
INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT ACT, 2016 - OLD WINE, NEW BOTTLE

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ABSTRACT

According to the data of Reserve Bank of India, the state governments has earned around INR 1.75 trillion only from excise duty, most of which incurred from liquor sales in the Financial Year 2020. After Goods & Services Tax and Sales Tax or Value-added Tax (largely on transport fuel), it was their 3rd largest source of revenue. It was all achieved after the major amendment to the Industrial (Development and Regulation) Act, 1951 by introducing the Bill of 2015. The Industries (Development and Regulation) Amendment Bill, 2015, amends the Industries (Development and Regulation) Act, 1951. It amends the schedule to exclude production of alcohol for potable purposes from the ambit of the Act. It aimed to bring industries engaged in the manufacture of potable alcohol under the exclusive control of the states. The Union government made to be responsible for formulating policy and regulating foreign collaboration for all products of fermentation industries, including industrial and potable alcohol.

CHAPTER I: INTRODUCTION

1.1 INTRODUCTION

Industrialization is a major objective of developing countries as a means to the attainment of higher levels of economic well-being of the people. Advancement of science and technology provides the wherewithal to achieve faster industrial growth. After four and half decades of strongly inward oriented policies, India began opening up of its economy to foreign trade and investment with the announcement of New Industrial Policy in July 1991. The New Industrial Policy seeks to prepare Indian industry for meeting the challenges of globalization. The reforms aim at generating a market orientation for the hitherto highly regulated domestic economy by deregulating the domestic economy to provide Indian industry with greater flexibility to respond to competitive pressures by reducing costs and improving quality.

The New Industrial Policy has injected a substantial measure of competitive environment and market thrust to industry. Many areas earlier reserved for the public sector are now open to private sector participation. The restrictions on the expansion of large industrial houses have been removed. Licensing requirements for industries have been abolished except for a few strategic and defence industries.

The policy reforms towards Foreign Direct Investment (FDI) began with a radically new approach to FDI in the very first year of the implementation of New Industrial Policy. The new regime permits FDI in virtually every sector of the economy. Foreign equity proposals need not to be accompanied by technology transfer as required earlier. Royalty payments have been considerably liberalized, and restrictions on the use of foreign brand name/ trademarks for internal sale have been removed.

1.2 SUCCESSIVE INDUSTRIAL POLICIES ADOPTED BY THE GOVERNMENT

1) Industrial Policy Resolution, 1948¹

Immediately after independence, the government gave a careful thought to the economic problems faced by India and recognised that any improvement in the economic conditions of the people is possible only through a substantial increase in the generation of national wealth as a mere distribution of existing wealth would not make any significant difference to people.

¹ <https://dpiit.gov.in/sites/default/files/chap001%20%2013.pdf>

Thus, a need for a dynamic national policy directed towards a continuous increase in production and productivity by all possible means, together with measures to secure its equal distribution was felt. The government in this context adopted in 1948 an Industrial Policy Resolution, a historic document and a trend setter, which emphasized on importance to the economy of securing a continuous increase in the production and its equitable distribution and pointed out that state must play a progressively active role in the development of industries.

The resolution envisioned that besides arms, ammunitions, atomic energy and railway transportation, to be the monopoly of the Central Government, the States would be exclusively responsible for the establishment of new undertakings in basic industries except where, in the national interest, the State itself found it necessary to secure the cooperation of private enterprises, though it was made clear that the State would also progressively participate in these fields.

Recognising the valuable role of private enterprises in the economy, the resolution emphasized that the States could contribute more quickly to the increase of national wealth by expanding its present activities where it is already operating and by concentrating on new units of production in other fields, rather than acquiring and running existing units. The resolution also recognised the importance of participation of foreign capital enterprise, particularly in relation to industrial technology and knowledge, for the rapid industrialization of India. The Industrial Policy Resolution, 1948 was provided legal support by enacting Industries (Development and Regulation) Act, 1951 and vesting in the government necessary powers to regulate and control the existing and future undertakings.

2) Industrial Policy Resolution, 1956²

The Industrial Policy Resolution of 1956 laid down the basic approach towards industrial development. The policy thrust rightly recognised the Directive Principles of State Policy enshrined in the Constitution and the adoption by the Parliament in December 1954 of the socialist pattern of society as the objective of social and economic policy.

In order to realize the socialistic pattern of society, the government recognised the need to accelerate the rate of economic growth and to speed up industrialization and, in particular, to develop heavy industries and machine making industries, to expand the public sector. The

² Ibid.

government also felt the need to prevent private monopolies and the concentration of economic power in different fields in the hands of small number of individuals.

The government classified industries into three categories:-

- (a) First Category includes those industries, the future development of which was the exclusive responsibility of States;
- (b) Second Category included progressively State owned industries and areas in which the States had to take initiatives to establish new undertakings, though the private participation was also expected to supplement the government efforts; and
- (c) Third Category included all the remaining industries with the responsibility of private sector for their development.

The Industrial Policy Resolution of 1956 was followed by the Industrial Policy Statement of 1973 which, inter alia, identified high priority industries for investment by large industrial houses and foreign companies. Emphasis on de-centralisation and on the role of small scale, tiny and cottage industries was the hallmark of the Industrial Policy Statement of 1977. The Industrial Policy Statement of 1980 focused attention on the need for promoting competition in the domestic market, technological upgradation and modernization. The policy laid down the foundation for an increasingly competitive export base and for encouraging foreign investment in high technology areas. These policies created a climate for rapid industrial growth in our country. A number of policy and procedure changes were also introduced in the years 1985 and 1986 aimed at increasing productivity, reducing costs and improving quality.

3) New Industrial Policy, 1991³

The New Industrial Policy was tabled in the Parliament on July 24th, 1991, at the time when the Government of India faced severest foreign exchange resource crunch. This document admitted candidly the policy distortion of the past and expressed the government's earnestness to achieve a breakthrough in its policy formulations.

³ https://dpiit.gov.in/sites/default/files/IndustrialPolicyStatement_1991_15July2019.pdf

The statement on New Industrial Policy states that the major objectives of the new industrial policy package will be to build on the gains already made, correct the distortions or weaknesses that may have crept in, maintain a sustained growth in productivity and gainful employment and attain international competition. Pursuant to this, the government initiated a series of measures in the areas of industrial licensing, foreign investment, foreign technology agreements, public sector policy and MRTP Act.

The Industrial Policy Resolution of 1956 and the statement on New Industrial Policy of 1991 has therefore, been to inject new dosage of competition in order to induce greater industrial efficiency and international competitiveness. The domestic competition has been induced by delicensing of industries and liberalizing the policy related to foreign direct investment.

Since July 1991, the Indian industry has undergone a sea change in terms of the basic parameters governing its structure and functioning. The major reforms include large scale reduction in the scope of industrial licensing, simplification of procedural rules and regulations, reduction of areas reserved exclusively for the public sector, disinvestment of equity in selected public undertakings, liberalization of trade and exchange rate policies, rationalization and reduction of customs and excise duties and personal and corporate tax.

With a view to ensure efficient allocation of resources, banking and capital markets also came in for major economic reforms. The banking sector reforms included substantial interest rate deregulation, liberal licensing of private sector banks, and expansion of the branch network of foreign banks. The capital market reforms aimed at de-linking capital market from direct government controls; by a system of better disclosure, greater transparency and wider investor protection. Separate policy measures were announced in the form of specific packages aimed at upliftment of the small scale, tiny and cottage industries as well as 100% Export Oriented Units, and units located in the Export Processing Zones and Technology Parks and Special Economic Zones.

1.3 THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951⁴

The Industries (Development and Regulation) Act, 1951 is an important piece of legislation affecting the industrial sector of the country. The object of the Industries (Development and Regulation) Act, 1951 is to provide to the Central Government means of implementing the

⁴ https://dpiit.gov.in/sites/default/files/IndustriesAct_1951_11June2018.pdf

Industrial Policy. It seeks to regulate the deployment of material resources of the community according to the norms laid down in the Policy and is thus an instrument for its implementation. The act has helped the government in directing the manner in which industrial development should take place in the country and also in optimizing the development of scarce resources of the community amongst competing claims.

1.4 THE INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT ACT, 2016⁵

The Industries (Development and Regulation) Amendment Bill, 2015, amends the Industries (Development and Regulation) Act, 1951. It amends the schedule to exclude production of alcohol for potable purposes from the ambit of the Act. It aimed to bring industries engaged in the manufacture of potable alcohol under the exclusive control of the states. The Union government made to be responsible for formulating policy and regulating foreign collaboration for all products of fermentation industries, including industrial and potable alcohol.

1.5 OBJECTIVE OF THE STUDY:

The research study evolves on the axis of objectives which are carefully outlined hereunder:-

- a) To study the scope of various Industrial Policies introduced by the Indian government;
- b) To explore the effectiveness of the Industries (Development and Regulation) Act, 1951; and
- c) To understand the motive behind introducing amendment to the Industries (Development and Regulation) Act, 1951 by passing the bill of 2015.

1.6 HYPOTHESIS

The hypothesis of this study will help in examination of the efficiency and effectiveness of the governing principles of the Industries (Development and Regulation) Amendment Act, 2016; whether the said scheme has accomplished the target of achieving the said objectives or not.

1.7 METHODOLOGY

The methodology used in study of this project is Doctrinal. It is based on the information and

⁵ https://dpiit.gov.in/sites/default/files/industries_Amendment_Act_2016.pdf

data collected from secondary source(s). It includes publication research, journals, and historical information of both past and present. When a research is concerned with some legal problems, issue or question, it is referred to as doctrinal, theoretical or pure legal research. Doctrinal research is a theoretical study where mostly secondary source of data are used to seek to answer one or two legal propositions or questions or doctrines. Its scope is very narrow and there is no such need of field work.

1.8 LITERATURE REVIEW

A literature review is a critical and in depth evaluation of previous research. It is a summary and synopsis of a particular area of research, allowing anybody reading the paper to establish why you are pursuing this particular research program. A good literature review expands upon the reason behind selecting a particular research question.

It is not a chronological catalog of all the resources, but an evaluation, integrating the previous research together and also explaining how it integrates into the proposed research program. All sides of an argument must be clearly explained, to avoid bias, and areas of agreement and disagreement should be highlighted.

- **Gautam Chikermane “70 Policies that Shaped India: 1947 to 2017, Independence to \$2.5 Trillion”**: in trying to change the geography of economic development, the best the government managed to do was create “company towns”, with little trickle down to neighbouring areas. Its most powerful contribution to the Indian economy, however, was to curb enterprise.

CHAPTER 2: OVERVIEW OF INDUSTRIAL DEVELOPMENT & REGULATION ACT (IDRA), 1951⁶

2.1 BACKGROUND

The IDRA, 1951 was introduced to ensure that industries were set up and expanded only with obtaining a license and specified a schedule of industries that were subject to licensing. The overall objective of industrial licensing was to allocate and channelize private resources according to priorities stated in the development plans. The intention was to reallocate resources from production of consumer goods and into the production of machine tools and capital goods. Only small-scale industry (SSI) was exempted from licensing to encourage

⁶ Supra 4

labour-intensive consumer goods production in rural areas. Through this Act, the government had full control over:

- a) Approval of any proposal on capacity, location, expansion, manufacture of new products etc.;
- b) Approval of foreign exchange expenditure on the import of plant and machinery; and
- c) Approval for the terms of foreign collaboration

The main objectives of the Act was to empower the Government:- (i) to take necessary steps for the development of industries; (ii) to regulate the pattern and direction of industrial development; (iii) to control the activities, performance and results of industrial undertakings in the public interest. The Act applied to the 'Scheduled Industries' listed in the First Schedule of the Act. However, small-scale industrial undertakings and ancillary units were exempted from the provisions. The Act was administered by the Ministry of Industries and Commerce through its Department of Industrial Policy and Promotion (DIPP).

The term 'industry' is not defined under the Act though the term 'industrial undertaking' is. The scope of regulatory provisions in the Act is more specific and limited in respect of 'industrial undertakings' which fall within the industries mentioned in the First Schedule.

The system of licensing provided under the Act regulates the planning of future development and undertakings on sound lines as may be deemed expedient in the opinion of the Central Government. The Act confers on the Central Government power to make rules for registration of existing undertakings, regulation of the production and development of industries specified in the Schedule attached to the Act.

2.2 IMPLEMENTATION OF THE ACT

The Act is implemented through Department of Industrial Policy and Promotion, Ministry of Commerce & Industry on whom the Central Government has vested the power to develop and regulate Scheduled Industries.

The IDRA Act is simple in its texts and deals only with principles, leaving the details to be worked out by the authorities entrusted with the task of translating them into concrete action plans. This has resulted in the issue of various notifications, circulars, press notes, clarifications from time to time by the hitherto Department of Industrial Development now named as

Department of Industrial Policy and Promotion with a view to administering the Act.

The Central Government has framed the Registration and licensing of Industrial Undertakings Rules, 1952, prescribing general procedure to be followed for the purposes of registration and licensing of an industrial undertaking.

2.3 REGULATION OF SCHEDULED INDUSTRIES

Regulation of industries specified in the First Schedule to the Act is sought to be achieved by means of registration of existing industrial undertakings; licensing of new industrial undertakings; and licensing for producing or manufacturing new articles. Registration and licensing procedure has been provided in the Act for the obvious purpose of channelizing the limited resources of the country in a manner conducive to the overall industrial development of the country. The Act requires industrial license to be obtained from the Central Government for certain specific purposes.

CHAPTER 3: THE INDUSTRIES (DEVELOPMENT AND REGULATION) AMENDMENT ACT, 2016⁷

3.1 OVERVIEW

- The Industries (Development and Regulation) Amendment Bill, 2015 was introduced in Lok Sabha on December 7th, 2015. The Bill was introduced by Minister of State for Commerce and Industry, Ms. Nirmala Sitharaman. The Bill amends the Industries (Development and Regulation) Act, 1951.
- The 1951 Act provides for development and regulation of certain industries including metallurgical, telecommunications, transportation, fermentation (which includes production of alcohol) among others.
- The 1st Schedule of the Act includes all industries that are regulated under the Act. The Bill amends the schedule to exclude production of alcohol for potable purposes from the ambit of the Act.

⁷ Supra 5

3.2 STATEMENT OF OBJECTS AND REASONS

- The Industries (Development and Regulation) Act, 1951 was enacted to provide for the development and regulation of certain industries. Section 2 of the said Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule to the Act. Any industry engaged in the manufacture or production of any of the articles mentioned under each heading or sub-headings of the First Schedule to the Act would thus be under the control of the Union. The heading 26 of the First Schedule to the Act provides for Fermentation Industries which includes Alcohol and other products of fermentation industries.
- According to the distribution of legislative powers contained in the Seventh Schedule to the constitution, entry 8 of List II - State List enumerates the subject matter “Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors” and entry 24 thereof, enumerates the subject matter “Industries subject to the provisions of entries 7 and 52 of List I”. While entry 7 of List I - Union List provides for the subject matter “Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war”, entry 52 thereof, provides for “Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest”. Thus, the authority to regulate the subject matter “intoxicating liquors” appears to vest both with the Union and the States. This has resulted in prolonged litigation.
- The Supreme Court of India, in the case of **Bihar Distillery and another versus Union of India and others (AIR 1997 SC 1208)**⁸, has held that in the interest of proper delineation of the spheres of the Union and the States, the line of demarcation should be drawn at the stage of clearance or removal of the rectified spirit. Where the removal or clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be with the Union and where the removal or clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be with the States.

⁸ <https://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=007991551000&CaseId=007991551000>

- In the backdrop of the above judgment of the Supreme Court, the Law Commission of India had recommended in its 158th Report that the heading 26 of the First Schedule to the Act be substituted as “Fermentation Industries but not including Alcohol”.
- The recommendation of the Law Commission of India was examined in depth by the Government. If the subject “Alcohol” is taken out of the First Schedule to the Act, both industrial alcohol and potable alcohol would come under the purview of the State Government which is not in consonance with the judgment of the Supreme Court. Moreover, the effect of implementation of the recommendation of the Law Commission would be that the subject “Alcohol” which covers both industrial alcohol and potable alcohol would no longer be a Central subject.
- Therefore, it is proposed to amend the First Schedule to the Industries (Development and Regulation) Act, 1951 by substituting the heading 26 thereof, as “26 Fermentation Industries (other than Potable Alcohol)”, so that it would be in conformity with the judgment of the Supreme Court and also ensure that the industries engaged in the manufacture of alcohol meant for potable purposes shall be under the total and exclusive control of States in all respects. The Central Government would continue to be responsible for formulating policy and regulating foreign collaboration (foreign direct investment and foreign technology collaboration agreements) for all products of fermentation industries, including industrial alcohol and potable alcohol.

CHAPTER 4: LIQUOR TRADE LIBERALISATION – PERFORMANCE SO FAR

4.1 WHAT ALL WAS CLAIMED WITH THE REGULATORY CHANGE

In the year 2014, research by a Kochi-based think tank had suggested liberalisation of India’s liquor industry to facilitate entry of foreign players, considering the sales growth in imported spirits across the country. With the growing demand for imported liquor, a liberalised environment would help reduce high import tariffs and benefit major stakeholders in the industry, the report prepared by the Centre for Public Policy Research (CPPR) said.

Heavy Taxes

An average consumer of domestic as well as imported liquor pays five to six times the

production cost and much of this is charged as taxes by the State governments, it was said. According to CPPR, the liquor market in India is the 3rd largest and fastest growing. A significant part of this demand is met by domestic production. However, the market operates under strong regulatory framework and this has led to corruption, cronyism, exorbitant prices, black marketing and public health concerns, thereby affecting the liquor quality. It was pointed out in the report that, some of the State Governments are even liberal in allowing private players in retail sales, while others are more sensitive.

However, all the States have protected the local market from liquor imports. Though India allows 100% FDI for distillation and brewing of potable alcohol through the automatic route, not many investors turn up due to restrictions and taxes at the State level.

The complete control over production and distribution networks has enabled some of the States to earn huge revenue from liquor sales. For instance, Tamil Nadu earned Rs. 21,000/- cr. while Kerala fetched Rs. 8,000/- cr. during 2012-13 fiscal.

Squeeze on Imports

The imported liquor is in the costliest category with a flat rate of 150% in domestic customs duty. For the most consumed whisky, the consumer ends up paying approximately five times the average import price. Thus, the FDI in liquor remains less exploited due to various State-level taxes, even though the imports are climbing at the rate of 33%.

Though the regulatory framework in the States was intended to discourage consumption, the report pointed out that it had led to problems such as unexpected price rise, artificial supply shortage, ban on product advertisements, black market etc.

Quoting an ASSOCHAM study, CPPR said the imported liquor market, including duty-free ones, would cross 5-million mark by 2015 with the entry of foreign as well as domestic investors in the sector. Competition with foreign brands in the domestic market would prompt the adoption of best practices and encourage healthy drinking practices among consumers.

The report also said the States have clear incentives to curb illegal liquor production and to encourage registered and branded products. Rather than directly being involved in selling as in the case of Kerala, it could control the sector with an efficient regulatory framework. This will ensure access to quality products at competitive prices, the study said.

4.2 INDUSTRY IS STRUGGLING TO COVER OPERATING COST

Confederation of Indian Alcoholic Beverage Companies (CIABC), which represents leading Indian alcohol beverage makers including Radico Khaitan, Globus Spirits, Allied Blenders & Distillers and Jagatjit Industries, has written to various state governments to allow companies to increase prices. Alcohol prices are controlled by individual states.

"Unprecedented inflationary trends in raw material and services and transportation for alcoholic beverages in the past three to four months is seriously impacting commercial viability of the manufacturers," CIABC director general Vinod Giri said in the letter.

Cost of glass bottles, extra neutral alcohol - a principal ingredient of liquor, caps, cartons, PET bottles and labels have increased 5-17% on average, it said.

The association has either sent or is in the process of sending it to the governments of Delhi, Uttar Pradesh, Haryana, Punjab, Telangana, Andhra Pradesh, Kerala, Rajasthan, Madhya Pradesh, Odisha, and Chhattisgarh among others.

Increase in prices is "being sought to cover up for costs only and not for other commercial gains", it said.

Last year, which was fraught with nationwide lockdowns on account of the Covid-19 pandemic, impacted sales of IMFL (Indian made foreign liquor).

However, in the September quarter of this year, sales across spirits and beer increased to pre-pandemic numbers on the back of reopening of bars and restaurants.

During the complete lockdown months last year, even though the central government had permitted opening of shops to sell essentials, sale of alcoholic beverages had not been permitted, which led some states such as West Bengal and Chhattisgarh to allow online delivery of alcohol, which did not take off on account of steep delivery fee charged by aggregators and lack of clear guidelines.

CHAPTER 5: CONCLUSION

India's infamous Licence Raj began here. Just four years after political independence, the future of the country's economic independence was sealed with the Industries (Development

and Regulation) Act⁹, enacted by Parliament on October 31st, 1951. The law declared “in the public interest” - a term that would get echoed over the next five decades for several laws and policies, to mean the curbing of all economic freedom - that the central government “should take under its control” the industries specified in the First Schedule.¹⁰

The First Schedule included 38 industries, from defence and machine tools to telecommunications and electrical equipment; and 171 articles, from precious metals and coal to fans and sewing machines. The law created a Central Advisory Council¹¹ to advise the central government “on matters concerning the development and regulation of scheduled industries.” It also prevented the establishment of any new industrial undertaking, unless it was under, and in accordance with, a licence issued in that behalf by the central government.¹²

Additionally, it handed the government the power to decide conditions such as where an industry would be located or what its size would be.¹³ To set up a small-scale enterprise, for instance, the government would look at six factors¹⁴ before giving a licence; investment in plant and machinery, or land and buildings; nature of ownership; smallness of the number of the workers employed; nature, cost and quality of the product; foreign-exchange requirements for the import of any plant or machinery; and “other relevant factors as may be prescribed.” The other clauses included the power to investigate,¹⁵ to assume management control of an enterprise,¹⁶ and to take over an enterprise without investigation. The prices charged for various products would not be a function of business activity but of the government’s opinion on whether it was equitable.¹⁷

The law delegated immense power to the inspector, who could enter and inspect any premise and examine any document or person. Based on the recommendation by the Law Commission, a 2015 amendment transferred the authority to regulate potable alcohol to states.¹⁸

⁹ <https://legislative.gov.in/sites/default/files/A1951-65.pdf>

¹⁰ Ibid. Chapter I, Section 2

¹¹ Ibid. Chapter II, Section 5

¹² Ibid. Chapter III, Section 11(1)

¹³ Ibid. Chapter III, Section 11(2)

¹⁴ Ibid. Chapter III, Section 11B (1) & Section 11B (2)

¹⁵ Ibid. Chapter III, Section 15A

¹⁶ Ibid. Chapter IIIA, Sections 18A through 18F

¹⁷ Ibid. Chapter IIIB, Section 18G(1)

¹⁸ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=126747>

Finally, in trying to change the geography of economic development, the best the government managed to do was create “company towns”, with little trickle down to neighbouring areas. Its most powerful contribution to the Indian economy, however, was to curb enterprise.

CHAPTER 6: BIBLIOGRAPHY

➤ **LEGAL INSTRUMENTS**

- a) Industrial Policy Resolution, 1948
- b) Industrial Policy Resolution, 1956
- c) New Industrial Policy, 1991
- d) The Industries (Development and Regulation) Act, 1951
- e) The Industries (Development and Regulation) Amendment Act, 2016

➤ **WEBSITES**

- a) <https://pib.gov.in/newsite/PrintRelease.aspx?relid=126747>
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