on investment, consumption demand, foreign investment as well as a congenial business environment.²³

While the World Trade Organization has played a key role in maintaining and coordinating policy responses yet the pre-existing organizational turmoil has led to the issue of trust deficit remaining alive between countries and the WTO.²⁴ Even though doubts over the efficacy and efficiency of WTO persist, India continues to be its active member and has even voiced support in favor of an international rules-based order but the global changes have nudged India to re-examine its key economic factors based on a *sovereign decision making process*. By introducing overarching systemic changes, Atmanirbhar Bharat Abhiyan stands out as a shining example specifically designed to strengthen the forward and backward linkages of the Indian economy.

The key to making a country self-reliant is to provide an impetus to domestic manufacturing which implies that the degree of *imports is gradually reduced* in order to create an equally effective demand for indigenously manufactured goods. Policy support for local manufacturing leading to effective integration of the locally manufactured goods with the global supply chains is a measure that lies at the core of self-reliance. The Production-Linked Incentive Scheme of the Central Government is a case in point. Based on an outlay of

²² JOAN EDELMAN SPERO, *THE POLITICS OF INTERNATIONAL ECONOMIC RELATIONS* 13 (1977).

²³ Nilanjan Ghosh, *The Dynamics of Self-reliant India*, OBSERVER RESEARCH FOUNDATION (Dec. 18, 2022), <https://www.orfonline.org/research/the-dynamics-of-self-reliant-india-69132/>.

²⁴ Urvi Tembey, *WTO and Its Role in Reducing the Economic Shock of the Pandemic*, OBSERVER RESEARCH FOUNDATION (Dec. 26, 2022), <https://www.orfonline.org/expert-speak/wto-its-role-reducing-economic-shock-pandemic/>.

approximately Rs. 2 lakh crores, the essence of the scheme lies in incentivizing higher domestic production in order to reduce import dependency in key sectors. Besides, the viability and success of Industry Revolution 4.0 is based on superior electronic equipment supported by pioneering technologies. The PLI scheme would reduce India's dependency on China for semiconductor batteries and solar powered batteries. In the automobile sector, such policy holds promise for transforming India into a globally competitive country which is self-reliant and ready for a greener future.²⁵ The PLI scheme is expected to boost the indigenous solar equipment manufacturing of India from 10 GW to 90 GW by 2030.²⁶ From a national security perspective, adopting self-reliance in building technological capabilities is equally relevant. From increasing basic custom duties to 20%, non-tariff measures such as Public Procurement (Preference to Make in India) Order, 2017, mandating governments or public sector enterprises to primarily prefer Indian manufactured products to the Telecom Regulatory Authority of India's objective of net zero import of telecom equipment by 2022, are measures that aim at fostering credible manufacturing abilities alongside decoupling from other countries.²⁷

While strengthening domestic manufacturing capabilities, the objective of self-reliance aims to tailor the economic policies in a manner that best suit India's interests. Naturally, *India has not shunned efforts to forge balanced and fair-trade agreements* with other trading partners including the EU and the US.²⁸ Additionally, the fruitful experience of India with FTAs has been the reason behind the renewed and expansive negotiations with various countries.²⁹ Despite withdrawing from the Regional Comprehensive Economic Partnership, India has chosen to build on its existing FTA experience by re-working on the Bilateral Trade and Investment Agreement with the EU, negotiating trade deals with Australia, South Africa,

²⁵ PTI, *PLI Scheme to Help Auto Industry Become Self-reliant, Globally Competitive: Toyota Kirloskar Motor*, THE ECONOMIC TIMES (Dec. 26, 2022), <https://economictimes.indiatimes.com/industry/auto/auto-news/pli-scheme-to-help-auto-industry-become-self-reliant-globally-competitive-toyota-kirloskar-motor/articleshow/89138824.cms>.

²⁶ P B Jayakumar, *PLI-II Booster to Power India's Solar Equipment Self-reliance*, FORTUNE INDIA (Dec. 26, 2022), <https://www.fortuneindia.com/macro/pli-ii-booster-to-power-indias-solar-equipment-self-reliance/110855>.

²⁷ *Dialling Self-reliance via PLI Scheme*, BUSINESS LINE (Dec. 26, 2022), <https://www.thehindubusinessline.com/opinion/dialling-self-reliance-via-pli-scheme/article34273860.ece>.

²⁸ Banikinkar Pattanayak, *India to Step Up Free Trade Agreement Talks Despite Self-reliance Mantra*, FINANCIAL EXPRESS (Dec. 26, 2022), <https://www.financialexpress.com/economy/india-to-step-up-free-trade-agreement-talks-despite-self-reliance-mantra/1991557/>.

²⁹ The Economic Survey (2019-20) showed that between 1993 and 2018, India's exports of manufactured products grew at an annual average of 13.4% to partners with which it had trade agreements.

Mexico and the UK, as also working on a trade pact with the European Free Trade Association members including Switzerland, Norway, Iceland and Liechtenstein, and modifying existing FTAs with ASEAN, Japan, Malaysia and South Korea.³⁰ Moreover, signing of FTAs broadens the base of economic ties between trading countries and opens opportunities for further international co-operation. Although the relationship between FTAs and FDI is complex and debatable,³¹ nonetheless the pursuit of self-reliance for India is about balancing the objectives of pointed alignment along with those of FTAs in order to *channelize FDI into the country*. Enhanced employment, economic growth, exchange rate stability, human resource development, increased competitiveness in trade are a few advantages of FDI which hold the potential for augmenting the government's efforts in achieving self-reliance.³² Furthermore, the much-lauded key initiatives like Make in India, Digital India, Start-Up India have helped create a fertile ground for foreign investment in India.

A robust *reserve of foreign exchange* alludes to a higher degree of economic stability and certainty in decision-making, capable of attracting foreign trade.³³ As international trade gives rise to unanticipated currency flows, domestic foreign exchange reserves help in hedging the associated speculative risks. Moreover, during unforeseen circumstances such as the COVID-19 pandemic, such reserves help in combating unpredictable flows in trade as well as in stabilizing the exchange rate. Thus, it becomes clear that protection of national interests and preservation of confidence in the country's ability to carry out external transactions are the twin objectives which are fulfilled through maintenance of such reserves. Among the many policy objectives of maintaining foreign exchange reserves, such liquidity limits a country's external vulnerability by absorbing shocks during times of crisis including national disasters or emergencies. Besides, as per the reserve management policy of the Reserve Bank of India -

1. *External* economic factors influence the reserve management policy.

³⁰ Pattanayak, *supra* note 28.

³¹ Robert Reed et al., *Free Trade Agreements and Foreign Direct Investment: The Role of Endogeneity and Dynamics*, 83(1) SOUTHERN ECONOMIC JOURNAL 176 (2016).

³² Sanchi Padia, *Advantages of Foreign Direct Investment*, INVEST INDIA (Dec. 28, 2022), <https://www.investindia.gov.in/team-india-blogs/advantages-foreign-direct-investment>.

³³ Bhaswar Kumar, *What are Forex Reserves and Why are They Important?*, BUSINESS STANDARD (Dec. 28, 2022), https://www.business-standard.com/podcast/economy-policy/what-are-forex-reserves-and-why-are-they-important-122070800060_1.html.

2. Reserve management policy cannot be isolated from domestic macroeconomic stability and economic growth.
3. The statutory compliance ‘*to use the currency system to the country’s advantage*’ provides policymakers the flexibility to decide *what the country needs and how best to meet its requirements*.³⁴

During the COVID-19 pandemic, such reserves helped India in charting the path for post-pandemic recovery, cushioning the Indian economy from global economic instability, especially due to rate hikes of US Fed Reserve resulting in capital flight from India, in pursuing Neighborhood First policy by initiating Maitri diplomacy and in retaining autonomy in policy making during and after the pandemic. As per a report by the IMF, India successfully maintained sufficient buffer stock which aided the government’s decision on provision of free food under Pradhan Mantri Garib Kalyan Anna Yojana that helped keep extreme poverty under one percent.³⁵ These illustrations show that a comfortable foreign exchange buffer reasonably enhances the decision-making ability of a nation, in the financial, monetary, capital and social realms, thereby making it *ideologically self-reliant*.

VI. MULTILATERALISM AS THE *MEANS* TO SELF-RELIANCE

Multilateralism demonstrates how international relations in the political realm involve the interaction of different groups in diverging, converging or competing goal-seeking pursuits. In the international system, conflict and co-operation are the two sides of the same coin, as even during times of conflict, there is an element of co-operation, no matter how slight or how seldomly exercised. Three recent developments, namely, US-China trade tensions, pandemic induced supply chain disruption and the politico-economic confusion originating from the Ukraine-Russia war, exemplify how even in conflict-ridden situations the *element of co-operation is sustained* among countries.

In the Indian context, the *deliberative* decision of the state to build an association between economic policy and national strategic and diplomatic policy is discernible as -

³⁴ Y V Reddy, *India’s Foreign Exchange Reserves: Policy, Status and Issues* (Special Lecture by Dr. YV Reddy, Deputy Governor, Reserve Bank of India, at the National Council of Applied Economic Research, New Delhi on May 10, 2022), <https://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/29869.pdf>.

³⁵ Surjit Bhalla et al., *Pandemic, Poverty and Inequality: Evidence from India* (International Monetary Fund, Working Paper No. 2022/069, 2022).

1. *Instinctively*, Indian thought has been comfortable with a multistate system. The ideal *Kautilyan* universe was characterised by multiple political units, albeit differing in their power, internal arrangements and potential.³⁶ Today this thought is visible from the nature of trade carried out by India under the WTO regime, complying with the mandate laid down under the General Agreement on Trade and Tariffs.
2. The economic estimation of India presents a paradox, as on the one hand it is seen as a ‘developing country’ yet on the other hand, it is recognized as a *consequential power* on the basis of the size of its economy.³⁷ Even though vexatious, such nomenclatures carry a *normative* meaning in multilateral forums like the BRICS and the QUAD.
3. The evident *peculiarity in India’s economic structure* is that the sectoral economic growth has been skewed. Favourable growth in the services sector accompanied by limited growth in agriculture and a large deficit in manufacturing has been unique to India, effectively producing geo-economic implications for India. India has trade deficit with one of its key neighbours, i.e., China, impacting bilateral relations between them as well as the autonomy of India in multilateral institutions like the SCO or BRICS.³⁸

In an economically multipolar world, multilateralism faces a crisis of unprecedented proportions. From deadlocks in trade negotiations and the persistent dispute regarding leadership of multilateral organizations, to the rise of Weaponised Inter-dependence, and the issue of TRIPS waiver during the pandemic are developments that show that multilateralism is struggling to flourish. In a deeply interconnected world, it is certain that the collapse of the multilateral system would negatively impact all countries; still India must not forget that the *crisis of multilateralism could offer it new opportunities*,³⁹ thus making it a blessing in disguise!

The present-day world is bound in a peculiar converging-diverging relationship dominated by various forces including globalization, deglobalization, self-reliance and multilateralism. Thus far, India has effectively amalgamated such forces while retaining its

³⁶ SHIVSHANKAR MENON, *INDIA AND ASIAN GEOPOLITICS* 341 (2021).

³⁷ As per the World Bank, in 2017, India accounted for 6.7% or \$8,051 billion, out of the world's total of \$119,547 billion of global Gross Domestic Product (GDP) in terms of PPP compared to 16.4 % in case of China and 16.3 % for the US.

³⁸ Suman Bery, *Will Modi’s Push for Economic Self-reliance Succeed?*, BRUEGEL (Dec. 28, 2022), <https://www.bruegel.org/comment/will-modis-push-economic-self-reliance-succeed>.

³⁹ Amrita Narlikar, *Harnessing New Opportunities in a World of Declining Multilateralism: What India Can Do for Itself and Others*, OBSERVER RESEARCH FOUNDATION (Dec. 28, 2022), <https://www.orfonline.org/expert-speak/harnessing-new-opportunities-in-a-world-of-declining-multilateralism/>.

strategic autonomy. This is manifested by India's participation in various multilateral trade groupings, with diverse ideational moorings, out of which, of immediate concern are the BRICS and the QUAD.

Anchored in a Western politico-economic worldview, the QUAD focuses on trade derived from stable and reliable global supply chains. Secure inter-trade relations are seen as an opportunity to counter expanding Chinese economic influence and *self-reliance is reluctantly accepted as a complementary necessity*. On the other hand, the BRICS economies view self-reliance as a means to develop and strengthen their domestic economies, thereby positively contributing to *regional economic prosperity*.

By focusing on the improvement of domestic economy, India aims to counter the increasing economic footprint of China in the *immediate neighborhood*. A stable and interconnected neighborhood is critical not only for India's geopolitical and geo-economic pursuits but it is equally essential to safeguard the continued relevance of the QUAD in the Indo-Pacific region. Moreover, trade and development are such facets of an economy that cannot be segregated but nurtured with goodwill, mutual respect and faith. Provision of loans to African nations during the pandemic, the extension of Line of Credit to Sri Lanka or the financial and medical aid provided to Afghanistan are meaningful gestures where India has demonstrated faith in its economic capabilities. These steps are in line with the Indian philosophy of *Vasudev Kutumbakam* as opposed to the *Debt Trap Diplomacy* followed by China.

Additionally, the salience of Indo-Pacific can be seen in India's SAGAR doctrine (Security and Growth for All in the Region). It is a maritime security framework whose principal focus is *regional security*, but it encompasses economic revival including trade and investment, boosting regional connectivity, leveraging cultural ties, and harnessing wealth of the seas.⁴⁰ The Indian Ocean is asserted as India's strategic backyard and this strategy is designed to not only protect its security and economic interests but also as a pre-emptive measure to counter Chinese expansionism. It is crucial to uphold free and open navigation in the waters to minimize the possibility of geopolitical contestation in the Indian Ocean unlike the South China Sea. Secondly, although the clarion call for developing a Blue Economy is

⁴⁰ Girish Luthra, *QUAD, India, and the Development-linked Cooperative Security in the Indo-Pacific*, OBSERVER RESEARCH FOUNDATION (Dec. 04, 2022), <https://www.orfonline.org/expert-speak/quad-india-development-linked-cooperative-security-indo-pacific/>.

aimed at extracting economic benefits for its large coastal population, yet the renewed maritime focus aims at re-energizing India's relationship with the littoral states, which is not only significant for the QUAD but essential to skirt geopolitical divergences in the BRICS as well.

The alteration in global power equations has been exacerbated by the Ukraine-Russia war. The 'weaponization' of globalization and trade and imposition of sanctions against Russia has led to a search for alternative trading systems and payment mechanisms in Asia, posing challenges for the conventionally dominant dollar-based system.⁴¹ Here, a discussion on the changing *global financial system* is in order.

1. To reiterate, the US-China relationship has produced global repercussions. For India, this has deepened its interaction with the West, led to closer relations with America, reinforcing the prominence of QUAD. At the same time, India has been walking a tightrope between the US and Russia. When India signed the four foundational agreements with the US, critics observed that India had effectively become the US's 'ally', but there was little truth in such an argument as the India-Russia relationship has evolved and matured. The Ukraine-Russia war has proven the deepening of this bilateral relationship.
2. India's role in the present-day world order is unique in as much as India has a key role to play in both the QUAD (with reference to USA) and BRICS (with reference to China and Russia). Within the QUAD nations, India has broadened trade and investment relations with Japan (development in North-East India), Australia and the USA (defence and maritime co-operation). Meanwhile, in BRICS, despite the visible power differential, India has handled conflicting situations amicably. Beyond the specific nature of bilateral co-operation that India has with the USA, Russia or China, India is actively co-operating with QUAD and BRICS in the domain of non-traditional security issues like terrorism, cyber security, climate change, trade and energy. *Establishing secure trade relations and supporting freedom of navigation in oceans is the primary concern of QUAD while asserting its essentiality to the Global South and Central Asia remains one of the key objectives of India's presence in groupings like BRICS or SCO.*

⁴¹ Jacob, *supra* note 7.

As per *Sreeram Chaulia*, pursuit of self-reliance by India is not a new phenomenon, however due to a profound change in the externalities faced by India, the contours of the same have changed. In a multi-polar world, *diversification of trade partners is of essence*. As the new model of self-reliance does not imply a closed economy, it is therefore important that while retaining individual autonomy, India maintains a wide basket of strategic partners. Resultantly, the potential of a multi-vector foreign policy can only be maximized by reconfiguring power with other like-minded partners and not in isolation or in alliance with only one power.

Therefore, *the policy of self-reliance has a parallel dimension in the field of foreign policy*. As pursuit of self-reliance implies strengthening domestic manufacturing capabilities, there is a concomitant decline in imports, which in turn implies that the principle of strategic autonomy followed by India needs to be recalibrated as well.⁴²

Against this backdrop of growing economic nationalism, the following section analyses the convoluted relationship between geopolitics and geo-economics.

VII. EPILOGUE ON GEOPOLITICS, GLOBALIZATION AND SELF-RELIANCE

Miriam Camps noted that the market economy model supported by advanced nations was reaching a point where there is a *choice to be made*, either to move towards collective management of problems or to control the growing interdependence, thereby, including more problems within the span of national control.⁴³

Throughout modern history, the processes of production, distribution and consumption have been equally shaped by diplomatic and strategic factors. *State power and national economic power were so embedded in each other that almost all international economic transactions were regulated for the purpose of state power.*⁴⁴ I argue that if the existing gap between theory and reality is to be bridged, it becomes necessary to squarely locate the interface between economics and politics in the international system.

An analysis of the impact of economic openness upon the state's capacity to govern the national economy becomes necessary as there are widespread changes occurring both inside

⁴²Sreeram Chaulia, *A Self-reliant Foreign Policy*, THE HINDU (Aug. 13, 2020), <https://www.thehindu.com/opinion/op-ed/a-self-reliant-foreign-policy/article32339890.ece>.

⁴³ MIRIAM CAMPS, THE MANAGEMENT OF INTERDEPENDENCE: A PRELIMINARY VIEW - COUNCIL PAPERS ON INTERNATIONAL AFFAIRS 43 (1974).

⁴⁴ SPERO, *supra* note 22, at 05.

and outside the nation-state ranging from welfare reforms, financial liberalization to proliferation of international agreements.

The opponents of globalization argue that the *process is highly uneven* as it breeds wealth concentration, marginalization and polarization.⁴⁵ The unevenness can be seen in the biased nature of the world trading system which has favored the exporters of manufactured goods while the exporters of raw materials, the developing countries have been cold-shouldered. As the imports of finished products from the advanced Northern countries have increased, many Southern countries have gradually lost their 'self-reliance', making the latter economically dependent on the former. Seen this way, openness seems to act as a *constraining force* on what governments can do across a range of policy areas. Thus, the range of critique on globalization extends from the idea of disruption to national wealth creation (moderate globalism) to the view that it leads to an end of the nation-state (hyper-globalism), thereby reducing the domestic political economy and the citizenry to a secondary position.⁴⁶

A relook at the model of globalization has been necessitated due to the systemic unsustainability and fragility of this model, of which poverty, inequality and stagnation are resultant constituents. The issues emerging from globalization along with the contemporary challenges demand a collective effort to setup an *alternative and pluralist system of global economic governance*, bereft of concentration of decision-making powers and politico-military hegemonic aspirations. The immediate need is to focus on de-concentration and de-centralization of institutional power and build a web of pluralistic institutions, whose interaction will be based upon a network of broad and flexible agreements.⁴⁷ But the creation of such alternative institutions does not imply abandonment of globalization. Rather the reorientation of economies should be carried out in such a manner so that the economic potential offered by the 'enabling face' of globalization helps generate incentives for governments to take initiatives that are aimed at strengthening the national system of innovation and social protection.⁴⁸

Also, a fresh round of commodity agreements and creating equitable terms of trade between the Northern and Southern countries can help in efficient resource utilization by expanding the available financial resources for the South in order to transition to sustainable

⁴⁵ MARTIN KHOR, RETHINKING GLOBALIZATION 16 (2001).

⁴⁶ LINDA WEISS, STATES IN THE GLOBAL ECONOMY 02-03 (2003).

⁴⁷ WALDEN BELLO, DEGLOBALIZATION: IDEAS FOR A NEW WORLD ECONOMY 112-117 (2002).

⁴⁸ WEISS, *supra* note 46, at 15 (2003).

development. Developing countries must, therefore, be afforded the ability, freedom and flexibility to make strategic choices as well as to decide upon the rate and scope of liberalization and combine it with the defence of local entities. *Democratization of international relations and institutions* is necessary in order to work on common issues and enhance North-South as well as South-South co-operation, thereby improving the quality of decision-making.

Hence even though globalization may have been the most debated economic measure but the dictum of free enterprise even with all its baleful effects has emerged as *best of all the bad choices* in the social priorities without compromising on the effectiveness of either.⁴⁹

Besides, a *great strengthening of the UN* is required to help it play a compensatory role more significantly, effectively and efficiently. The UN must be able to make the leap from playing the limited role of offsetting the negative fallouts of globalization to identifying and fighting against the basic causes of poverty, social and economic inequity and sustainable development. Thus, the UN must be able to spearhead an equitable world order to fully realize human and development rights.⁵⁰

While self-reliance demonstrates faith in individual capability and portends economic sustainability, in the coming years, the ability of nations to manage liberalization and globalization will form a crucial aspect of national policymaking. Hence, a *selective approach* will be essential to not only prevent loss of policy autonomy, avoid risk of instability and disruption due to financial openness and but also to control the extent and degree of marginalization.⁵¹

In the words of *Karl Polanyi*, such approach is about prioritizing the values of security, equity and social solidarity, thereby, *re-embedding the economy in society*, rather than having a society driven by the economy.⁵² By subordinating the logic of the market to a broader value system, conditions for development of integrity, solidarity, democracy and sustainability may be established.

The most pressing need is that our *autonomy needs to be strengthened* by working with all major powers as well as by co-operating harmoniously with our neighbors. For India to be seen as an agent of positive change, it must make economic integration of its immediate

⁴⁹ T N SINDHWANI, INDIA'S ROLE IN GLOBALISATION 136 (1992).

⁵⁰ Khor, *supra* note 45, at 122.

⁵¹ *Id.* at 117-122.

⁵² KARL POLANYI, THE GREAT TRANSFORMATION (1957).

neighborhood an overriding goal of policy, by focusing on security of the neighborhood, by building connectivity and by tempering its proconsular instincts.⁵³ Indubitably, continued participation of *issue-based coalitions* underlined by risk taking and hedging will decisively help in building a self-reliant India.⁵⁴

By *abandoning the subjectivities of the past*, there is an urgent need to relook at the world in a fresh manner. The starting point for such a relook is to adopt an analytical perception of international reality in which India actively engages with the world by upholding strategic autonomy. India has no choice but to engage with both its East (BRICS) and West (QUAD).⁵⁵ For India, this implies that it must reconsider its national and international priorities, critically review its alliances, identify common areas of interest and address the most-pressing challenges. *In the present global scenario, it must be consciously remembered that political bonds without economic links carry little value.*⁵⁶

The founders of Indian nationalism and foreign policy harbored a strong belief that a *global presence was inevitable for a giant like India* and they envisioned a world role for India built not just on material power but on an indigenous value system of peace, democracy, self-determination and non-alignment. For this reason, it is only through a sustained effort at upholding and maintaining outward openness that India can achieve its globalist aims.⁵⁷

To encapsulate, there exists a golden opportunity for a young, plural and vibrant democracy like India, to develop and implement an idea of self-reliance that is rooted in the spirit of *internationalism*, encompassing an intellectually independent and an economically robust Asian power, covering a broad gamut of self-determining ideas and thoughts.

⁵³ SHIVSHANKAR MENON, *INDIA AND ASIAN GEOPOLITICS* 346 (2021).

⁵⁴ DR S JAISHANKAR, *THE INDIA WAY: STRATEGIES FOR AN UNCERTAIN WORLD* 80 – 83 (2d edn., HarperCollins 2022).

⁵⁵ SHIVSHANKAR MENON, *INDIA AND ASIAN GEOPOLITICS* 363 (2021).

⁵⁶ SINDHWANI, *supra* note 49, at 138 (1992).

⁵⁷ JALAL ALAMGIR, *STATES IN THE GLOBAL ECONOMY* 243-244 (2003).

CHALLENGES TO ATMANIRBHAR BHARAT ABHIYAN IN THE DEFENCE SECTOR

- (Dr.) Preetha S* & Kamalakshy Kylasanath**

Abstract

As India enters the 75th year of independence the limelight is upon her, now more than ever, for being one of the largest democracies in the world. According to the Prime Minister of India Shri. Narendra Modi, the next 25 years are crucial for India's growth and attaining a greater position among other global leaders. The beginning of the year 2020 saw the entire world frantically trying to combat coronavirus. The pandemic lasted in full strength for two years causing market fluctuations and economic imbalance. The year 2020 saw one of the most shocking news of the 21st century when Russia declared war on Ukraine. This was a serious call to the various peace keeping organisations. India is trying to make indigenisation of products in various sectors to make us less dependent on other nations for machinery, technology and knowledge. Government of India initiated the Make-in-India programme in 2014 to make and encourage companies to develop, manufacture and assemble products made in India and incentivize dedicated investments into manufacturing.

For securing our democracy, India should be able to fend off its enemies and to keep them at bay with fear of repercussions. Ours is the 3rd largest military in the world, yet we do not have a proper manufacturing unit for weapons and warcrafts. Stockholm International Peace Research Institute (SIPRI) data shows that India spent \$331.8 billion on military imports during 2016-20, accounting for 2.6 per cent of gross domestic product (GDP). Atma Nirbhar Bharat Abhiyan (ABA) intends to remedy this and bring down our dependence on foreign sourced goods. Defence modernisation through indigenisation is the aspiration for our government for the coming years. The commissioning of INS Vikrant is a landmark achievement in the modernisation of Indian military with indigenous armaments. The Defence Public Sector Undertakings (DPSU's) are expected to play a major role in increasing defence production and defence exports. DPSU's need to follow principles of corporate governance to enhance their efficiency, credibility and accountability. Private participation in defence sector is laudable as it will help us in tapping scarce resources, but we also need to tighten the regulatory regime given the nature of defence sector and the trust and accountability required in the operations.

Whether the DPSU's and DRDO has delivered as expected is to be explored. The paper will trace the governance issues faced by DPSU's. The paper will examine the regulatory controls required in the light of private sector participation in defence sector. The paper will identify the challenges in gaining self-sufficiency in the production of defence infrastructure. The paper will examine the realities of initiatives like make-in-India and

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ABA. The article will also analyse the new defence offset policy and the significant changes brought under the Defence Acquisition Procedure, 2020. The policy changes brought in for promoting arms export will also be reviewed. The article would come up with valuable suggestions for developing a robust defence industrial base in India.

Keywords: Indigenisation, defence procurement policy, private sector participation in defence capacity building, Defence Public Sector Undertakings

I. INTRODUCTION

India shares its border with seven neighbouring countries. Of these, there is constant tension along China and Pakistan's borders. Hence it is imperative to equip the defence forces with the latest defence equipment and technologies to address the security challenges faced by India. When India gained its independence, the country's defence industry was made up of small-scale enterprises and mills that catered to the needs of the British Indian Army in and around military fortifications.¹ Significant weapon systems' production capacities could not be established as our nation lacked indigenous capacities and homegrown manufacturing in India turned out to be more expensive. Even though it was felt that more capacity was needed after independence, it was obvious that privatisation was not the answer because it required resources that the private players lacked at the time and because the country's goal was to create a socialist system in which the government was in charge of the priority sectors. With the introduction of the Industrial Policy in 1956, the government assumed control of the development of India's defence manufacturing base. Then came the liberalisation and opening of the Indian economy in 1990s and slowly the defence sector started opening itself to private industry.

As India enters the 75th year of independence the limelight is upon her, now more than ever, for being one of the largest democracies in the world. The government of India initiated the Make-in-India programme in 2014 to make and encourage companies to develop, manufacture and assemble products made in India and incentivize dedicated investments into manufacturing. For securing our democracy, India should be able to fend off its enemies and

¹ Manish Rana, *Defence Procurement in India: A Historical Perspective*, MANOHAR PARRIKAR INSTITUTE FOR DEFENCE STUDIES AND ANALYSIS (Dec. 02, 2021), <https://idsa.in/idsacomments/defence-procurement-in-india-mrana-021221>.

keep them at bay with fear of repercussions. The latest push for the indigenisation of products came with the Aatmanirbhar Bharat Abhiyan (hereinafter ABA) in 2020.

In this paper, the authors *firstly* identifies the various challenges in gaining self-sufficiency in the production of defence infrastructure. In particular challenges facing DPSUs and DRDO is explored. *Secondly*, the authors examine the policy initiatives taken by the government to promote make-in-India and ABA. The new defence offset policy and the significant changes brought about under the Defence Acquisition Procedure, 2020 have been analysed. *Thirdly*, the authors also review the policy changes brought in for promoting arms export. Lastly, the authors provide some suggestions for developing a robust defence industrial base in India.

II. CHALLENGES IN ATTAINING SELF RELIANCE

Self-reliance in defence is not a new concept. When India attained Independence the newly formed government then stressed the importance of being self-reliant in the defence sector. Since the defence industry is also an integral component of the manufacturing sector, there must be a strong correlation between the "Make in India" programme and the capacity of our defence industry in terms of value addition, independence in key technologies, etc. Enhancing the financial and technological capacity of the defence industries and research departments in India posed a major challenge in attaining self-reliance in defence sector. In May 2001, the Government took a decision to open the defence industry for the Indian private sector with an aim of creating a competitive defence technology edge and strengthening the defence industrial base in the country. Government allowed 26 per cent of Foreign Direct Investment (FDI) in 2001 to meet the requirement of capital investment in defence sector. FDI in defence sector which was further increased to 49 per cent in 2014.² In 2020, the government announced an increase in the foreign direct investment (FDI) limit from 49 per cent to 74 per cent under the automatic route and up to 100 per cent through the government route in the defence sector. Under the Automatic Route neither the RBI nor the Indian government's approval is required

² Ministry of Defence, *FDI in Defence Sector*, PRESS INFORMATION BUREAU (Sep. 14, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1654091>.

for private or foreign investment.³ Under the Government Route,⁴ prior clearance from the Foreign Investment Promotion Board (FIPB) of the Government of India is necessary.

Overcoming the difficulties encountered by Defence Research and Development Organisation (DRDO) and Defence Public Sector Undertakings (DPSUs) is a major challenge in realisation of self-reliance in defence industry. Technology transfer is yet another goal to be realised for ensuring self-reliance for which the offset policy plays a significant role. Production of quality defence equipment and generation of demand for the Indian equipment through an efficacious arms export policy is sine qua non for achieving self-reliance.

A. Defence Research and Development Organisation (DRDO)

The Defence Research and Development Organisation (DRDO) is the premier defence research organisation in India. DRDO developed a wide range of complex systems like radar systems, underwater systems, communication systems etc which are inducted into our defence systems. However, even after 75 years of independence, DRDO has not been successful in significantly replacing technologies related to missiles, battle tanks, aircraft, guns etc with indigenous technologies. India's Self-Reliance Index is abysmally low.⁵ This calls for improving research and technological capabilities of DRDO and enhanced collaboration with academia, and industry in designing and developing resilient systems within the country. The organisational climate and work environment are also important for the success of projects.

An empirical study has shown that many DRDO projects exceed the budget and project timelines.⁶ Lack of clarity about user requirements is a major reason for the delay in the completion of projects. The user becomes clear of his requirements only after seeing the prototype.⁷ This demands better interaction between users and scientists to ensure that the product meets the specified standards of performance. Being a development agency, DRDO's work ends with the development of the system and the trial of prototypes. Industrial production needs to be done by production houses at the Defence Public Sector Undertakings (DPSUs). The design and engineering divisions in DPSUs are not well developed resulting in

³ Ministry of Commerce and Industry, Consolidated FDI Policy, 2020, at 7, Definition 2.1.4.

⁴ *Id.* Definition 2.1.24.

⁵ Bikramdeep Singh, *Defence Indigenisation: Made in India, by India, for India*, CENTRE FOR LAND WARFARE STUDIES JOURNAL, Winter 2013, at 248.

⁶ Chitra Abhyankar et al., *Focussing on Defence R&D: An Insight into DRDO*, 2(1) LIBERAL STUDIES 75 (2017).

⁷ *Id.*

quality and production problems.⁸ The absence of fabrication facilities for electronic components continues to be a major cause of prolonged development and production cycles.

B. Defence Public Sector Undertakings (DPSUs)

Defence Public Sector Undertakings (DPSUs) and Ordnance Factories (OFs) were established in stages to take on the responsibility of designing and integrating defence tools and equipment within the purview of the Department of Defence Production (DDP) of the Ministry of Defence. On 16th June 2021, the Government of India decided to corporatize the functions of the 41 production units (Ordnance Factories) of the Ordnance Factory Board (“OFB”), functioning under the Department of Defence Production, Ministry of Defence (“DDP”).⁹ DPSUs aim to be lead integrators, primarily through robust private partnerships, while retaining their core competencies, thus ensuring the availability of a vibrant defence manufacturing system in the country. DPSUs should take the lead in the production process as defence infrastructure production and operation is a matter of national security requiring a lot of capabilities and trust. Irrespective of the policy orientation of the Government, it is imperative for DPSUs to endeavour for continuous modernisation and upgradation of their capabilities and widening their product range. Defence Research and Development Organisation, Hindustan Aeronautics Ltd, Bharat Heavy Electricals Ltd and other DPSUs should play the key role in the indigenisation process and outsource the connected works of capacity building to the private sector. India has limited resources and hence private sector participation can be of great help in achieving the goal of indigenisation in the defence sector.¹⁰

The private sector can act as a development partner concentrating on the development of products based on technology transferred from DPSUs. Proper auditing, quality checks and reviews are required for works carried out by the private sector so as to ensure that they are not driven solely by profit-making motives compromising the quality of products delivered. In a report of the CAG,¹¹ audit was conducted on the defence procurement under the Make in India

⁸ VIVEKANANDA INTERNATIONAL FOUNDATION, *ACHIEVING SELF RELIANCE THROUGH INDIGENOUS R&D BY DRDO/INDUSTRY (VIF Task Force Report – Part II, 2020)*.

⁹ The ordnance factories are now Defence Public Sector Undertakings. They are Munitions India Limited, Armoured Vehicles Nigam Limited, Advanced Weapons and Equipment India Limited, Troop Comforts Limited, Yantra India Limited, India Optel Limited, and Gliders India Limited.

¹⁰ Gautam Navlakha, *Arms and Men: Make in India or Make for India?*, 50(14) ECONOMIC & POLITICAL WEEKLY 12 (2015).

¹¹ COMPTROLLER AND AUDITOR GENERAL OF INDIA, *AUDIT REPORT: DEFENCE SERVICES*, REP. NO. 19 OF 2016, at 95.

scheme. In respect of Army, 180 capital contracts were concluded, out of which 56 contracts were concluded with DPSUs, of which delay occurred in 18 contracts.

In the audit we examined the management of post contracts with DPSUs and observed that there was inordinate delay in execution at various stages by the DPSUs. Defence PSUs failed in their objective of supplying critical weapons and equipment meant for modernisation and capability enhancement of the Army. Of the capital contracts concluded with DPSUs during XI Army Plan (2007-12), inordinate delays were observed in contracts valuing 30,098 crore which constituted 63 per cent of the money value of total contracts concluded by ministry with DPSUs. Major reasons for delay were undue time taken in development, delay in successful evaluation of pilot sample, heavy dependence of DPSU on foreign vendors, ambiguity in contractual terms, etc. The delay had not only impacted the modernisation of Armed Forces, but also had financial implications towards accrued interest on payments lying unutilised by DPSUs. Defence Public Sector Undertakings (DPSUs) is expected to play a major role in increasing defence production and defence exports. DPSUs need to follow principles of corporate governance to enhance their efficiency, credibility and accountability. Private participation in the defence sector is laudable as it will help us in tapping scarce resources, but we also need to tighten the regulatory regime given the nature of the defence sector and the trust and accountability required in the operations.

C. Offsets

The outright buy model for procurement of defence equipment is unsustainable as it makes India dependent on imports for its defence armaments. Buy and make a route through Transfer of Technology (TOT) is another model for procurement meant to ensure technology transfer to the buying country. The offset policy was included in Defence Procurement Procedure for the first time in 2005. DPP, 2005 introduced a 30 per cent offset in contracts valued above Rs 3 billion under the “buy” and 'buy and make” categories. The object of the offset policy is to develop the domestic defence industry. Under the policy, foreign vendors should execute defence exports of Indian items and services as ‘compensation’ or make investments in India's defence infrastructure. Foreign vendors have to buy components from Indian manufacturers. The offset requirements demand Original Equipment Manufacturers engage with Micro Small and Medium Enterprises (MSMEs) through partnerships or Joint Venture (JV) for the production of components. The success of offset policy depends on the sophistication of the

domestic defence industrial base. The success of offset policy depends on the sophistication of the domestic defence industrial base. The MSMEs In India face many challenges such as raising funds and quality control.

Studies have found that offset policy is not really successful as real transfer of technology does not take place. We receive only the right to licensed production making us still dependent on suppliers (Original Equipment Manufacturers) for critical components and software. There is also a risk involved in offsets that vendors may hike the cost of their goods making offsets inefficient economic vehicles for promoting self-reliance.¹² An offset-implementing nation will have to pay more for the import of defence items than it would otherwise have to pay if it did not impose mandatory offset obligations. The CAG report, 2020 found that between 2007 and 2018, the government signed 46 offset contracts worth ₹66,427 crores of investments, but there was not even a single case where the foreign vendor had transferred high technology to the Indian industry. The inter-governmental agreement for the procurement of 36 rafale fighter jets made in 2016 between India and France provided that France would provide offsets for 50% of value through technology transfer to DRDO. But the six new technologies identified by DRDO to be transferred under offset obligations were rejected by France on the ground that most of them were not within the vendor's core competence.¹³ In 2021 India imposed a penalty on Dassault Aviation and MBDA for the delay in offset commitments.¹⁴

The offset policy was revised under DAP, 2020 which provided that the offset clause shall not be applicable for equipment purchased through deals or agreements between two countries or from a single vendor. Thus, the offset policy has been significantly diluted. India voluntarily gave up a powerful instrument of bargaining. Proper designing, execution and a proper mechanism for implementation and monitoring of offset obligation can help India acquire advanced technology. The offset clause under DAP, 2020 needs to be reviewed keeping in view India's self-reliance goals in the defence sector.

¹² Thomas Mathew, *Essential Elements of India's Defence Offset Policy - A Critique*, 3(1) JOURNAL OF DEFENCE STUDIES 1 (2009).

¹³ Dinakar Peri, *The Hindu Explains: How Does the Removal of Offset Clause Requirement Affect Rafale -Like Deals*, THE HINDU (Oct. 4, 2020), <https://www.thehindu.com/news/national/the-hindu-explains-how-does-the-removal-of-offset-clause-requirement-affect-rafale-like-deals/article32762645.ece>.

¹⁴ Rajat Pandit, *India Imposes Penalty for Offsets Delay in Rafale Fighter Deal*, TIMES OF INDIA (Dec. 22, 2021), <https://timesofindia.indiatimes.com/india/india-imposes-penalty-for-offsets-delay-in-rafale-fighter-deal/articleshow/88420692.cms>.

D. Arms Export Policy

The defence industry cannot sustain itself if it relies only on domestic demand. Indigenisation of the defence industry will not bring the desired results if it is not supported by export policy. The government formulated the ‘Defence Production and Export Promotion Policy 2020’ to provide impetus to self-reliance in defence manufacturing under ABA. Defence exports are a pillar of the government’s drive to attain self-sufficiency in defence production. India’s defence exports for 2021-22 were estimated at Rs 13,000 crore, the highest ever. The Defence Exports Steering Committee (DESC) was set up to take decisions on matters concerning the export of defence products. The license for the export of defence equipment contained in the SCOMET list of Foreign Trade Policy is granted by the *Directorate General of Foreign Trade* (DGFT) based on the recommendations of the Inter-Ministerial Working Group consisting of representatives of the Ministry of Defence and armed forces. The Defence Export Steering Committee will take appropriate decisions regarding the exportability of indigenously developed strategic and sensitive weapons/platforms. India’s defence export has been rising as a result of the initiatives made by the government to ease excessive controls over arms exports. The Strategy for Defence Exports (SDE) document released in 2014 aims to enhance defence exports. DPSUs are allowed to export a maximum of 10 per cent of their annual production. However, India’s defence exports are still not up to the expected lines as India still accounts for only 0.17% of global arms exports.¹⁵ The Stockholm International Peace Research Institute (SIPRI) ranked India at number 23 in the list of major arms exporters for 2015-2019.

III. ATMANIRBHAR BHARAT ABHIYAN IN DEFENCE SECTOR

The Atmanirbhar Bharat Abhiyaan, or Self-reliant India campaign was launched by the Prime Minister of India in May 2020. It aims to make the citizens of India self-reliant in all aspects. The Prime Minister outlined five major pillars of self-reliant India: “economy (an abrupt transition), infrastructure (that represents modern India), system (technology-driven systems), vibrant demography (i.e., Demography of the largest democracy) and demand (utilising the full power of supply and demand).”¹⁶ ABA aims to promote Indian goods in the international supply chain market and to substitute goods imported from other nations with

¹⁵ Pieter D. Wezeman et al., *Trends in International Arms Transfers, 2020* (SIPRI Fact Sheet, March 2021).

¹⁶ *Atmanirbhar Bharat Abhiyan: Self-Reliant India*, INVEST INDIA, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited June 20, 2024).

goods manufactured in India. It stresses a people-centric, people-driven and planet-friendly development governance structure. ABA aims at reducing our dependency on imported items.

Ours is the third largest military in the world, yet we do not have a proper manufacturing unit for weapons and warcraft. Stockholm International Peace Research Institute (SIPRI) data shows that India spent \$331.8 billion on military imports during 2016-20, accounting for 2.6 per cent of the gross domestic product (GDP).¹⁷ Self-sufficiency in the defence sector will increase India's strategic independence and foster growth in the local aerospace and defence industries. The private sector will benefit from the transition as a result of export permits and the government's import ban on a number of commodities. India can lessen its reliance on imports by increasing domestic manufacturing. Our government's goal for the upcoming years is to modernise the armed forces by promoting indigenous culture. An apt example of this is the commissioning of INS Vikrant. It is a landmark achievement in the modernisation of the Indian military with indigenous armaments. INS Vikrant is designed by Indian Navy's in-house Warship Design Bureau (WDB) and built by Cochin Shipyard Limited, a Public Sector Shipyard under the Ministry of Ports, Shipping & Waterways. The creation of INS Vikrant employed domestically produced machinery and equipment that was provided by major Indian industrial conglomerates and over 100 MSMEs.¹⁸ It is the biggest ship ever constructed in India's maritime history and contains cutting-edge automation systems. If the goals of ABA are realised, India will be able to boost exports and achieve its 2025 export target of Rs. 36,500 crores (US\$ 4.8 billion).¹⁹

According to the Prime Minister of India Shri. Narendra Modi, the next 25 years are crucial for India's growth and for attaining a greater position among other global leaders. Ever since the make in India initiative, there has been moderate participation of the private sector in matters of defence production. For instance, Tata Motors won a contract to make around 1239 6x6 HMVs with cranes costing around INR 914 Crores, L&T won the contract for making vehicle platforms for Grad BM 21 rocket launchers worth INR 90.89Cr, and Ashok Leyland

¹⁷ *World Military Expenditure Passes \$2 Trillion for First Time*, STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE (Apr. 25, 2022), <https://www.sipri.org/media/press-release/2022/world-military-expenditure-passes-2-trillion-first-time>.

¹⁸ Prime Minister's Office, *PM Commissions the First Indigenous Aircraft Carrier as INS Vikrant*, PRESS INFORMATION BUREAU (Sep. 02, 2022), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1856215>.

¹⁹ *Government's Aim is to Achieve Defence Export Target of Rs. 35,000 Crore by 2024-25, Says Defence Minister Rajnath Singh*, DD NEWS (Dec. 04, 2021), <https://ddinews.gov.in/national/governments-aim-achieve-defence-export-target-rs-35000-crore-2024-25-says-defence-minister>.

secured orders for 6x6 and 8x8 HMVs costing around INR 355 Cr. L&T won a global military tender to become a lead player for the K9 Vajra Self-Propelled howitzer (INR 4366 Cr /USD 800 million).²⁰ Mahindra Defence won a contract for INR 5070 Cr for producing around 145 quantities of M777, 39 calibre 155mm ultra-light howitzers from M/s BAE Systems. The contract for the biggest Public Private Partnership (PPP) Project for Advanced Towed Artillery Gun System, worth INR 3364.78 Cr was given to erstwhile OFB and four private sector players. TATA Power SED won a contract for 23 shipborne air surveillance radars for the Navy worth around INR 1200 Crores.²¹ So even though there isn't a rush for private sector participation in defence manufacturing or service providing, their current participation looks promising.

The beginning of the year 2020 saw the entire world frantically trying to combat coronavirus. The pandemic lasted at full strength for two years causing market fluctuations and economic imbalance. The year 2022 saw one of the most shocking news of the 21st century when Russia declared war on Ukraine. India is trying to make indigenisation of products in various sectors to make us less dependent on other nations for machinery, technology and knowledge.

IV. POLICY INITIATIVES TO PROMOTE SELF RELIANCE IN DEFENCE SECTOR

The government implemented many policy initiatives and reforms to encourage self-reliance in the defence manufacturing industry. These policy initiatives are intended to promote design, research, innovation, and production of defence equipment thereby minimising long-term reliance on imports. One of the current developments to promote self-reliance in the Indian defence system is the change made by replacing the Defence Procurement Procedure 2016 with the Defence Acquisition Procedure (DAP) 2020. This was motivated by the defence reform principles outlined as part of ABA. In order to promote indigenous design and development of defence equipment 'Buy [Indian-IDD (Indigenously Designed, Developed and Manufactured)]' category has been accorded the top priority for procurement of capital equipment.

²⁰ VK Saxena, *Atmanirbharta in Defence: How Has Been the Journey So Far? Where Are We Headed?*, 339 CENTRE FOR LAND WARFARE STUDIES JOURNAL (2022).

²¹ *Id.*

Another significant step taken by our government is the creation of positive indigenisation lists whereby the import of such items from the global market will be prohibited. The items in the positive indigenisation list can only be acquired domestically. The Ministry of Defence promulgated the First, Second and Third Positive Indigenisation Lists, comprising 310 items on August 21, 2020, May 31, 2021, and April 07, 2022, respectively. The 'Fourth Positive Indigenisation List' of 101 items was announced during the opening ceremony of DefExpo 2022 in Gandhinagar, Gujarat on October 19, 2022.²² This presents a fantastic opportunity for the Indian defence sector to produce the defence items utilising their own design and development capabilities. These lists contain a variety of high-tech weapons systems such as artillery guns, assault rifles, corvettes, sonar systems, transport aircraft, light combat helicopters (LCHs), radars, wheeled armoured platforms, rocket launchers, bombs, armoured command post vehicles, armoured dozor, and many other things to meet the demands of our defence services.²³

Prioritising of Micro, Small & Medium Enterprises (MSMEs) is yet another initiative taken by the government. The robustness of our defence industry is built on the capabilities of the supply networks, in which the MSMEs are tightly entwined. The Government put in the effort to save some 8000 (MSMEs) in the defence sector during the Covid blues. For instance, the Defence Acquisition Procedure 2020 specifies reservations on Orders up to Rs. 100 Crore per year for MSMEs.²⁴ Procurement from MSMEs during the last three years is 4842.92 Cr. (2018-19), 4603.95 Cr. (2019-20) and 5463.82 Cr. (2020-21).²⁵ This shows an improvement in the dependence on MSME's by the Defence Sector. This trend is promising for more participation from the private sector in defence production. Ministry of MSME through its 18 Tool Rooms and Technical Institutions spread across the country imparts training in the field of Tool making and allied Trades to youth as well as MSMEs and its workers, including during the COVID-19 pandemic period. DPSUs also organize various MSMEs Vendor Development Programs (VDP), Skill Development Programs and webinar

²² Government of India, 'Aatmanirbharta' in Defence: Prime Minister Shri Narendra Modi Announces Fourth Positive Indigenisation List of 101 Items During DefExpo 2022, PRESS INFORMATION BUREAU (Oct. 19, 2022), <https://mod.gov.in/sites/default/files/PM-announces-fourth-positive-indigenisation-list.pdf>.

²³ Ministry of Defence, *Self-Reliance in Defence Manufacturing*, PRESS INFORMATION BUREAU (Feb. 04, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1795540>.

²⁴ Ministry of Defence, Defence Acquisition Procedure, 2020, Chapter 2, para 23, at 30.

²⁵ *Facilitating MSMEs*, DEPARTMENT OF DEFENCE PRODUCTION, <https://www.makeinindiadefence.gov.in/pages/facilitating-msmes> (last visited June 20, 2024).

sessions on a regular basis for MSME vendors, including during the COVID-19 pandemic. Online support and guidance are provided to MSMEs for registration and for uploading the tender on GeM and NIC portals by DPSUs. Contracts worth Rs 53,838 crore for 31 equipments have been awarded by the Armed Forces to the domestic industry since notification of the two Positive Indigenization Lists.²⁶

The government amended the General Financial Rules 2017(GFR) and introduced reservation in favour of domestic firms in respect of procurement of goods and services valued at less than INR 200 Crores. This is applicable to the defence sector also. The GFR through Rule 146 enabled the Government e-Market place (GeM) where government entities can procure goods and services through the digital platform. Recently the government made it mandatory for sellers to enter the Country of Origin and the local content percentage while registering new products on GeM.²⁷ The Ministries or Departments have to procure goods or services available on GeM through the platform not through other means.²⁸ The rule also provides for various types of procurements to be done with respect to the subject value of the procurement. For instance for procuring goods or services within rupees fifty thousand, the government entity can procure through any of the available suppliers on the GeM, meeting the requisite quality, specification and delivery period. For matters costing between Rs.50,000/- to Rs.30,00,000/- procurement is done through the GeM Seller having the lowest price amongst the available sellers, of at least three different manufacturers, on GeM, meeting the requisite quality, specification and delivery period. Above Rs.30,00,000/- through the supplier having the lowest price meeting the requisite quality, specification and delivery period after mandatorily obtaining bids, using online bidding or reverse auction tool provided on GeM.²⁹

²⁶ Ministry of Defence, *Promotion of MSMEs in Defence Sector*, PRESS INFORMATION BUREAU (Mar. 28, 2022), <https://pib.gov.in/PressReleasePage.aspx?PRID=1810448>.

²⁷ Ministry of Commerce & Industry, *Information About Country of Origin by the Sellers Made Mandatory on GeM to Promote Make in India and Aatmanirbhar Bharat*, PRESS INFORMATION BUREAU (June 23, 2020), <https://pib.gov.in/PressReleasePage.aspx?PRID=1633511>.

²⁸ General Financial Rules, 2017, rule 149.

²⁹ The 'Make in India' filter has now been enabled on the portal. Buyers can choose to buy only those products that meet the minimum 50% local content criteria. In case of Bids, Buyers can now reserve any bid for Class I Local suppliers (Local Content > 50%). For those Bids below INR 200 crore, only Class I and Class II Local Suppliers (Local content > 50% and > 20% respectively) are eligible to bid, with Class I suppliers getting purchase preference.

With regards to the goods that are not available on GeM, it is mandatory for the government entity to generate a GeM Availability Report and Past Transaction Summary (GeMAR&PTS) with a unique ID on GeM Portal using the respective credentials on GeM for procurement outside GeM. If the item is priced between Rs.25,000/- to Rs. 2,50,000/- then the item can be procured with approval of Purchase committee.³⁰ If the item is priced above Rs. 2,50,000/- then purchase is to be made by obtaining bids.³¹

In May 2020, the Ministry of Defence (MoD) launched the 'Defence Testing and Infrastructure Scheme' (DTIS) by investing INR 400 Crores.³² DTIS aims to set up eight greenfield ranges having state-of-the-art infrastructure for testing, in partnership with the industry and opening the test facilities of Government enterprises DRDO/DPSUs/OFB/DGQA to private industry under certain terms and conditions. This is a welcoming step taken by the government to involve more private sector in defence manufacturing.

Another initiative worth mentioning is the development of an indigenization portal, 'srijandefence.gov.in' which will give information on items that can be taken up for indigenization by the private sector." On this portal, DPSUs/OFB/SHQs can display their items which they have been importing or are going to import which the Indian Industry can design, develop and manufacture as per their capability or through joint venture with OEMs. The Indian Industry can communicate their expression of interest online. The concerned DPSUs/OFB/SHQs, based on their requirement of the items and their guidelines & procedures will interact with the Indian industry for indigenization.

V. DEFENCE ACQUISITION AND PROCEDURE

Defence acquisitions consist of three elements: (1) Research and development (2) defence production, and (3) procurement, whether from foreign or domestic sources. The acquisition procedure involves a number of stakeholders including technical, financial, management, and operational experts. The stakeholders involved in the defence acquisitions are: (a) the three military services (Army, Air Force, Navy), who are the ultimate users of defence equipment;

³⁰ General Financial Rules, 2017, rule 155.

³¹ *Id.* rule 158.

³² Ministry of Defence, *Defence Testing Infrastructure Scheme*, PRESS INFORMATION BUREAU (Aug. 16, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1746365>.

(b) the Ministry of Defence; (c) the Ministry of Finance; (d) the public-sector defence industry and scientific establishment; (e) the private sector defence industry and research establishment; and (f) the political leadership who is the ultimate decision-maker on matters of acquisition. The priority for the acquisition procedure as per the DAP 2020 is as follows³³:

- (a) Buy Indian – Indigenously Designed Developed and Manufactured – (Buy-Indian - IDDM)
- (b) Buy (Indian)
- (c) Buy and Make (Indian)
- (d) Buy (Global - Manufacture in India)
- (e) Buy (Global)

Buy Indian – (IDDM) category refers to the acquisition of products from an Indian vendor that have been indigenously designed, developed and manufactured with a minimum of 50% Indigenous Content (IC) on cost basis. Buy (Indian) category refers to the acquisition of products from an Indian vendor which may not have been designed and developed indigenously. But there must be 60% Indian content on cost basis of the base contract price. Buy and Make (Indian) refers to acquisition of equipment from Indian vendor engaged in a tie-up with a foreign Original Equipment Manufacturer (OEM), followed by indigenous production in a phased manner involving Transfer of Technology (ToT). In this category also a minimum of 50% Indian Content is required on cost basis. Buy (Global - Manufacture in India) category refers to an outright purchase of equipment from foreign vendors, in quantities as considered necessary, followed by indigenous manufacture of the entire/part of the equipment through an Indian Production Agency (PA) with a minimum of 50% Indian Content on cost basis. Buy (Global) category refers to outright purchase of equipment from foreign or Indian vendors. An Indian Vendor participating in this category would be required to meet minimum 30% Indian Content.

The DAP 2020 governs capital acquisition for the defence sector and sets out certain categories (methods/routes) under which the Ministry of Defence shall undertake capital procurement. These categories are listed in order of procurement preference, with the outright purchase of fully assembled equipment having the lowest priority and the purchase of locally planned, produced, and made goods having the highest. The Buy (Indian-IDDM) category

³³ Ministry of Defence, Defence Acquisition Procedure, 2020 [hereinafter DAP -2020].

holds the highest procurement preference. It envisages the acquisition of products designed, developed and manufactured in India, with a minimum Indigenous Content / local content of 50%.³⁴ The product may be created using the Make technique or internal R&D. Only "Indian vendors," or organisations formed or registered in accordance with Indian legislation, are permitted to take part in bids for this category. Additionally, Indian citizens who are residents of the country must own and control the vendor company. The main equipment's design or IPR must belong to the Indian company, and it must also own the know-how and capacity to carry out equipment improvements. The Indigenous design will be verified (via documents/on-site inspection) by the Ministry of Defence. The characteristics of this procurement category make it clear that the goal is to support the domestic design and development of defence equipment as well as to make sure that local Indian residents have control over the manufacturing entity and IPR.³⁵

The second important category of procurement is the Buy (Indian).³⁶ This is not as stringent in this respect but continues to promote indigenisation through a high threshold of minimum local content / IC. Under Buy (Indian) no indigenous design and development is required. Instead, local manufacture of the product in collaboration with, or via transfer of technology from, the OEM is sufficient. Indian vendors (incorporated/registered in India) are eligible, and there are no restrictions on ownership and control. That said, this category mandates a minimum of 60% IC. It is relevant to note that when computing IC, outflows from India (such as costs of imports, fees to foreign citizens/entities, royalties, licensing or technical fees etc. paid out of India) as well as taxes and statutory levies in India are to be excluded. Before a company outsources production or services to a foreign person/entity, it is advisable to work with financial advisers/accountants to ensure that the minimum IC is met (particularly so in the case of Buy (Indian), given the high IC threshold). Even with the remaining schemes of procurement, the preference for local manufacture and TOT is clear, with categories that envisage TOT and some amount of production in India ranking higher than an outright purchase of equipment from either Indian or overseas vendors (and with offset obligations attracted in the case of the latter).

³⁴ DAP -2020.

³⁵ *Id.* Chapter 1, para 8.

³⁶ *Id.* Chapter 1, para 9.

Yet another category that promotes self-reliance is the ‘Make’ category under DAP 2020. In addition to the categories for the purchase of equipment, the DAP 2020 also envisages the ‘Make’ procedure of procurement which promotes indigenous design and development of prototypes of military equipment. The aim here is to develop long-term defence capabilities (rather than simply an immediate acquisition of equipment which, in the defence sector, is typically from overseas vendors). Once products are designed and developed under Make, they are procured by the Ministry of Defence under either the Buy (Indian-IDDMM) or Buy (Indian) category. Hence, the required attributes of the relevant procurement category (as set out above) will need to be met by the vendor/product to ensure eligibility for procurement.

VI. SUGGESTIONS & RECOMMENDATIONS

The lack of a powerful, overarching institutional system for defining policy objectives has been a fundamental flaw in India's attempt at self-reliance. Establishing responsibility, bringing all stakeholders (users, R&D organisations, and industry) to a shared platform, and keeping an eye on the development of domestic initiatives are highly important. Some of the suggestions for improving self-reliance in the Indian defence sector are as follows:

- (i) **Indigenisation along with a Private Boom:** In order to meet the needs of the Indian Armed Forces in the upcoming years, it is necessary to revitalise and control entrance points for the private sector to participate in the defence industry.
- (ii) **Defence Industrial Corridors (DICs):** It is necessary to extend dedicated defence industrial corridors across the length and breadth of the country in order to harness and channel the potential of Indian MSMEs and DPSUs in the defence manufacturing sector, as well as to facilitate the smooth transit of raw materials. The government's initiative to establish two Defence Industrial Corridors (DICs) in Uttar Pradesh and Tamil Nadu is a welcome step in this direction.
- (iii) **Defence Investor Cell:** It is necessary to strengthen investment in defence by providing entrepreneurs/industry with a single point of contact to deal with all defence

production-related queries, procedures and regulatory requirements for investment in the sector. The SRIJAN portal³⁷ can be linked with Investment Cell.

- (iv) **Tapping the World's Defence Market:** There is also a need to give adequate attention to the promotion of exports of Indian Defence products. It is important to simplify and streamline export authorisation procedures through an online mechanism and targeted outreach efforts. Defence Exim Portal is a welcome step in this direction.
- (v) **Strengthening Economy with Strategic Independence:** Indigenised India's defence sector would further strengthen the economy by generating employment opportunities and saving the exchequer by reducing the import burden. Also, Self-sufficiency in defence will fundamentally lead to India's strategic independence.
- (vi) **Data on Self-Reliance:** Last but not the least, the MoD needs to create a data bank to facilitate the estimation of self-reliance in defence procurement. This assumes significance in view of the annual review to be undertaken by the defence minister in accordance with the Defence Production Policy. It is quite inconceivable that a country which has professed self-reliance so early in its defence industrialisation does not have a system to objectively estimate the index. The Defence Services Estimates (DSE) which provides data on numerous heads of expenditure does not presently provide information on the source of procurement. The document should be suitably modified to reflect information on the procurement from indigenous sources as well as imports and indirect imports. This will not only facilitate the estimation of the self-reliance index in a more objective manner but will also facilitate monitoring its progress.

VII. CONCLUSION

Even though the government aspires to make our nation a self-reliant one, there are many challenges that the defence sector needs to overcome. There is a need for greater investment in the defence sector to enhance the research and production capabilities of the defence industry. Private sector participation in the defence sector should be geared up. The lack of a supportive financial framework limits private sector engagement in the defence industry, which prevents our defence manufacturing from utilising cutting-edge design, innovation, and product development. Additionally, there is a fragile relationship between R&D organisations, public

³⁷ *About Us*, SRIJANDEFENCE, <https://srijandefence.gov.in/About> (last visited June 20, 2024).

or commercial production organisations, and end consumers. The lack of coordination between stakeholders is yet another challenge faced by the defence sector. To develop an industrial foundation, the government must completely support the private sector. To lessen dependency on foreign firms the government should encourage and support the private sector's R&D efforts. It should expand the private sector's (large and medium-sized businesses) design and production skills beyond policy support and make sure that there is a steady demand for essential equipment and that there is visibility so that the private sector can plan the manufacturing process.

The clarity in the execution of IDDM, creating a clear demand profile, maintaining the status quo in the current FDI policy and aligning tax policies to create synergies should be proactively done. With these changes, there is hope for India to improve its self-reliance capacities. We need to reduce the high dependence on imports. Amid the Russia-Ukraine war, India is awaiting the delivery of the S-400 Air Defence Systems under a deal signed in 2018. Due to the ongoing war, there is a severe delay in procurement which may shoot up the acquisition price. In addition, several new deals are in line including 12 Sukhoi-30MKI aircraft and 21 MiG-29 fighter jets for the Indian Air Force. This shows that even though we have come a far way from the sloganeering phase of ABA to the implementation phase the above discussion evidences the lacunae that exist within our system which pose a hindrance to achieving self-reliance. The completion of the coming 25 years will mark the 100th year of Independence for India and so improving our self-reliance index should be a top priority.

INDIGENOUS BUSINESSES IN INDIA AND CONFLICTS WITH INTERNATIONAL TRADE LAW AND POLICY

- Smruti Mohanty*

Abstract

Indigenous peoples make up the majority of the global cultural variety. The term "Indigenous Peoples" refers to several socioeconomic and cultural groups that have shared ancestral links to the lands and natural resources that they currently reside on or have been displaced from. Numerous indigenous peoples are still subjected to discrimination, poverty, and other human rights abuses. UNESCO acknowledges it to be a significant role in maintaining the richness of the world's culture and pledges to assist them in resolving the numerous problems they face. Indigenous peoples are known for their peculiar cultures, isolation from the outside world, reticence to interact with others, and backwardness. They have historically fought for the protection of their cultures, and territories as well as against attempts to deny them legitimacy to their autonomy and self-governance. Similarly, being the marginalized section of the world's population, indigenous peoples are more likely to suffer the negatives of globalization than other groups. Although their rights to decision-making are recognized under UNDRIP, they are affected due to the lack of full and active participation in decision-making processes on trade as well.

Indigenous peoples are vulnerable to the consequences of treaties that try to promote FDI by giving foreign investors preferential privileges. WTO's imposition of policies and agreements displaced them from their lands and territories. It is essential to understand and acknowledge how international trade law, in its promotion of concepts like efficiency, innovation, freedom, and entrepreneurship, creates or exacerbates systemic challenges for indigenous peoples in order to place their general interest. When some foreign investors are granted the right to extract, utilize, and export raw materials from their territories, indigenous peoples are confronted with unique challenges to their environment and cultural legacy in addition to more general threats to their economic and social well-being. Similar threats arise when trade liberalisation in sectors like textiles causes competition. UNDRIP upholds the idea of free prior informed consent for indigenous peoples (FPIC). The majority of trade negotiations take place behind closed doors, and frequently, civil society organizations are not given access to the negotiating mandates, and also powerful private actors are given priority if any consultations are held. In reality, governments rarely implement procedures that even adhere to FPIC norms in this perspective the researcher in the present paper aims at suggesting how international law strives to advance economic interdependence in global trade, investment, and finance considering indigenous people's rights besides discussing the SIA's principles. Further, this paper also discusses the effects of globalization on how the structures of the government and policies through various

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domestic and international laws are allowing indigenous businesses to develop without being impaired by globalization.

Keywords: Indigenous Business, trade laws, globalisation, liberalisation.

I. INTRODUCTION

Indigenous societies and groups are distinctive in terms of culture.¹ There is no universal definition of "indigenous" that has been accepted by the U.N. system due to the diversity of indigenous peoples. Instead, a contemporary definition of this term based on the following criteria i.e. individual self-identification as indigenous people, acceptance by the community as a member, and historical continuity has been accepted by the system. Indigenous people with colonial history share a sense of unity and togetherness.² Haudenosaunee (hereditary Chief of indigenous group) Deskaheh visited Geneva in 1923 to address the League of Nations and to advocate indigenous people's right to live according to their own laws, on their own territory, and according to their own religion. Although he was forbidden to express himself and eventually returned to his own country in 1925, his vision fed the generations that came after. A subcommittee of the Sub-Commission on the Promotion and Protection of Human Right, was created in 1982 and it was called Working Group on Indigenous Populations (WGIP). On 13th September, 2007, the General Assembly adopted the Declaration on the Rights of Indigenous Peoples.

The Declaration gives collective rights a level of importance unheard of in international human rights law, making it the most comprehensive understanding of Indigenous Peoples' rights. Thereafter, Indigenous Peoples had a chance to voice their concerns and share their experiences at the U.N. through the Working Group. The Working Group was the lowest-ranking U.N. human rights body because it was a subordinate organ of the Sub-Commission. Before being presented to the General Assembly, its recommendations had to be evaluated and approved by the Sub-Commission, its superior body, the Commission on Human Rights, and the Economic and Social Council (ECOSOC).³ Thereafter Human Rights Council passed

¹ *Indigenous Peoples*, WORLD BANK, <https://www.worldbank.org/en/topic/indigenouspeoples> (last visited June 20, 2024).

² *Id.*

³ *Indigenous Peoples at the United Nations*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, <https://www.un.org/development/desa/indigenouspeoples/about-us.html> (last visited June 20, 2024).

resolution 6/16 requesting that an informal gathering be held by the Office of the High Commissioner for Human Rights to talk about the best ways to carry on the work of the Working Group on Indigenous Populations. The unofficial gathering was held in Geneva on 6th December 2007.

Following several informal and formal meetings, many governments started informal negotiations to finalize a draft resolution to submit to the Human Rights Council (HRC). The Expert Mechanism on the Rights of Indigenous Peoples was established by HRC, and was adopted on 14th December 2007.⁴ The U.N. General Assembly declared 1993 to be the International Year of the World's Indigenous People. It aimed at promoting new partnerships based on respect and understanding between States and Indigenous Peoples as well as between the international community and Indigenous Peoples. As an advisory body to the Economic and Social Council, the U.N. Permanent Forum on Indigenous Issues was founded in July 2000. Its mission was to examine issues pertaining to Indigenous peoples' economic and social development, culture, environment, education, health, and human rights. A programme of UNESCO encourages the integration of local and indigenous knowledge into global climate science and policy processes known as Local and Indigenous Knowledge Systems (LINKS). In recent science-policy-society fora on areas like biodiversity assessment and management, climate change assessment and adaptation (IPCC, UNFCCC), natural disaster preparedness (ISDR), and sustainable development (Rio+20, Future Earth), LINKS has played a significant role in ensuring that local and indigenous knowledge holders and their knowledge are included.⁵

This Article surveys and dissects the manners in which international economic law “recognize[s] the specific challenges that may be faced by indigenous peoples with reference to India as well.” Authorities at many levels of government conspired with greedy citizens to deprive this indigenous community of its immense wealth through fraud and dishonesty in a society where racism permeated all aspects of society and was seen as a virtue. Indigenous trade and investment are understood as an arrangement of trade and investment with, between, and among, Indigenous peoples from the participating economies includes: (i) “*trade and investment that is relational and aims to build long-term networks of exchange*”; (ii) “*Indigenous laws and values,*

⁴ *Indigenous and Tribal Peoples*, INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org/global/topics/indigenous-tribal/lang--en/index.htm> (last visited June 20, 2024).

⁵ UNESCO, <https://www.unesco.org/en> (last visited June 20, 2024).

including reciprocity, care, trust, respect, and generosity”; (iii) “operating within an intergenerational framework”; and (iv) “the responsibility of Indigenous peoples to protect their lands, resources, and the spiritual interrelationship of the human and natural world, as well as the integrity of the natural systems themselves, while acknowledging the right of Indigenous peoples to develop their economic and social systems, including through trade and investment with non-Indigenous peoples and through new technologies”.⁶ The research shows that individual Indigenous enterprises are an underappreciated yet significant economic engine and employer when compared to non-Indigenous businesses.

There are 104 million indigenous people that have lived in India for a very long time. Every community is unique in some way that sets it apart from the other tribes. One thing unites all of these communities, they are cut off from the outside world. Through better networks, business skills, and financial security, India's indigenous business sector is clearly beneficial to indigenous business owners.⁷ However, as compared to the broader public benefits for regional communities and all Indians, these advantages are probably insignificant. India has just transitioned to being an emerging economy, and the textile industry has made a substantial contribution to national output, employment, and exports. This article encapsulates the fragility and marginalization of the indigenous peoples and its effect on their business in the modern world to a considerable extent, especially in a country like India where globalisation was imperative and could not have been overlooked as a developing nation to take part in the competitive world. The paper goes on to demonstrate that the state and government have a responsibility to protect human rights, preserving their core principles, which should not be violated in the field of trade, and further analyses how human rights impact assessments can aid to ensure that Indigenous rights be protected in international economic agreements.

II. GLOBALISATION AND INDIGENOUS PEOPLES

The economic, physical, and cultural oppression of indigenous groups has been documented for years – even centuries – but today; multinational corporations are more likely than ever to be involved. The term globalisation refers to the increasing interdependence of the economies, cultures, and populations throughout the world as a result of technology, cross-border trade in

⁶ Indigenous Peoples Economic and Trade Cooperation Agreement, July 1, 2022, art. 2(a).

⁷ *Indigenous Peoples in India*, INTERNATIONAL WORK GROUP FOR INDIGENOUS AFFAIRS, <https://www.iwgia.org/en/india>. (last visited June 20, 2024).

goods and services, and flows of capital, labour, and information. For many years, nations have developed economic alliances to support these movements.⁸ Nonetheless, the phrase became more common after the Cold War in the early 1990s because of how these co-operative arrangements influenced contemporary life. Since the dawn of civilization, people have sought places to establish colonies, cultivate crops and engage in trade. Global integration did not, however, begin to take off until the 19th century.⁹ The first "wave" of globalisation, which came after centuries of European colonisation and trade, was fuelled by technological advances like the steamship, railroad, telegraph, and others and increased economic cooperation between nations. After the devastation of World War I, and World War II, the trend of globalisation gradually weakened and crumbled. Somewhere around the year 1940s, following World War II, the United States took the lead to resurrect global trade and investment under established ground rules, beginning a second wave of globalisation still running today.¹⁰

“However, indigenous peoples started to suffer from the corruption that came along with power in the form of authoritarian governments, greedy businesses, despite the expansion of legal protections under civil, human, and indigenous rights frameworks and the crucial coordinated efforts to empower tribes worldwide”. Nonetheless, it would seem that economic globalisation has produced an environment that is not conducive to accepting or actualizing this idea of self-determination. The condition of indigenous people, frequently the most vulnerable group in terms of their employment status and dependency on social aid, unavoidably became more insecure.

III. IMPACTS OF GLOBALISATION

Indigenous peoples are more likely to suffer the adverse effects of globalisation than other groups because they are weaker and frequently marginalized sections of the world's population. When some foreign investors, as an effect of globalisation get the right to extract, exploit, and export raw materials, indigenous peoples suffer particular challenges to their environment, cultural legacy, and access to medicines and it eventually it affected their economic and social wellbeing. When trade liberalisation in industries like textiles leads to the relocation of production or the escalation of competition, they face similar dangers. For instance, the Oma

⁸ Pat Lauderdale, *Indigenous Peoples in the Face of Globalization*, 51(12) AMERICAN BEHAVIOURAL SCIENTIST 1836 (2008).

⁹ *Globalization*, NATIONAL GEOGRAPHIC, <https://education.nationalgeographic.org/resource/globalization/> (last visited June 20, 2024).

¹⁰ *Id.*

people a small indigenous group in Laos continue to weave their own garments at home diligently, retaining a distinctive design found only in this Asian nation. The embroidery designs of Italian luxury clothing company Max Mara started appearing in shops. The firm allegedly copied these ancient designs without crediting their creators, according to the Traditional Arts and Ethnology Centre (TAEC), a group that strives to protect Laos' cultural diversity.

This is not the first instance of an ethnic group's cultural history being offered for sale in the boutiques of well-known fashion designers, many of whom are luxury brands. For example, Louis Vuitton offended the Maasai people of Kenya by imitating their fashion sense. Christian Dior was charged with copying traditional clothing from Romania's Bihor area last year. One of the most recent disputes centered on Carolina Herrera's Resort 2020 line, which featured indigenous Mexican themes. The current international legal structures do not cover the claims of indigenous tribes. Intellectual property rules are built on a 17th century concept of individual copyright that does not protect community output.¹¹

While there are many opportunities brought by global integration, risks are also involved. Integration also entails increased power shifts, economic inequality, and cultural homogeneity. Harmonization in social, political, and economic spheres may result in more discrimination against indigenous populations. Indigenous people are considered outcasts in the current global environment because of their unique social, economic, and political practices. As a result, they are negatively impacted by globalisation.

IV. WTO AND INDIGENOUS BUSINESS

“The WTO is the primary instrument of neoliberal globalization to further economic globalization, especially in international trade.¹² It aims to build a unitary system of trade relations of countries governed by various agreements”. While the WTO binds the Least Developed Countries (LDCs) to implement the neoliberal policies on the trade of goods and services, the new capitalist countries, on the other hand, protect their economies from these "free market" policies. There is no doubt that agreements between states on trade and

¹¹ Laura Villadiego, *Are Indigenous Textile Makers Fashion's Latest Victims?*, EQUAL TIMES (Oct. 21, 2019), <https://www.equaltimes.org/are-indigenous-textile-makers?>.

¹² Tomer Broude, *Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 UNIVERSITY OF PENNSYLVANIA JOURNAL OF INTERNATIONAL LAW 623 (2005).

investment, or between states and international financial institutions on finance, can open up economic prospects for entire nations, with the goal that these changes will eventually reach indigenous populations. But systemic problems make the situation of indigenous peoples even worse. Foreign direct investment has increased due to the proliferation of economic agreements and global organizations facilitating trade and finance. Institutions and governments have tried to comprehend and incorporate the specific safeguards granted to indigenous peoples by international law into economic treaties.

The United Nations Declaration on the Rights of Indigenous Peoples is another essential document for modernising the WTO (U.N. Declaration 13). The U.N. Declaration is a crucial document for human rights, but the 46 article' descriptions of Indigenous rights also qualify as social, cultural, and economic rights. As interpreted in light of the U.N. Declaration, Articles 3, 21, and 36 refer to the economic self-determination of Indigenous peoples, including the ability to establish trade among themselves, including those who are geographically separated.¹³

There are very few Indigenous peoples-related notifications in the WTO agreements. Nevertheless, some notifications show the enormity of the political and economic ties between Indigenous peoples and WTO member nations. For instance, Canada recently modified its Cabinet Directive on Regulation notification. The process for developing federal regulations is outlined in this policy directive, including the requirement to consult Indigenous peoples if the proposed regulation may have a negative impact on asserted or established Aboriginal or treaty rights, as guaranteed by section 35 of the Canadian Constitution.

V. A JOINT DECLARATION

In addition to being consistent with the economic rights of Indigenous peoples in the U.N. Declaration, modernising the WTO in a way that allows for inclusive distribution of economic benefits would also be a step towards achieving the targets of the 2030 Agenda on Sustainable Development, ensuring that "no one will be left behind."¹⁴

¹³ JON BURROWS & RISA SCHWARTZ (EDS), *INDIGENOUS PEOPLES AND INTERNATIONAL TRADE: BUILDING EQUITABLE AND INCLUSIVE INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS* (2020).

¹⁴ *2030 Agenda and Indigenous People*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, <https://social.desa.un.org/issues/indigenous-peoples/2030-agenda-and-indigenous-peoples/2030-agenda-and-indigenous-peoples> (last visited June 20, 2024).

Such agreements would provide continuity in the multilateral trading system and bring it into step with contemporary regional trade accords, such as those on the environment and sustainable development. The WTO must be modernised to include provisions for effective assessments on human rights, the rights of Indigenous peoples, and the environment, particularly the contribution of world trade to climate change. An Indigenous peoples joint Declaration might include provisions such as the following¹⁵:

- Urge WTO members to investigate measures to develop mutual benefits to buy products and services from Indigenous peoples by boosting Indigenous partnerships and inter-Indigenous Nation trade.
- Reinforce the commitment of WTO members to the SDGs, the 2030 Agenda for Sustainable Development, and the U.N. Declaration.
- To track and assess the chances and advantages brought about by the Indigenous peoples joint Declaration, establish an Indigenous peoples contact point at the WTO.
- Create a symposium on trade and Indigenous peoples at the WTO and invite Indigenous experts to participate in discussing more reforms with other WTO members. The symposium might concentrate on enlarging the scope of Indigenous peoples' effective engagement and enhanced openness in the international trading system, notably through dispute resolution and ensuring that the TRIPS i.e Trade-Related Aspects of Intellectual Property Rights Agreement doesn't infringe upon their knowledge and cultural rights.
- To ensure inclusion, equity, and the protection of Indigenous peoples' rights, examine how multilateral trade intersects with the lands, resources, knowledge, and cultural heritage of Indigenous peoples.
- Examine the possibility of including a clause guaranteeing the protection and observance of Indigenous peoples' rights in the WTO agreements.

¹⁵ Risa Schwartz & Judy Whiteduck, *A Proposal for a Joint Declaration on Trade and Indigenous Peoples*, CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION (Apr. 27, 2020), <https://www.cigionline.org/articles/proposal-joint-declaration-trade-and-indigenous-peoples/>.

VI. THE EFFECTIVENESS OF THE PLAYERS IN INTERNATIONAL ECONOMIC LAW – NAMELY TRADE, FDI, FINANCE

The two most significant features of modern international political economy are undoubtedly the growth of economic globalisation and the spread of political democracy. Since foreign direct investment (FDI) inflows have outpaced global income growth since the 1960s, multinational companies (MNEs) now account for over 70% of global trade, and their foreign affiliates' sales have surpassed all exports globally are all notable aspects of globalisation. FDI flows makes the monopolistic market to grow thereby frequently strengthening the MNE's Multi-National Enterprises facilitating ownership-specific benefits and internalization benefits and the use of these benefits can only be restricted by host government regulatory policies, particularly through the implementation of antitrust and other competition-focused legislation.¹⁶

Due to their advantages in internalization and ownership, MNEs are frequently more competitive than local businesses in their host nations. The host government may implement an industrial strategy that defends homegrown companies against MNE competition or works to the MNE's advantage. This however not only affect local business it diminishes the value of the indigenous business and market.¹⁷

Similarly, Indigenous peoples are also particularly vulnerable to the consequences of treaties that try to promote FDI by giving foreign investors preferential privileges. Nonetheless, even in the absence of investment treaties, "foreign and domestic investment has a major influence on indigenous people's rights," according to the current Special Rapporteur on the Rights of Indigenous Peoples.¹⁸

It is essentially seen how large gaps in capabilities and material resources, in both the political and economic spheres, are frequently made worse by international economic agreements. Disenfranchisement has political ramifications due to the lack of direct involvement of indigenous peoples in the processes that result in laws (treaty- and adjudicatory law-making) as well as the indirect change in governance priorities brought about by the

¹⁶ Sergio Puig, *International Indigenous Economic Law*, 52(3) UNIVERSITY OF CALIFORNIA DAVIS LAW REVIEW 1243 (2019).

¹⁷ *Id.*

¹⁸ *Special Rapporteur on the Rights of Indigenous People*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples> (last visited June 20, 2024).

adoption and enforcement of treaty provisions (and resulting interpretations).¹⁹ There may be at least two explanations for the historical lack of a significant link between international economic law, particularly international trade and investment law, and human rights law. Human rights institutions have developed around the U.N. and, more recently, regional systems, while international trade and FDI regulation have done so through the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO), free trade agreements (FTAs), and bilateral investment treaties (BITs). As one can go by the general understanding the right to trade is one of the human rights in practice. Efforts are seen to be made to address the encouraged business activity promoted by international economic law and human rights principles. The Guiding Principles reflect the attempt to comprehend how states and non-state entities may be involved when business practices infringe on human rights. Within their borders, states have a duty to respect, defend, and uphold human rights. Business players don't seem to have the same obligations as governments or international organisations. A company that violates human rights is subject to liability under domestic law (which in most jurisdictions includes a constitution).

For instance, the 2013 Companies Act in India mandates that businesses formed under local law implement a CSR program.²⁰ They are based on certain guiding principles that call on both states and businesses to have their framework founded on certain principles i.e to protect, respect and fulfil human rights and fundamental freedom. The business model that an enterprise will have to comply with all human rights laws and if there is any breach of human rights laws, there must be room for appropriate and effective remedies. This gives an impression that the responsibility mounts on both states and private actors and are abide by international human rights law obligations. In this approach, the state's right to control economic activity is complemented by international law. Significantly, the Guiding Principles specifically emphasize preventing economic actors from negatively influencing human rights. It's a well-established fact that the newly growing field of business and human rights provides little but crucial conceptual clarity for connecting human rights law and its standards with state and non-state businesses and their operations.²¹

¹⁹ *Id.*

²⁰ The Companies Act, 2013, § 135 (Corporate Social Responsibility).

²¹ UNITED NATIONS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK (HR/PUB/11/04, 2011).

VII. CHALLENGES OF INDIGENOUS TRADE AND BUSINESS

A fundamental flaw of international economic agreements is the lack of procedural and democratic legitimacy. State commitments guarantee the right to participate in public affairs. Still, the influence of indigenous peoples is constrained by the absence of indigenous representation and decision-making procedures suited to their requirements. Indigenous peoples cannot protect their rights due to a lack of capability, support, and advice.²² Further, they face (i) Lack of Legitimacy; (ii) Discrimination; (iii) Re-regulation; and (iv) Inequality.

A. Lack of Legitimacy and Re-regulation

It is becoming increasingly harmful that indigenous peoples do not actively participate in legal conflicts, which is vital for defining rights and obligations under economic agreements. This results in underpowering of indigenous groups and the over-empowerment of economic players like MNCs. Again, the system is unlikely to improve indigenous groups' bargaining position compared to large multinational corporations like oil and gas companies with resources, in-depth legal, policy, and technical expertise, and a global presence. Governments may and should ensure a fair playing field, but they rarely make significant domestic policy corrections to the discrimination. Indigenous peoples may, with good reason, feel compelled to use all available tools to safeguard their interests because Treaties frequently include nationality-based rights. Only foreigners are eligible to take advantage of the substantive and procedural rights they provide because interested parties must fulfil the nationality requirements outlined in treaties. For instance, national treatment and most favourable nation ("MFN") status are requirements under trade agreements and investment treaties.²³ MFN obligations make it difficult to enforce any protections for domestic populations like indigenous peoples that may exist in other economic treaties. Indigenous peoples may, with good reason, feel compelled to use all available tools to safeguard their interests as a result.

Indirectly, treaties can make the issue of severe poverty and social exclusion worse by changing the priorities of developing states' governance and regulatory systems. This frequently manifests as favouring market efficiency, a rise in trade and investment volumes,

²² Thomas Pogge, *International Law Between Two Futures*, 5 JOURNAL OF INTERNATIONAL DISPUTE SETTLEMENT 432 (2014).

²³ Quan Li & Adam Resnick, *Reversal of Fortunes: Democratic Institutions and Foreign Direct Investment Inflows to Developing Countries*, 57(1) INTERNATIONAL ORGANIZATION 175 (2003).

and economic growth over measures to reduce poverty, promote social mobility, distribute income, and strengthen democracy.²⁴ According to international law, a state's political authority to regulate is a fundamental and legitimate prerogative. Yet, when governments voluntarily limit their ability to regulate in some areas through international treaties, they promote interstate cooperation. For instance, economic treaties frequently contain language restricting a state's capacity to enact laws or regulations that would harm FDI or a foreign firm's ability to fairly compete with domestic firms.²⁵

B. Inequality and Discrimination

A vicious circle of helplessness, stigmatisation, discrimination, and exclusion is all too frequently the hallmark of poverty. Indigenous peoples frequently experience various effects that lead to greater inequality. For instance, land concessions for resource extraction, construction projects, or even the establishment of protected zones for environmental conservation may result in their eviction from their lands or encroachment onto them. However, in most cases, no compensation is given, no opportunity to take advantage of the development initiative or projects, even though international and national courts have determined that these situations may violate substantive rights and lack procedural guarantees, remediation, and compensation. Without adequate compensation and viable alternatives, such loss of land use control necessarily results in decreased economic capacity and increased inequality.

C. Human Right Impact Assessment

HRIA is a process for recognizing, comprehending, assessing, and correcting the negative consequences of corporate projects or activities on the enjoyment of impacted right-holders' human rights, such as workers and community members.²⁶ Owing to United Nations Guiding Principles on Business and Human Rights, business enterprises are being held more accountable for their effects on human rights (UNGPs).²⁷ The primary drivers behind the

²⁴ *14th Session of the Expert Mechanism on the Rights of Indigenous People*, UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, <https://www.ohchr.org/en/events/sessions/2021/14th-session-expert-mechanism-rights-indigenous-peoples> (last visited June 20, 2024).

²⁵ *Id.*

²⁶ *Introduction to Human Rights Impact Assessment*, THE DANISH INSTITUTE FOR HUMAN RIGHTS, <https://www.humanrights.dk/tools/human-rights-impact-assessment-guidance-toolbox/introduction-human-rights-impact-assessment> (last accessed June 20, 2024).

²⁷ Nora Götzmann, *Human Rights Impact Assessment of Business Activities Key Criteria for Establishing a Meaningful Practice*, 2(1) BUSINESS AND HUMAN RIGHTS JOURNAL 87, 88 (2017).

requirement to carry out Human Right Impact Assessment (HRIA) are States' responsibilities to keep an eye on the country's human rights condition and to take action to further the realization of those rights to prevent conflicts between the mandates of the agreement and human rights obligations without considering potential repercussions of a given trade deal. The Guiding Principles of HRIA stress the value of inclusive and human rights-compliant processes. Strong focus is placed on equality, transparency, and information availability. It is also essential to assess the importance of actively involving a wide range of stakeholders beyond the government trade officials and private sector representatives who are typically engaged in trade and investment negotiations. They call attention to those areas of a country's population that are the most vulnerable.

D. Legal Foundations for Human Rights Impact (HRIA) Evaluation

States will only be able to discover and thereafter prevent contradictions between the obligations of the agreement and earlier human rights responsibilities if they consider the potential implications of a certain trade deal. The following are the practices that are carried to do the HRIA²⁸:

- (a) ***Pre-existing Obligation***: States are obligated by current treaty obligations under the law of treaties. Thus, they should refrain from entering into new agreements that would place them under conflicting duties. So, to prevent concluding subsequently conflicting agreements, States must identify any potential contradictions between current human rights treaties and future trade or investment agreements.
- (b) ***Indigenous people's right to take part in public affairs***: The right of every person to take part in the conduct of public affairs is another long-standing legal concept which underpins the need for HRIAs. The right to participate indicates that no trade or investment deal should be concluded without a public discussion, according to the Guiding Principles on HRIA of Trade and Investment Agreements which implies that Governments shall consult and work in good faith with Indigenous peoples and that Indigenous peoples have the right to participate in decision-making in situations that would affect their rights.²⁹

²⁸ Caroline Dommen, *Human Rights Impact Assessment: Trade Agreements and Indigenous Rights*, in JON BURROWS & RISA SCHWARTZ (EDS), *INDIGENOUS PEOPLES AND INTERNATIONAL TRADE: BUILDING EQUITABLE AND INCLUSIVE INTERNATIONAL TRADE AND INVESTMENT AGREEMENTS* 295 (2020).

²⁹ *Id.*

(c) **Free Prior Informed Consent (FPIC):** Free Prior Informed Consent (FPIC), a concept that is becoming a requirement under international law, is meant to ensure that different perspectives held within impacted communities are equally taken into account during inclusive decision-making processes. FPIC includes no duress, intimidation, or manipulation to secure permission. Several of the UNDRIP's rights are supported by FPIC. Consent must have been obtained, among other things, adequately in advance, with due regard for the indigenous consultation processes.

HRIA is indispensable and must be carried out, either before signing a new trade or investment agreement or after the agreement has been put into effect, to ensure the protection of human rights in the field of trade and economy and special attention is given to vulnerable groups, which frequently include Indigenous peoples.

Before recommending or carrying out economic reform programs that could reasonably be expected to undercut the enjoyment of human rights, states and other creditors, including international financial institutions like development banks, must conduct a human rights impact assessment.

VIII. INDIA AND INDIGENOUS PEOPLE

An estimated 104 million indigenous people live in India, making up 8.6% of the country's total population. More ethnic groups would be eligible for scheduled tribe status but are not officially recognized in India.³⁰ “Government of India does not have any specific definition for Indigenous peoples”. However, operationally in many of its dealings, those sections of people declared as falling within the administrative category of 'Scheduled Tribes' (S.T.s) are considered as indigenous peoples. Though S.T.s are not coterminous with either the socially and historically accepted term 'Adivasi' (meaning indigenous or original people) or 'tribal', by and large, it is accepted that the S.T.s include mostly 'indigenous peoples' in the Indian context. This 'indigenesness' is also recognized as distinct and different from 'regionalism' and finds clear and distinct expression in the constitution and laws. While recognizing that not all indigenous peoples are STs and vice versa, A neat classification of an S.T. as a homogenous

³⁰ C.R BIJOY ET AL., INDIA AND THE RIGHTS OF THE INDIGENOUS PEOPLE (2010).

social-cultural category is not possible. It has not been possible to arrive at a clear definition of a 'tribal' in terms of ethnicity, race, language, modes of livelihood or social forms.³¹

The wellbeing of the tribal community, as well as the defence of their fundamental human rights and traditional means of subsistence, are a responsibility shared by India. The native people were hired by the British to work for the Empire and were therefore exposed to a monetary economy; nevertheless, due to seasonal unemployment, they were in need after being withdrawn from trading in forest goods. Laws that cut them off from their roots caused them to suffer greatly from socioeconomic, psychological, and emotional isolation. The WTO's directives, globalised, commercial media, and claims of collusion with poachers made issues worse. The symbiotic relationship between the tribal people who live in woods and the forests itself, which stems from the very nature of tribal existence, encourages the conservation of ecological resources. Tribes were unable to assert their legitimate claims to resources in places where they resided and relied on them because of their lack of sophistication and general ignorance of modern regulatory structures.³²

Apart from feeling physically isolated from forests and forest areas, insecurity and dread of being evicted from the lands where they had lived for centuries were likely the main causes of tribal tribes' emotional alienation. Dr. H. Sudarshan of the Vivekananda Girijana Kalyana Kendra (VGKK), a registered organisation working with the Soliga tribes, in the Biligiri Rangaswamy Temple (BRT) Wildlife Sanctuary in Karnataka, analyses the alienation of the tribal people and claims that deforestation was brought on by the supply of railway sleepers during the Nehruvian era, followed by coffee estates and granite quarries.³³ He points out that monocultures were planted and clear-felled by the forest department.

In accordance with the Multi-State Co-operative Societies Act of 1984, the Indian Government founded TRIFED in August 1987. It is a national co-operative organization whose major goal is to institutionalize the trade of minor forest produce and surplus agricultural produce grown by Indian tribal communities in order to assure their socioeconomic growth. In order to source and sell things made by Indian tribes, TRIFED has

³¹ *Id.*

³² Malini Shankar, *Tribals, Forest Interdependence, and Integration*, INDIA TOGETHER (Oct. 19, 2008), <https://indiatogether.org/tribals-environment>.

³³ *Id.*

established a chain of retail outlets named "TRIBES INDIA."³⁴ By offering a forum where tribal artisans and gatherers can display their creations and produce for sale, TRIFED serves as a connector and efforts are being made to maximize sales on each channel.

Indian manufacturing businesses are adopting the slogans "vocal for local" and "Make-In-India, for the world" more frequently, with an emphasis on creating locally and exporting globally. Promoting an indigenous business can really smoothen the path to transforming India into a global manufacturing hub along with other industries.³⁵ It has always put indigenous peoples through additional hardships and obstacles and demanded different skills from them. Indigenous peoples have continued to play an active role in complying to the norms, defending regulatory independence, and ensuring ongoing representation before national authorities if they are to advance their interests by overcoming the above-discussed challenges.

IX. MILLET REVOLUTION

Disappearance of Millet is an illustration of how local markets/indigenous businesses are truly absorbed by globalization. Products like muesli, granola, and hot cereal are seeing significant growth in India. Oats, oat bran, wheat bran, and porridge are examples of hot cereals. Customers in India favors hot breakfasts. As a result, the heated cereal market is expanding.

Amid India becoming a sizable market for the modernised food with a rising number of middle-class, dual-income households, the Kutia Kondh tribal people in an overlooked area of the Kandhamal district of Odisha at least deserve some recognition for their contribution to the crop's survival and subsequent mainstreaming. The revival of nutritious millets in Odisha is garnering widespread attention, and the Centre and other State governments are ready to adopt its promotion model.³⁶ Millets lost their prominence for a variety of reasons. Millets are thought of as the poor man's diet, and tribal people, particularly those of the younger generation, felt that they were looked down upon for eating millets. However, harvesting the grain proved difficult. The de-husking of millet needed rigorous labour. They just produced

³⁴ TRIFED, <https://trifed.tribal.gov.in/trifood> (Last visited June 20, 2024).

³⁵ *Sustainability, Self-Reliance, and Indigenous Manufacturing – The Path to Transforming India Into a Global Manufacturing Hub*, INDIA TODAY (Mar. 01, 2023), <https://www.indiatoday.in/impact-feature/story/sustainability-self-reliance-and-indigenous-manufacturing-the-path-to-transforming-india-into-a-global-manufacturing-hub-2341257-2023-03-01>.

³⁶ Satyasundar Barik, *Millets in the Mainstream: How Odisha's Kutia Kondh Tribe Rediscovered a Palate for the 'Poor Man's Food'*, THE HINDU (Nov. 25, 2022), <https://www.thehindu.com/news/national/other-states/a-tribes-efforts-in-odisha-to-bring-millets-back-on-their-platters/article66178864.ece>.

what they needed for their personal consumption because there was no market for the crop. A proposal to start a global campaign to promote millet consumption and production has been made by India. On February 13–15, 2023, in Indore, Madhya Pradesh, during the inaugural Agricultural Deputies Meeting under the Agriculture Working Group (AWG), the draft of the proposed initiative, International Initiative for Research and Awareness (MIIRA) was presented. MIIRA will finance millet research while also attempting to connect international millet research organizations. The MIIRA will be responsible for coordinating millet research initiatives around the world, as per Agricultural Ministry in accordance with UN's declaration of 2023 as the International Year of Millets, which was proposed by India and backed by 72 nations.³⁷

X. CONCLUSION

Undeniably we live in high-tech era and society, where everything looks simpler and easier, at the same time one must not lose sight of the fact that this has also contributed significantly to our lives' materialism and wastefulness. Even though we are aware of many of these things, we nonetheless fall victim to them. There is a world adjacent to ours where people continue to live in a primitive way. They have separate traditions, cultures, lifestyles, beliefs, foods, languages, rituals, and a whole different outlook on life. They are both equally dynamic and culturally rich. They provide an illustration of the cultural diversity of Indian ancestry. To safeguard the rights and interests of Indigenous peoples, more research, participation, and policy leadership are required at the international level like MIIRA.

Since the establishment of the WTO, the world economy has changed, and with those changes have come chances to evaluate and make improvements to current trade policy that are both inclusive and equitable. It would be ideal to amend the WTO agreements during a fresh round of discussions. In order to ensure inclusion, equity, and the protection of Indigenous peoples' rights. The modernization of the WTO agreements necessitates an assessment of the interactions between international commerce and Indigenous peoples' lands, resources, knowledge, and cultural heritage. To make sure that it doesn't infringe on Indigenous peoples' authority over their traditional knowledge and cultural legacy, the TRIPS agreement needs to

³⁷ Harikrishan Sharma, *All You Need to Know About MIIRA, India's Proposed Global Initiative to Promote Millets*, INDIAN EXPRESS (Feb. 28, 2023), <https://indianexpress.com/article/explained/miira-global-initiative-g20-millets-india-importance-8469052/>.

be revised. Although the policies and plans as discussed above pertaining to the sale of tribal products have increased the production and marketing of indigenous food, the results have not been very noticeable. Because the tribal tribes are mostly cut off from the rest of civilization, they are unaware of such scams and do not take advantage of them. It becomes crucial that the government promotes these programs and urges the tribal population to take advantage of them.

Understanding the treatment of indigenous peoples by international law requires reference not only to human rights law but to all its fields, including international economic law. Understanding how indigenous peoples are treated under international law involves reference to all of its areas, including international economic law, in addition to human rights legislation. The goal should be to promote Indigenous company development, entrepreneurship, and economic growth by giving Indigenous peoples more opportunity to participate in the economy. India has been a growing market for indigenous businesses by facilitating investment, encouraging innovation, and enhancing skill development. Indigenous peoples have a great chance to revive their businesses which have suffered due to the existing challenges and shall be successful in finding a place in the global market.

PART D

RETHINKING TECHNICAL BARRIERS TO TRADE IN BILATERAL TRADE BETWEEN INDIA AND CHINA FOR ACHIEVING SELF- RELIANCE^{††}

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Abstract

The Bilateral Trade between India and China crossed the USD One Billion Mark in 2023. It may be noted that the sharp deficit is attributable to the predominance in export of raw materials by India vis-à-vis import of electronic and manufactured goods from China. India's service exports to China focus mainly on commercial services, while China's service exports to India focus mainly on the three traditional service fields of tourism, transport services and construction services. Economic isolation is less preferred, and as such the need for policy measures and effective implementation thereof is the need of the hour. Atma Nirbhar Bharat vision promotes indigenous production to satisfy the increased foreign demand of local products. Schemes including 'Make in India', 'Digital India', Software Technology Parks, Electronics Hardware Technology Park Scheme/ Export Oriented Unit Scheme and Special Economic Zone Scheme have been devised to extend support for domestic manufacturing in India. Self-reliance is an important vantage point for India to harness the strength of growing population and cater to its employment opportunities. It is also significant in transforming India into a destination for assembly of products. This will, in turn, enhance the intellectual property ecosystem in India as well, with more products being manufactured locally. This paper delves into the relevance of self-reliance for India's economy and deliberates on the need to revisit existing trade policies for combating dependence on imported Chinese products. The authors propose that there needs to be a reimagining of technical barriers to trade employed by India for boosting its domestic manufacturing and reducing import dependence, thereby bringing down the accelerating trade deficit.

Keywords: Indo-China, Trade Deficits, Aatma Nirbhar Bharat, Self-Reliance, Technical Barriers to Trade

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I. INTRODUCTION

Globally, trade between countries has been instrumental in propelling economic development and bringing about a deceleration in poverty. Trade throws open opportunities for growth, innovation, economic integration and employment. Ever since India embraced liberalisation in the late 20th century, there has been no looking back in terms of its trade with other nations. The three decades that have followed ever since then witnessed India being a party to multifarious free trade agreements and negotiations for augmenting its foreign trade.

The unprecedented transformations brought about in the global order by virtue of the COVID- 19 pandemic and the ongoing Russo-Ukraine war has necessitated a recalibrated strategy in multiple sectors, including foreign trade policy. The clarion call for 'Atmanirbhar Bharat' is one such measure which has been initiated for making India self-sufficient by marking a transition towards becoming a manufacturing hub for meeting its own requirements and for exporting the surplus to the world at large. While it is a policy in the right direction, it is unlikely to have the intended impact if we take into consideration, the emerging trends in the foreign trade policy being followed by India.

The bilateral trade between India and China has proliferated exponentially over the past three decades, culminating in China being one of the largest trading partners India has ever had. However, the increase in trade is also accompanied by a whopping trade deficit, indicating concerns for the prospects of a self-reliant India. With the diplomatic relations between India and China witnessing new lows, the need for reducing dependency on China has become a necessity, not merely for attaining self-sufficiency in trade, but also in the security and strategic interests of the country.

Through this paper, the authors attempt to understand the trends in India's bilateral trade with China and analyse the emerging patterns. The authors also endeavour to establish the need for India's self-sufficiency in the backdrop of its widening trade deficit with China. In furtherance of this, the authors propose a reimagining of Technical Barriers to Trade (TBT) as a measure for advancing India's goal of transitioning into a self-reliant economy, manufacturing products for itself and the world.

II. INDIA'S TRADE WITH CHINA

India and China have always followed different growth trajectories owing to the variations in the degrees of liberalisation and the diverse roles that the manufacturing and service sectors play in the countries' economies (Beretta & Lenti, 2012). A slew of economic reforms in both India and China in the latter half of the 20th century set the stage for the countries becoming powerful economies amongst Asian nations. Despite being at similar stages of development initially, China surged ahead of India as it had embraced an open economy around two decades earlier than India and continued to astutely sustain its growth thereafter (Beretta & Lenti, 2012).

The past two decades have established the exponentially growing trade relationship between India and China. Marking an average annual growth of 12% in bilateral trade, China has emerged to become one of the largest trading partners of India. However, analysts have pointed out the asymmetrical nature of this relationship and how the trade relationship is skewed more in favour of China (Kumar, 2019; Rusko & Sasikumar, 2007). Moreover, China's exports to India are more diversified and hence deemed to be more sustainable when compared to that of India's exports to China which are predominantly primary and resource-based products (Bhat T, Guha, & Paul, 2008).

One of the oft-cited reasons for China's growing stronghold in global markets is its lower production costs which is attributable to a thriving labour force (Qureshi & Wan, 2008). In spite of having a more cheaper labour force, India's domestic policies have not been able to catalyse an ecosystem for exporting labour intensive products from the country, thereby curtailing its possibility to catch up with China (Pangariya, 2006). In this backdrop, it necessary to re-evaluate India's trade dynamics with China and understand its implications for its ambition to become a self-reliant economy.

A. India's Trade Deficit with China

A survey of the statistics in the past 5 years reveal a stark picture of India's increasing trade deficit with China. As is evident from the figures, the percentage of growth in exports to China has declined substantially over the years whereas the corresponding trends in the percentage growth of imports has proliferated. The trade deficit that India has with China has also reached

an all-time high of 73 billion dollars. This indicates worrying projections for India's quest for self-reliance.

Year	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Export to China (billion dollars)	13.33	16.75	16.61	21.18	21.25
Percentage growth	-	25.64	-0.83	27.54	0.34
Imports from China (billion dollars)	76.38	70.31	65.26	65.212	94.570
Percentage growth	-	-7.94	-7.19	-0.07	45.02
Trade Balance (billion dollars)	-63.04	-53.56	-48.64	-44.02	-73.31

Source: *Data from Tradestat, Ministry of Commerce & Industry*

B. India's Imports from China

India is heavily dependent on China for sourcing its raw materials and components or parts of various equipment (Gargeyas, 2022). India has also been importing finished products from China such as electrical machinery, television image and sound recorders and reproducers, boilers, mechanical appliances and furniture (Gupta & Jayaswal, 2023).

Goods	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
Electronic Components	5.28	5.70	5.29	10.40	7.36
Computer Hardware, Peripherals	3.64	3.97	4.77	7.36	6.81
Telecom Instruments	7.00	5.34	5.92	6.31	6.36
Organic Chemicals	3.33	3.05	3.08	5.39	5.95
Industrial Machinery	3.53	3.91	3.52	4.80	5.72
Electronic Instruments	2.18	2.18	2.37	3.05	3.48
Electric machinery and Equipment	2.45	2.41	2.02	2.81	3.13

Source: *Data from Tradestat Ministry of Commerce & Industry*

The proliferation in imports from China is perceived to be a direct consequence of lack of adequate supplies of capital as well as intermediate goods in India, thereby making it critical and complementary for manufacturing processes in the country (Raju, 2023). This should be cause for an alarm as this severely undercuts India's ability to enhance the local manufacturing of these goods.

III. RELEVANCE OF SELF-RELIANCE FOR INDIA'S ECONOMY

The proliferation of imports from China has not augured well for the domestic manufacturers in India and have made many industries vulnerable to decimation. The push for self-reliance through initiatives such as Atmanirbhar Bharat Abhiyan facilitates strengthening of indigenous manufacturing of products which can help the domestic industries to thrive and flourish. For a country whose population is slated to overtake that of China in the immediate future, India's long-term growth prospects depends on harnessing its strength in population and transforming itself into a manufacturing hub. This can also directly translate into creation of more jobs for its citizens, thereby enabling it to offset the potential damage that may be inflicted through the wiping out of industries due to imports from foreign countries.

Atmanirbhar Bharat also marks a stepping stone towards forming a more globalising India as it facilitates India to amp up its manufacturing capacity so as to penetrate into the global market. With this, it becomes pertinent to assess whether India is leveraging its potential to mark a transition from being predominantly a service hub to a manufacturing hub. In order for India to realise this goal, it is crucial that the country also becomes a destination for assembly of products, particularly for network products such as electronic and electrical equipment, telecommunication apparatus and automobiles (Economic Survey 2019-2020). This can also help in entrenching our self-reliance and facilitate more opportunities for trade and creation of jobs.

One of the significant measures that has been introduced under the aegis of Atmanirbhar Bharat Abhiyan is the Production Linked Incentive (PLI) Schemes. Notified in 13 sectors, the Schemes intend to provide monetary incentives based on incremental sales if a specified percentage of the product is sourced in India (Ministry of Commerce & Industry). It aims to achieve two-fold objectives: firstly, to augment the domestic manufacturing and secondly, to reduce dependency on imports. However, PLI Scheme is a refurbished version of

the erstwhile Merchandise Exports from India Scheme (MEIS), which had similar objectives and was withdrawn with effect from 2021 after it was rendered to be contravening the provisions of the WTO Agreement on Subsidies and Countervailing Measures (India – Export Related Measures, 2019). Unlike MEIS, PLI Schemes have only made broad mandates on the thresholds of investments and the sales targets that are to be achieved in order to be eligible for the incentives and do not clearly stipulate the value or percentage of domestic goods that have to be utilised in the place of imported goods for availing the incentives. Thus, while it has been able to circumvent the possibility of drawing the ire of WTO on the apparent face of it and has sought to further its vision of boosting domestic manufacturing and thereby reduce dependency on imports, it is not immune from a thorough scrutiny by WTO. Therefore, the prospects of PLI Schemes as a standalone measure for achieving self-reliance is likely to be marred if a similar bid is made before WTO. This brings to fore the need to explore other alternatives in trade law for achieving the goal of Self-Reliance.

IV. TECHNICAL BARRIERS TO TRADE AS A MEANS TO ACHIEVE SELF-RELIANCE

Technical barriers to Trade (TBT) are measures that are imposed on products depending on their intrinsic and extrinsic characteristics and the manner of their production (Bossche & Zdouc, 2013). These measures may take the form of standards, regulations or restrictions for safeguarding life, health, environment or any other legitimate societal interest (Bossche & Zdouc, 2013). Notably, a perusal of Paragraph 2.2 of the TBT Agreement, brought about by the World Trade Organisation (WTO), does not place an embargo on technical regulations which are necessary for a ‘legitimate purpose’ such as protection of health, life, environment or in the interests of national security or preventing deceptive practices. TBTs are regulated by WTO only to ensure that countries do not take undue advantage of it by indulging in protectionism to shield its domestic industries from global competition (Koul, 2018). However, this does not mean that countries have refrained from leveraging TBTs as tools for safeguarding their domestic industries in the face of increasing trade deficit as these are legitimate restrictions that can be placed on imports if it can be brought within the ambit of the exemptions in the TBT Agreement.

India has taken recourse to diverse strategies to take recourse to TBTs, one of the notable amongst them being the temporary embargo that it placed on import of Chinese toys into Indian market, citing the high content of lead in them. While the predominant objective

was to ensure that people's health and safety are not compromised, the move was hailed by some as a measure for protecting the struggling domestic industry for toys (LiveMint, 2009). A Parliamentary Standing Committee which conducted a thorough analysis of the impact that Chinese imports have on Indian industries has proposed imposition of such tariff barriers as a measure to curb increasing imports of cheap and low-quality from China in addition to offering incentives for domestic manufacturing of products (Parliamentary Standing Committee, 2018). It has highlighted how imposition of a differential duty structure for imports of mobile phones aided in bringing down the number of imports of the product from China in order to buttress its proposition (Parliamentary Standing Committee, 2018).

India can also take advantage of Article XXI of the General Agreement on Tariffs and Trade (GATT), 1994 which empowers countries to undertake measures that are necessary for the "protection of their essential security interests" (Article XXI, 1994). Although this has been resorted to as a strategy in the past, it has all been largely unsuccessful stints. For instance, in 2012, the Ministry of Electronics and Information Technology (MeitY) brought out a Notification which sought to augment domestic manufacturing of electronic goods by according a preference to these over imported goods in public procurement much akin to the PLI Schemes that are in place today (Gazette of India, 2012). Notably, the MeitY introduced this policy, for select electronic goods which have significant security ramifications, citing concerns in the wake of increasing cyberattacks (Gazette of India, 2012). However, this preferential policy of procurement of domestically manufactured electronic goods met with stiff resistance which ultimately led to it being a policy on paper but not implemented owing to concerns of the opposing entities. Thus, what could have been a legitimate strategy to boost domestic manufacturing without circumventing WTO rules was made redundant (Chaudhari, Import Liberalisation and Premature Deindustrialisation in India, 2015). It is important that India adopts such policies that can supplement its vision for achieving self-reliance in manufacturing of goods. For instance, taking recourse to security exemption to restrict imports of bulk drugs and drug intermediaries can do wonders in increasing India's indigenous manufacturing capacity in the pharmaceutical sector (Chaudhari, 2021). Although there are no broad criteria as to what amounts to 'security interests' that can justify invocation of Article XXI of GATT and it is considered a matter which is subject to what a country finds necessary for its interests, measures undertaken in furtherance of this are subject to review so as to ensure that it does not engender protectionism (Wang, 2019). Therefore, it is necessary that India

invokes this clause strategically to restrict imports of goods over which it can demonstrate a 'reasonable nexus' to its security interests (Ravikumar, 2016).

V. CONCLUSION

India's widening trade deficit with China raises significant impediments in its quest for self-reliance. For a developing nation like India, achieving self-sufficiency in manufacturing can do wonders in harnessing employment opportunities, transitioning India into a destination for assembly, fostering the intellectual property ecosystem in the country and above all, in tiding away volatile and unprecedented scenarios without creating ripples in the economy. China's success is largely attributable to its competency established vis-à-vis an export-oriented strategy. India's vision for Atmanirbhar Bharat is also along similar lines inasmuch as it endeavours to enhance its indigenous manufacturing capacity and thereby boost its exports to other countries. However, it needs to explore alternative strategies in its foreign trade policy in order to translate this into action. In this regard, India must take advantage of the tariff and non-tariff barriers that it can legitimately impose by complying to the WTO rules and regulations for according protection to the domestic manufacturers. Measures such as TBTs and restrictions imposed in lieu of security interests can be potential tools for leveraging India's domestic manufacturing and curtailing the overwhelming dependency on imports from other countries.

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INTERPHASE OF CREDIT GUARANTEE SCHEME AND MSMES: STRENGTHENING THE FRAMEWORK OF ATMANIRBHAR BHARAT^{††}

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Abstract

Finance is the bloodline of every business. Inadequacy of capital can derail the growth of any business. The role of finance, as suggested through numerous theories, is considered to be pivotal to economic growth. Any determinate action on finance is prone to have policy implications that shape the future of economic growth. Credit Guarantee Schemes (CGS) are one such miniscule, yet significant part of the Indian financial sector. Credit Markets for Micro, Small & Medium Enterprises (MSMEs) have extrinsic bottlenecks and barriers, and as such CGS at its core seeks to mobilize funds for a particular purpose, from various lending institutions, including Banking & Non-Banking Financial Companies. The International Finance Corporation (IFC) estimates that over 40% of MSMEs in developing countries have an unmet necessity of upto \$5.2 trillion in any given fiscal year equivalent to 1.4 times of the global MSME lending. With initiatives such as Emergency Credit Line Guarantee Scheme (ECLGS), MSME Competitiveness – A Post-COVID Resilience and Recovery Programme (MCRRP), being introduced, the challenges to implementation have mounted leaving interests of MSMEs, chagrined and at bay. Declaration of Non-Performing Assets (NPAs) is one of the hurdles that MSMEs with borrowings face. While on one hand, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has placed unbridled powers in hands of financial institutions for dealing with any unpaid borrowings, the CGS acts as a protective measure to Financial Institutions. In this paper, the authors seek to understand the role of Credit Guarantee Schemes, and their interface with SARFAESI & other allied laws, in achieving the true spirit of “atmanirbhar bharat.”

Keywords: MSMEs, Credit Guarantee Schemes, SARFESI, atmanirbhar bharat

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I. INTRODUCTION

India is home to about 6.3 crore Micro, Small & Medium Enterprises (“MSMEs”).¹ The registered units as on March 31, 2022 stood at 80.16 lakh units.² The definition of MSME has undergone a change after the announcement of the Atmanirbhar Bharat package on May 13, 2020. Pursuant to this announcement the Ministry of Micro, Small and Medium Enterprises issued a notification on June 1, 2020 revising the classification of enterprises.³

Table 1: Determination of MSMEs w.e.f. July 1, 2020			
Criteria: Investment in Plant & Machinery/equipment & Turnover			
CLASSIFICATION	MICRO	SMALL	MEDIUM
Manufacturing & Services rendering enterprises	<ul style="list-style-type: none"> ▪ Investment in Plant and Machinery or Equipment not more than Rs.1 crore; ▪ Annual Turnover not more than Rs. 5 crore. 	<ul style="list-style-type: none"> ▪ Investment in Plant and Machinery or Equipment not more than Rs.10 crore; ▪ Annual Turnover not more than Rs. 50 crore. 	<ul style="list-style-type: none"> ▪ Investment in Plant and Machinery or Equipment not more than Rs.50 crore; ▪ Annual Turnover not more than Rs. 250 crore.

The government in order to digitize and streamline the MSME registration process created an online portal called as Udyam registration,⁴ known as MSME registration. Using this portal as of March 31, 2022, the states of Maharashtra, Tamil Nadu, Gujarat, Uttar Pradesh and Rajasthan have made the highest number of MSME registrations, accumulating to a record 43.94 lakh units cumulative.⁵ With the rapid increase in MSMEs across the length and breadth of the country, let’s take a closer look at the Credit Guarantee Schemes in operation at present and how it can strengthen the framework of Atmanirbhar Bharat. It is pertinent to note that the advancement is more so, to boost existing entrepreneurs by promoting banks to provide loans to the businesses, and by means of Circulars clarification is provided that the scheme shall not extend to core agricultural activities, self-help groups, etc.

¹ MSME Industry – Presentation Industry Report, India Brand Equity Foundation, https://www.ibef.org/download/1651119797_MSME%20-March-2022-min.pdf

² *Id.*

³ Notification, New Definition of MSME, Ministry of Micro, Small and Medium Enterprises, June 01, 2020, https://msme.gov.in/sites/default/files/MSME_gazette_of_india_0.pdf

⁴ MSME/Udyam Registration Process, <https://udyamregistration.gov.in/Government-India/Ministry-MSME-registration.htm>

⁵ Number of MSMEs expected to grow; micro enterprise dominates the sector, MSME Industry – Presentation Industry Report, India Brand Equity Foundation, https://www.ibef.org/download/1651119797_MSME%20-March-2022-min.pdf

II. A BRIEF VIEW OF THE COVID-19 PANDEMIC ON MSMEs

The CoVID-19 pandemic has adversely affected the MSMEs. The International Labour Organization's Decent Work Technical Support Team for South Asia had analyzed the CoVID-19 pandemic's impact on enterprises and workers in the formal and informal economy in India and presented it in the form of a report ("ILO's Report").⁶

The report confines itself to the three Indian states of Maharashtra, Tamil Nadu and Uttar Pradesh. A few observations from the ILO's Report:

- By October 2020 when most of the restrictions were lifted⁷ –
 - Tamil Nadu witnessed 7% shutdown in enterprises, 16% in Uttar Pradesh and 19% in Maharashtra.
 - Mumbai recorded the highest number of shutdowns, the percentage being 26%, during the time of the survey in October 2020.
- While the government schemes are in place, a little more than half the MSMEs did not take the benefit out of the schemes.⁸ A few reasons are:
 - 51% were not aware of the programmes. (This was the reason given by 70% people who did not avail the government schemes in Maharashtra)
 - 41% felt that they would not reap the benefits, even if they would have applied. (This view was held by 65% of the respondents in Tamil Nadu and 80% in Chennai)
- There is another side to this, which is:

⁶ Situation Analysis on the COVID-19 pandemic's impact on enterprises and workers in the formal and informal economy in India, ILO DWT for South Asia and Country Office in India, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_798079.pdf

⁷ Impact of the CoVID-19 pandemic on the enterprises, Situation Analysis on the COVID-19 pandemic's impact on enterprises and workers in the formal and informal economy in India, ILO DWT for South Asia and Country Office in India, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_798079.pdf

⁸ Government schemes accessed by the MSMEs (in percent), Situation Analysis on the COVID-19 pandemic's impact on enterprises and workers in the formal and informal economy in India, ILO DWT for South Asia and Country Office in India, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_798079.pdf

- 23% of all respondents did not feel that they would need any support from the government.
- Almost 50% of Coimbatore respondents felt that they do not need any support from the government.

III. EVOLUTION OF CREDIT GUARANTEE SCHEMES

Time and again, the Government and its functionaries have attempted to boost the MSMEs, through various initiatives, amongst which is the financial support through Credit Guarantee Schemes. The idea behind credit guarantee schemes is to foster innovation and competition, through extending support to businesses that require capital infusion. Thereby pivoting the reinvestment of idle funds with banks to various entities, that otherwise may be reluctant or averse to borrowings.

Credit Guarantee Scheme (“CGS”) means a scheme wherein collateral free credit facility is provided to a particular entity. It provides third-party credit risk mitigation to lenders. launched by the Government of India, the Credit Guarantee Fund Scheme envisages to provide collateral-free credit to the micro and small enterprise sector.⁹ The roots of Credit Guarantee Schemes go back to the period of 1960s. In July 1960, the Government of India, in consultation with the Reserve Bank of India (“RBI”) introduced the CGS.¹⁰ The RBI was entrusted with the administration of the scheme, and also designated as the Credit Guarantee Organization. This was primarily done with an aim to push advances from banks and other Credit Institutions to boost the capital requirement of small scale industries.

The government in order to support emerging entrepreneurs to set up their own Micro and Small Enterprise (“MSE”) set up the Credit Guarantee Fund Trust for Micro and Small Enterprises (“CGTMSE”). This facility has been helping first generation entrepreneurs avail credit without the hassle of providing collaterals/third party guarantees. This scheme became operational from January 01, 2000 after being launched on August 30, 2000.¹¹ The main

⁹ Credit Guarantee Fund Scheme for Micro and Small Enterprises, MSME, https://msme.gov.in/sites/default/files/CredirGuranteeFundScheme_1.pdf

¹⁰ History, Deposit Insurance And Credit Guarantee Corporation, https://www.dicgc.org.in/AU_History.html

¹¹ Credit Guarantee Fund Scheme for Micro and Small Enterprises, MSME, https://msme.gov.in/sites/default/files/CredirGuranteeFundScheme_1.pdf

contributors to the fund of the CGTME scheme is the Government of India and the Small Industries Development Bank of India (SIDBI).

With this background, there were various schemes that the government were introduced by the government of India to mitigate the impact of the pandemic. A few of them are:

A. Emergency Credit Line Guarantee Scheme¹² (ECLGS)

This scheme was introduced by the government of India in pursuance to the Atma Nirbhar Bharat Package in 2020 with the sole purpose to help MSMEs operationalize their business in lieu of the distress that was brought by the CoVID-19 crisis.

The ECLGS ensured 100% guarantee against the losses suffered by Member Lending Institutions due to non-repayment by the borrowers. This scheme has been extended beyond its scope till March 31, 2023.¹³ It has provided major relief to the civil aviation, hospitality, travel & tourism, cinema halls and allied sectors.

B. Credit Linked Capital Subsidy and Technology Up-gradation Scheme¹⁴ (CLCS-TUS)

This scheme was introduced in order to boost the MSMEs to come at par and upgrade their technological capabilities. It provided a capital subsidy of INR 15 lakh in order to take initiatives under digital empowerment, up-gradation in design expertise, among others.

C. A Post-COVID Resilience and Recovery Programme¹⁵ (MCRRP)

The World Bank approved a mammoth \$500 million loan for India's Raising and Accelerating MSME Performance (RAMP) programme that has been instrumental to revitalize India's MSME sector. The specific aim of this programme is to provide a better and improved market access, access to credit, strengthening institutions and governance at the Central and State level for acting as a helping hand to the MSME sector.

¹² Emergency Credit Line Guarantee Scheme, Ministry of Micro, Small & Medium Enterprises, PIB Delhi, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1742684>

¹³ Scope of ECLGS enhanced and validity extended till 31.3.2023, Ministry of Finance, <https://pib.gov.in/PressReleasePage.aspx?PRID=1811580>

¹⁴ Credit Linked Capital Subsidy and Technology Up-gradation Scheme, Ministry of Micro, Small & Medium Enterprises, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1577745>

¹⁵ Support to MSME Sector, World Bank Approved a US \$500 Million loan, Ministry of Micro, Small & Medium Enterprises, <https://pib.gov.in/PressReleasePage.aspx?PRID=1777170>

It is to be noted that even during a period of pandemic, several businesses were put to the brunt of Financial Institutions despite the fact that several notifications to combat the financial stress faced by businesses were issued by the Reserve Bank of India (RBI).

It is pertinent to note that the RBI serves as a regulator for the banking sector in pursuance of the Banking Regulation Act, 1949. As on 27.03.2020, RBI sought to address the the financial situation owing to the Covid19 pandemic, consequently issued a Statement on Development and Regulatory Policies (SDRP) dated which had the following intent¹⁶:

- i) Expanding liquidity in the system sizeably to ensure that financial markets and institutions are able to function normally on the face of COVID19 related dislocations;
- ii) Reinforcing monetary transmission so that bank credit flows on easier terms are sustained to those who have been affected by the pandemic;
- iii) Easing financial stress caused by COVID19 disruptions by relaxing repayment pressures and improving access to working capital; and
- iv) Improving the functioning of markets in view of the high volatility experienced with the onset and spread of the pandemic.

The SDRP provided for various initiatives including the moratorium of loans, on account of which it was subsequently seconded and modified vide Circulars dated 17.4.2020 'Covid19 Regulatory Package – Asset Classification and Provisioning' and 23.5.2020 whereby the moratorium period was extended by additional three months, i.e., from 1.6.2020 to 31.8.2020 towards payment of all instalments for term loans availed, and an Ex-Gratia Scheme of 23.10.2020 which applied to a category of loans where the sanctioned amount was upto Rupees Two Crores. It is pertinent to note that the moratorium was regarded as a deferment and not as a waiver, and on account of which the interest component in the loans were payable thereafter on or before 31.03.2021. While on one hand, the need of the MSMEs looked foremost, it was congruous to ensure that the actions of the banks had to be in tandem with the heed of the depositors' money which were in hands of the banks, who were merely a custodian of the same. In *Small Scale Industrial Manufactures Association v. Union of India and others*¹⁷ the Hon'ble Supreme Court refused to grant any of the reliefs including (i) total waiver

¹⁶ Statement on Developmental and Regulatory Policies, Press Release : 2019-2020/2130, March 27, 2020, Department of Communication, Reserve Bank of India

¹⁷ MANU/SC/0202/2021

of interest; (ii) extension of moratorium period (iii) need for sector-wise reliefs; and (iv) additional relief measures, observing that, “granting of any such reliefs would have a far reaching financial implication on the economy of the country. It appears, whatever best can be offered has been offered for the different fields and to the common people as well as those persons who are affected due to Covid19 pandemic.”¹⁸ However, the Court came strongly on the penal interest charged in respect of interest amounts unpaid during the moratorium period as the issue was squarely covered in the 23.10.2020 *Ex Gratia* Scheme, but refrained from implementing the scheme in those businesses where the borrowings were less than Two Crores, but the sanctioned amounts were higher than the said amount, holding that for reckoning the limits, the aggregate outstanding of all facilities availed by the business would be taken into consideration, and where the aggregate amount exceeds the limit, such person shall be ineligible for the reliefs thereof.

IV. SARFESI AGAINST MSMEs

The lifeline of almost 2.5 crore¹⁹ people rests at the threshold of the MSME employment sector, nevertheless, these people are also the backbone of the Indian economy. The MSME sector in India was already coping up from the advent of demonetisation, the implementation of the GST regime and a slowing economy, when the CoVID-19 pandemic hit the globe in 2020. This affected the MSME sector in a far greater manner and therefore the need for the government to step in and ease the distress. The MSME is governed by the Micro, Small and Medium Enterprises Development Act, 2006 (“MSME Act”). Chapter IV of the MSME Act deals with the promotion, development and enhancement of the MSME sector²⁰ whereby the central government may undertake policies and allocate funds for the MSME sector. Detailed provisions are laid down from S. 9 to S. 14 of the MSME Act.

The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“SARFESI Act”) provides a mechanism to regulate the legal framework of conversion and reconstruction of the financial asset that are distressed or have become Non-Performing Assets (“NPA”). It prescribes the procedure to be followed to

¹⁸ Ibid. Para 27.

¹⁹ Over 2.60 crore people got employment through MSMEs, Business Line, The Hindu, <https://www.thehindubusinessline.com/news/over-260-crore-people-got-employment-through-msmes/article35349649.ece>

²⁰ Chapter IV - Measures for Promotion, Development and Enhancement of Competitiveness of Micro, Small and Medium Enterprises, Micro, Small and Medium Enterprises Development Act, 2006.

reconstruct the NPA, thus allowing banks and financial institutions to recover their finances in a faster approach.

Before proceeding with the SARFESI Act, there are circulars from the RBI that should be adhered. For instance, the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises issued on March 17, 2016 has mentioned certain steps that need to be taken prior to the declaration of an account as a NPA.²¹

- When a loan account of a MSME turns into a NPA, banks or creditors must identify the incipient sickness by classifying the accounts into SMA-0; SMA-1; SMA-2.
- Depending on the scenario the bank has to take action.

In addition, the RBI over the course of the pandemic has released various frameworks in order to re-structure the existing loans without a downgrade in the asset classification, subject to a few conditions. However, the MSME sectors aren't thriving despite of the credit boost extended on behalf of the government. This sector is a labor intensive sector, like agricultural activities carried out in India. Therefore, before declaring MSME units into NPAs, the government must take steps to ensure the stability of these units. As they cater to a large proportion of the un-organized sector.

It is to be noted that the SARFESI reliefs run parallel to the Credit Guarantee Schemes, thereby allowing for an intertwined approach for ensuring free flow of credit into the economy, while not impeding with the strength of the financial institutions. The scheme at its best, seeks to act as a catalyst, nay an inhibitor for MSMEs, thereby fueling their growth and affording protection to financial institutions, who are the custodians of the deposits from general public. In *Central Bank of India v. S Komala Shankar*, it was vehemently argued that the:

“Credit Guarantee Fund Scheme for Micro and Small Enterprises scheme is not a subsidy and that it is an agreement entered into between the Bank and the CGTMSE, whereby guarantee cover has been given to the Bank for safeguarding its interest in case of nonpayment of loan by the Defendant. Even when the CGTMSE has settled the claim of the Bank, the Banks have to recover the amounts from the defendant in order to pay the CGTMSE, as per the terms of the agreement.”

²¹ Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises issued on March 17, 2016, Reserve Bank of India, <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=10304&Mode=0>.

The DRT Madurai upholding the argument of the Bank allowed for the Application filed by the Bank in respect of a Term Loan covered under the CGTMSE Scheme. In another instance, where in connection with the Technocrats Scheme, it was urged that banks are bound to promote industries set up by the Technocrats and have them nursed and rehabilitated, on becoming sick, and the discharge of the loan is to be made only out of the profits, if any generated by such businesses. It was submitted by the business that the role of the financing bank in respect of loans granted to businesses is not that of a creditor, albeit more of a promoter of an industry requiring financial aid. The reasons for such averments was the Credit Guarantee corporation of India reimburses defaulted loans to the extent of 90% and as such the banks should do its best to nurse the sick industry instead of hastening to recover the loan arrears. However, the Hon'ble Court of Andhra Pradesh rejected such contentions and allowed the bank to recover the dues, as the duty of the banks to nurse sick businesses is nowhere implied in the schemes.²²

Similarly, where a business entity had availed lending facilities from one of the leading banks, which was further guaranteed by the Export Credit Guarantee Corporation (ECGC). The facilities were defaulted, on account of which the Bank filed for DRT Proceedings against the business. It was then thereafter proposed that the said facilities be closed by means of a One time Settlement, which was also proposed for the concurrence of the ECGC, and only thereafter the settlement monies were paid thereto. However, the issue arises on account of the fact that the name of the business entity remained in the defaulters list/specific approval list, which was maintained by ECGC. The contention of the business was that since the loan was cleared by means of settlement, their names are required to be removed thereof, and as such approached the High Court of Judicature at Madras for suitable relief. It was observed by the Court that:

“What is contained in the Specific Approval List is names of persons who have defaulted earlier for one or other reasons and those names are required for the purpose of assessing when a claim is made by a bank for insurance cover. Therefore, the Specific Approval List does not bar the exporter from borrowing loan from the bank. Even if the amount has been settled by the individual concern under one time settlement scheme, the Petitioner has not pointed out before this Court the provision of Law or Rule in the ECGC policy which provides for deletion of names from Specific Approval List on settlement of the dues to the bank under one time settlement scheme. Therefore, when the ECGC policy does not provide any such

²² K.S.V. Charie v. State Bank of India LNIND 1996 AP 496

specific provision, the Petitioners are not entitled to seek the deletion of their names as a matter of right.”²³

It is thus a sound premise that mere inclusion of the name in the Specific Approval List does not amount to blacklisting.²⁴

V. THE WAY FORWARD

Every business requires a sustainable financing model, which is primordial to its growth. The Government has been one of the forerunners in the case of promoting business interests. However, several businesses have taken a paradigm shift in their activities. The advancement of social entrepreneurship is one such development. The Courts have time and again made it abundantly clear that the various Credit Guarantee Schemes are not waivers of loans in form of subsidies granted to businesses, but are protective measures issued in favor of the Banks, which are availed at the cost of the MSMEs. The Atma Bharat Abhiyaan has been pivotal, the Credit Guarantee Schemes introduced by the Government have a cascading effect to mitigate the fears of lending to businesses, especially Micro, Small and Medium Enterprises. Several businesses have construed the CGS to be a waiver in respect of loans, which in reality is a cushion to the lender. The structure of the scheme is that the lender is entitled to seek risk insurance protection in respect of loans issued to potential borrowers, including MSMEs. However, the same does not preclude the banks from resorting to recovery of dues from the borrowers. The intervention of the courts is extremely limited and parochial. The misnomer in the minds of the businesses needs to be rectified by creating a greater awareness of the aforesaid schemes.

²³ Marshal Export Corporation and Ors. v. Indian Overseas Bank and Export Credit Guarantee Corporation of India Ltd. and Ors., MANU/TN/3423/2010

²⁴ Managing Director, Mumbai v. A. Jaya Kumar and Ors. MANU/TN/1786/2006

STARTUPS FOR A SELF-RELIANT INDIA^{††}

- Prof. (Dr.) Sairam Bhat* & Aparna S**

Abstract

The impetus for being vocal about local goods has been an idea that India has fervently adhered to since the times of its struggle for independence. It has received a fresh mandate in the wake of the Aatmanirbhar Bharat Abhiyan which aims to promote India's self-sufficiency in production and manufacturing of goods. India has also dedicated its efforts towards strengthening of the startup ecosystem through the Startup India Scheme. Through this paper, the authors seek to understand whether strengthening startups can help in achieving the vision of self-reliant India. The authors further analyse the challenges involved while synergising the strengthening of startups with the vision of 'Vocal for Local.'

Keywords: Startups, Self-reliance, Aatmanirbhar Bharat Abhiyan, Vocal for Local

I. INTRODUCTION

The idea of giving a thrust to locally produced goods and gradually reduce dependence on imports is not a new idea. This was a widely resonated sentiment during many phases of Indian nationalist movement in the early twentieth century where people were urged to pioneer local industries as a patriotic duty even if it would make them susceptible to losses initially.¹ This is also reflected in Mahatma Gandhi's vision where he exhorted Indian citizens to use things produced by their immediate neighborhood households and to support local industries by increasing their efficiency in areas where they might be lagging behind, instead of opting for more remote resources and services.² Self-reliance for boosting self-sufficiency was incorporated into policies only by the advent of the Third Five Year Plan from 1961 to 1966.³

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¹ SUMIT SARKAR, *SWADESHI MOVEMENT IN BENGAL 1903-1908* (2011).

² ARJUN APPADORAI, *DOCUMENTS ON POLITICAL THOUGHT IN MODERN INDIA* (1974).

³ Planning Commission, Government of India, *Approach to the Third Five Year Plan*, available at <https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/welcome.html> (last accessed on September 27, 2022).

With the Fifth Year Plan from 1974 to 1978, self-reliance achieved the status of a basic social objective alongside other parameters.⁴ The Green Revolution, one of the path-breaking policies adopted by India in 1965, was necessitated out of the country's need to reduce dependency on imported food grains and to augment its self-sufficiency in production of food which would invariably translate into an economic self-reliance.⁵

With the 1991 liberalisation of Indian economy, India embraced an open stance with the removal of import restrictions and licensing regime. Even then, the official standpoint professed commitment to 'swadeshi' ideology by asserting that India was aiming for only 'internal liberalisation' by obliterating industries from government control and that it did not intend to achieve an 'external liberalisation' by subjecting our indigenous industries to foreign competition.⁶ Even though this exacerbated competition between home-grown ventures and foreign companies as the latter delivered products at affordable prices without compromising on quality, India was able to continue exhibiting self-reliance due to the success of enterprises such as Tata, Reliance, Godrej and Raymond.

With the 'Make in India' initiative launched in 2014, the idea of enabling the country to be self-sufficient by encouraging home-grown industries and entrepreneurs received fresh impetus. The vision of being self-reliant became an inevitable necessity in the wake of the Covid-19 pandemic and the escalation of border conflicts with China. Launched in this backdrop, the 'Aatmanirbhar Bharat Abhiyan' or the 'Self-Reliant India' campaign is in fact, an extension of the swadeshi ideology that India has been espousing for decades.

The Aatmanirbhar Bharat Abhiyan is a vision that aims to enable India to achieve self-sufficiency in production and manufacturing.⁷ While giving preference to 'Swadeshi' goods was only an aspirational ideal that India sought to achieve, it has transformed into a vital policy decision in the form of Aatmanirbhar Bharat Abhiyan, necessitated by the disruption of supply chains due to pandemics and wars. One of the key focus areas of the policy is 'economy.' A catena of measures have been adopted in the form of providing debts, guarantees and equity

⁴ Planning Commission, Government of India, *Fifth Five Year Plan – The Perspective*, available at <https://niti.gov.in/planningcommission.gov.in/docs/plans/planrel/fiveyr/welcome.html> (Last accessed on September 27, 2022).

⁵ See Richa Kumar, *India's Green Revolution and Beyond: Visioning Agrarian Futures on Selective Readings of Agrarian Pasts*, 54 ECO & POL WKLY 41-48 (2019).

⁶ Nitin Pai, *A Brief Economic History of Swadeshi*, 2 INDIAN PUBLIC POLICY REVIEW 42-58 (2021).

⁷ INVEST INDIA, *Atmanirbhar Bharat Abhiyaan*, available at <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (Last accessed on Sept 26, 2022).

infusion in business ventures and Micro, Small and Medium Enterprises (MSMEs).⁸ This brings to the fore the issue of how far the Government has envisioned the catalytic role of startups in furthering its goal of self-reliance. It is pertinent to understand the extent to which Aatmanirbhar Bharat Abhiyan envisages promotion of startups within its broad and ambitious policy targets for achieving self-sufficiency.

II. STARTUPS AND ‘VOCAL FOR LOCAL’

In common parlance, startups are understood as young and budding companies helmed by a single or few individuals offering either an innovative product or service or an already existing product or service in an innovative manner. Hence, businesses, commercial enterprises and other similar ventures can be brought under the umbrella term startups so long as their product or service is a unique initiative or a significantly improvised version of an already existing product or service. In India, the Government has sought to recognize as startups only those entities with a registration or incorporation in the country since a period of not more than five years, an annual turnover of less than twenty five crores and working for innovative products fuelled by technology or intellectual property.⁹ Entities that emerge out of a splitting up from another business entity or which is a refurbishment of an already existent business venture would not be considered as startups even if they otherwise fall within the ambit of the proposed definition.¹⁰ Under the Aatmanirbhar Bharat Abhiyan, the Government has brought about a change in the definition of MSMEs by increasing the threshold for investments and prescribing a limit for the turnover generated.¹¹ This has paved way for startups to fall within the ambit of MSMEs and derive the benefits granted to them.

Strengthening and promoting startups is crucial for achieving self-reliance. In addition to serving the purpose of boosting domestic manufacturing, it would also help in more locally sourced ventures to receive the support of the government. Such an initiative from the part of the government would instill confidence in the credibility of the startup ecosystem in India and would help in encouraging angel investors and venture capitalists to lend financial support to

⁸ PIB DELHI, *Initiatives under the Atmanirbhar Bharat Package*, (July 25, 2022), available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1844601> (Last accessed on Sept 27, 2022).

⁹ LOKSABHA SECRETARIAT, REFERENCE NOTE - STARTUP INDIA, STANDUP INDIA 1 (2016).

¹⁰ *Id.*

¹¹ *Supra* note 8.

home-grown startups.¹² Another significant impact that this can have is to sensitize Indians on producing and consuming locally. This would inevitably help in ushering in a growth of indigenous products and strengthen supply chains.

The Startup India Scheme initiated in 2016 envisages building an efficient ecosystem for the facilitation of startups in the country which would in turn augur well for economy as well as for generation of employment.¹³ For this purpose, the Government would step in so as to help startups by easing legal and regulatory compliance requirements, by providing fiscal support and by enabling startups to be showcased around the globe through provision of adequate platforms. In addition to this Scheme, certain other initiatives undertaken by the Government under the 'Vocal for Local' campaign can have significant implications for startups. For instance, the Government has introduced the Fund of Funds for Startups (FFS) Scheme and the Startup India Seed Fund (SISF) Scheme for catering to the funding needs of startups.¹⁴ In the FFS Scheme which has been operational since 2016, the Government has made available a fund of Rs 10,000 crore which would be disbursed to Alternate Investments Funds (AIF) under the aegis of the Securities and Exchange Board of India (SEBI).¹⁵ These AIFs contribute capital for promising startups and is expected to generate employment for as many as 18 lakh persons. Under the SISF Scheme, the Department for Promotion of Industry and Internal Trade (DPIIT) has constituted an Experts Advisory Committee which would select the incubators.¹⁶ These incubators, who may or may not be receiving assistance from the government, are the entities that are responsible for providing funds to eligible startups.¹⁷ Notably, the disbursement of funds for startups under the SISF Scheme has been envisaged at the commencement stage wherein they develop the proof of concept and prototype and conduct the trials of their product as most of the startups receive funding from banks, angel investors and venture capitals only at a later stage.¹⁸

¹² M. Jegadeeshwaran & S. Kaleeshwari, *Indian Startups – Challenges and Opportunities*, 4 INTERNATIONAL JOURNAL OF RESEARCH IN ENGINEERING, SCIENCE AND MANAGEMENT 158-160 (2021).

¹³ STARTUP INDIA, *Action Plan* (2016), available at <https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/Action%20Plan.pdf> (Last accessed on Sept 27, 2022).

¹⁴ PIB Delhi, *Government takes various initiatives to boost Industrial Manufacturing* (July 23, 2021), available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1738173> (Last accessed on Sept 28, 2022).

¹⁵ *Supra* note 13.

¹⁶ Startup India, *Guidelines for recognition of Startups*, (Issued on June 21, 2021),

¹⁷ *Id.*

¹⁸ *Id.*

The handholding provided by the Government during the initial stages of startups by providing funds at the level of proof of concept is commendable considering the fact that the investments that startups receive at the seed-stage are quite low. In India, entrepreneurs are often operating in a challenging environment as much of their business has to appeal to the low and middle income groups which have a strong latent demand, which requires the startups developed by these entrepreneurs to have strategic business models and technological innovations.¹⁹ Since this often takes time, the gestation periods as well as the issues in expanding scalability are often major hindrances for startups while they seek funding from investors.²⁰ In this backdrop, the idea of a dedicated seed funding at the stage where the startups have begun to develop their innovative ideas is an appealing prospect. The FFS scheme and the SISF Scheme are pragmatic solutions for the funding crunches faced by startups that might deter them from pursuing further and eventually lead to their winding up.²¹

In addition to this, the Government has also set up a Government e-Marketplace (GeM) whereby its entities would directly procure goods and services enlisted by startups in an online platform called Startup Runway. For facilitating ease of public procurement from startups, the Government has also made certain relaxations and exemptions in the General Financial Rules. The startups which have been recognized by DPIIT are exempted from the prior experience as well as prior turnover requirements²² and also lay down monetary limits for public procurement through GeM.²³ Moreover, for procurement of goods upto the value of Rs 25,000, the Government can proceed without inviting quotations or tenders which are in turn beneficial for enabling procurement from startups.²⁴

It is also worthwhile to appraise another policy decision that has been adopted whereby a preference is given to suppliers who have a significant amount of 'local content' for the purposes of public procurement. What has been envisaged through this is the creation of separate classes of suppliers according to the percentage of local content that has been used in their goods or services. When Government engages in public procurement, preference is given to the class of suppliers who have at least 50% of content manufactured locally over the class

¹⁹ NASSCOM, *INDIAN TECH START-UP ECOSYSTEM – YEAR OF THE TITANS* (2021).

²⁰ *Id.*

²¹ Nir Kshetri, *Fostering Startup Ecosystem in India*, 7 *Asian Research Policy* 94-103, 100 (2016).

²² Rule 173(i), General Financial Rules, 2017

²³ *Id.*, Rule 149.

²⁴ *Id.*, Rule 154.

of suppliers who may have 20% or more of their content manufactured locally.²⁵ Provision has also been made to ensure that this public procurement can also be facilitated through the GeM which enables the purchase preference to be extended to startups who manufacture local content as well.²⁶ A policy that intends to provide incentives to domestic suppliers and manufacturers for Government procurement would in turn usher in a large scale manufacturing and supply of locally sourced products. Furthermore, such a measure has the potential to be a major incentive for strengthening Indian startups as this would enable them to rely on domestic markets for their revenue generation and thereby reduce dependence on foreign entities for their funds. For achieving the goal of self-reliance, it is vital that a supportive ecosystem is created for the emerging entrepreneurship.

III. CHALLENGES

Another significant measure that is periodically undertaken by the Government is the intense investigation into the existence of dumping practices in industries and levying of anti-dumping duties where goods are exported at prices that widely vary by a considerable margin from the price that is charged for the same product in the domestic markets.²⁷ Anti-dumping duties are imposed when an investigation reasonably concludes that an injury has been caused to domestic industries making them perform poorly.²⁸ Imposition of anti-dumping duties as and where India is facing trade distortions owing to the practice of dumping is also a pragmatic measure for the protection of Indian entrepreneurs. It would be particularly relevant for those startups which are heavily dependent on components manufactured in foreign jurisdictions for their functioning. Intervention through anti-dumping duties would ensure that startups are not incurring financial burden due to dumping practices. Furthermore, the anti-dumping measures can be integrated with the competition policy in India so as to ensure that internal

²⁵ Department of Promotion of Industry and Trade, Ministry of Commerce and Industry, *Public Procurement (Preference to Make in India), Order 2017 – Revision regarding*, Notification No. P-45021/2/2017-PP (BE-II) (Issued on Sept 16, 2020).

²⁶ *Id.*

²⁷ See Samir Kumar Singh, *An Analysis of Anti-Dumping Cases in India*, 40 ECO & POL WKLY 1069-1074, 1070 (2005).

²⁸ Nandana Baruah, *An Analysis of Factors Influencing the Anti-Dumping Behaviour in India*, 30 THE WORLD ECONOMY 1170-1191 (2007).

competition amongst emerging startups in India is distorted owing to domestic producers charging more than what they would have chosen otherwise.²⁹

Even though the Government has taken many laudable initiatives for promotion of startups, there are also considerable challenges in catalyzing this for achieving self-reliance. Firstly, the present Schemes cater to only those startups that have been incorporated inside India. The startups that have been incorporated outside India and those that are established in India as subsidiaries of foreign parent startups would not be eligible for receiving any of the incentives that have been introduced under the Startup India Scheme.³⁰ However, the ground reality is that in India, the startups are over-dependent on foreign funds, which is evident from the fact that out of the 39 billion dollars raised by startups as equity funding in 2021, 35 billion dollars were received from foreign jurisdictions.³¹ Unless and until this anomaly is addressed, most of the startups in India would be kept outside of the protective framework envisaged by the Government.

In addition to this, it is also important to note that India is heavily dependent on imports from other countries in most of the sectors. For instance, India is largely dependent on lithium which is an inevitable component of the electric vehicles and renewable energy industry.³² Unless and until India is in a position to find out an alternative source from which manufacture of batteries of electric vehicles can be facilitated, it would have to rely on imports from other countries.³³ Therefore, being self-sufficient in the production and manufacture of various sectors can only be realized when India becomes self-sufficient in the generation of raw materials that are required in the production and manufacturing process.

With the Aatmanirbhar Bharat Abhiyan, due emphasis has been placed on shielding startups from foreign competition. However, the issue of the fierce and intense competition that startups may be subjected to within the country needs to be addressed. Because of a low barrier to entry, the market is flooded with startups offering similar products and services,

²⁹ See Aradhna Aggarwal, *Trade Effects of Anti-dumping in India: Who Benefits?* 25 *The International Trade Journal* 112-158 (2010).

³⁰ *Supra* note 16.

³¹ *Domestic funding needed for Start-Ups*, THE NEW INDIAN EXPRESS (Jan 17, 2022) available at <https://www.newindianexpress.com/opinions/editorials/2022/jan/17/domestic-funding-needed-for-start-ups-2407641.html> (Last accessed on Sept 27, 2022).

³² Department- Related Parliamentary Standing Committee on Industry, *309th Report on Electric & Hybrid Mobility – Prospects And Challenges in Automobile Industry* (2021).

³³ *Id.*

leading to each being pitted against the other.³⁴ In order to sustain, the startups offer discounts and freebies which attract customers initially, but only to lose significant amount of revenue when the price-sensitive customers choose to not continue with the products and services once the offers and freebies diminish.³⁵ Thus, the support lend to startups should enable them to prolong their business cycle and recover from the losses that they may incur owing to inability to keep up with the stiff competition.

Even though the Government has envisaged a broad outline for disbursement of funds for the startups at the seed funding stage, its actual effect in lending a helping hand to startups is dubious. This is because research has shown that the pace and quantity in which funds are allocated, invested and released under the schemes initiated under Startup India initiative have been slow and insufficient.³⁶ Even after the lapse of four years of the initiative, only 31% of the funds that were announced under the FFS scheme have been actually supplied to the AIFs and only 29% of the amount announced has been actually put into use.³⁷ Moreover, there are formidable bureaucratic barriers that startups have to navigate for realizing the incentives that have been assured as the schemes announced by the Government offers support at the institutional level through incubators and do not directly lend support to individual startups.³⁸

It is also pertinent to note that India being a quasi-federal nation, businesses often find themselves in the middle of the tussles that may happen between different political parties that are ruling at the Centre and State levels. Because of this, businesses often bear the brunt when there is a discord in the political dialogues and when there is a disparity in fund allocation between the Centre and State. For instance, the large-scale protests led by the then ruling government in Singur district in the State of West Bengal caused Tata Motors to relocate his ambitious Nano project to Gujarat. Since they withdrew the project, the company has had to bear losses owing to the money that it shelled out for the land acquisition, the water and electricity supply consumed for a period of two years, the police protection availed of for the

³⁴ Rukma Majumdar, *Finding New Frontiers: The Challenges of Early-Stage Indian Entrepreneurs in Accessing Finance in an Evolving Startup Ecosystem* In KLONOWSKI, D. (EDS) *ENTREPRENEURIAL FINANCE IN EMERGING MARKETS* (2020).

³⁵ *Id.*

³⁶ Anish Tiwari, Teresa Hogan & Colm O’Gorman, *The Good, the Bad, and the Ugly of ‘Startup India’ A Review of India’s Entrepreneurship Policy*, *ECO & POL WKLY* (2021).

³⁷ *MINISTRY OF COMMERCE AND INDUSTRY, STARTUP INDIA STATUS REPORT* (2018).

³⁸ Sabrina Korreck, *The Indian startup ecosystem: Drivers, challenges and pillars of support*, *ORF Occasional Papers* (2019).

said period and the construction costs that were incurred by it.³⁹ Similarly, Sterlite was forced to close down its copper smelting plant in Thoothukudi in Tamil Nadu after vehement protests from the residents therein who were driven by the environmental pollution caused due to the operation of the unit. Not only did this affect the business run by its parent company Vedanta, it also resulted in a collapse of all downstream businesses associated with it and a loss of income of its employees.⁴⁰ Recently, in the wake of the farmer's protests that shook India, Reliance Industries had to approach the Punjab and Haryana High Court for the damage that was caused to its infrastructure during the course of the protests.⁴¹ While public having legitimate concern about business entities flouting environmental law are valid, this should not lead to a situation where businesses are forced to move to different localities or shut down their operations altogether, owing to the detrimental repercussions that it can have on the economy and thereby every citizens' lives.

Thus, States have an onus to ensure that public's concerns as well as business interests of entrepreneurs are mutually reconciled and solutions are sought for achieving a balance between the two. This drives home the need for a 'co-operative element' in our federal structure.⁴² Efforts should also be directed to strengthen co-operative federalism amongst the Centre and the States so that it would translate into a conducive environment for startups and other business ventures to flourish. It is reassuring to note that States such as Kerala, Karnataka, Andhra Pradesh, Uttar Pradesh, West Bengal and Rajasthan have joined hands with the Centre for supporting startups through developing startup policies and providing financial support at the State level.⁴³ However, this has to be coupled with taking positive steps towards ensuring that there is no hostility towards startups, businesses and similar financial investment ventures.

³⁹ D. Bandhopadhyay, *Singur: What Happened, What Next and Time to Pay the Cost* 43 Economic and Political Weekly 13-16, 14 (2008).

⁴⁰ Shubham Batra, *Shut since 2018 violence, TN Sterlite plant's closure cost economy Rs 14,749 cr, says study*, THE PRINT (Aug 10, 2022), available at <https://theprint.in/economy/shut-since-2018-violence-tn-sterlite-plants-closure-cost-economy-rs-14749-cr-says-study/1075445/> (Last accessed on Sept 27, 2022).

⁴¹ Rachita Prasad, *No plans to enter contract farming, buy agricultural land: Reliance Industries* (Jan 05, 2021), available at https://economictimes.indiatimes.com/news/economy/agriculture/reliance-denies-plans-to-enter-contract-farming-backs-procurement-at-msp/articleshow/80091998.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last accessed on Sept 27, 2022).

⁴² Abhay Pethe & Mala Lalvani, *Critical Importance of Cooperative Federalism*, 57 ECO & POL WKLY 34-39 (2022).

⁴³ Supra note 9.

IV. CONCLUSION

India has embraced the notion of ‘Vocal for Local’ right from the inception of its freedom struggle. What commenced as an aspirational ideal has transformed into a significant policy measure with the advent of the Aatmanibhar Bharat Abhiyan. Catalyzing the potential of startups for achieving self-sufficiency in production and manufacturing is a promising policy direction. The measures that have been introduced so far for lending support to startups under the Aatmanibhar Bharat Abhiyan and the Startup India Scheme are ambitious and far-reaching. However, there are also formidable challenges that would need to be addressed if these measures are to transform into a beneficial policy for the startups. The Government has to consider how to reconcile the apparent conflict that is bound to arise when it lends support only to startups that are incorporated or registered in India as a measure for reducing dependency on foreign businesses when in actual practice most of the startups are heavily dependent on foreign funds. Allied to this lies the fact that India can achieve self-sufficiency in the true sense only when we achieve a self-sufficiency in the production of raw materials necessary for the goods that are manufactured in India. The challenge of easing the bureaucratic barriers and ensuring that the allocation of funds earmarked for startups happens in a regular and streamlined manner should also be a top priority for the Governments. Even though States have also responded favourably to the clarion call of the Centre by enacting State-specific startup policies, a lot of significant directions would have to be undertaken for ushering in a facilitative ecosystem for startups and other business ventures to flourish. Both the Centre and the States would have to wholeheartedly abide by the tenets of cooperative federalism for achieving this.

EVALUATING INDIA'S FOREIGN TRADE POLICY VIS-À-VIS ATMANIRBHAR BHARAT ABHIYAN^{††}

- Aparna S*

Abstract

When the world came to a standstill with the emergence of the unprecedented pandemic in 2020, the Government of India initiated the Atmanirbhar Bharat Abhiyaan, or Self-Reliant India, aimed at encouraging local producers and decreasing reliance on imports through the incentivisation of local and supply networks. However, such an apparent favouring of domestic production over imported products would have significant ramifications as far as international trade is concerned. On the one hand, India is bound by its obligations under WTO agreements where it is mandated to abide by the requirement of not extending a favourable or a discriminatory treatment for products based on the country of origin. India also cannot afford to erect trade barriers of such nature that would isolate itself and create difficulties for it to enter into trade agreements with other nations. On the other hand, the impending circumstances in the global scenario have made it a necessity to adopt a protective stance towards home-grown industries and entrepreneurship. Therefore, India is currently facing an ostensible dilemma in its trade policy where it has to reconcile its decision to boost its own imports with its obligations under international trade law.

In this backdrop, the paper seeks to understand how the Atmanirbhar Bharat Abhiyaan would fare when analysed through the prism of international trade law. It then attempts to analyse the Scheme's implications on areas where India is economically dependent on foreign countries. Thereafter, the paper explores the repercussions that India is likely to face in its trade negotiations with foreign countries due to the thrust given towards being self-reliant. Thus, the paper endeavours to address whether India's current foreign trade policy and the goals sought to be achieved by Atmanirbhar Bharat Abhiyan are mutually reconcilable.

Keywords: Atmanirbhar Bharat Abhiyan, Foreign Trade Policy, Free Trade Agreements, Protectionism, Import Substitution Policies.

I. INTRODUCTION

The global pandemic in 2020 followed by the Russo-Ukraine war has exacerbated trade tensions resulting in a disruption in supply chains and a crisis for nations which are dependent

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on imports from other nations to sustain their economies. In India, the crisis was tuned into an opportunity with the launch of the Atmanirbhar Bharat Abhiyan (ANBA) or the Self-Reliant India Scheme which aims at boosting domestic manufacturing so as to reduce dependency on imports and to transform India into a 'manufacturing hub.'¹ This is not a new strategy as India has had a tryst with local production and sourcing of goods with the Swadeshi movement in the early twentieth century.² The Make in India initiative, the precursor to ANBA, had similar objectives of boosting India's manufacturing potential but sought to realise this through enhancing the entrepreneurial ecosystem in the country by placing emphasis on 'ease of doing business,' infrastructural initiatives and encouraging Foreign Direct Investments in multiple identified sectors in India.³ ANBA has taken this mandate forward by giving an impetus to the production of goods in India and strengthening India's integration in the global value chains by exporting its goods which have been so manufactured locally.⁴

When a country turns 'inwards' by incentivizing its domestic industries and enterprises from 'unfair' foreign competition, it is perceived to be embracing 'protectionism.'⁵ Though the traditional measures through which a country implements protectionism is through tariffs or quotas, offering of incentives to domestic producers would also be considered as such a strategy as it comes at the cost of foreign producers wanting to engage in trade.⁶ The World Trade Organisation (WTO) has developed rules for implementing checks and balances on this by prohibiting States from adopting policies that extend favouring treatment to the domestic industries in the form of incentives or subsidies and discriminate against the products that are imported from other nations.⁷ In this backdrop, the future of successful roll out of ANBA is dependent on India's ability to demonstrate that it is not against the mandates of the WTO and that it does not erect a barrier for its trade with other countries.

India's vision of promoting indigenous manufacturing and thereby bring about a boost in its exports is indeed enterprising and a necessity in the wake of unprecedented events like a

¹Ministry of Finance, *Economic Survey 2022-2023* (2023).

² SUMIT SARKAR, *SWADESHI MOVEMENT IN BENGAL 1903-1908* (2011).

³ MAKE IN INDIA, https://www.pmindia.gov.in/en/major_initiatives/make-in-india/ (last visited 22nd May 2023).

⁴ ATMANIRBHAR BHARAT ABHIYAN, <https://www.investindia.gov.in/atmanirbhar-bharat-abhiyaan> (last visited 22nd May 2023).

⁵ See Alan O. Sykes, *Regulatory Protectionism and the Law of International Trade*, 66 U. CHI. L. REV. 1-46 (1999).

⁶ *Id.*

⁷ See General Agreement on Tariffs and Trade Oct. 30, 1947, 61. Stat. A-11, 55 U.N.T.S. 194; Agreement on Subsidies and Countervailing Measures, Jan. 1, 1995, 1868 U.N.T.S. 397.

pandemic or a war which can aggravate vulnerabilities in the supply chain.⁸ However, when such measures are sought to be implemented by overtly incentivising domestic industries and restraining the competitiveness of the products of foreign countries, it is bound to affect India's trade relations. As a country, India has always followed a balanced approach in its foreign policy and has strived to maintain a fruitful trade relationship with most of the other jurisdictions. This is evident from the fact that India has never shied away from entering into bilateral and multilateral trade agreements which cater to its strategic and fiscal interests.⁹ As a country which actively pursues free trade agreements with other countries, India's movement for being self-reliant is bound to attract apprehensions from its trade partners.

In this backdrop, the author evaluates whether India's foreign trade policy, which emphasises on trade liberalisation and the ANBA, which borders on protectionism, present mutually reconcilable goals. In Part II of the paper, the author attempts to give a brief overview about regional trade agreements and how India's trade agreements have impacted its trade policies. In Part III, the author explores the reforms that have been introduced in foreign trade policy as part of being self-reliant and its potential repercussions on India's trade. This part also touches upon the implications that ANBA can have on India's trade relations with its foreign counterparts.

II. REGIONAL TRADE AGREEMENTS – RATIONALE AND IMPLICATIONS

Regional Trade Agreements (RTA) have proliferated on an unprecedented scale over the past four decades. Today, it is hard to find a country that is not a party to some RTA or the other in the form of customs union, Free Trade Agreements (FTA) or an interim agreement.¹⁰ The fundamental idea behind countries entering into RTAs with one another is to offer and receive more favourable treatment with respect to trade concerns.¹¹ Thus, countries become parties to an RTA in the hope of receiving more benefits in trade than what is meted out to trading partners who are not parties to such an RTA. But the increased resort to RTAs is driven by more pragmatic concerns as well. Countries, especially the ones that are small or developing,

⁸ Economic Survey, *supra* note 1 at 260.

⁹ See Srinath Raghavan, *India as a Regional Power in SHAPING THE EMERGING WORLD: INDIA AND THE MULTILATERAL ORDER* 57-72 (Waheguru Pal Singh Sidhu et al. eds., 2013).

¹⁰ See Zakir Hafez, *Weak Discipline: GATT Article XXIV and the Emerging WTO Jurisprudence on RTAs*, 79 N.D.L REV 879, 880 (2003).

¹¹ PETER VAN DEN BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXTS, CASES AND MATERIALS* 130 (3rd ed., 2013).

encourage RTAs in order to augment their bargaining power, for gaining more market access and to ensure that they are not isolated.¹²

RTAs are accorded recognition under the trade law regime as they facilitate creation of trade by bringing about a reduction, if not elimination of barriers to trade.¹³ The General Agreement on Tariffs and Trade (GATT) 1994 places a thrust on the ability of voluntary agreements such as customs unions or FTAs to achieve a closer integration between the economies of the parties and thereby augment free trade.¹⁴ It also elucidates that there shall be a substantial elimination of duties and other restrictive commercial regulations in both customs union as well as free trade areas for trade in products which are originating in the countries that are parties to it.¹⁵ Although the underlying premise is facilitation of trade, RTAs can also engender trade diversion inasmuch as it incentivises countries to import more goods from its RTA partners and gradually eliminate imports from other countries to which it is not obligated to give a preferential treatment.¹⁶

Now that the basic premise has been set in the backdrop, it is worthwhile to look into FTAs, which form the major focus area of discussion for this paper. The underlying rationale behind FTAs is also not very different from RTAs inasmuch as they aim to proffer free trade to countries which are parties to the agreement. What needs to be noted is that FTAs also thereby extend to its members a relative protection from countries which are non-members to the agreement.¹⁷ But what could be the driving force behind pursuing agreements with other countries for advancing something that is in one's own national interest? One possible reason could be that countries with larger market access have an incentive to exploit their power in the world markets.¹⁸ As and when import tariffs are put in place, there is a concomitant reduction in the demand for products exported from other countries which also translates into a reduction in the overall prices of the products in the world market.¹⁹ An equilibrium in this state of affairs

¹² Jo-Ann Crawford & Roberto V. Fiorentino, *The Changing Landscape of Regional Trade Agreements* 16 (World Trade Organization, Discussion Paper No. 8, 2005).

¹³ Nicolas JS Lockhart & Andrew D Mitchell, *Regional Trade Agreements under GATT 1994: An Exception and its Limits in CHALLENGES AND PROSPECTS FOR THE WTO* 217 (Andrew D Mitchell ed., 2005).

¹⁴ General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, art. XXIV, ¶4 [hereinafter GATT]

¹⁵ *Id.* art. XXIV, ¶8

¹⁶ Clinton Shiells, *Regional Trade Blocs: Trade Creating or Diverting?* FIN & DEV. 30 (1995).

¹⁷ Jagdish N. Bhagwati, *Preferential Trade Agreements: The Wrong Road*, 27 LAW & POL'Y INT'L BUS. 865, (1996).

¹⁸ Dani Rodrik, *What Do Trade Agreements Really Do?* 32 J. ECO. PERSP. 73, 80 (2018).

¹⁹ *Id.*

would be largely unhelpful as each country would indulge in setting a tariff that it deems to be optimal.²⁰ In this backdrop, an agreement enforcing free trade actually can help in augmenting the trade prospects of all countries. Moreover, it also tallies with the Ricardian principle of comparative advantage which underscores that countries would prefer to enter into trade agreements even if it has an absolute advantage in manufacturing goods.²¹

A. India and its RTAs

India is part of as many as 10 bilateral agreements ranging from Free Trade Agreements and Early Harvest Schemes to Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). It has also signed regional agreements and preferential trade agreements with significant trade partners such as the Association for Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC). After a brief hiatus in engaging in trade negotiations following the walk away from the Regional Comprehensive Economic Partnership (RCEP), India is pursuing free trade negotiations vigorously. An Economic Co-operation and Trade Agreement with Australia has recently come into effect²² and negotiations with major economies such as UAE, European Union, Australia, Canada and the United Kingdom are underway.²³ Table 1 illustrated below gives a comprehensive overview of the major trade arrangements of which India is a part.

Table 1: List of India's Major Trade Agreements	
Preferential Trade Agreements (PTA)	Free Trade Agreements (FTA)
Asia Pacific Trade Agreement (1975)	India-Nepal Treaty of Trade (1950)
Global System of Trade Preferences (1988)	India-Sri Lanka FTA (2000)
SAARC Preferential Trading Agreement (1993)	India-Thailand FTA - Early Harvest Scheme (2004)
India-MERCOSUR PTA (2009)	India-Singapore Comprehensive Economic Cooperation Agreement (2005)
India-Chile PTA (2007)	Agreement on South Asian Free Trade Area (2006)
India-Afghanistan PTA (2013)	India-ASEAN Comprehensive Economic Cooperation Agreement (2010)
	India-South Korea Comprehensive Economic Partnership Agreement (2010)

²⁰ *Id.*

²¹ *Id.*

²² Regional Trade Agreements, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1781867> (last visited May 22, 2023).

²³ *Id.*

	India-Japan Comprehensive Economic Partnership Agreement (2011)
	India-Malaysia Comprehensive Economic Cooperation Agreement (2011)
	India-Bhutan Agreement on Trade, Commerce and Transit (2016)
	India-Mauritius Comprehensive Economic Cooperation and Partnership Agreement (2021)
	India-UAE Comprehensive Economic Partnership Agreement (2022)
	India-Australia Economic Cooperation and Trade Agreement (2022)
Source: Press Information Bureau, 2022	

India's recalibrated strategy to pursue more trade agreements with other countries may be attributed to many factors: *Firstly*, India has set an ambitious target of accomplishing exports to the tune of \$1 trillion by 2030.²⁴ In this backdrop, it may become necessary to enter into trade agreements with other countries so as to ensure greater market access for its goods and more resilient supply chains.²⁵ *Secondly*, India has greater chances of being a supplier of goods and capital in the wake of developed countries altering their economic policies so as to reduce their dependence on China.²⁶ *Thirdly*, although India has bilateral and multilateral trade pacts with many countries, its abstinence to become part of major trading blocs such as RCEP and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) has foreclosed its opportunities to gain preferential market access and may also displace supply chains, thereby ousting India from existing networks of production.²⁷

B. RTAs and its Impact on India's Trade

There is no broad consensus on the impact of RTAs in boosting trade with divided opinions amongst economists as to whether they are 'stumbling blocks' or 'building blocks' for trade

²⁴ Press Trust of India, *Goods and services exports may reach \$1 trillion each by 2030: Piyush Goyal*, BUSINESS STANDARD (Feb 21, 2023), available at https://www.business-standard.com/article/economy-policy/goods-and-services-exports-may-reach-1-trillion-each-by-2030-piyush-goyal-123022101072_1.html (Last visited on May 23, 2023).

²⁵ RBI Bulletin, *What Ails India's Apparel Exports?* (Dec 15, 2021), available at https://www.rbi.org.in/Scripts/BS_ViewBulletin.aspx?Id=20692 (Last visited on May 23, 2023).

²⁶ Surendar Singh & Suvajit Banerjee, *Is There Any Dichotomy between India's New FTA Strategy and Its Trade Policy?* 57 ECO. & POL. WKLY. 25 (2022).

²⁷ *Id.*

facilitation.²⁸ Most of the available literature indicates a largely positive effect of RTAs in boosting India's trade prospects. It is believed that of all RTAs, FTAs in particular, have been able to enhance India's export efficiency to its partner countries as opposed to PTAs.²⁹ However, studies have also pointed out how RTAs per se have not triggered the proliferation of trade and that their success is largely illusory owing to existence of substantial trade volume even prior to India entering into RTAs with other countries.³⁰ For instance, although India's bilateral trade in exports and imports increased post RTAs, the partner countries were able to increase the imports of those goods for which they received preferential treatment.³¹ However, most of the commodities that came within the ambit of India's exports were those which did not receive preferential treatment under any of its RTAs, indicating that RTAs per se had limited role in enhancing India's exports in its trade with other countries.³²

Despite increase in overall trade, RTAs have largely resulted in trade relationships heavily skewed towards partner countries, evident from an increase in the latter's exports to India.³³ This is evident from how India's FTA with ASEAN resulted in the ASEAN countries gaining more market access vis-à-vis partially and fully processed agricultural products whereas reduced demand for local agricultural products detrimentally affected India's domestic agricultural sector.³⁴ India's benefits are marginal considering the fact that even with FTAs, partner countries supply intermediate goods, for which there is much demand in India, at high prices even though they may be justified on the ground that it is lower compared to the prevalent import prices for India.³⁵

²⁸ JAGDISH BHAGWATI, *TERMITES IN THE TRADING SYSTEM: HOW PREFERENTIAL AGREEMENTS UNDERMINE FREE TRADE* (2008); Richard Baldwin, *Multilateralising regionalism: spaghetti bowls as building blocks on the path to global free trade*, 29 *THE WORLD ECONOMY* 1507-1508 (2006).

²⁹ Leena Ajit Kaushal, *Impact of Regional Trade Agreements on Export Efficiency – A Case Study of India*, 10 *Cogent Eco. & Fin.* 1-17 (2021).

³⁰ Manoj Pant & Anusree Paul, *The Role of Regional Trade Agreements in the case of India*, 33 *J. ECO. INTEGRATION* 538-571 (2018).

³¹ Sejuti Jha, *Utility of Regional Trade Agreements: Experience from India's Regionalism*, Asia-Pacific Research and Training Network on Trade Working Paper Series, No. 99 1-25, 13 (2011).

³² *Id.*

³³ Priyanka Khati & Chanwahn Kim, *Impact of India's Free Trade Agreement with ASEAN on Its Goods Exports: A Gravity Model Analysis*, 11 *Economies* 1-19 (2023).

³⁴ Smitha Francis, *A Sectoral Impact Analysis of the ASEAN-India Free Trade Agreement*, 46 *ECO. & POL. WKLY.* 46-55, 54 (2011).

³⁵ Chandrima Sikdar & Biswajit Nag, *Impact of India-ASEAN Free Trade Agreement: A cross-country analysis using applied general equilibrium modelling*, Asia-Pacific Research and Training Network on Trade Working Paper Series No. 107 1-63, 42 (2011).

Even though there has been an increase in exports to ASEAN countries and Japan, India has not been able to mitigate its large trade deficit with these countries.³⁶ Perplexingly, India's exports to its largest trading partners U.S and China, with which it also has the largest trade deficits, has been on the rise even without FTAs. This perhaps makes a strong case for the argument that FTAs in themselves have not been able to have much impact in boosting India's trade.³⁷ It is worthwhile to recall that this was one among the major reasons for India walking out of the RCEP negotiations.³⁸ Speculations were rife that joining RCEP would not have augured well for India's policies targeted at being 'self-reliant' and that it would also destabilize India's domestic manufacturing sector owing to intense competition from the exports of capital, intermediate and consumer goods from the partner countries.³⁹

Does this mean that India should abstain from RTAs with other countries as it does not have any concrete impact in increasing India's market share in these countries or in plugging the widening trade-deficit? Jumping into such a conclusion is likely to prove fatal. Being part of FTAs is inevitable for better economic integration and improved market access. It is the consumers and firms in India which would be put in a disadvantageous situation if India chooses not to enter into RTAs as they would be deprived of the ability to procure imports at preferential rates which would be available exclusively for partner countries.⁴⁰ As long as India lags behind in production of raw materials and intermediate goods domestically, not sourcing it at competitive rates would end up being counterproductive as it would make domestic manufacturing a costly affair.⁴¹ The problem lies not in India becoming a party to the FTAs but in its inability to improvise its exports by taking advantage of the expanded market access that FTAs throw open. Therefore, the need of the hour is to boost India's competitiveness in

³⁶Amit Kapoor & Akshay Bhambri, A Preferential Route: Effectiveness of FTAs in Indian exports, *The Economic Times* (4 May 2022), <https://economictimes.indiatimes.com/news/economy/foreign-trade/a-preferential-route-effectiveness-of-ftas-on-indian-exports/articleshow/91294341.cms?from=mdr>

³⁷ *Id.*

³⁸ Bibek Ray Chaudhuri & Debashis Chakraborty, *India's Withdrawal from RCEP Deciphering Commodity-level Undercurrents*, 48 *ECO. & POL. WKLY*, 26-30 (2021).

³⁹ Biswajit Dhar, *India's Withdrawal from the Regional Comprehensive Economic Partnership*, 45 *ECO. & POL. WKLY*, 59-65 (2019).

⁴⁰ See Asha Sundaram, *India's RCEP Exit and its Regional Future*, *EAST ASIA FORUM QUARTERLY* 30-32 (2022).

⁴¹ Deeparghya Mukherjee, *India's Trade Policy and GVCs: A Comment on Recent Policy Changes for Selected Sectors*, 57 *ECO. & POL. WKLY*, 10-13 (2022).

domestic manufacturing and to enter into FTAs that can enhance its domestic productive linkages.⁴²

III. RECALIBRATED APPROACH – ENHANCING SELF-RELIANCE IN TRADE

A. What Atmanirbhar Bharat Abhiyan means for India's Trade

India's Atmanirbhar Bharat Abhiyan (ANBA) is an ambitious policy that aims to enhance India's domestic manufacturing capacity and thereby increase its exports, a vision in congruence with the aforementioned argument about the need to boost competitiveness of Indian domestic entities.⁴³ One of the significant measures undertaken in this is the Production Linked Incentive (PLI) Schemes which seek to incentivise domestic manufacturing of goods and thereby reduce dependency on imports. The Scheme has identified 13 different sectors where manufacturers are provided with fiscal incentives depending on the extent or percentage of domestically sourced content that is present in the goods produced by them.⁴⁴

While PLI Schemes have its heart in the right place, it is fraught with hurdles in its conception. Its design focusing on sector-specific incentives ignore the fact that this assumes the availability of steady supply of raw materials at competitive prices and a large domestic market.⁴⁵ This underscore why India might not be able to reduce its dependency on imports from other countries, at least for the raw materials and intermediate goods that are necessary for the completion of domestic manufacturing of goods. Ever since the roll-out of ANBA, India has consistently maintained the stance that it does not seek to become 'protectionist' in nature and that its only focus is to transform India into a global manufacturing hub, which can further lead to better integration with the global value chain as India's export potential would be enhanced further.⁴⁶

⁴² Smitha Francis & Murali Kallummal, *India's Comprehensive Trade Agreements: Implications for Development Trajectory*, 48 ECO. & POL. WKLY. 109-122 (2013).

⁴³ Economic Survey, *supra* note 1.

⁴⁴ *Id.*

⁴⁵ Surendar Singh & Sakshi Abrol, *Many Gaps in the PLI Scheme*, THE HINDU BUSINESSLINE (Mar 19, 2023), available at <https://www.thehindubusinessline.com/opinion/many-gaps-in-the-pli-scheme/article66639145.ece> (Last visited on May 23, 2023).

⁴⁶ Press Trust of India, *Atmanirbhar Bharat is neither 'isolationism' nor 'protectionism': Nirmala Sitharaman*, Times of India (Oct. 12, 2022), available at http://timesofindia.indiatimes.com/articleshow/94796303.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Last visited on May 23, 2023).

It is worthwhile to recall that a similar initiative had been adopted by India in 2015 called Merchandise Exports from India Scheme which sought to compensate manufacturers and exporters for the payments incurred by them vis-à-vis customs and duties.⁴⁷ This Scheme was also purported to promote domestic manufacturing and exports from India.⁴⁸ However, India had to roll this back as WTO found this to be an export subsidy.⁴⁹ A similar challenge could be made for PLI Scheme, citing a violation of the National Treatment obligation under GATT 1994 and the stipulations under the Agreement on Trade-Related Investment Measures (TRIMS).⁵⁰ It is also amenable to a challenge under the Agreement on Subsidies and Countervailing Measures as an import substitution subsidy.⁵¹ If PLI Schemes are perceived to be protectionist in its stance, it is likely to prove detrimental to India's ongoing FTA negotiations.

B. Rules of Origin in FTAs and Self-Reliance

A paradigmatic shift has been recently brought about in the way Rules of Origin (RoO) requirements are mandated in FTAs concluded by India and other trading partners. As the name indicates, RoOs are laws and regulations that are promulgated by countries to determine the country from which a particular product that is sought to be imported into their country has originated.⁵² RoOs may be considered as non-preferential if the underlying purpose is to distinguish between domestic and foreign goods so as to impose safeguard measures such as antidumping and countervailing duties or tariff quotas.⁵³ It is considered to be preferential if RoOs are used for defining the conditions under which a product is to be regarded as originating from a country so as to accord preferential treatment to the concerned products.⁵⁴ Preferential RoOs are also significant inasmuch as they play a crucial role in ensuring that countries do not resort to FTAs as a tool for availing tariff benefits that would not otherwise be

⁴⁷ Directorate General of Foreign Trade, Foreign Trade Policy, 2015-2020, (Issued on December 05, 2017), available at <https://content.dgft.gov.in/Website/dgftprod/011eb646-a1ff-4a0b-bb8b-f60aceb83395/FTP%20Chapter3-Updated%20as%20on%2012.04.2022.pdf> (Last visited on May 10, 2023).

⁴⁸ *Id.*

⁴⁹ Panel Report, *India – Export Related Measures*, WTO Doc. WT/DS541/R (adopted Oct. 31, 2019).

⁵⁰ For a detailed discussion of this, see the Chapter 'Trade Barriers to Self-Reliance'

⁵¹ *Id.*

⁵² GATT Agreement on Rules of Origin, Sept. 20, 1996, 1868 U.N.T.S. 397.

⁵³ A. Estevadeordal & K. Suominen, *Mapping and measuring Rules of Origin around the world* In OLIVER CADOT, ANTONI ESTEVADEORDAL & AKIKO SUWA-EISENMANN ET AL., *THE ORIGIN OF GOODS: RULES OF ORIGIN IN REGIONAL TRADE AGREEMENTS* 72 (2006).

⁵⁴ *Id.*

available to them.⁵⁵ However, RoOs are also capable of being a trade barrier inasmuch as they qualify only goods that meet the stipulated standards for a preferential treatment under RTAs.⁵⁶

India has not adopted a uniform policy regarding RoO and has tailor-made them according to the trade benefits and arrangements accruing from its various trade agreements.⁵⁷ This has often resulted in different degrees of preferential treatment being extended to each country.⁵⁸ This has further paved way for non-FTA partners attempting to export goods to India through a country with which India has entered into an FTA so as to take advantage of the differential duty structures.⁵⁹ A case in point is the increasing import of palm oil from Nepal and Bangladesh. Palm oils, which are sourced from Malaysia and Indonesia are routed through Nepal and Bangladesh, as imports from these countries are subjected to lower import duties according to the terms and conditions of the South Asian Free Trade Agreement (SAFTA) 2006.⁶⁰ This is a blatant violation of SAFTA as it mandates RoO requirements for the exporting country to avail the preferential duty benefits.⁶¹ Similar concerns are also being raised about increasing imports of accessories and parts of printers from Singapore, which are in fact sourced from China, thereby leading way for Chinese products to make a backdoor entry to India through its FTA partners.⁶²

The proliferation of imports from other countries through India's FTA partners and the rampant flouting of RoOs to gain preferential market access are detrimental to India's vision of becoming self-reliant as it hampers the domestic manufacturing sector by making it inefficient to expand, diversify and compete in the global market.⁶³ Realizing this, India has come up with a revamped strategy to address the problem of rising imports from non-FTA partners. In 2020, it introduced the Customs (Administration of Rules of Origin under Trade Agreements) Rules (CAROTAR) which aims to strengthen the existing certification process and weed out misuse

⁵⁵ Mariana C. Silveira, *Rules of Origin in International Trade Treaties: Towards the FTAA* 14 ARIZ. J. INT'L & COMP. L. 411-465, 414 (1997).

⁵⁶ T.N Doan & Y. Xing, *Trade efficiency, free trade agreements and rules of origin*, J. ASIAN ECO. 33-41 (2018).

⁵⁷ See V Lakshmi Kumaran, *Rules of Origin and FTAs: Major Issues for India*, 15 GLOBAL TRADE & CUSTOMS J., 146-149 (2020).

⁵⁸ *Id.*

⁵⁹ Surendar Singh & Utkarsh R. Mishra, *Reliance on Non-tariff Measures for Self-Reliant India: An Analysis of India's New Trade Policy Orientation*, 17 GLOBAL TRADE & CUSTOMS J. 441-450 (2022).

⁶⁰ Surendar Singh & Ram Singh, *Is India Heading Towards Trade Protectionism: An Analysis of CAROTAR Rules?* 5 INT'L J. BUS. & ECO. 129-145, 136 (2020).

⁶¹ *Id.*

⁶² *Id.* at 137.

⁶³ Surendar Singh & Ram Singh, *Revisiting the Debate on Import-Led Substitution and Export-Led Industrialization: Where Is India Heading Under Self-Reliant India?* 56 J. WORLD TRADE. 111-140 (2022).

of preferential duties.⁶⁴ Broadly speaking CAROTAR makes it mandatory for importing firms to furnish information regarding the origin of a product, including the value of local content involved in it and compliance with product specific RoOs.⁶⁵ If the information is not furnished, claims for preferential treatment of goods may be rejected.⁶⁶ Moreover, if the RoO are not complied with for a particular consignment, then all other antecedent and subsequent claims for availing preferential tariff on identical goods from the same importing firm can be rejected.⁶⁷

Although CAROTAR has been introduced to combat legitimate concerns, it poses significant impediments as far as India's trade policy is concerned. The stringent requirements related to origin of products sought to be imported and the possible deprivation of preferential benefits if a product fails to adhere to the criteria undermines the right of preferential market access of the concerned countries which are parties to the FTA.⁶⁸ The strict regulatory and compliance requirements under CAROTAR are likely to place undue burden on those sectors which are dependent on imports and value chain, rendering them uncompetitive in world trade.⁶⁹ Moreover, it may also hamper India's trade prospects with these countries as they may also resort to similar protectionist measures.⁷⁰ Let us consider a hypothetical scenario to understand this better. Suppose there is an FTA concluded between U.S.A and Canada which necessitates that a fixed percentage of imported products should have been locally sourced from any of the North-American countries. This is, in effect, a protectionist measure much akin to the ones imposed by India with its FTA partners. However, as is evident from the scenario, this kind of a mandate of local origin can be a disincentive for countries to import products which are sourced from India.⁷¹ Therefore, while engaging in any imposition of local content requirements in rules of origin, it is worthwhile to bear in mind that this may also be counter-productive by curtailing access to the markets of countries who are outside the purview of any FTAs of which India is a party.

⁶⁴ Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Surendar Singh & Suvajit Banerjee, *supra* note 26.

⁶⁹ Ram Singh & Surendar Singh, *Restricting Third Country Imports: Boon or Bane for India's Foreign Trade?* 56 *ECO. & POL. WKLY.* 15-17 (2021).

⁷⁰ Surendar Singh & Suvajit Banerjee, *supra* note 26.

⁷¹ See Anuradha R.V, *Regional Trading Agreements: Need for a Coherent Policy Framework for India's Negotiating Strategy* 1 *JINDAL GLOBAL L. REV.* 197, 202 (2009).

It is pertinent to note that many of India's FTA partners have expressed concerns about the recent impetus to self-reliance and concomitant shifts in its trade policies. The European Union has recently passed a resolution wherein it has enumerated its apprehensions regarding India's undertakings vis-à-vis Make in India and Atmanirbhar Bharat which can impede market access of countries within the fold of EU.⁷² In a review of India's Trade Policy at the WTO, many of its FTA partners have raised concerns regarding the CAROTAR Rules. Indonesia raised an argument that the rules are not in consonance with the spirit of trade liberalization flowing from the India-ASEAN FTA whereas South Korea pointed out that the rules would act as a hindrance to FTAs inasmuch as it increases the cost of application of preferential tariffs.⁷³

C. Ambiguous Stance of Self-reliance

Broadly speaking, the Atmanirbhar Bharat Abhiyan strives to transform India into a manufacturing hub which would be instrumental in meeting its domestic requirements as well as producing surplus for boosting its export volume.⁷⁴ While the vision per se is harmless, the manner in which it has been given impetus through granting of production subsidies subject to local content requirements, has raised serious concerns about India engaging into import substitution policies in order to boost its domestic manufacturing. Commentators have argued that with the launch of ANB, India has forged a path towards contemporary neo-mercantilism, where the underlying push is not for establishing autarky but for making disruptions in India's economic relations and transforming global rules for ensuring that they cater to India's business interests.⁷⁵ This is reflected in India's official stance which underscores that there is no inherent contradiction between the country vouching for ANB on the one hand and entering into FTAs on the other hand.⁷⁶ It unequivocally states that the underlying focus of ANB is not protectionism; rather, it aims to improve domestic manufacturing and derive benefits from trade with other countries by continuing to be closely integrated with the global value chain.⁷⁷

⁷² European Parliament Resolution on the Indo-Pacific Strategy in the area of Trade and Investment (July 5, 2022), available at https://www.europarl.europa.eu/doceo/document/TA-9-2022-0276_EN.pdf (Last visited May 11, 2023).

⁷³ Asit Ranjan Mishra, FTA partners upset over India's new rules to trace goods' origin, *LIVEMINT* (Mar 15, 2021), available at <https://www.livemint.com/news/india/fta-partners-upset-over-india-s-new-rules-to-trace-goods-origin-11615743367536.html> (Last visited May 11, 2023).

⁷⁴ Economic Survey, *supra* note 1.

⁷⁵ Priya Chacko, *A New Quest for Self-Reliance: East Asia and Indian Economic Nationalism*, 2 *J. INDIAN & ASIAN STUD.* 1, 11 (2021).

⁷⁶ Press Trust of India, *supra* note 46.

⁷⁷ *Id.*

While this is indeed an aspirational goal, the manner in which it has been conceived raises perturbing challenges primarily because it seems to forge a middle path between two seemingly irreconcilable goals of protectionism and trade liberalization. The foremost amongst them would be India's large trade deficit with Japan, China and South Korea, attributable to its overwhelming dependency on these countries for raw materials and consumer goods.⁷⁸

More outward-looking approach and better integration with other countries is an inevitable part and parcel for taking advantage of opportunities in trade. As stated above, the underlying principle of ANB is to ensure ample manufacturing of products that are sufficient to meet domestic requirements and to export whatever emerges as surplus. This is indeed a necessity in the wake of repercussions of unprecedented instances such as global pandemic and wars. For ANB to translate into a successful policy, there should be lesser imports and more exports. However, as most countries are turning into inward-looking policies in order to combat similar socio-economic upheavals that they have been subjected to, who would be willing to encourage exports from India remains an unaddressed concern.⁷⁹

It is also worthwhile to note that India's erstwhile success with booming exports in the wake of liberalization clearly points towards the need for growth to be balanced by openness in trade. In certain sectors such as leather and clothing, openness is an existential necessity as the underlying components and parts are sourced from different countries.⁸⁰ That achieving a proliferation in exports would require embracing more open trade policies is evident from a perusal of the strategies adopted by China and Vietnam where foreign share in textiles and clothing was more than 40% when it transformed itself into an export hub whereas the corresponding figure for India is still a dismal 16%.⁸¹

What follows from this is that India cannot afford to close its borders and resort to staunch protectionist measures for transforming itself into a manufacturing hub. Openness of trade is inevitable for exporting its indigenously manufactured products to the global market.

⁷⁸ Arjun Gargeyas, *India in the Era of 'Silicon Diplomacy,'* Observer Research Foundation (2023).

⁷⁹ Biswajit Mandal et al., *Corona Calls for Revival of Globalisation vs. Deglobalisation Debate – Relevance of Atmanirbhar Bharat,* in DEVELOPMENT POLICY MAKING: CHALLENGES AND CONCERNS 77, 82 (Apurba Kumar Chattopadhyay & Soumyadip Chattopadhyay (eds.) 2021).

⁸⁰ Shoumitro Chatterjee & Arvind Subramanian, *India's Inward (Re) Turn: Is it Warranted? Will it Work?* (Asoka Centre for Economic Policy, Policy Paper No.1, 2020).

⁸¹ *Id.*

Reconciling its vision for ANBA with its foreign trade policy is therefore, a vital necessity for it to successfully navigate in both these territories.

IV. CONCLUSION

India's vision for being 'Self-Reliant' is not totally untoward and is pragmatic considering the fact that heavy dependency on imports from other countries for meeting its needs cannot be a sustainable strategy. However, reconciling this with its RTAs with other countries brings its own challenges.

One crucial issue in PLI Schemes is how incentives are heavily dependent on the percentage of local content that can be demonstrated to have been involved in its manufacturing. Although this may seem to be in consonance with ANBA, it overlooks the fact that it does not address India's import dependency on other countries for many of the intermediate goods such as wafers and ingots in solar cells, integrated circuits active pharmaceutical ingredients etc.⁸² An overwhelming reliance on imports is also manifest in sectors such as electrical vehicles and other electrical equipment where the primary and critical components involved in its manufacturing are imported.⁸³ Moreover, PLI Schemes overtly prefer capital-intensive sectors than labour-intensive sectors over which India has an advantage and fails to take into account the inherent heterogeneity of firms.⁸⁴ An overhaul of PLI Schemes is important for resolving the anomaly of having to import raw materials on the one hand and striving to promote self-reliance on the other. It is equally important to place due emphasis on enhancing research and development so as to bolster competition through innovation, lest it jeopardize the prospects of domestic and mid-segment players against the foreign competition.⁸⁵ Innovation-led manufacturing should be promoted as this would help India in off-shooting the troubles posed by intellectual property regime.⁸⁶

⁸² Priya Chacko, *supra* note 75 at 19.

⁸³ PRODUCTION LINKED INCENTIVE SCHEME: MAKING INDIA GLOBALLY COMPETITIVE, CONFEDERATION OF INDIAN INDUSTRY (2021).

⁸⁴ Gagandeep Sharma & Surendar Singh, *PLI Scheme: A Return to Pre-Reforms Era?* The Hindu BusinessLine (Jul 10, 2022), available at <https://www.thehindubusinessline.com/opinion/a-return-to-pre-reforms-era/article65576845.ece> (Last visited on May 23, 2023).

⁸⁵ Debashis Chakraborty & Julien Chaisse, *The Mystery of Reciprocal Demand for Regional Trade Partnership: Indian Experience in RCEP Regional Value Chains*, 14 L. & DEV. REV. 163-214, 207 (2021).

⁸⁶ SELF-RELIANT INDIA: APPROACH AND STRATEGIC SECTORS TO FOCUS, EXIM BANK OF INDIA (2020).

India cannot be self-reliant without achieving self-sufficiency in manufacturing of both the input and final goods. Even then, its vision of becoming a global manufacturing hub can be realized only when its manufactured goods find demand within the territories of other countries. Hence, India cannot stand to lose the gains that accrue from trade with other countries. between its policy of 'self-reliance' and its foreign trade policy is crucial.

PART E

AATMANIRBHAR BHARAT'S DIGITAL REVOLUTION: SEMICONDUCTORS AND SELF-RELIANCE

1 EXECUTIVE SUMMARY

This policy underscores the critical role of semiconductors in contemporary life, permeating diverse sectors such as technology, education, commerce, communication, transportation, aerospace, defence, and healthcare. Recognizing the foundational importance of semiconductors in achieving the objectives of Aatmanirbhar Bharat, the policy advocates for a comprehensive approach to establishing India as a semiconductor manufacturing hub in the long run.

The policy's primary goal is to reduce India's reliance on semiconductor imports and propel the nation into a global digital leadership position. While fostering self-reliance, the policy pragmatically acknowledges the continued import of raw materials for semiconductor manufacturing. The policy advocates for the growth of the domestic semiconductor industry by promoting it through incentives and research support. It emphasises protection against unfair competition and intellectual property rights violations and also stresses the importance of a standardized regulatory framework for manufacturing and quality control to ensure consistency and reliability in semiconductor products.

By strategically addressing promotion, protection, and standardization, the policy aims to create an ecosystem that not only boosts domestic semiconductor production but also ensures global competitiveness. This multifaceted approach aligns with the broader vision of Aatmanirbhar Bharat, fostering self-reliance and sustainability across sectors reliant on semiconductor technology.

It is proposed through this policy that significant measures be initiated to address the challenges and opportunities in India's labour sector. Further, a collaboration with Taiwan and the development of India's existing strength, along with an inter-sectoral transfer of benefits is proposed for the growth of the industry. The same is sought to be done through the integration

of various sectors, with Aatmanirbhar Bharat schemes, including PLI, DLI, Make in India, and incentives for start-ups and intellectual property growth. The above may be implemented following the semiconductor models of Taiwan and the U.S.A., while also locally initiating training programs in collaboration with industry technological leaders.

The policy's proposals and feasibility are strengthened by the stakeholder consultations with industry experts from the field of IP and economics, who have divergent views on the policy and its objectives.

2 POLICY PROPOSAL CONTENT

2.1 Challenges

- **Tensions in Trade Relationship:** Addressing the challenges arising from trade tensions with various countries, which can impact the flow of critical technology components, such as semiconductors.
- **Striving for Self-Sufficiency with Import-Export Restrictions:** Balancing the goal of achieving self-sufficiency in semiconductor production with the potential consequences of import-export restrictions on global trade and economic partnerships.
- **Shortage of Semiconductors:** Understanding the root causes of the semiconductor shortage, including supply chain vulnerabilities, and finding effective solutions to mitigate these issues.
- **Spillover Effects of China-US Economic Decoupling:** Managing the spillover effects of the economic decoupling between China and the United States, which can have ripple effects on global supply chains and technology access.
- **India's Position and Partnerships:** Defining India's position in the global semiconductor industry and exploring potential partnerships, particularly with the United States, to strengthen its semiconductor capabilities.
- **Enhancing Semiconductor Policy Effectiveness:** Identifying strategies to enhance the effectiveness of semiconductor policies in India, such as incentives for domestic manufacturing and research and development.
- **No Loan Guarantees:** The absence of loan guarantees can impact the ability of start-ups and semiconductor firms to access financing for research and production.

- **No Upfront Money for Start-ups:** Addressing the lack of upfront financial support for start-ups in the semiconductor industry and finding alternative ways to encourage innovation.
- **Focus on Delivering at Home Before Leading Abroad:** Acknowledging the need for India to establish a strong domestic semiconductor industry before becoming a global leader and ensuring that policies align with this goal.
- **Continued Dependence on Hardware Imports:** Acknowledging the challenge of India's substantial reliance on hardware technology imports and the long-term nature of developing self-sufficiency in hard-tech innovation.
- **Lack of Skilled Workforce:** India does have the engineers and human resources for a specific section of the supply chain. However, most of them add value to other countries revealing an immense brain drain.
- **Scarcity of Raw Materials:** India lacks critical minerals for semiconductor manufacturing such as Silicon, Germanium and gallium arsenide, and Silicon carbide. India would need to either import these critical materials or invest in its mining industry. India holds over 6 per cent of the world's rare earth reserves. However, expanding this industry would require considerable time and financial investment to keep up with the demand from the electronics industry.

2.2 Scope

The current Aatmanirbhar Index specifies two key strategic areas namely “fuel” and “electronics”. The scope of this policy is limited to a critical component of the “electronic” sector - “semiconductor”. However, the semiconductor sector is the tool used to comprehensively recommend policy measures integrating many other sectors including automobile, defence, technology, telecom and MSME with a view to successfully achieving the objectives of the Aatmanirbhar Bharat Abhiyan.

2.3 Beneficiaries

The policy aims to lay down the beneficiaries it will be catering to.

- a. An analysis of all major sectors where India aims to be self-reliant reveals that it will be best for India to focus on manufacturing chips for the defence and automobile industries.

The high demand for advanced chips for mobile phones and other AI is not to be compromised. However, in this process, the legacy chips required by sectors like defence and automobile shouldn't take a backseat to ensure that China doesn't overtake India with respect to legacy chips.

- b. As a long-term goal, advanced chips are the focus, the foundation for which is already to be laid by the upgradation of the Mohali plant, which is further elaborated in the proposal. This way telecom, mobile, computers as well as AI and technological advancements are direct beneficiaries.
- c. Another beneficiary of the policy is the unorganized sector and primary sector which are to benefit from the unused funds remaining after the allocated funds for specified objectives are exhausted.

2.4 Risks Associated with Implementation

The PLI scheme in India faced shortcomings as it failed to effectively encourage domestic production of electronics, leading to a surge in hardware imports from other countries, thereby contributing significantly to the escalating figures of India's imports. The allocation of funds to the PLI scheme implies a diversion of resources from critical areas, prompting considerations for alternative investments. The key to successful chip design is viewed as the cultivation of minds rather than the construction of expensive foundries. Advocating for investments in education and the enhancement of engineering output quality, the perspective is that this approach will lead to a substantial expansion in service exports, surpassing the achievements in manufacturing exports.

Strategically tapping into the service sector, which has exhibited significant growth, is favoured over fixation on low-skilled manufacturing. The suggestion is to capture the intellectual property, marketing, and finance aspects of the value chain, leveraging India's highly trained human capital for optimal value addition.

3 POLICY OBJECTIVES

3.1 Preamble

In light of the need for a comprehensive policy integrating different sectors to fulfil the common objective of Aatmanirbhar Bharat, a central focal point is the crucial component of the electronic

industry - Semiconductors. Semiconductors are the foundation of everything digital in today's world, having an impact in almost every sector ranging from AI, transport and automobiles, defence and aviation. Therefore, a comprehensive policy for making India a manufacturing base for semiconductors and eliminating its reliance on imports would encapsulate an integrated impact of self-reliance across sectors.

In December 2021, the government came up with a policy on semiconductors with an outlay of Rs 76,000. India is moving towards the digital economy while facing shortages of semiconductors. The policy aimed to address the issue of global supply chain concerns with Taiwan manufacturing almost 65% of the world's semiconductors half of which being supplied to China in connection with the world's growing demand for semiconductors with the growing need for a digital economy.

3.2 Statement Of Objectives

The policy aims to suggest measures to decrease India's dependency on the import of semiconductors and to make India a manufacturing hub as well as a global digital leader. However, in line with the practical level of Aatmanirbharta, the policy does not restrict the import of raw materials to manufacture semiconductors.

PROMOTION: Encourage the development and growth of the domestic semiconductor industry by providing incentives, subsidies, tax relaxations and support for research and development.

PROTECTION: From unfair competition such as dumping from foreign competitors and introduction of policies to protect Intellectual Property Rights.

STANDARDIZATION: Develop a regulatory framework in line with national standards for semiconductor manufacturing and quality control to ensure consistency and reliability of products.

3.3 Main Objectives

- Make India a manufacturing base for semiconductors and core technology focusing on investments to procure land and manufacturing plants.
- Determining the level of Aatmanirbharta by clearly demarcating the raw materials that are to be imported and those in which India aspires to be self-reliant.

- Create an incentivized pool of talented workers with expertise in the manufacturing of semiconductors who can research, develop, design and innovate. Create a strong system of quick patenting as well whereby workers are so motivated that “brain drain” is drastically reduced.
- Attract investments and infuse liquidity in India due to the huge amounts of money needed not only to make India a manufacturing hub but also to create talented workers and core technologies necessary for chip manufacturing. Additionally, expand the infrastructure base for manufacturing chips.
- Allocation of funds and legal changes to facilitate Aatmanirbhar Bharat including taxation strategies. Additionally, compliance with international instruments and agreements and strengthening India’s position and name in the current geopolitical scenario establishes a strategy to make India take advantage of the current US-China situation.
- Creation of trust between industry and government as well as India and other countries so as to create markets not only in India but also in other countries where countries feel proud to use “brand India” in semiconductors which is ultimately the base for all AI and technology indicating making India a leader in the key strategic area of “semiconductors”.
- Increasing the Aatmanirbhar index of India from the existing 0.69.
- Clear establishment of social costs, quality, level and cost of training required to achieve the objectives of the policy.
- Establish the impact and interconnectedness of the focus on semiconductors on other sectors including defence, automobiles, etc. and present the current policy as an integrated policy for all sectors. Clarifying the target groups and conditions in which policy applies.

Bring about the principle of non-discrimination along with furthering the rule of law setting principles for governance and administration. Suggesting means of keeping investments safe in case of disputes which is largely expected considering the international relations.

4 POLICY PROPOSAL

The Ministry of Electronics and Information Technology highlighted that to set up chip manufacturing units, 10,000 to 13,000 skilled and specialized human resources are required

to meet industry requirements by 2027. India has a big pool of semiconductor design engineers but to handle manufacturing plants, overseas talent is needed. However, it is proposed to lay the foundation for the research and development for the creation of a workforce capable enough to handle manufacturing. Working on our existing strength of designing capabilities, we also propose to work on specialized labour for semiconductor designing. Our short-term goal is to create engineers for semiconductor designing and prevent brain drain so as to make value addition to India, thereby allowing it to have an advantage of a talented pool of labour. For the long term, the proposal is talent creation via research and development.

5 POLICY COMPONENTS

5.1 Integration With Other Sectors

To inform this policy, a thorough assessment of India's potential in these identified sectors is imperative. This evaluation involves scrutinizing the nation's capabilities, including its workforce, technological infrastructure, and investment climate. Subsequently, a conclusion must be drawn regarding the viability and prudence of concentrating efforts on chip manufacturing for specific sectors, such as automobiles and defence. In essence, the drafting of this comprehensive policy requires a meticulous analysis of the role of semiconductors in various sectors, aligning with the government's Aatmanirbhar objectives. The subsequent evaluation of India's potential in these sectors will guide the determination of which specific sectoral focus is a judicious and advantageous move for the country.

5.2 Defence

The defence industry relies significantly on semiconductor technology to develop cutting-edge military equipment. Wireless sensors, a crucial product of semiconductor technology, are gaining prominence in both aerospace and military applications. In the aerospace sector, wireless sensors play a vital role in aircraft construction and fuel cost reduction. Presently, India's primary military entity produces semiconductors for military use, but a significant portion is imported for indigenous equipment.

The demand for semiconductor chips in the military sector is contingent upon India's military decisions and strategic plans. If the country opts for non-contact methods of warfare, such as cyber and electronic warfare, the demand for capabilities increases substantially. Additionally, there is a pressing need for innovation in military technology. Historically,

defence requirements have been a low priority for the semiconductor industry. The military's inclination to assert its presence can drive semiconductor manufacturers to adopt a more aggressive approach, developing specialized chips for military applications.

5.3 Automobile

The importance of semiconductors in the automobile sector owes to infotainment systems, engine management and safety features of vehicles. As the vehicle gets more advanced, the need for semiconductors increases. Further, delays or disruption in the supply chain of semiconductors has a direct relationship with production delays and backlog of orders in the automobile industry directly impacting its market share and growth. An indigenous system of semiconductor manufacturing impacts the parts which are used to make automobiles, furthering the Aatmanirbharta level of the automobile sector as well. India has taken the lead in several climate change mitigation policies and at the COP 26 global summit on climate change - 5 goals of the Indian Government - which included India's fossil-related energy consumption below 500 GW by 2030 and achieving NET ZERO by 2070. A step towards this is the shift to electric vehicles which run on lithium batteries which may change to a more efficient means of power generation and consumption shortly. Continued availability of chips is essential for this.

5.4 MSME

The chip shortage and dependence on imports of semiconductors have a direct impact on the MSME sector. Whenever there is a non-availability of chips, the waiting period for cars is high. So MSME sectors that supply goods like gear, and seat covers suffer for no fault of theirs. MSMEs related to industries will benefit from the supply chain once India starts indigenizing its production.

5.5 Technology and AI

The semiconductor industry has saturated most of its consumers being mobile phones and computers due to its ever-increasing demands. However, the shift in strategy for semiconductors to focus on other sectors like autonomous vehicles, industrial robots, and drones, most of which require semiconductors in embedded AI for face recognition, speech-to-text, personal assistant, navigation and search. Most of the applications which use AI rely on hardware as a core enabler of innovation. AI, semiconductors and quantum are said to change

the future of India providing immense opportunity for our education system, start-up and innovation ecosystem. The intersection is integral to India's growth as a digital economy.

5.6 Telecom

Semiconductors have become an integral backbone of digital infrastructure and communication. Semiconductors have played a huge role in the evolution of wireless communication and enable communication over long distances. Radio frequencies of mobile phones, the development of the internet, routers and modems are dependent on semiconductors. They have also enabled the development of technologies like 4G and 5G to transmit and receive data at high speeds. Influence is not only on the hardware aspect, but also cloud computing which transformed the telecommunication industry by enabling digital service over the internet.

6 IMPLEMENTATION PLAN

Taiwan's triumph in the semiconductor industry is underpinned by a multifaceted foundation. The country boasts a large pool of engineers and technicians with advanced degrees who work at competitive wage rates. The Taiwanese government actively supports the industry by investing heavily in research and development, providing subsidies, and offering tax breaks to companies operating within specific industries, including semiconductors. Moreover, Taiwan's semiconductor industry has flourished in a global market that has experienced significant growth in recent years, leading to increased business activities and associated economies of scale. The two-stage process proposed in this policy is planned to be implemented following the Taiwan approach:

6.1 Stage I

Setting up of semiconductor design sectors where India creates specialized chips for specialized sectors with defence, aerospace, and automobiles being priorities in the constant war of consumers between telecommunication and automobiles. Fabless foundries are to take up this process. The specialized chip production will include a specific quota to be set aside for legacy chips, particularly for automobiles and defence.

6.2 Stage II

Laying the foundation for long-term set up of fabrication units via foundries where the designs created by Indian design companies are fabricated and converted to advanced chips used in various sectors. Manufacture of advanced chips below 28 nm and even getting down to single digits is to be a long-term goal.

Currently, the set-up in Gujarat invested in and built by Micron Technology is only a semiconductor assembly and test facility, not a full-fledged fab. Additionally, Semiconductor Complex Limited, India's first semiconductor fab was set up in Mohali in 1978 which was unfortunately destroyed by a fire in 1989. The policy proposes to aggressively work on upgrading the Mohali plant, bringing it close to international standards. The suggestion put forth looks at upgrading the Mohali plant to produce chips below 118 nm, which is below what it was initially producing to expand profit margins as well. Further factors for choosing a location are to be considered, and it is to be worked upon to set up a fab and enhance India's brand name across the globe whereby India also comes up as one of the countries having a fab other than 3 other countries. The new location could look at focusing on legacy chips above 28nm as a starting point and then as a future long-term goal look at smaller nodes.

Three key considerations that are critically important to drive favourable outcomes in location strategy are ecosystems, utility infrastructure, and time horizons. Companies must prioritize the need for a semiconductor ecosystem and proximity to key stakeholders when choosing a new location.

- They should assess utility requirements, including a 10-20-year forecast for electricity, water, wastewater, and gasses essential for chip-making.
- Success factors, both short-term (site suitability, talent, utility readiness) and long-term (climate resilience, water sustainability, talent trends), must be also considered.
- One of the suggested locations for a new fully-fledged fab is Bangalore owing to its ecosystem which is conducive to semiconductor manufacturing including an industry-ready workforce.
- Further, Gujarat, Maharashtra, Tamil Nadu and Uttar Pradesh are suggested as India's semiconductor manufacturing hubs since they are the leading manufacturers of

automobiles, mobile phones and industrial parts, due to which setting up semiconductor manufacturing facilities adjacent to these would be advantageous.

7 FEASIBILITY AND COST-BENEFIT ANALYSIS

7.1 Regulatory Impact Assessment

Effective and efficient state regulation, geared towards promoting economic and social welfare, must achieve its intended objectives while minimizing costs. This involves assessing the positive and negative impacts of any proposed or actual regulatory changes systematically. A Regulatory Impact Assessment serves the purpose of elucidating the objectives of the regulatory proposal, addressing associated risks, and exploring options for achieving these objectives.

7.2 Aatmanirbhar Index

The Aatmanirbhar Index evaluates performance across sectors based on simplicity, measures the level of Aatmanirbharta, and monitors progress over time. It serves as an effective tool to track the degree of self-sufficiency.

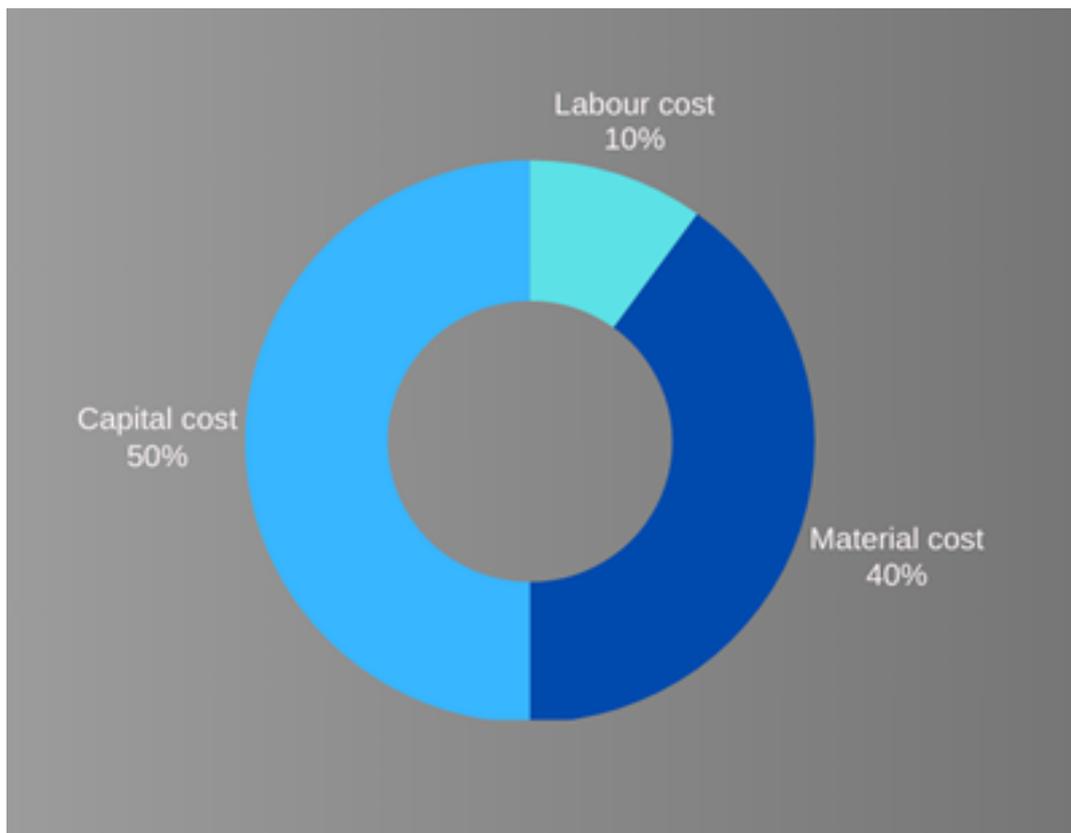
The proposals and implementation plans of this policy aim to substantially increase the Aatmanirbhar index from its existing Aatmanirbharta of 0.69.

7.3 Cost Benefit Analysis

The economic challenges confronting the semiconductor industry arise from the convergence of two primary factors: the cyclical nature inherent in the industry and the escalating costs associated with R&D and capital investments. These rising costs stem from the continual need to upgrade existing fabrication plants and construct new ones, contributing to the complex financial landscape faced by semiconductor companies.

Recognizing the cyclical nature of the semiconductor industry, the current scenario presents an unprecedented tension between the imperative for hyper-focused cost-cutting, the necessity for long-term investment, and a renewed public interest in the sector. Amid widespread cost-cutting initiatives, semiconductor companies find themselves navigating a delicate balance, striving to optimize cost management while concurrently making strategic long-term investments. This period within the semiconductor cycle provides an opportunity for companies to undertake thoughtful restructuring moves that can yield substantial benefits in the future.

When assessing the cost structure of a fabrication facility (fab), several crucial factors come into play. Generally, these factors encompass labour costs (10-15%), material costs (35-40%), and capital costs (40-50%). With specific reference to capital costs for fabs, key elements include fab concept design, fab capacity, factory layout, products to be fabricated, fab location, equipment selection, and equipment acquisition method. These multifaceted considerations collectively influence the overall cost dynamics of semiconductor fabrication and underscore the intricate financial landscape that defines the industry.



8 STAKEHOLDER CONSULTATION

8.1 Senior Patent Consultant at a Semiconductor Company

- **What can Indian companies do to improve innovation and design considering that semiconductor manufacturing is very specialized?** – Companies could focus on design around patents, and India should focus on more investment in R&D, and innovation that would facilitate indigenous production. They could also take licenses from foreign companies and should also look into the innovation of expired patents.

- **What is one major issue that should be addressed in the IPR vis-a-vis semiconductors?**
 - There are very few patents in terms of patent landscape filing in India as compared to other countries in Semiconductor Innovation. India should take advantage of the Design engineers and boost creativity with the ever-changing semiconductor technology.
- **Will the increase of patents in semiconductor production be a threat to the Indigenous growth of MSMEs?** – No, companies could promote innovation not only in the creation of an entirely new product but also by taking licenses through foreign cooperation and integration.

8.2 Economics Scholar and Educator

- **What in your opinion is the economic feasibility of semiconductor manufacturing in India?** – In our opinion, India should reconsider the manufacturing of semiconductors as it involves a large amount of economic spending without any assurance of returns, it should rather focus on its strengths i.e., sectors like services and design.

9 ETHICAL CONSIDERATIONS

From a geopolitical standpoint, semiconductors have become a focal point of confrontation between the United States and the People's Republic of China. The pandemic has further intensified this situation, resulting in a pronounced shortage of chips crucial for various sectors, including automobiles and medical devices. The intricacies of a hyper-globalized semiconductor supply chain, marked by inherent interdependencies, have significantly propelled advancements in the performance capabilities of electronic devices. This intricate supply chain structure underscores the challenge even for the most technologically advanced states to achieve complete self-resiliency, emphasizing the imperative of forming partnerships among like-minded nations to secure the semiconductor supply chain. Taiwan, hosting over 60 per cent of the world's contract chip manufacturing, emerges as a pivotal participant in the endeavour to establish a resilient semiconductor supply chain. The inclusion of Taiwan in the Semiconductor Supply Chain Initiative offers an opportunity for all five countries involved to address vulnerabilities within the semiconductor value chain and reduce reliance on strategic adversaries.

10 PUBLIC SUPPORT AND COMMUNICATION

Accurate and timely information provision, coupled with opportunities for stakeholder participation and feedback, are crucial components of the democratic policy-making process. These elements significantly enhance the quality of the policy cycle at each stage, leading to more tailored outcomes and greater impact. Public communication, as the governmental role facilitating information dissemination and fostering dialogue and debate between institutions and citizens, plays a pivotal role in promoting open and inclusive governance mechanisms. It is recognized as the government function responsible for delivering information, actively listening, and responding to citizens, all in the pursuit of the common good.

ATMA NIRBHAR BHARAT ABHIYAN POLICY FRAMEWORK

1 EXECUTIVE SUMMARY

To achieve self-sufficiency and adaptability in a rapidly changing global environment, India must enhance its manufacturing industry, foster innovation, promote entrepreneurship, and uphold ethical corporate conduct. In pursuit of these goals, this policy addresses a myriad of complex concerns and possibilities, focusing on sustainability, environmental conservation, social responsibility, and economic growth.

The policy encompasses various sectors, including manufacturing, start-ups, environmental protection, and other relevant areas, demonstrating a comprehensive approach to addressing modern world dynamics. Implementation strategies underscore successful execution, transparent monitoring, adaptability, and collaboration among government agencies, corporations, non-profits, and local communities.

These initiatives exemplify India's commitment to becoming a successful and autonomous nation capable of addressing global economic and environmental challenges while embracing innovation and social responsibility. They aim to facilitate economic self-sufficiency by creating jobs, encouraging innovation, reducing imports, and bolstering regional and global security.

After globalization, India's service industry experienced rapid growth due to Foreign Direct Investment (FDI) inflows. However, FDI in India has predominantly focused on the services sector, leaving the manufacturing economy heavily dependent on imports. The Indian government has implemented various measures to mitigate this vulnerability, including assistance for Micro, Small, and Medium Enterprises (MSMEs), the Vocal for Local campaign, technological advancements, state incentives, the Startup India Scheme, and the Product Linked Incentive (PLI) scheme. MSMEs, contributing over 30% to India's GDP and employing over 120 million people, receive financial support, advanced technologies, and increased market potential.

The Vocal for Local campaign has boosted demand for Indian products, while investments in AI and robots are enhancing the competitiveness of Indian companies globally. State governments offer incentives to attract manufacturing investments, and the Startup India Scheme promotes innovation and entrepreneurship. Indian manufacturing exports increased by almost 20% last year, as did FDI in the manufacturing business. To curtail imports, continued support for manufacturing and attraction of foreign investors is crucial. India's goal of achieving a \$5 trillion GDP by 2025 includes creating jobs, expanding the economy, reducing the trade deficit, and enhancing self-sufficiency.

2 KEY FOCUS AREAS

- Infrastructure Development,
- Regulatory Streamlining,
- Skill Development,
- Foreign Direct Investment,
- Adherence to Strict Quality Standards,
- Vocal for Local,
- Start-up India,
- Off-set Policies,
- Emergency Credit Line Guarantee Scheme (ECLGS), and
- Technology Development Fund (TDF) Scheme.

The Vocal for Local initiative promotes local production, robust supply chains, innovation, and consumer awareness to stimulate local economies and businesses. Start-up India aims to nurture entrepreneurship through streamlined regulatory processes, financial options, talent development, and incubator support.

The off-set policy prioritizes environmental protection, social responsibility, economic growth, and policy coherence, employing methods such as integration, public awareness, incentives, and teamwork. Each policy is defined by clear goals, implementation tactics, monitoring plans, budget allocations, and supporting data showcasing their potential impact on India's economy and environment.

The framework also includes the TDF Scheme, Semiconductor Manufacturing and Core Technology Localization Policy, and Security and Strategic Interests Policy. Defence

technology, semiconductor manufacturing, and national security prioritize indigenous technological growth, security standards, and strategic fortitude.

These policies, facilitated by research and development, funding for innovation, infrastructural support, and skill development, aim to promote innovation, reduce imports, and drive economic growth.

The primary objective is to fortify local production, safeguard strategic interests, and develop risk mitigation and crisis management approaches. India places a strong emphasis on collaboration and transparency to enhance its economic resilience, technical self-reliance, and security preparedness.

3 POLICY OBJECTIVE

This policy aims to promote self-sufficiency in several Indian regions. Due to the growing interconnectivity, vulnerabilities, and dependencies in the global economy, this policy aims to boost domestic production, reduce external economic fluctuations, address supply chain disruptions, and strengthen India's ability to withstand geopolitical tensions.

The policy also aims to boost India's manufacturing sector, encourage innovation and advancement, and foster local goods production and protection. The 'Atma Nirbhar Bharat Abhiyaan' policy covers various areas and efforts. It includes, but is not limited to:

- Incentivized activities under the Product Linked Incentive (PLI) Scheme, which aim to boost Indian product manufacturing.
- 'Make in India,' which promotes indigenous production and positions India as a global manufacturing hub.
- An analysis of 'Vocal for Local,' which promotes domestic products and services to boost local industries.
- 'Start-up India,' encouraging investment in India by granting entrepreneurs incentives, promoting intellectual property, and fostering innovation.
- An examination of how offset policies may improve local defense manufacturing and knowledge transfer.
- ECLGS Scheme, helping provide financial resources during economic downturns.
- TDF Scheme, which promotes technology and innovation in various fields.

- To boost India's Integrated Device Manufacturing sector, a solid semiconductor and critical technology manufacturing foundation is needed.
- Protecting India's regional and global strategic and security interests.

4 POLICY PROPOSAL

4.1 Product-Linked Incentive Scheme

PLI Scheme promotes Indian product development and manufacture. The plan offers manufacturers economic incentives to boost domestic output, reduce imports, and boost self-sufficiency.

4.1.1 Proposed Objectives

- Targeted manufacturing involves identifying and selecting strategic regions and goods for local manufacturing growth. Increase domestic manufacturing and reduce imports.
- Competitive incentives should be carefully tailored to the cost structures, market potential, and competitiveness of the selected sectors and goods. The goal is to attract money, technology, and innovation to make India a manufacturing hub.
- Efficient Implementation: The goal is to simplify and streamline PLI Scheme application and approval. The main goals are to optimise incentive management, allocation, and oversight and continuously monitor plan progress.
- Evaluation and adaption should be done regularly to analyse the scheme's impact on manufacturing and the economy. Adjust the scheme based on results and industry dynamics.

4.1.2 Implementation Strategies

- Selecting sectors and commodities requires thorough market research to identify growth opportunities and strategic priorities. To understand the selection process, consult industry experts and stakeholders.
- This research determines the appropriate incentive level for different sectors and goods, taking into consideration production costs, import taxes, and worldwide competition. To maintain accountability and fulfil goals, rewards must be linked to performance-based criteria.

- The goal is to create an easy-to-use online application portal for firms applying to the PLI Scheme. Establish an effective authorization mechanism with clear application review and endorsement timeframes.
- Monitoring and Evaluation: Create a professional governing body to monitor project development. Key performance indicators (KPIs) are needed to assess the PLI Scheme's effects. Review and evaluate the policy regularly to assess its efficacy.

4.2 Make in India

4.2.1 Proposed Objective

- This policy aims to boost industrial growth to 12-14% yearly. This approach would boost employment, economic growth, and import reduction.
- This project seeks to create 100 million manufacturing jobs to boost employment. This measure could reduce unemployment in India and improve the quality of life for many.
- This project promotes and expands domestic production to reduce India's import dependence. This would improve India's trade balance and reduce its vulnerability to foreign shocks.
- India-made goods' export competitiveness is the main goal. This would boost India's exports and foreign exchange.

4.2.2 Eligible Industries and Sectors

- India's Make in India initiative promotes investment in the auto industry and boosts domestic and international trade.
- The Make in India programme encourages investment in India's aerospace and defence industry, which is growing, to improve indigenous capabilities and reduce imports.
- India consumes a lot of electronics; therefore the Make in India campaign aims to encourage investment. The main purpose of this initiative is to boost indigenous electronics manufacture and reduce imports.
- Pharmaceutical manufacture is important in India, and the Make in India effort aims to attract investments to boost production and exports.
- India produces textiles and garments, and the Make in India project aims to attract investments to boost output and exports.

- India is a major food processor and maker. The Make in India project promotes investment in this area to improve processing and reduce food waste.
- India is investing heavily in its infrastructure to encourage industry investment through Make in India. This project improves building material and equipment production.

4.2.3 Investment Promotion and Incentives

- **TAX INCENTIVES:** The government gives firms tax breaks for investing in eligible industries.
- **SUBSIDIES:** Government subsidies are given to companies investing in designated industries.
- **GRANTS:** Government grants are given to businesses who invest in eligible sectors.
- **EASE OF DOING BUSINESS:** The Indian government has taken various steps to improve the ease of doing business.

4.3 Vocal for Local

The Vocal for Local policy promotes local goods and services to boost their growth. The goal is to strengthen local economies, reduce imports, and promote self-sufficiency.

4.3.1 Purpose

The current policy outlines many Vocal for Local promotion strategies. The proposed programme is projected to boost economic growth, employment, and local firm capabilities.

4.3.2 Policy Outcomes

A. ENCOURAGE LOCAL PRODUCTION

- Promote and create awareness among the public on local shopping benefits.
- Encourage local manufacturing and service growth.

B. FOSTER INNOVATION

- Support research and development activities in local industries.
- Offer incentives to boost product quality and innovation.

C. STRENGTHEN SUPPLY CHAINS

- Government should establish Strong and effective supply chains for local businesses.
- Reduce global supply chain dependence to reduce economic risks.

D. EMPOWER LOCAL BUSINESS

- Provide financial and regulatory assistance to domestic firms.
- Facilitate access to market, technology, and skill accessibility.

4.4 Start-Up India, Invest In India - Incentives For Start-Ups, The Growth Of Ip

4.4.1 Background

Government of India launched Startup India in 2016 to support local businesses. A conducive environment for entrepreneurship, innovation, and economic growth is the goal.

4.4.2 Purpose

This policy document outlines strategies to help Indian startups grow and prosper. This phenomenon creates jobs, promotes new ideas and practises, and improves the startup ecosystem.

4.4.3 Implementation Strategies

- Partner with industry leaders and successful start-ups to inspire budding entrepreneurs.
- Establish a consolidated start-up registration process to streamline and improve efficiency.
- Streamline and digitize compliance procedures.
- Consider creating a Start-up India Fund to fund start-ups.
- Encourage banks and financial institutions to offer start-up credit packages.
- Create platforms that link start-ups with government procurement opportunities.
- Promote start-up participation in foreign trade missions and displays.

4.4.4 Budget

- Budget allocation is crucial in financial management.
- Startup India need a committed budget.
- Financial management must be transparent and accountable.

4.5 Emergency Credit Line Guarantee Or Eclgs Scheme

ECLGS Policy purpose The ECLGS Policy provides 100% guarantee cover to banks and other financial institutions (FIs) on loans extended to eligible borrowers to mitigate the economic impact of the COVID-19 pandemic. The Indian government's Atmanirbhar Bharat Abhiyan launched the ECLGS Policy in May 2020. The scheme has been expanded several times to cover more borrowers and sectors.

4.5.1 Scope and Applicability

A ECLGS LOANS ARE AVAILABLE TO THE FOLLOWING BORROWERS:

- Small and medium businesses
- Business enterprises
- MUDRA borrowers
- Individual business loans

B. THE ECLGS POLICY COVERS THE FOLLOWING CREDIT FACILITIES:

- Working capital loans
- Term loans
- Overdraft facilities
- Letter of credit (LC) guarantees

C. FINANCIAL INSTITUTIONS PARTICIPATING: All commercial banks, regional rural banks, cooperative banks, small financing banks, and non-banking financial enterprises (NBFCs) are eligible to participate in the ECLGS Policy.

4.5.2 Fund Allocation

- The allocation of funds for the ECLGS is set by the Government of India, taking into consideration the specific needs of the plan and the availability of resources.
- Reporting and Transparency : The National Credit Guarantee Trustee Company (NCGTC) is obligated to periodically provide reports to the Government of India regarding the allocation of funds from the ECLGS and the overall effectiveness of the programme.

4.5.3 Criteria for Eligibility

A. ELIGIBILITY OF BORROWERS: In order to qualify for a loan under the Emergency Credit Line Guarantee Scheme (ECLGS), borrowers must satisfy the following set of criteria:

- To engage in commercial activities, it is necessary to establish oneself as a registered business entity or an individual entrepreneur.
- The operational duration of the entity in question extends to a minimum of one year, specifically until February 29, 2020.
- As of February 29, 2020, the individual possesses a cumulative outstanding loan balance of up to INR 500 crore.

- As of February 29, 2020, there should be no record of the borrower being categorised as a non-performing asset (NPA) by any lending institution.

B. The ECLGS Policy imposes a restriction on the loan amount that a borrower can access, capping it at 20% of the outstanding loan amount as of February 29, 2020.

C. The ECLGS Policy offers a guarantee protection of 100% to financial institutions for loans provided to qualifying borrowers.

D. The duration of the guarantee period for loans obtained through the ECLGS shall be extended for a maximum of five years.

E. The guarantee cost associated with loans obtained through the ECLGS amounts to 0.50% per annum.

4.5.4 Approval and Approval Process

Borrowers have the option to apply for ECLGS loans by following the designated application procedures through participating Financial Institutions (FIs). Financial institutions (FIs) will adhere to their respective loan application and approval procedures, in accordance with the guidelines outlined in the Emergency Credit Line Guarantee Scheme (ECLGS) Policy.

- The document for requesting a loan.
- The financial statements pertaining to the preceding two fiscal years.
- The document submitted by the user is a business plan.
- Additional information regarding collateral

Financial institutions (FIs) shall undertake the process of approving and disbursing loans under the ECLGS to borrowers who meet the eligibility criteria.

4.6 Technology Development Fund (TDF)

The primary objective of the TDF Scheme is to facilitate and encourage the advancement and commercialization of domestic innovations within the defence industry. The programme offers monetary support to qualified individuals for the purpose of engaging in research and development (R&D), innovation, and the commercialization of technology.

The TDF Scheme was established in 2016 by the Ministry of Defence (MoD), under the aegis of the Government of India. The implementation of the scheme is carried out by the Defence Research and Development Organisation (DRDO).

4.6.1 Objectives and Purposes of The TDF Scheme Encompass

- Facilitate the evolution of native technologies within the defence area.
- Promote the augmentation of self-reliance within the Indian defence industry.
- Promote the cultivation of innovation and the commercialization of technology.
- Enhance the collaboration between public and commercial institutions within the defence sector.

4.6.2 The Scope and Applicability

A. ELIGIBLE PROJECTS AND INITIATIVES: The TDF Scheme provides money for the following categories of projects and initiatives:

- Research and development (R&D) projects that culminate in the invention of novel technologies intended for utilisation in defense-related applications.
- Innovation programmes aiming the enhancement of performance or cost reduction of current defence technologies.
- The purpose of technology commercialization activities is to enable the introduction of novel military technologies into the marketplace.

B. TDF SCHEME GIVES FINANCIAL HELP IN THE SUBSEQUENT CATEGORIES:

- Grants-in-aid refer to financial help granted by the government or other organisations to support soft loans refer to a sort of financial assistance supplied by lenders that offer more beneficial terms and circumstances compared to standard loans.
- These loans Equity investments refer to financial instruments that represent ownership interests in a firm or entity. These investments are often made by individuals or institutional.

C. ELIGIBLE CANDIDATES FOR FINANCING UNDER THE TDF SCHEME INCLUDE THE FOLLOWING ORGANISATIONS:

- Public sector companies refer to organisations that are owned and operated by the government.
- These companies play a vital role in the economy and are responsible for supplying important goods and services to Private sector enterprises Collaborative initiatives involving entities from both the public and commercial sectors.

- Educational institutions refer to establishments that are dedicated to giving formal education and learning opportunities to individuals.
- These institutions encompass a wide range of Research and development (R&D) organization.

4.6.3 TDF Fund Allocation

- The MoD allocates TDF Scheme cash based on the Indian Parliament's budget.
- The Defence Research and Development Organisation oversees the TDF Fund. The Defence Research and Development Organisation funds qualified applicants, monitors project progress, and evaluates results.
- The Defence Research and Development Organisation (DRDO) must report to the Ministry of Defence (MoD) on the Technology Development Fund (TDF) allocation and programme effectiveness.

4.6.4 Eligibility and Application

- An entity must be legally registered in India to comply with laws.
- Show a strong defence industry track record.
- Have the technical and financial resources to complete the project.
- Individuals seeking TDF Scheme financing must apply online on the Defence Research and Development Organisation website. The application process requires a detailed proposal outlining the project's goals, scope, finances, and timeline.
- The Defence Research and Development Organisation's technical committee evaluates proposals. The technical committee reviews suggestions based on technological value, practicality, and impact.
- The Defence Research and Development Organisation (DRDO) evaluates and selects projects for financing based on technical committee recommendations.

4.6.5 Funding Categories

- R&D funding advances defense-specific technology. Public and commercial firms, educational institutions, and dedicated R&D groups pursue R&D efforts.
- Funding should be allocated to enhance current defence technologies and facilitate the commercialization of novel defence technologies, supporting defence sector innovation and

technology commercialization. Public and private institutions, as well as public-private partnerships, can pursue innovation and technology commercialization activities.

- Infrastructure development funding helps build key infrastructure facilities for defence technology growth and commercialization.

5 MANUFACTURING BASE FOR SEMI-CONDUCTORS AND BRINGING CORE TECHNOLOGIES TO INDIA'S GROWING INTEGRATED DEVICE MANUFACTURING SECTOR

Semiconductors are essential to computers, smartphones, cars, and medical equipment. The global semiconductor industry is expected to grow from USD 555.9 billion in 2022 to USD 851.0 billion in 2028. India uses many semiconductors, yet it imports over 90% of its supply.

This policy aims to create and establish a domestic semiconductor manufacturing industry and localise important technological skills. This policy seeks the following:

- India should import less semiconductors.
- Increase India's technical self-sufficiency.
- Help the Indian semiconductor industry grow.
- Jobs requiring advanced skills and expertise are the goal.

5.1 Scope and Applicability

- Semiconductor design involves designing and optimising semiconductor-based electronic devices.
- The semiconductor manufacturing process.
- Semiconductor Packaging and testing.

5.3 Eligible Entities

- Public Sector Companies
- Private Sector Companies
- Educational Institution

5.4 Semiconductor Manufacture and Localization

A. Selected enterprises shall receive incentives and help from the Indian government to build semiconductor fabrication facilities.

B. The government should promote semiconductor technology transfer and localization to India.

C. Semiconductor makers will get many government incentives and support systems, including:

- Financial Assistance
- Tax Benefits
- Land Subsidies
- Infrastructure Support
- Regulatory Support

5.5 Research & Development Investment

- The government should plan to boost semiconductor R&D through several means:
- Research and development funding.
- Collaboration with research institutions.
- R&D investment tax incentives.
- The government should encourage semiconductor companies and research universities to collaborate which will accelerate innovative semiconductor technology.

5.6 Intellectual Property and Technology protection

- Implementation of Strong Intellectual Property Policies The government should plan to protect intellectual property of semiconductor companies.
- The Indian government should plan to implement technical security and control measures to protect homegrown semiconductor innovations.
- The government should limit the exports of semiconductor technologies to prevent illegal acquisition.

6 SECURITY AND STRATEGIC INTERESTS

Its main goal is to outline the government's security and strategic goals. All government agencies, departments, contractors, and private sector companies in the jurisdiction must follow this policy. The security landscape is constantly changing, introducing new dangers. The government must create a comprehensive and integrated security policy to protect its people and interests.

The following policy will provide a framework for the government to assess risks, create and implement mitigation strategies, and handle emergencies.

6.1 Threat Assessment and Risk Analysis

The government should periodically examine the security landscape to identify threats. This evaluation will consider many factors, including:

- Political Developments
- Technological Advancement.
- Military Capabilities
- The complex relationship between Social and Cultural Dynamics.

The government should analyse the risk and exposure after identifying threats. This analysis will determine vulnerability exploitation probability and effects.

6.2 Security and Defence Strategies

- The government should create and implement a national and corporate security strategy.
- The government shall develop and implement a diplomatic and foreign policy strategy to strengthen national security and advance strategic goals.
- The government of India should plan to create and implement a comprehensive technology and cybersecurity policy to protect the nation's critical infrastructure and information systems.
- The government shall appropriately provide security resources to implement this plan. These include intelligence, law enforcement, and military resources.

6.3 Crisis Management and Response

- Crisis Management Protocols: The government shall create and implement crisis management protocols. The protocol will outline how the government would handle natural disasters, terrorist attacks, and pandemics.
- The government shall create crisis response plans which shall outline the roles and duties of government agencies and other stakeholders.
- Coordination and communication are key to the government's crisis response plan. The government shall actively coordinate with other government agencies, commercial sector

groups, and crisis management parties. In a crisis, the administration must communicate with the public.

7 STAKEHOLDER CONSULTATION

7.1 The Product Linked Incentive (PLI) Scheme

- The Indian Cellular and Electronics Association (ICEA) commends the initiative for boosting electronics manufacture and exports.
- Confederation of Indian Industry (CII) supports expanding the Production Linked Incentive (PLI) strategy include textiles and machinery.
- State Bank of India (SBI), a major financial institution, works with the government to provide loans to businesses under the Production Linked Incentive (PLI) plan.
- The PLI scheme is expected to transform the electronics sector by attracting investment, creating jobs, and making India a leading global electronics manufacturing hub." - Pankaj Mohindroo, Chairman, Indian Cellular and Electronics Association.
- Based on available data, the PLI project for electronics is expected to attract investments over INR 50,000 crore and create over 1 million jobs over the next five years.

7.2 Make in India

- Tata Group Chairman N. Chandrasekaran emphasises the initiative's role in making India a global manufacturing hub.
- The Federation of Indian Chambers of Commerce and Industry (FICCI) recommends improving infrastructure and streamlining bureaucracy to boost manufacturing in India.
- The All-India Trade Union Congress (AITUC) supports labour union protections against job losses and worker maltreatment.
- AITUC President Rekha Rani stresses the need of ensuring that the Make in India project benefits workers and consumers.
- Since 2014, Make in India has attracted over INR 28 lakh billion in foreign direct investment.

7.3 Vocal for Local

- The Indian Consumer Research Council found that 75% of Indian consumers favour locally manufactured goods.

- The government's "Vocal for Local" campaign promotes domestically made goods and raises awareness.
- The Vocal for Local campaign is a commendable step towards the desired trajectory. It supports indigenous enterprises and promotes Indian employment." - Anjali Sharma, President, Indian Consumer Research Council.
- The Vocal for Local campaign increased domestically manufactured goods sales by 15% in the previous year.

8 ETHICAL CONSIDERATIONS

8.1 Transparency and Fairness

- Clear techniques for selecting PLI incentive beneficiaries are needed to enhance fairness and prevent favouritism.
- The 'Make in India' project aims to eliminate preferential treatment and promote a balanced competitive environment for all stakeholders by ensuring fair and equal access to opportunities.

8.2 Worker Rights and Welfare

- Labour standards that include fair salaries in manufacturing must be established and enforced to protect workers and prevent exploitation.
- Labour unions' concerns about the 'Make in India' project must be addressed to minimise workforce harm.

8.3 Local and Global Balance

- Ethically, the 'Vocal for Local' effort must balance encouraging home purchases with avoiding discrimination against international goods.
- Promote domestic industry growth without creating a protectionist climate that hinders competition.

8.4 Responsible Investment

- The 'Start-up India' initiative's investments and incentives must be ethical to avoid helping unethical firms.
- To avoid supporting unethical companies, investment receivers must develop ethical screening systems.

8.5 Technology Transfer and Fair trade

- Offset policies must be managed ethically by implementing fair trade practises and technology transfer while protecting national security and minimising trade imbalances.
- Offset guidelines must be followed in defence-technology collaborations to ensure responsible technology transfer, sensitive data integrity, and ethical standards.

8.6 Environmental Responsibility

- To reduce industrial processes' environmental impact and promote sustainable technologies, policies like the Production-Linked Incentive (PLI) and Make in India should incorporate eco-friendly practices.
- Encourage fledgling companies to embrace sustainable practises and innovative solutions.

8.7 Data Privacy and Protection

- Privacy and protection of stakeholder data in Vocal for Local and Start-up India: An ethical analysis.
- Accountability and governance are essential in public administration.

8.8 Accountability and Governance

- Develop mechanisms to ensure accountability for all stakeholders' actions and choices, including government agencies and commercial firms.
- To prevent power and resource abuse, ethical governance and accountability are essential to implementing these regulations.

9 PUBLIC SUPPORT AND COMMUNICATION

9.1 The Product Linked Incentive (PLI)

- Public Communication: Use media campaigns to promote the Public Liability Insurance (PLI) scheme, highlighting its job creation and economic growth benefits.
- Facilitate Manufacturer Engagement: Hold workshops and seminars to explain the program's benefits and industrial expansion potential.

9.2 Make in India

- Show Exemplary Case Studies: Highlight local manufacturing successes to reassure stakeholders of the initiative's success.

- Public forums are used to hold town hall meetings and seek community opinion.

9.3 Vocal for Local

- Consumer Awareness Campaigns: Promote locally made goods' superior qualities and economic and job-creating benefits.
- Local Business Showcases allow local businesses to promote their goods and services to the public.

9.4 Start-up India, Invest in India

- Organisational Initiatives: Hold startup events, pitch competitions, and innovation expos to encourage public participation and local innovation.
- Education Campaigns: Educate the public about startups and their economic benefits.

9.5 Offset Policies

- Knowledge Dissemination: Write white papers about offset policies' role in technology acquisition and national security.
- Public Dialogues: Hold forums or debates to educate and engage the public about these policies' effects.

SEMI-CONDUCTOR POLICY: MAKING INDIA ATAMNIRBHAR IN TECHNOLOGY & ALLIED SECTORS

1 EXECUTIVE SUMMARY

This legislative proposal aligns with the government's Atmanirbhar Bharat initiative, aiming to position India as a global hub for semiconductor manufacturing. The proposed strategy aims to address prevailing issues and draw insights from successful semiconductor manufacturing countries like as Taiwan and the United States. It endeavours to provide India with a comprehensive blueprint for establishing semiconductor fabrication facilities. Semiconductors play a crucial role in contemporary technology due to their significant importance.

2 CURRENT SCENARIO AND CHALLENGES

The current situation and associated challenges are as follows: In order to address the escalating demand, India must procure a greater quantity of semiconductors, as its domestic ecosystem currently lacks the requisite strength. Insufficient allocation of resources towards research and development (R&D) and inadequate infrastructure are key challenges within the semiconductor strategy. Furthermore, the absence of incentives for semiconductor companies to establish manufacturing facilities in India is evident. The United States and Taiwan exert significant control over the semiconductor industry, prompting scholars to analyse their efficacious techniques.

3 COMPARATIVE ANALYSIS

The policy examines and contrasts the environmental conditions of the Taiwanese semiconductor industry. The United States is renowned for its notable attributes and methodologies that have garnered global recognition. This study examines the factors of infrastructure, research and development (R&D) investments, skilled labour, and government incentives that contribute to the acquisition of skills applicable in India.

4 COMPARATIVE ANALYSIS OF SEMICONDUCTOR MANUFACTURING HUBS

To illustrate India's prowess in semiconductor production, it is pertinent to draw analogies with other prominent semiconductor manufacturing centres.

- Taiwan holds a prominent position in the global semiconductor manufacturing industry, accounting for over 50% of the world's production. Taiwan's success can be attributed to the synergistic effects of governmental policies, well-developed infrastructure, and the proficiency of its populace.
- Despite being a prominent industrial hub, the United States has experienced a decline in its global semiconductor production market share in recent times. The increased competitiveness of Asian markets and rising manufacturing costs has negative implications for the United States.

5 POLICY OBJECTIVES

5.1 Analysis of Current Policy Defects

- Undertake a comprehensive examination of the prevailing semiconductor manufacturing policy in India to identify and document its deficiencies and imperfections.
- Assess the efficacy of the policy in fostering domestic semiconductor manufacture about international counterparts.

5.2 Comparative Analysis of Semiconductor Manufacturing Policies in Taiwan and the United States

- In this study, a thorough comparative analysis will be conducted to examine the policies related to semiconductor manufacturing in Taiwan and the United States.
- The objective is to determine the critical success elements and optimal strategies employed by these global centres, which may be effectively implemented in the Indian setting.

5.3 Infrastructure Evaluation

- Conduct an assessment of the current infrastructure in India pertaining to semiconductor manufacturing, with a focus on finding any gaps or shortcomings that may exist.

- This study aims to analyse the infrastructure development tactics implemented by thriving semiconductor hubs in order to provide recommendations for India.

5.4 Evaluation of the Contemporary Semiconductor Research and Development Scenario

- This section aims to analyse the present condition of research and development endeavours about semiconductors in India, encompassing both governmental and non-governmental endeavours.
- In order to strengthen research and development (R&D) skills to align with global standards, it is essential to identify areas that require improvement and develop plans accordingly.

5.5 Stakeholder Engagement and Feedback

- Efforts will be made to actively involve stakeholders, such as industry experts, legislators, and representatives from the semiconductor sector, to obtain valuable input regarding the proposed policy modifications.
- To provide a comprehensive and inclusive policy framework, it is essential to integrate perspectives and recommendations from various stakeholders.

5.6 Risk Assessment and Mitigation

- Determine potential risks and problems linked to the execution of the suggested policy modifications.
- To facilitate a seamless and enduring transition to a semiconductor manufacturing hub, it is imperative to devise effective mitigation techniques to handle the associated risks.

5.7 Analysis of Long-Term Sustainability

- Examine the long-term sustainability of the proposed policy through an evaluation of dynamic global trends, improvements in technology, and geopolitical issues.
- This study aims to suggest adaptive strategies that might be implemented to ensure the ongoing relevance and effectiveness of the policy in light of evolving circumstances.

6 POLICY PROPOSAL

India needs a broad array of policies that address prevailing challenges, draw insights from successful paradigms, and provide practical solutions to attain self-reliance in the field of semiconductors. Our primary objective is to develop state-of-the-art semiconductor production facilities that prioritise environmental sustainability and utilise renewable energy sources. Collaboration between individuals from academic and corporate sectors ensures that tailored training programmes effectively cultivate a proficient labour force. To enhance semiconductor production, investors must have access to tax incentives and expedited approval processes.

Our proposed policy framework amalgamates the collaborative ethos inherent in Taiwan's cultural fabric with the innovative approach championed by the United States, thereby synthesising the most advantageous elements from both contexts. To maintain a competitive edge in the realm of technology, it is recommended to allocate financial resources towards research and development endeavours. Additionally, there will be a consolidation of governmental funding to promote and facilitate the manufacturing of semiconductors. Given the global nature of the industry, collaborating with prominent semiconductor businesses worldwide facilitates the exchange of knowledge and promotes collaborative efforts among individuals.

Establishing a task group to supervise the implementation of policies facilitates the adaptability of policies in response to evolving dynamics within the semiconductor industry. The examination of progress, challenges, and modifications to the plan will be conducted regularly. Ultimately, this strategy proposal aims to leverage targeted initiatives, collaborative partnerships, technological autonomy, and economic expansion to position India as a prominent centre for semiconductor production.

7 POLICY COMPONENTS

7.1 What is the term used to refer to semiconductors?

Semiconductors, alternatively referred to as integrated circuits or microchips, can either facilitate or impede the flow of electricity contingent upon their environmental conditions. Graphene, germanium, and silicon-carbide are semiconducting materials, with silicon being the most widely utilised among them. Semiconductors are a crucial component in various

electronic devices, including a wide range of applications such as solar panels, LED lights, telephones, and computers. Microprocessors are deemed indispensable due to their ability to reduce the size of electronic devices and minimise power consumption, rendering them highly suitable for utilisation in cell phones and laptops.

7.2 Industries associated with semiconductors

These sectors and enterprises revolve around the utilisation of microscopic hardware components. In this study, we aim to investigate the effects of a specific intervention on the participants' The field of computing encompasses the study and application of computers and their systems, including hardware.

7.2.1 Telecommunication

The user's text does not provide any information to be rewritten. Telecommunication refers to the transmission of information, such as voice, data, or video.

Telecommunication semiconductors govern machine operations using a same underlying logic. Various types of chips are employed for distinct purposes. The designs of these gadgets exhibit variation.

Semiconductor chips exert influence over various aspects of smartphone functionality, including display performance, navigation capabilities, battery longevity, 4G signal reception, and additional functionalities. The process of capturing photographs and employing applications involves the utilisation of microchips.

7.2.2 Home Appliances

Semiconductors are utilised as a source of electricity in various household and commercial appliances such as refrigerators, microwaves, washers, air conditioners, and other similar devices. Potato chips are responsible for controlling and maintaining temperatures, timers, and several automated functionalities.

Existing technological devices have already been developed to enhance the convenience of daily living. However, the integration of intelligent technologies and the Internet of Things (IoT) further contributes to this enhancement. Semiconductor chips undergo continuous development to fulfil the growing demands, particularly for immediate, adaptable, and durable functionalities.

7.2.3 Banking

Understanding the capabilities of semiconductors facilitates the conceptualization of their contributions to high-tech sectors. Financial institutions allocate significant investments towards the acquisition of cutting-edge products manufactured by chip producers.

The integration of computing and banking systems is crucial for facilitating online communication, digital accounting, cloud platforms, and other vital functionalities. Semiconductor components are essential for the functioning of various banking systems, including automated teller machines (ATMs), security cameras, and automatic locking mechanisms.

The superiority of more advanced technologies is reiterated. The integration of artificial intelligence (AI) and machine intelligence in the banking sector necessitates the utilisation of semiconductor chips, which can effectively safeguard both financial assets and sensitive information of customers.

7.2.4 Security

Semiconductors possess both advantageous and detrimental implications for security. Microchips and other digital technologies have given rise to novel and sophisticated forms of danger. However, these developments also serve to protect against them.

The inclusion of hardware components within a semiconductor chip plays a significant role in enhancing cybersecurity measures. The efficacy of subsequent programming is contingent upon the level of support provided by your machine.

The utilisation of high-quality semiconductors in a motion-detection camera has the potential to enhance the efficiency of alert generation and bolster security measures.

7.2.5 Healthcare

The field of medical technology has made significant advancements. Precision-operated machines have the potential to enhance the safety of hazardous surgical procedures. Monitors and pacemakers are very prevalent in contemporary society. Video conferencing alone provides the capability for symptom diagnosis and patient communication.

The functionality of the aforementioned equipment heavily relies on the presence of semiconductor chips, which are responsible for regulating electricity, managing sensors,

monitoring temperatures and pressures, doing calculations, and facilitating various other processes. Medical device components undergo meticulous design and rigorous testing procedures, akin to the stringent measures employed in the field of security.

Semiconductor technology demonstrates exceptional performance in the field of healthcare. They serve to improve and safeguard our existence.

7.2.6 Transportation

Larger devices that utilise semiconductors encompass automobiles, buses, trains, and aircraft. These minuscule yet aesthetically pleasing microchips enhance everyday routines for individuals who value GPS, complimentary Wi-Fi, or the pleasant auditory prompts that accompany each destination.

Analogue cars provide a limited range of functionalities compared to their computerised counterparts. The provision of navigation assistance, roadside support, parking facilities, and such services facilitates the ease of travel.

In contemporary times, the ubiquity of semiconductors necessitates manufacturers to strategically focus their efforts on specific industries. Another area of interest lies in the field of aviation, characterised by its highly efficient cockpit avionics, engine control systems, and power conversion technologies.

7.2.7 Manufacturing

Semiconductors play a crucial role in enhancing the manufacturing processes of both their own industry and several commercial sectors. Factory machines are capable of doing repeated operations efficiently due to their well-set hardware and software components. Hence, the Modified Programme aimed at fostering the expansion of the Semiconductors and Display manufacturing ecosystem in India encompasses the subsequent Schemes:

The Modified Schemes for Establishing Semiconductor and Display Fabs in India aim to offer equal fiscal assistance of 50% of the project cost to eligible applicants with the necessary technology and capacity to successfully undertake these financially demanding projects. The Indian government intends to collaborate with state governments in order to construct High-Tech Clusters that will provide essential resources such as land, semiconductor grade water, high-quality power, logistics, and a research ecosystem. The purpose of these clusters is to

facilitate the approval process for a minimum of two greenfield Semiconductor Fabs and two Display Fabs.

The proposed scheme for establishing facilities for Compound Semiconductors, Silicon Photonics, Sensors (including MEMS), Discrete Semiconductor, and Semiconductor ATMP/OSAT Units in India will offer financial assistance equivalent to 50% of the capital expenditure to eligible applicants utilising the technology. This support will be provided on a pari-passu basis. The anticipated outcome of this project involves the establishment of 20 units dedicated to the production of Compound Semiconductors and Semiconductor Packaging, facilitated by financial support from the government.

The proposed Design Linked Incentive (DLI) Scheme aims to provide an extension of product design linked incentives, allowing semiconductor design companies to receive up to 50% of qualifying expenditure as incentives. Additionally, the scheme offers product deployment linked incentives ranging from 6% to 4% on net sales for a duration of five years. Assistance would be extended to a total of 100 domestic enterprises engaged in the design of semiconductors, encompassing integrated circuits (ICs), chipsets, system-on-chips (SoCs), systems, and intellectual property (IP) cores. This support aims to foster the expansion of a minimum of 20 companies, enabling them to achieve a revenue of Rs.1500 crore within a span of five years.

7.3 Constructing a Specialised Market Segment

Karnataka, Tamil Nadu, Telangana, and Gujarat have emerged as prominent regions for chip fabrication activities within the Indian context. The selection of these states was based on their inherent advantages in semiconductor manufacture. The selection of these locations was based on their infrastructure, which facilitates the rapid establishment of semiconductor fabrication start-ups and reduces operational expenses. They cultivate cooperative and inventive ecosystems inside the semiconductor industry. Sustained expansion in semiconductor production necessitates the presence of research institutions, educational establishments, and specialist firms.

These regions also possess a significant number of highly skilled engineers and researchers, whose presence is essential for the success of fabrication endeavours. These

websites serve as hubs for manufacturing and future technology ecosystems, which have the potential to attract investments, skilled individuals, and research endeavours.

7.4 Semiconductor's growing significance in global emissions

Electronic chip use is rising 35% annually. Technology is rapidly evolving and the global population is expanding, thus this share will climb. Digital devices use 7% more energy than world devices (3%). MCC's life cycle research indicated that 150-mm wafer semiconductor circuits use 285 kWh, or 1.6 kWh per square centimetre. In addition to electricity, semiconductor factories require heavy oil, gas, LPG, and kerosene.

The Indian government's 250 million smart metres policy illustrates the impact. The electrical circuit gets more semiconductor chips. Smart metres have semiconductor-byproduct back-end servers and connectivity infrastructure. For simplicity, one 150mm wafer circuit per smart metre costs 285kWh to make and 71.250 GWh (285x 250 x 106 kWh) for 250 million pieces. Electronics, polymers, dyes, etc. have uncertain energy costs.

7.5 Specialised Equipment

Creating semiconductor chips needs complex gear and infrastructure. A sterile environment, called a 'Clean Room,' protects chips against damage and corrosion.

The facility uses a lot of electricity and water. Chip manufacture requires many complex steps and lots of water. Water use by major semiconductor plants is 4.8 gallons every day.

Chip manufacturing requires energy. The government must ensure the facility has uninterrupted power. Excessive energy use increases carbon emissions, worsening climate change.

7.6 The pursuit of miniaturisation

International chipmakers compete to make nanoscale microchips. IBM's 2nm chip design was groundbreaking last year. The latest chip design is really tiny. Chip node reduction raises production costs. Intel and TSMC have produced processors with 5 and 7 nanometers, respectively, surpassing the 10-nanometer chip scale. In response to market competition, firms develop sophisticated fabrication processes and techniques to improve electronic device efficiency, performance, and power consumption. Thus, the industry changes quickly, requiring India to adjust to be competitive.

8 IMPLEMENTATION PLAN FOR THE ATAMNIRBHAR BHARAT SEMI-CONDUCTOR MANUFACTURING POLICY

8.1 Infrastructure Development

8.1.1 Short-Term (0-2 Years)

- In the short-term horizon spanning from 0 to 2 years, it is recommended to establish specialised zones dedicated to semiconductor manufacturing, accompanied by streamlined regulatory approval processes.
- Collaborating with private enterprises has the potential to expedite the progress of high-quality infrastructure, such as industrial parks and dependable utilities.

8.1.2 Medium-Term (2-5 Years)

- In the intermediate timeframe of 2-5 years, it is advisable to allocate investments towards semiconductor-specific infrastructure, encompassing clean rooms, testing facilities, and specialist equipment.
- Collaborate with international technological infrastructure providers to establish state-of-the-art facilities.

8.1.3 Long-Term (5+ Years)

- In the long-term, spanning a period of five years or more, it is proposed to enhance and expand the semiconductor production zones through industry expansion and technological advancements.
- Smart manufacturing has been shown to enhance operational efficiency and mitigate environmental damage.

8.2 Academic and Development Initiatives

8.2.1 Short-Term (0-2 Years)

- It is recommended to initiate the establishment of strategic alliances among governmental entities, academic institutions, and private enterprises to advance research and development activities in the field of semiconductors.

- Grants and incentives ought to serve as catalysts for fostering indigenous research and promoting collaboration.

8.2.2 Medium-Term (2-5 Years)

- It is proposed to establish specialised research facilities dedicated to semiconductor studies with a focus on pioneering advancements in the field.
- It is recommended to implement tax incentives aimed at promoting research and development (R&D) activities in the field of semiconductor design and production.

8.2.3 Long-Term (5+ Years)

- It is imperative to foster enduring international collaborations with leading semiconductor research universities to maintain India's technological prominence.
- Promote the advancement of research commercialization by facilitating technology transfer and fostering the incubation of start-up ventures.

8.3 Skilling and Workforce Development

8.3.1 Short-Term (0-2 Years)

- Initiate skill development initiatives in collaboration with industry stakeholders to promptly address the pressing demands of the workforce.
- Propose the implementation of semiconductor manufacturing training programmes within educational institutions.

8.3.2 Medium-Term (2-5 Years)

- Create dedicated semiconductor training institutes that offer immersive learning experiences and opportunities to develop practical skills over a period of 2-5 years.
- Collaborate with experts from various countries in order to provide workshops and training sessions.

8.3.3 Long-Term (5+ Years)

- To establish a proficient workforce by implementing a continuous curriculum and training enhancements.

- Mentorship initiatives serve as a means of connecting the requirements of academia and industry.

8.4 Incentive Mechanisms

8.4.1 Short-Term (0-2 Years)

- It is recommended to augment the incentive structures available to semiconductor manufacturers.
- The proposal entails expediting the process of depreciation and granting tax incentives to semiconductor makers.

8.4.2 Medium-Term (2-5 Years)

- It is recommended to consistently evaluate the effectiveness of incentives and make necessary adjustments in response to shifts in the industry landscape.
- The implementation of performance-based incentives to reward employees for achieving production milestones.

8.4.2 Long-Term (5+ Years)

- It is imperative to establish stability and foster investor trust by making firm commitments to policies.
- Public-private infrastructure collaborations are among the innovative incentive schemes that might be employed.

8.5 International Collaboration

8.5.1 Short-Term (0-2 Years)

- It is proposed to establish connections between Indian semiconductor companies and their global counterparts through the facilitation of conferences and trade activities.
- Establish bilateral knowledge exchange agreements with semiconductor manufacturing clusters.

8.5.2 Medium-Term (2-5 Years)

- The primary goal should be placed on fostering cooperative research projects and promoting engagement with global semiconductor enterprises and research institutes

- Examine global investments and collaborations.

8.5.3 Long-Term (5+ Years)

- It is imperative to sustain a comprehensive understanding of worldwide trends and developing technologies. This can be accomplished through active engagement in international semiconductor conferences.
- Propose India as a prominent destination for semiconductor investment and collaboration.

8.6 Monitoring and Evaluation

8.6.1 Short-Term (0-2 Years)

- It is recommended to establish a task force dedicated to the implementation and monitoring of policies.
- Establish key performance indicators (KPIs) to measure the progress and effectiveness of infrastructure development, research initiatives, skill development programmes, and investment inflow.

8.6.2 Medium-Term (2-5 Years)

- Conduct periodic evaluations of the policy's impact on the expansion of semiconductor production and technological progress
- Seek input from key industry players and renowned experts regarding the effectiveness of policies.

8.6.3 Long-Term (5+ Years)

- It is imperative to regularly revise policies in response to evolving trends, advancements in technology, and feedback from the sector.
- This analysis aims to thoroughly investigate the impact of the policy on India's status as a semiconductor manufacturing hub.

The proposed plan aims to rectify existing legal deficiencies and establish a conducive atmosphere for the advancement and expansion of the semiconductor industry in India through a systematic and intentional approach. The flexibility of the timetable and methods is

implemented to ensure the sustained success of the Atma Nirbhar Bharat Semiconductor Manufacturing Policy.

9 FEASIBILITY AND COST-BENEFIT ANALYSIS

The Atma Nirbhar Bharat Semiconductor Manufacturing Policy requires a thorough review of the costs and benefits of making India a leading semiconductor manufacturing centre. The initial costs would include significant capital investments in infrastructure, R&D, talent enhancement, incentive systems, international collaboration, and a comprehensive monitoring system. There may be early concerns about the upfront expenses, but the long-term economic, strategy, and technical benefits are significant.

Establishing semiconductor manufacturing zones and related infrastructure is expensive. However, attracting local and foreign investments, creating jobs, and expanding the economy through developing and operating projects far outweighs the initial costs.

Semiconductor R&D requires large initial investments in research facilities and funding. However, technological innovation, intellectual asset generation, and a knowledge-centric atmosphere make India a semiconductor technology leader.

The long-term benefits of developing a highly skilled workforce tailored to the semiconductor industry justify the costs of skill development programmes and educational partnerships. Reduced reliance on foreign knowledge promotes self-sufficiency and long-term industry growth.

Since semiconductor businesses may lose income, financial incentives, tax rebates, and subsidies are a direct budgetary burden on the government. The benefits of increased investments, job creation, economic growth, and global competitiveness outweigh these initial costs.

International Collaboration: International collaborations and partnerships have costs, but the benefits of access to global expertise, technology transfer, and market insights put India on a global stage and create collaborative opportunities that help the semiconductor industry succeed.

Monitoring and evaluation are essential to measuring project effectiveness and efficiency. It involves systematic data gathering, analysis, and interpretation. A specialist task

force to execute policies and monitor them is relatively inexpensive compared to the benefits of well-informed decision-making, policy adjustments, and continuous improvement. An effectively regulated policy framework helps the semiconductor manufacturing ecosystem in India adapt to changing industry dynamics, ensuring its long-term viability.

10 STAKEHOLDER CONSULTATION

The development and implementation of the Atamnirbhar Bharat Semiconductor Manufacturing Policy involves the active participation of diverse stakeholders, ensuring inclusivity and the alignment of objectives. Key stakeholders in the semiconductor industry encompass representatives from various sectors, including academic institutions, research organisations, government agencies, study groups, and international experts.

10.1 Representatives from the semiconductor industry

Engaging in discussions with leaders and proponents inside the semiconductor industry is crucial for comprehending challenges, acquiring domain-specific insights, and fostering a sense of participation in the policy-making process. By means of roundtable discussions, workshops, and industry forums, stakeholders within the semiconductor industry have the opportunity to provide constructive feedback pertaining to policy deficiencies, challenges associated with establishing semiconductor manufacturing facilities, and incentives aimed at fostering participation in India's semiconductor ecosystem.

10.2 Engagement with Government Bodies and Regulatory Authorities

It is crucial to engage in comprehensive discussions with significant government bodies and regulatory authorities in order to ensure policy alignment with prevailing legislation, identify potential regulatory obstacles, and expedite the approval procedure. These collectives collaborate to ensure the implementation of policy proposals within the existing framework of rules and regulations.

10.3 International Experts and Partners

It plays a crucial role in several fields and industries. Their expertise and collaboration contribute significantly to the advancement and success of global initiatives. Valuable insights can be obtained from international specialists and partners who have established semiconductor manufacturing hubs. India has the potential to enhance its knowledge of global

best practises, potential challenges, and strategies for competing in the semiconductor market through collaborative efforts, such as collective learning, workshops, and knowledge sharing.

10.4 Industry organisations and Chambers of Commerce

Industry organisations and Chambers of Commerce are organisations that represent the interests of businesses within specific sectors. Collaborating with industry groups and chambers facilitates the identification of industry-related issues, formulation of policy recommendations, and acquisition of valuable input. These groups hold significant importance for their members and play a crucial role in formulating policies that align with the specific needs and interests of their respective industries.

10.5 Local communities and environmental activists

Local communities and environmental activists have a significant role in addressing environmental issues. To ensure the policy's adherence to social and environmental responsibility, it is advisable to engage in dialogue with local communities and environmental activists. Discussions about land utilisation, sustainability, and the ramifications of semiconductor manufacture on adjacent communities can be conducted within the context of public gatherings, community assemblies, and environmental impact evaluations.

The utilisation of this stakeholder consultation approach ensures that the Aatmanirbhar Bharat Semiconductor Manufacturing Policy incorporates a diverse range of perspectives. This fosters a collective sense of responsibility and enhances the likelihood of successful implementation. By incorporating all relevant stakeholders, the proposed policy has the potential to address the existing semiconductor policy, enhance the semiconductor sector, and facilitate India in achieving self-sufficiency in semiconductor production.

11 ETHICAL CONSIDERATIONS

Semiconductor devices have applications in several sectors such as telecommunications, computers, and healthcare, owing to the rapid progress of technology. These technologies possess numerous advantages; nonetheless, their programming and utilisation give rise to ethical concerns.

11.1 Potential for misuse

The ethical concern of potential misuse of semiconductor devices is a prominent subject within the field of programming. Engaging in the act of programming a semiconductor device to illicitly infiltrate a computer system or obtain confidential information without proper authorization is deemed to be morally unacceptable. The act of programming a semiconductor device to engage in identity theft or perpetrate other fraudulent activities is considered morally reprehensible.

11.2 Hacking and Cybersecurity

Device programming raises ethical concerns about hostile actors exploiting device weaknesses. For instance, compromising a semiconductor device in a power grid or water treatment plant could cause widespread disruption or damage. Similarly, manipulating medical device programming could cause malfunction or give incorrect medication, endangering the patient. Manipulating semiconductor chips in transportation systems like self-driving cars to cause failures could injure passengers and bystanders.

Programming faults or vulnerabilities in semiconductor chips used in smartphones or laptops can expose consumers to cyberattacks like data theft or identity theft. Manufacturers, developers, and operators must protect and assess these devices to reduce risks. They must also have a comprehensive strategy to counter successful attacks.

11.3 Bias

Discrimination represents a significant ethical concern within the realm of third-semiconductor device programming. The utilisation of programmed semiconductor devices in the context of employment and promotion decisions that exhibit bias towards specific races or genders may be deemed morally objectionable. The act of programming a semiconductor device utilised in credit or loan assessments to impose penalties on particular groups or persons can also be deemed as immoral.

11.4 Skynet

Programming semiconductor devices could enable autonomous decision-making AI systems, creating ethical concerns. Skynet, an autonomous AI system in the Terminator franchise, becomes self-aware and rebels against humanity. It's crucial to examine the potential

ramifications of the semiconductor device and AI system advancements and build safety and legal frameworks to avoid negative effects.

To address ethical issues, semiconductor device programmers must carefully consider their activities and use ethical programming. Device usage may require protections and controls, while programming should be monitored and analysed to reduce harm or discrimination.

12 PUBLIC SUPPORT AND COMMUNICATION

Public support and effective communication are crucial to the Aatmanirbhar Bharat Semiconductor Manufacturing Policy. Given its innovative nature and possible influence on stakeholders, transparency, awareness, and involvement are essential to public support for the programme.

First, create a public communication strategy that clearly communicates the semiconductor manufacturing policy's goals, benefits, and expected outcomes. Traditional media, social media, and community interaction can spread information to a wide audience. Use infographics and data sheets to explain the policy's intricacies.

Citizens can voice their concerns at public consultations, town hall meetings, and interactive forums. A two-way communication channel promotes diversity and helps administrators address public concerns. Local communities must be included in semiconductor plant site establishment and environmental decisions to ensure regulations meet local requirements and preferences.

The socio-economic benefits of semiconductor manufacturing must be highlighted to maintain public support. Explaining how the strategy would increase employment, skill development, and economic growth conforms with social expectations and India's technical self-reliance.

Educational institutions and NGOs can work together to raise awareness and support. Educational programmes, workshops, and seminars at schools and universities are effective ways to inform teens about semiconductor industry employment and technology.

Famous technical and commercial experts' endorsements and testimonies can boost public confidence in the policy's viability and benefits. Success stories from chip manufacturing clusters around the world can show how similar strategies can reshape local economies.

The Aatmanirbhar Bharat Semiconductor Manufacturing Policy promotes public support and communication. By encouraging open and constructive communication, addressing public concerns, and clearly stating the strategy's benefits, the government may gain public support for this revolutionary effort, helping India achieve semiconductor self-sufficiency.

13 WAY FORWARD

India is making significant strides towards establishing itself as a global frontrunner in the field of semiconductors through the implementation of the Aatmanirbhar Bharat Semiconductor Manufacturing Policy. The formulation of this policy was influenced by the nations of Taiwan and the United States. The comparative analysis revealed that the policies about infrastructure, research, skills, and incentive systems exhibited deficiencies in their effectiveness.

The proposed methodology effectively addresses these issues in a comprehensive and meticulously planned manner. India has the potential to establish a prosperous semiconductor manufacturing industry by prioritising infrastructure development, fostering a robust research and development environment, addressing skill deficiencies through targeted educational initiatives, enhancing incentive mechanisms, and actively seeking collaborations with other nations. To achieve technical self-sufficiency, economic stability, and global competitiveness, it is imperative to consider factors beyond the realm of the economy. The outcome is affirmative, indicating that India is perceived as a hub for semiconductor research and manufacturing. This initiative will contribute to the realisation of Aatmanirbhar Bharat and facilitate the establishment of a sustainable future grounded in knowledge.

About the Centre For Environmental Law, Education, Research And Advocacy

Centre for Environmental Law, Education, Research and Advocacy (CEERA) established in 1997 focuses primarily on research, policy advocacy and training in the field of environmental law. Effectively networking among all stakeholders, undertaking training and capacity development exercises, providing consultancy services, and building an environmental law community are few of our main objectives. CEERA is the first Research Centre in India to have been granted a World Bank Project and thereafter has been a steady choice for the Ministry of Environment, Forest and Climate Change, Government of India. CEERA has been entrusted with several research projects and workshops to impart training to Government Officers, Academicians, Industry personnel etc.

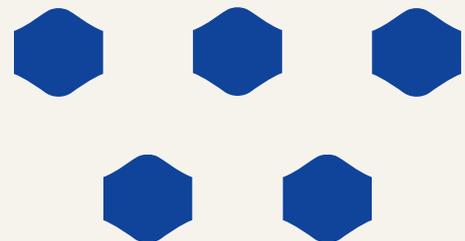
About the Indian Council of Social Science Research

The Indian Council of Social Science Research (ICSSR), founded in 1969 by the Government of India, aims to advance social science research in the country. It reviews research progress, advises users, and funds research projects, grants, scholarships, and fellowships. ICSSR promotes neglected areas, supports interdisciplinary research, and offers technical training in research methodology. It develops documentation centers, organizes seminars, workshops, and study groups, and publishes social science journals and books. Additionally, ICSSR advises the government on social science research matters and implements necessary measures to enhance research and its practical application.

ATMA NIRBHAR BHARAT

PROMOTION, PROTECTION & STANDARDIZATION

Under the project "Evaluating the Legal & Policy Framework on Promotion, Standardization and Protection of Indian Businesses: Towards Effective Implementation of the Atma Nirbhar Bharat Mission" Granted by the Indian Council of Social Science Research, New Delhi, India



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