Realising the Goals of Sustainable Development-The Role of Commercial law

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Abstract

This paper will look into the current regulatory framework and the recent developments in the corporate sector and suggest reforms which can advance sustainable development and economic growth in India. The indicators identified by the world bank report of ease of doing business puts India in a better place in 2018 compared to the 130 rank it had in 2017. India has improved to the 100th position and the better ease of doing business rank is not possible without a conducive regulatory environment. Corporate frauds, unethical practices, outdated laws, poor implementation of existing laws, overlapping power of adjudicating bodies, unnecessary intervention from courts resulting in inordinate delays were all reasons for India's poor show in the global market. Soon the government realised that availability of credit, assuring the lenders of realisation of their debts without losing the value of the assets, restructuring of viable businesses are all possible only when a country has strong bankruptcy laws. This was also one strong indicator that has upped India's rank in the world bank's ease of doing business. The central government's enthusiasm in bringing availability of credit and a stable market is also clearly reflecting in the recent enactment of the Fugitive Economic Offenders Act 2018, amendments in Money laundering Act and the implementation of the Insolvency and Bankruptcy code 2016.

While it is important to enact laws for facilitating trade and economic growth it's equally important to adopt sustainable development practices. So the need of the hour in India is sustainable development coupled with friendly policies by the government that can bring a favourable climate for doing business in India. This study will highlight the lapses in the existing legal and business environment and will suggest amendments that can ensure better governance, protect sustainable development and accelerate economic growth.

The methodology adopted is doctrinal and the study was conducted from materials collected through primary and secondary sources. Relevant legislation in other jurisdictions, articles published in different journals, books, and published government reports were referred.

Keywords: Regulatory framework, sustainable development.

Sustainable development is the most significant engine that rides any country's growth. Whether it is a developed or a developing nation unless growth is backed by sustainability the positive effects of growth will not be realised. Currently, there is an increased use of natural resources which brings an added responsibility on us to use our resources efficiently and promote sustainable use of energy and other resources. The good news is that recently there is also an increased awareness of sustainability and development as unless we preserve our natural resources, flora and fauna, development will result in causing serious harm to our eco system. Realising this, the United Nations Organisation have developed seventeen sustainable goals[1] that nations need to achieve by 2030.According to UN, sustainable development goals are a blueprint to achieve a better and a more sustainable future for all[2]. The goals include eliminating poverty and hunger, improving good health and well-being, providing quality education, clean water and sanitation, affordable and clean energy, decent work and economic growth, bringing gender equality, reducing inequality, responsible production and consumption, sustainable cities and communities, climate action, life below water, life on land, partnership for the goals and peace, and justice and strong institutions[3].

Moving from a global perspective to a country perspective it is clear there are a lot of challenges for every government to ensure sustainable development in the above identified areas. This is more in developing countries like India where the government is struggling to combat poverty, unemployment and illiteracy and to provide other basic amenities to its people.

This paper will look to explore one such goal, namely how innovation can advance the goals of sustainable development. It would specifically cover new laws, highlighting the need for strong and efficient institutions in helping sustainable development of any country. It would also look into the recent government policies implemented in India and will highlight the lapses in the existing legal and business environment. It will suggest amendments that can ensure better governance, protect sustainable development and accelerate economic growth.

Research Problem

The UN goals for sustainable development include eliminating poverty and hunger, improving good health and well-being, providing quality education, clean water and sanitation, affordable and clean energy, decent

[1] https://www.un.org/sustainabledevelopment/sustainable-development-goals/
[2] Sustainable Development Goals, http://www.undp.org/content/undp/en/home/sustainable-development-goals.html
[3] *Id.*

work and economic growth, bringing gender equality, reducing inequality, responsible production and consumption, sustainable cities and communities, climate action, life below water, life on land, partnership for the goals and peace, and justice and strong institutions. Only sustainable development can bring a better future for all. Its effective implementation is possible in India only through a uniform and combined effort by all agencies and governments. So unless we have a strong and efficient legal system that can deliver justice, prevent economic offences, policy violations, environmental pollution, irresponsible production and consumption and bring fair economic policies, sustainable development will not be a reality.

Research Methodology

Methodology adopted in this study is doctrinal. Materials were collected through primary and secondary sources. Government reports, world reports on sustainable development, articles published in different journals, books, and newspaper reports were extensively referred.

Literature Review

A number of articles have been written and varied interpretations have been given to sustainability and sustainable development. According to Kates & Parris the concept of sustainability has been adapted to address very different challenges, ranging from the planning of sustainable cities to sustainable livelihoods, sustainable agriculture to sustainable fishing, and the efforts to develop common corporate standards[4]. Planetary stability must be integrated with United Nations targets to fight poverty and secure human well-being, argue David Griggs and colleagues[5].According to Jeffrey D Sachs Governments, international institutions, private business, academia, and civil society will need to work together to identify the critical pathways to success, in ways that combine technical expertise and democratic representation. [6]

The rule of law and development has a significant interrelation and are mutually reinforcing, making it essential for sustainable development at the national and international level[7]. Sustainable development can bring a better future for all. Its effective implementation is possible in India only through a uniform and combined effort by all agencies and governments. So unless we have a strong and efficient legal system that can deliver justice, prevent economic offences, policy violations, environmental pollution, irresponsible production and consumption and bring fair economic policies sustainable development will not be a reality. Only through a combined effort of different institutions and the policies and laws adopted by government, sustainable development can become a reality.

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[4] Kates &Parris, Editorial-what is sustainable Development?Goals,indicators,values and Practise,http://environmentmagazine.org/se/util/display_mod.cfm.

[5] David Griggs, Sustainable Development for People and Planets, NatureVol.495,21 March 2013,305. https://sustainabledevelopment.un.org/content/documents/844naturesjournal.pdf

[6] Jeffrey D Sachs.' From Millennium Development Goals to Sustainable Development Goals', www.thelancet.com,Vol.379, June 9,2012.

[7] *Id.*

The three most prominent changes that were implemented by the existing government which significantly impacted businesses in India recently were, the Good and Services Tax, Insolvency and Bankruptcy Code,2016 and the Fugitive Economic Offenders Act. Another policy of the government, which can bring a significant change in the Indian ecommerce space in near future, is the latest amendment to the FDI norms.[8] An analysis of these laws and policies are given below.

The Goods and Services Act:

Goods and Services Tax is a comprehensive, multi-stage, destination-based consumption tax levied at every stage of value addition in the lifecycle of a product.[9]Under the old rule, the tax liability was passed on at every stage of the transaction and the final liability always used to rest with the customer.[10]This is called the Cascading Effect of Taxes where a tax is paid on tax and the value of the item keeps increasing every time this happens.[11]GST aims to solve this problem by introducing seamless Input Tax Credit (ITC).[12]

But there were many challenges to implement the new tax reform. Businesses had to reframe strategies like keeping one central warehouse rather than warehouses at different states for reducing cost, revamping their IT system and accounting practices, relooking at the pricing of goods, cash flows to the business etc[13].The impact of resources and infrastructure was felt more on small-medium enterprises and the start-up businesses as they were not equipped for the infrastructural challenges and the expertise required for the smooth transition to the new system. The positive impact of GST is slowing emerging. According to industry experts there is a boost in competitiveness and performance among manufacturers, distributors and retailers.[14] As of March 2014, there were 12, 76,861 service tax assessees in the country out of which only the top 50 paid more than 50% of the tax collected nationwide.[15] The IT services, telecommunication services, the Insurance industry, business support services, Banking and Financial services, etc bore maximum tax burden.[16] But there is a difficulty in registering at every state making the process cumbersome. Once the procedural difficulties are removed we can see a lot more positive changes in the tax regime.

The Insolvency and Bankruptcy code 2016:

8 Amendments to the Foreign Direct Investment (FDI) rules implemented in February 1st,2019.
9 www.cleartax.com/gst
10 *supra* 6 at pg 25
11 *Id.*
12 *Id.*
13 Abhay Desai, Get ready for GST-A Guide for Goods and Services Tax, with Critical Analysis of Model Act.
14 GST-Analysis and Opinions, https://cleartax.in/s/gst-analysis-and-opinions
15 *Id.*
16 *Id.*

Insolvency and Bankruptcy of individuals and companies were dealt in multiple legislations in India. Provisions relating to Insolvency and Bankruptcy for companies were found in the Sick Industrial Companies (Special Provisions)Act,1985, Recovery of Debts Due to Banks and Financial Institutions Act,1993,The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and The Companies Act,2013. Individual Bankruptcy and Insolvency was dealt under The Presidency Towns Insolvency Act, 1909 and The Provincial Insolvency Act, 1920. These legislations caused procedural delays, resulted in overlapping powers of adjudicating bodies and were not in conformity with market developments.

The Insolvency and Bankruptcy Code was implemented in 2016 to facilitate timely resolution of insolvency and bankruptcy cases, provide maximization of value of assets of debtors, reorganization of business of corporate debtors, facilitate credit market, encourage entrepreneurship in India and to balance the interest of all stake holders.

The Insolvency and Bankruptcy Code proposes two stages for effective debt recovery-The first stage involves insolvency resolution negotiation; whereby the viability of running the enterprise and protecting the rights of creditors is assessed and in the second stage when negotiation to run the entity fails, liquidation of the corporate entity is proposed. The code proposes to conclude both processes in a time bound manner.

Though it is too early to comment on the success of the code, the procedural and infrastructural delays have resulted in giving a dud response to the much awaited bankruptcy reform in India. Some of the issues are the following-

The IBC do not effectively protect the rights of the creditors. Due to an inordinate delay many time the procedures under Insolvency and Bankruptcy Code does not ensure expeditious recovery of debt to the creditor. In many cases there is a delay in arriving at a resolution plan within the time stipulated by the IBC. The timeline of 270 days was extended by the NCLAT in *Quinn Logistics India Pvt. Ltd v. Mack Soft Tech Pvt. Ltd& Ors.*[17]. Another issue is the hurry in arriving at deals which infringes the rights of creditors, as they are forced to agree for huge haircuts.[18]They fear that debt recovery will be lower if the company goes for liquidation. For example in *Kamini Steel's case*[19] the resolution value proposed was lower than the liquidation value.(Resolution plan proposed was Rs.600 crore which was less than the liquidation value of Rs. 635 crores, resulting in the National Company Law Appellate Tribunal staying the order passed by National Company Law Tribunal)

Another issue that infringes the rights of debtors is the provision under S29A of the code that prevents the debtors or promoters from bidding during the Corporate Insolvency Resolution Process. This is a very harsh

[17] 208 CompCases 0432(2018) 144 CLA 0484
[18] Abhishek Dafria, One Year of Resolving Big Defaults-Post RBI Diktat, Glass Half full, www.economictimes.com,accessed on May 20,2018
[19] Kamini Steel and Power India Pvt. Ltd vs. Indian Overseas Bank & Ors, CA (AT)Insolvency No:335 of 2017

provision that will prevent a bonafide promoter from claiming back his entity and is contrary to the provisions of many other successful bankruptcy codes of different jurisdictions. In the recent Essar Steel case the NCLT dismissed the proposal of the promoters (Ruias) to pay off the company's outstanding debts. A total ban of their participation in the bidding process is not a solution to check fraudulent collusion of some creditors and the company promoters.

Thus though the new code brought an array of hope to the creditors for a time bound and easy settlement of debts the procedural and infrastructural delays and difficulties prevent them from achieving this objective.

Fugitive Economic Offender's Act 2018

The shocking incidents of Vijaya Mallya and Nirav Modi leaving the country and defrauding their creditors prompted the government to implement this new legislation. The Act aims to prevent economic offenders from evading law and absconding India and remaining outside the jurisdiction of Indian courts. The unique feature of this Act is that it empowers Indian government to attach the property of the offender, acquired from both illegitimate and legitimate means, within and outside India, until he subjects himself to an appropriate legal forum[20]. It also prohibits his right to make any civil claim once he is declared as an economic offender by an appropriate court[21]. Though the law looks promising it will take some years to see the benefits of this legislation.

The Foreign Direct Investment Rules, 2017 (Ecommerce) [22]

This new government rules implemented on February 1st, bars online market places and group companies from owning their vendors and prohibits them from controlling their inventory sold on their platforms.[23] Market analysts say that this will affect big companies like Amazon and Flipkart most, as this will restrict them from giving huge discounts, owning their sellers and will disallow exclusive product launches.[24] While the move is supported by anti-competitive enthusiasts, as a mean to curb monopoly practices of big players like Amazon and will put an end to their anti competitive practices like predatory pricing,[25] there is wide spread criticism also against the implementation of this rule by the government. Many experts point out that it will adversely affect start ups and online retail industry and constant change in policies also will bring unnecessary pressure on entrepreneurs on compliance rather than doing business.[26] Another possibility is the exit of US retail giant Walmart from flipkart which had recently invested $16 billion dollars in august 2018 to buy 77%stake in flipkart making it one of the largest M&A in India and a boost to the country's start-up

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20 Chawla& Mongia,*supra note* 37.
21 *Id.*
22 https://dipp.gov.in/whats-new/press-note-2-2018, https://dipp.gov.in/sites/default/files/pn2_2018.pdf
23 Morgan Stanley Warns Walmart May Exit Flipcart post new FDI norms, Nishanth Vasudevan & Samidha Sharma www.economictimes.com, Feb 6,2019.
24 'Concerned about constant e-policy changes by govt,says Binny Bansal', Madhav Chanchani,www.timesgroup.com, Feb 5,2019
25 'India is wise to curb Big Tech's Monopolistic Ways', Vivek Wadhwa, www.economictimes.com, Feb 6,2019.
26 *Supra* at 23.

environment.[27] The new policy is estimated to bring a 40% slowdown in flipkart's business leading to a $280 million loss on top of the $1.5 billion for 2019.[28]

Conclusion

While the present government was lauded for implementing many legislations like the Goods and Services Tax that prevented cascading effect of taxes, Insolvency and Bankruptcy code that checked the growing NPA crisis, the Fugitive Economic Offences Act that prevented fraudsters from defrauding creditors and many policies that created a stable capital market, It was also criticised for introducing reforms suddenly, that hampered economic progress and caused huge stock market fluctuations. A successful sustainable development agenda requires partnerships between governments, the private sector and civil society[29]. These inclusive partnerships built upon principles and values, a shared vision, and shared goals that place people and the planet at the centre, are needed at the global, regional, national and local level[30]. So the government must take urgent steps to mobilize, redirect and unlock the potential of private resources to deliver on sustainable objectives.[31]Governments must go for a collaborative approach and rope in businesses, non-governmental agencies, academicians, technical experts and young citizens to actively design new problem solving techniques for sustainable development[32].

Governments, international institutions, private business, academia, and civil society will need to work together to identify the critical pathways to success, in ways that combine technical expertise and democratic representation. Global problem-solving networks for sustainable development-in energy, food, urbanisation, climate resilience, and other sectors will therefore become crucial new institutions in the years ahead.[33] Since sustainable consumption and production aims at "doing more and better with less", gains from economic activities can increase quality of life by reducing use of resources, preventing degradation and pollution.[34] There also needs to be significant focus on operating on supply chain, involving everyone from producer to final consumer.[35] This includes educating consumers on sustainable consumption and lifestyles, providing them with adequate information through standards and labels and engaging in sustainable public procurement, among others.[36] Start ups-Small and medium-sized enterprises that engage in industrial processing and manufacturing are the most critical for the early stages of industrialization and

[27] *Id.*
[28] *Id.*
[29] 17 Partnerships for the goals, https://www.un.org/sustainable development
[30] Industry, innovation and infrastructure ,https://www.un.org/sustainable development
[31] *Id*.
[32] *Supra* note 5.
[33] Id.
[34] *Supra* note 1
[35] *Id.*
[36] *Id.*

are typically the largest job creators.[37] They make up over 90 per cent of business worldwide and account for between 50-60 per cent of employment.[38]So the government must consciously bring policy changes, better laws and an encouraging entrepreneurial climate to encourage our start-ups and promoting its 'Make in India' initiative. Governments globally must realise this through binding agreements on climate change, by halting the loss of biodiversity and ecosystem services and by addressing other sustainability concerns[39]. In addition to governmental efforts, sustainable development has emerged in the organization charts of businesses (such as Lafarge), consultancies (including CH2M Hill), and investment indices (such as the Dow Jones Sustainability Index).[40]So the Indian business houses also must take a cue from this and develop their own practices for sustainable development.

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[37] *Id.*
[38] *Id.*
[39] *Supra* note 5 pg 3.
[40] Lafarge: Sustainable Development, http://www.lafarge.com/cgi-bin/lafcom /jsp/content.do?function=responsables&lang=en.