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# **CRITICAL ANALYSIS OF INDUSTRIES (DEVELOPMENT AND REGULATION) ACT 1951**

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## **OBJECTIVE OF THE STUDY**

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

- To study the scope of various Industrial Policies introduced by the Indian government;
- To explore the effectiveness of the Industries (Development and Regulation) Act, 1951;
- To understand the motive behind introducing amendment to the Industries (Development and Regulation) Act, 1951 in the year 2016.

## **METHODOLOGY**

The methodology used in study of this project is Doctrinal. It is based on the information and Data collected from secondary sources. 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.

## **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 neighboring areas. Its most powerful contribution to the Indian economy, however, was to curb enterprise.

**Mital Ankit, India’s Industrial reforms of 1991: The inside story, Mint (Aug 16 2016):** This Article gives the wide perspective of all the major industrial changes since the Independence of India. This Article also covers the problems of License regime before the 1990s.

## Chapter-1

### **Bombay Plan 1944 (Introduction to the Industrial Policy of India)**

The Concept of Bombay Plan was the idea of eight major industrialists in the era of 1940s, the plan was exactly published in the year 1944. The Bombay plan was nothing but the vision of major industrial players about the economic policy of India or the model of the Economic Policy that India must follow after the Independence. The Plan was divided into the two editions the first edition was published in the year of 1944 and second edition was published in the year of 1945. The title of plan was itself stating “A brief Memorandum outlying a plan of the Economic Development for India”. The Plan was signed by JRD Tata, Ghanshyam Das Birla, Ardesir Shroff, and Sir Purshottamdas Thakurdas and John Mathai, Lala Shri Ram, Kasturbhai Lalbhai. The Bombay Plan was proposing that State shall have strong control over the Production, Supply and Distribution in the Economy. In short Bombay Plan was purposing to have Centralized model of the Economy or more State controlled model of the Economy.

Although the Prime Minister Nehru did not officially accept the Bombay Plan. But whole Nehruvian era was following the Economic model which is near similar to the Bombay Plan. Although we followed the mixed economy model but the Policies were more favorable towards the Public Sector. The era we call as License Raj where the Private players have to go through

strict Licensing Regulation. The Bombay plan stated that the Indian Economy is not in position to accept the free market economy, Indian manufactures are not in position to compete with foreign manufactures. The Independent India government followed the same path and strict licensing system was introduced. The government was more focused to develop the Public Sector Enterprises which Cleary shows that intention of government was clear to develop the strong intervention mechanism in the different sectors of the Economy<sup>1</sup>.

The major objectives of Bombay plan was to show the government the path in which the economy of the country can be developed by control mechanism, the objective was to double output of agriculture sector and a fivefold growth in the industrial sector, both within the framework of a 100 billion Rupee investment over the period or period spanning over 15 years.

The Business Community of the 1940s was very convinced that government control and the intervention will bring the equitable growth and development across all the sections of the Society. The word mixed economy was also coined in the Bombay plan later we followed the same path of mixed economy<sup>2</sup>.

The Purpose of Bombay plan was very clear and evident that without the Strong State Intervention the economy of the country will be in stagnant position. Many of us criticise the mixed economy system but the India political economic situation was such that it demanded the Strong State intervention in the various spheres of the Economy. Not just in India but across all over the globe there was the demand of State intervention in the Economy. The global discourse was also in the favor of the State Intervention in the economy.

The concept of British Welfare State emerged in that era of 1940s and for the purpose of the welfare state intervention is required. Also the Bank of England was also nationalized in the year 1940s. These facts very clearly proves that not just India but the major global economies around the world was in favor of some extent to have the State intervention. Also towards the end of world war and Bengal famine it was felt necessary that the countries like India which are newly born, it was very necessary to have the State intervention and the growth of Public Sector Enterprises. There is myth that the industrialists were in favor of the free market

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<sup>1</sup> Mariwala Vaibhav, Don't blame Nehru's Socialism for Air India fate. Read the 1944 Bombay Plan first, The Print ( Oct 26 , 2021) <https://theprint.in/opinion/dont-blame-nehrus-socialism-for-air-india-fate-read-the-1944-bombay-plan-first/756469/?amp>

<sup>2</sup> Mariwala Vibhav, Remember the Bombay Plan, Deccan Herald ( Oct 27, 2021) <https://www.deccanherald.com/opinion/main-article/remember-the-bombay-plan-1044827.html>

economy in India the main reason why capitalists supported the Bombay Plan was that they want secure their position through mixed economy, they also need the support the government.

The many scholars and economists had firm belief that if India had followed the Free market Economy then the Economy of India will crumble, because the local market players will fail to face the challenges from the foreign players. This thesis was very clearly evident from the Bombay Plan. The authors of Bombay plan played key role in restructuring or revamping the Reserve Bank of India helped in set up of Federation of Indian Chambers of Commerce (FICCI) and Supported Congress during the Indian Freedom Struggle and discussed on various with the Viceroy's executive Council during the world war two. The Bombay Plan also discussed the struggles that were faced during the British Era and various constraints imposed by the British Regime. The plan clearly shows the path to the Government after the Independence of India.

The plan shows the path how the government can triple the India GDP in just 15 years and significantly increase the India overall per capita income. The whole planning was to be executed in the three parts i.e. the first part in five years and second Part in five years and third Part in five years. Again if we see after the Independence of India the Nehru government followed the similar approach of five years plan and the focus was the industrialisation and empowerment of the Agriculture sector of the India which on similar lines of the Bombay Plan.

The major industrialists who signed the Bombay plan were also the part of meeting with Congress National Planning Commission in the year 1937. These all facts shows that there was strong ideological inclination towards each other. The Congress government of different provinces had framed the economic plans with the help of these writers of Bombay Plan. The Adreshir Shroff one of the writers of Bombay Plan recommended a committee on reconstruction of the Economy "The Business Community is convinced it would be necessary for the Government to exercise far reaching control in all fields of business activity, and that business would cooperate in the interests of the economic development".

This report was critised on the ground that the industrialists supported the government intervention because they wanted secure their business interests by showing the solidarity with the Government and may also to engage themselves in the drafting of economic policy. The Statement given by the Adreshir Shroff was also showing that the business sector was not in position to provide the job in the Economy or shore up development and growth.

The planners argued for the mixed economy model where the government will take control of the “basic industries” and the private sector will take up the “consumer industries”. The Components of the basic industries was transportation by the air , rail, shipping , chemicals and power generation and various other sector of the engineering the report classified these are the most important sectors or the basic sectors in which there must be deep and pervasive of control of the government will be required.

The industrialists argued that by the nationalisation of basic industries it will help the government to reduce the income inequalities<sup>3</sup>. As per their views it will also help the government to create more and more jobs which will ultimately help the government to reduce the unemployment which was the major issue after the independence of India. The consumer industries include textiles, glass, cotton, tobacco and paper etc. They want the consumers industries to be free from any intervention or less intervention of the government.

The private sector shall lead these consumer industries in India with very strict allowance of foreign players in the Consumer market. It is very evident that government has not allowed the or with very strict regulation allowed foreign players in consumer market to protect the goods manufactured by the Indian companies.

They writers of Bombay Plan argued that the government must prioritise its basic industries over the consumer industries which would anyway be support the consumer industries and help to reduce the poverty in India. The planners have given the stress on the role of basic industries as per their views “for the success of our economic plan that the basic industries, on which ultimately the whole economic development of the country depends, should be developed as rapidly as possible”.

The main emphasis of Bombay plan was that government needed to take a leading role in the economy to ensure their provision. The government must strength the crucial sectors of the Indian Economy such as airlines and railways or heavy industries. Their focus was not whether there will be planned economy or not the focus should be on to what extent government will control the economy. The influence of Bombay plan are visible through the implementation of first five year plan and also in second five year plan. These plans was focussed on industrialisation and in agriculture sector. By taking the inspiration from this plan India adopted

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<sup>3</sup> Section 8, Bombay Plan 1944.

the Soviet Planning, Western Capitalism and some aspect of Western Socialism these all paved the way for India to follow its path.

Due to World War II and various other complexities that is faced by global economy the centralisation and mobilisation of resources was felt necessary not just in India but across the major economies of the world. The plan offers the balancing of interest between the private business and Government Control. The Prime Minister Nehru never officially accepted the plan but it was endorsed by the Nehru regime. The purpose of government control was to attain self-sufficiency and independence from foreign influence<sup>4</sup>.

## **Chapter-2**

### **Major Industrial Policy**

#### **1. Industrial Policy 1948**

The industrial policy 1948 was the first Industrial policy of India after the Independence of India. The policy was framed after the problems that was prevalent under the Indian Economy at that point. The focus of the policy was to establish the social order and equitable distribution of the resources in the society. The objective of resolution was to provide health and educational services to the large scale. There was also concern to improve the standard of living with certain goals. The major outcome of the industrial policy resolution was the development of a planning commission that will make targeted plan for every five year. The purpose of planning commission was to set –up the road map for the development of India<sup>5</sup>. This policy also lead down the base of Industrial (Development and regulation) Act 1951.

#### **2. Industrial Policy 1956**

Due to various economic and Political changes that was faced by India after Independence was felt necessary to again formulate new industrial policy. Also keeping in mind the directive principles of state policy enshrined under the constitution the policy was required to be framed.

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<sup>4</sup> Anwar Shakeel, Bombay Plan: A plan for the economic development of India , Jagran Josh ( Mar 25, 2019) <https://www.jagranjosh.com/general-knowledge/bombay-plan-a-plan-for-the-economic-development-of-india-1553518786-1>

<sup>5</sup> Kataria SK, Industrial policy 1948, Mohanlal Sukhadia University.

The policy was also termed as the Economic constitution. The policy of 1956 was focusing on heavy industries for the long term growth. This policy also cleared the stance of India that government will follow more socialistic pattern of Economy. After this policy several amendments were done in this policy and new policy was framed in the year 1991.

### **3. Industrial Policy 1991.**

India went to the crises in the year 1991 because of its economic mismanagement, red tapism and the various other factors. The government was forced to open the Indian Economy which will allow the foreign manufactures to set up the business in India, the economy was liberalised and Private players were allowed to stay in market without the strict regulation. The mandatory license raj was ended in the year 1990s. The extreme strict licensing policy was ended and new players were allowed to manufacture and produce freely with limited restriction. The policy accepted the mistake of past and appreciated what has been achieved in past. The IMF or International Monetary Fund also played an important role in opening of Indian Economy<sup>6</sup>. The IMF has given the condition precedent to loan that India shall follow the LPG policy (Liberalisation, Privatisation and Globalisation). The industrial policy has opened the doors for many sectors of the economy. The National Credit Control and organisation like Bureau of Industrial Costs and Prices were now the forgotten advisory body.

## **Chapter – 3**

### **Overview of the Industries (Development and Regulation Act) 1951**

The aim of the 1948 Industrial policy was to enact the law which will regulate and help in the development of the Industries and for that purposes the parliament enacted this law. In such a vast country like India, a country which is facing various issues rapid industrialization was necessary. It was felt necessary by the legislators to have the law that shall regulate affairs of Industry. An industry is the production of goods and services within the Economy.

The Act came into force on 8<sup>th</sup> of May 1952. This Act applies to industrial undertaking and also the items or articles mentioned in the First Schedule. The objective of this Act was to

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<sup>6</sup> Mital Ankit, India's Industrial reforms of 1991: The inside story , Mint ( Aug 16 2016) <https://www.livemint.com/Sundayapp/GEfISNMjdRctaEbPAzgxg9M/Indias-industrial-reforms-of-1991-The-inside-story.html>

bring the industries under the control of the central government. All the Industries that are listed under the Schedule I of the Act, the central government is empowered to make the rules or regulate the matters related to the industries in the Public interest<sup>7</sup>. The important objectives of the Act is to implement its Industrial Policy. The Purpose of this Act is also to regulate the pattern and direction of industrial development. To Control and regulate the performance an industrial undertakings in the public interest, the Act has introduced the licensing system for the future development of the undertakings. This Act gives the Power to Central Government to mandate licenses for the various kind of the industries.

The Preamble of the Act itself clears that the purpose of this law is to provide the development and regulation of certain industries. The License raj was based on this law only, which follows the strict mechanism to regulate the Industrial Licensing<sup>8</sup>. But in 1990s the rules were made to ease the business licensing in India. The Industries which are regulated by this Act it mandatory for them to go for Compulsory registration and Licensing<sup>9</sup> Process.

The Act also empowers the central government revoke the license if the industry failed to establish or take effective steps to implement the license within the timeframe<sup>10</sup>. The Act also empowers the Central Government to exempt the certain kind of industries or class of industries under this Act if it is in the Public Interest, this Provision was added through the amendment<sup>11</sup>.

The most important is that only industries which are mentioned under the Schedule of the Act are required to be regulated<sup>12</sup>.

## Chapter-4

### Industries (Development and Regulation) Amendment Act 2016

Before going into the amendment we need to know the meaning of the Potable Alcohol. The Portable alcohol is a highly purified product with very neutral odour and taste. The Potable Alcohol is made by the process of fermentation of Sugars with use of the yeast. The sugars are

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<sup>7</sup> Section -2, Industries Development and regulation Act ( 1951)

<sup>8</sup> Section-30 , Industries Development and regulation Act ( 1951)

<sup>9</sup> Section- 10 , Industries Development and regulation Act ( 1951)

<sup>10</sup> Section-12, Industries Development and regulation Act ( 1951)

<sup>11</sup> Section – 29B, Industries Development and regulation Act ( 1951)

<sup>12</sup> Section- 3(I) , Industries Development and Regulation Act (1951)

derived from grain. After fermentation process the ethanol is purified by a multiple distillation and the rectification process further purifies it<sup>13</sup>.

The Potable Alcohol is used by spirits industry as the main ingredient for the production of Premium brands cream liquors and akvavit, anised products etc. So it is clear that all the sprits industry uses the potable alcohol and other industries like chocolate industry also uses the potable alcohol. In short potable alcohol is used as processing aid in the food industry<sup>14</sup>.

### **A. Objectives of the Amendment**

The Central Government is empowered to regulate the industries that are mentioned under the schedule of the Act<sup>15</sup>. Under the heading 26 of the First Schedule<sup>16</sup> the Fermentation Industry is mentioned which empowers the central government to regulate. The cabinet passed the resolution on 9<sup>th</sup> September 2015 to amend the heading 26 of the First Schedule and in 2016 bill was passed for the amendment. The Purpose of the amendment was to exclude the Potable alcohol from the fermentation Industry. By excluding the potable alcohol the power to regulate the potable alcohol industry was passed to the States. The central government is only empowered to regulate the industries that are mentioned under the schedule of the Act.

The power to regulate the potable alcohol was passed to state on the recommendation of the 158<sup>th</sup> report of the Law Commission<sup>17</sup>.

### **B. Necessity of the Amendment**

There was long standing problems and confusion relating to the Jurisdiction of the Potable alcohol between the States and Central. This purpose of this amendment was to create the balance between the Union and States. This amendment will eliminate the room for abuse of Law and the misuse of the alcohol. This amendment will ensure that potable alcohol industry under the exclusive control of the State.

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<sup>13</sup> Cargill Food & Beverage

<https://www.cargill.com/food-bev/emea/alcohol/potable-high-pure-alcohol#:~:text=Potable%20High%20Pure%20Alcohol%20is,of%20the%20sugars%2C%20using%20yeast>

<sup>14</sup> Ibid

<sup>15</sup> Section-2 , Industries Development and Regulation Act ( 1951)

<sup>16</sup> Industries Development and Regulation Act ( 1951)

<sup>17</sup> PIB Release of 2015

<https://pib.gov.in/newsite/PrintRelease.aspx?relid=126745>

This amendment was done on the basis of the Supreme Court Judgement which ordered that industries engaged in the manufacturing of the potable alcohol shall be under the control of the states and the central government shall control only the industrial alcohol<sup>18</sup>. When alcohol was added to the First Schedule<sup>19</sup> in 1956, by this potable alcohol that is used by various industries was also included in the first schedule of the Act. After this conflicts arose between the states and central government because states were directly involved in this potable alcohol industry and exclusive control went to central government. The Supreme Court interpreted that alcohol includes only the Industrial alcohol not potable alcohol under the head 26 of the First schedule. The purposes of removing potable alcohol was that it was affecting many other industries that require the potable alcohol. So the amendment excluded the potable alcohol under heading 26 of the first schedule.

### **Conclusion and Suggestions**

The Industrial sector in India have faced many up and downs since the Industrial policy was framed in the year 1948. Initially India followed highly socialistic pattern of economy or closed economy with strong government control on every sectors of the economy. The Industrial Development and regulation Act 1951 was also passed on the basis of Industrial Policy of 1948. The objective of this Act was to regulate the licensing and development of industries in India. Again in the 1956 new industrial policy was framed to implement the Directive Principle of the State policy.

The both the Act of 1951 and policy of 1956 was to support the rapid industrialization in India. But due to financial crises of 1991, the new Industrial policy was framed in the year 1991. But still we are following law of 1951 for Industrial licensing and the development, the new law shall be passed to control the current economic situation and shall be based on latest industrial policy.

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<sup>18</sup> Bihar Distillery Vs Union of India SC (1997)

<sup>19</sup> Industries Development and Regulation Act , (1951)

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