

INFRASTRUCTURE, GROWTH AND DEVELOPMENT IN INDIA: LEGAL DIMENSIONS OF INFRASTRUCTURE

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Abstract

Good physical and social infrastructure facilities are extremely crucial for the rapid growth and development of two essential aspects of a country, i.e. economy and living conditions of the citizens in a country. It also reduces poverty and it's responsible for creating several jobs every year. Therefore, this article focuses on the role of the infrastructure sector in the development of a developing country like India. We will also get an insight into the current legal framework of the various sub-sectors of the infrastructure sector. Moreover, we will look into the current complications and challenges in the infrastructure sector and how it can be solved. The main focus of this article is the legal framework under which each infrastructure sector works and operates. Discussion on the current changes in these frameworks is also mentioned briefly in this article. This article also highlights how and why India lags behind other developing countries in terms of infrastructure. Given the urgency for the rapid growth and development of our physical and social infrastructure, this article tries to highlight and identify the key components and challenges in the infrastructure development. Some possible ways of overcoming these challenges are also mentioned in his article. Before we look into the legal framework and dimension of each infrastructure sector, it's essential to understand the current scenario in that sector, the complication in that particular sector, and what improvements are required. All of these issues are discussed in this article and several statistics, data, and research studies have been quoted to support the discussion and findings of this article. Therefore, it's a comprehensive article on the Infrastructure sector in India.

Keywords: Infrastructure, Growth, Development, Education, Health, Power, Road, Railway, Airport, Indian Economy, etc.

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INTRODUCTION

A country's position in terms of human and economic development is closely related to its achievements in the social and physical infrastructure. Physical infrastructure is an essential determinant of domestic production and social infrastructure is vital for economic as well as human development as it gives rise to better skilled, healthier, and educated citizens. Given the importance of infrastructure in the economy, we will look into the development and growth of both physical and social infrastructure in India. A proper comparison between India and other emerging countries can determine whether the growth pace of India's economy or infrastructure is adequate or not. We will also look into the challenges that haunt the growth of infrastructure in various sectors. Some possible ways of overcoming these challenges must be debated and implemented at the government level to get maximum benefit from infrastructure programs and policies. There have been several improvements in the last few decades in the infrastructure sector.

In 2012, India ranked 89th in terms of basic infrastructure as per the Global Competitive Index Report 2011-12. By 2018, it scored the 66th position in infrastructure as per the Global Competitive Index Report 2017-18. India has seen a gradual change in its infrastructure in the last decade and a massive funding program to bankroll a new infrastructure programme is under process too. Even though India has shown a great improvement in the last few years, more initiative is required to fast-track the country's development pace and speed. In short, major improvements in the social and physical infrastructure are the need of the hour. These improvements can be made to the legal framework and government policies of each infrastructure sector. In this article, we will look at both of them.

INFRASTRUCTURE SECTOR IN INDIA

The term 'Infrastructure' is used to describe the basic physical systems of a nation or business; this includes communication, transportation, sewage, water, electric systems, etc. All of these systems tend to be a very high-cost investment. Infrastructure is extremely vital for any country's economic development and growth. For infrastructure improvements, certain projects are funded privately or publicly. There are several types of infrastructure and some of them are soft infrastructure, hard infrastructure, and critical infrastructure. Examples of soft infrastructure are healthcare system, education systems, governmental systems, etc. Examples of hard infrastructure are highways, bridges, roads, etc. At last, examples of critical infrastructure are telecommunication, agriculture, public health, etc. There is no doubt about the fact that Infrastructure is a key component and driver of the overall development of a country and its economy. Major infrastructure sectors are power, dams, bridges, urban infrastructure, communication, etc.

Infrastructure is the basic building block that helps our economy to function efficiently. To identify any infrastructure sector, we must keep these six characteristics in mind. These characteristics are indicated by Rangarajan Commission. The characteristics are:

- Non-tradability of output
- Bestowing externalities on society

- Non-rival-ness
- Possibility of price exclusion
- Natural monopoly
- High-sunk costs

The Rangarajan Commission recommended inclusion of railway, roads, bridges, electricity, telecommunication network, crude oil, ports, sanitation, and several other infrastructure sectors. They also published a “the India Infrastructure Report” which included telecom, water supply, gas, electricity, roads, railways, etc.

Sectors such as oil/gas production, telecommunications, roads, ports, civil aviation, urban services, power, railways, mining sectors, and posts as infrastructure. Similarly, the Economic Survey also considers all of these sectors as the infrastructure of a country. In India, Infrastructure sector is highly responsible for propelling India’s developments. It enjoys the intense focus of the Indian Government so that new policies can be initiated to ensure the time-bound creation of the first-class infrastructure in India. India jumped 19 places in World Bank’s Logistics Performance Index 2016 and it ranked at the 35th position among 160 countries which shows that India is capable of doing great work in the development of infrastructure sector.

According to the Department of Industrial Policy and Promotion (DIPP), India received US\$ 24.67 billion from 2000 to 2017 as Foreign Direct Investment in Construction Development sector which includes housing, townships, infrastructure, construction development projects, etc. By 2020, the logistics sector in India is expected to reach US\$ 215 billion from US\$ 160 billion in 2017. India needs more investments by 2020 in the infrastructure sector to have sustainable development. Approximately US\$ 778 billion is required in the coming two years. Fortunately, India is witnessing significant interest from the international community and investors in the infrastructure sector currently. Some key investments in 2018 that has changed the spectrum of India’s infrastructure are mentioned below.

EDUCATION, HEALTH & SOCIAL INFRASTRUCTURE

To promote improved and better utilization of human resources and physical infrastructure, social infrastructures like health and education are essential in any country. For India, improving human capital is the need of the hour. To sustain a service-led growth, our country needs skilled manpower. India needs a proper education system that gives proper training for the current world scenario. A strong educational infrastructure can help India keep up the pace in terms of economy and quality manpower. Education and health are key indicators in the Human Development Index (HDI) which shows that it accelerates economic growth of a country. Also, India’s healthcare is inadequate as per the requirements of the country. There have been some improvements in the last decade still a lot needs to be done. Public health providers must be encouraged and more investments in this sector can aid better and healthier manpower.

PHYSICAL INFRASTRUCTURE

For any country to maintain a growth momentum, it's essential to improve and strengthen the infrastructure facilities of the country. The performance of physical infrastructure in the last decade in the Indian economy has been uneven. If compared to the world standards, India's infrastructure is of low quality. Without a doubt, India's rate of economic growth cannot be sustained if there isn't any increase in the pace and development of its physical infrastructure. Several infrastructure sectors like electricity, roads, information and communication technology must be improved to sustain the current economic position.

GROWTH OF INFRASTRUCTURE SECTOR IN THE LAST DECADE

The infrastructure sector has played a significant role in the overall development process of India's economy. In the last decade, this sector witnessed significant growth and increased investments. The infrastructure investment has been increased from 23% to 32.5% share of India's total expenditure by 2015. Even, the union budget 2016-17 also laid considerable emphasis on spending more on infrastructure to achieve double growth by the end of the year. In 2016, India got 35th rank among 160 countries in World Bank's Logistics Performance Index (LPI) that has 6 indicators which include trade infrastructure, timeliness of shipments, logistics service, etc. In the union budget of 2017-18, the government allocated almost US\$ 62 billion to the infrastructure sector as they recognized the immense potential of this sector.

KEY INITIATIVES TO DEVELOP INFRASTRUCTURE IN INDIA BY THE GOVERNMENT

The Government of India along with several investors from India and abroad formed National Investment and Infrastructure Fund (NIIF) in 2016. With the objective to draw and attract more investments in the infrastructure sector, NIIF aims to create value for investors seeking investments in the infrastructure sector of India. The government is also reviewing ways to introduce Public Private Partnership (PPP) in infrastructure to increase the appeal of this sector to the domestic and global investors. In August 2017, the government of India also approved the Metro Rail Policy which makes PPP mandatory for availing financial assistance for any metro project. It opens doors for private investors across the metro sector.

A new and innovative model is also introduced by the government to boost growth in the infrastructure sector. Hybrid Annuity Model (HAM), Regional Connectivity Scheme (TRCS), Toll Operate Transfer (TOT), and many other models have been introduced in the infrastructure sector to contribute to its growth. The Real Estate Regulatory Act is another initiative by Real Estate Investment Trusts (REITs) to create affordable housing across the country. This move will definitely attract more investors and growth will be seen shortly after its implemented. Some other initiatives by the Government of India are improving the regulatory environment, faster clearances of projects, long-term infrastructure bonds to raise funds, greater infusion of capital, etc. Confederation of Indian Industry (CII) aims at promoting the Indian Infrastructure sector and it's supported by the government. With adequate and appropriate policies in place and correct implementation can propel the growth of our economy and it can become an engine of growth in India's economy.

CHALLENGES IN THE DEVELOPMENT OF INFRASTRUCTURE IN INDIA

- *Land Acquisition:* It is the single largest roadblock in the development of Indian Infrastructure. Several projects are stalled or delayed because of it. There could be several reasons for the delay in land acquisition which includes resistance from farmers and landowners, price difference, property disputes, etc.
- *Delay in environmental clearance and other regulatory:* Various approvals are required throughout the project cycle and there are substantial delays in this process. Approvals from the multi-layer department can be more time-consuming which makes the process longer. Better governance can help in mitigating long delays in project approvals.
- *Private Player's limitation:* There is a lack of private players in the infrastructure sector too. More private sector investors must come forward to invest more in such projects. There is a need to speed up the ongoing efforts by the government to attract foreign investors and developers to invest in our infrastructure sector.
- *Funding Constraints:* Funding is a big roadblock in the proper implementation of infrastructure projects. Capital-intensive projects make it more difficult to get adequate funds. More reliance on the private sectors can be seen these days.

CHALLENGES IN THE HEALTH SECTOR IN INDIA

- The public expenditure is low in the health sector. More investment is required,
- Increasing privatization in the health sector and
- Poor institutional structure

CHALLENGES IN THE EDUCATION SECTOR IN INDIA

- Limited investment,
- Need to make elementary educational more universal,
- Education quality is low,
- Less focus on vocational education and
- Implementation of schemes and policies are not adequate.

LEGAL DIMENSIONS

The legal framework of the infrastructure sector has witnessed several major reforms which aim to achieve consistent and planned economic development. A gradual shift from a controlled market economy to an open market economy can be seen. Foreign investors and private investors have taken an imminent role in its development too. For economic liberation and revolutionary development of the countries, infrastructure sector plays a pivotal role. The government takes assertive steps to achieve the best results from the existing resources. In this section of the article, we will focus on some of the major questions that arise in the legal framework of infrastructure in India. We will also discuss the recent trends, innovations, and concerns along with practical solutions that our country can adapt to produce better results in terms of the development of infrastructure which will be a booster for our country's economic position.

INFRASTRUCTURE DEVELOPMENT AND LAND ACQUISITION

Land acquisition refers to the process used by the Union or State government to acquire private land for the purpose of development like industrialization, infrastructural facilities, urbanization, etc. In return, the government provides compensation to the landowners and rehabilitation or resettlement is also offered to them. In other words, it is the process by which the government acquires private property for public purpose irrespective of the consent of the existing owners of the property. Land purchase and land acquisition are two different things. The law that governs land acquisition in India is the Right to Fair Compensation and Transparency Land Acquisition, Rehabilitation and resettlement act, 2013 (LARR). Before this act, land acquisition in India was governed by the Land Acquisition Act of 1894. A new amendment bill was introduced in 2015 in the Lok Sabha by the Minister of Rural Development, Mr. Birender Singh. This bill amends the Right to the fair acquisition, rehabilitation, and resettlement (Amendment) Ordinance, 2014.

In this bill, several amendments were made by the BJP-led Government that gave the power to the Government of India to acquire land even for private companies. As per the bill, the private companies have to provide rehabilitation and resettlement to the property owners if the land is acquired through private negotiations. There has been a slight improvement in the original act and monetary or non-monetary compensations are made mandatory in the new bill. However, the bill has been criticized by several activists and social workers because of two reasons. First, the compensation amount is not adequate or sufficient in some cases and it is lower than the market price. Second, the affected parties in the land acquisition process are not considered at all in the bill. It will not be wrong to say that the current law on land acquisition is anti-farmer and anti-poor but this has been completely denied by the BJP government.

LEGAL FRAMEWORK OF VARIOUS INFRASTRUCTURE SECTORS

The infrastructure sector consists of various sectors that are governed by a specific act or law or statutes. Statutes encourage private participation and they provide the modes and means of private participation. Private players can participate through grants of licenses or contractual relations. Several legal frameworks of various sub-sectors in the infrastructure sector are mentioned below.

Airport: Airports are governed by the Airports Authority of India Act, 1994, Aircraft Rules, 1937 and the Aircraft Act, 1934. These regulations allow private players to participate in the infrastructure development of airports in our country. Fiscal incentives are given to private players to encourage more investments in this sector. In India, airports can be owned by the Central/State Governments, Urban Local Bodies, individuals, public sector units, and joint ventures.

Power: The legal framework that governs the power sector has undergone several changes in the last few decades. In 2003, the Electricity Act, 2003 was passed and it replaced the Indian Electricity Act, 1910 and Electricity Regulatory Commission Act, 1998. This act has aided in the rapid development of the electricity industry in India. It promotes competition,

transparent policies, transmission, and trading, less regulatory approvals, uniform licensing, and it also provides a statutory basis for state electricity boards' restructuring. Private participation is welcome and Foreign Direct Investment (FDI) is permitted in several projects like hydroelectric power plants, coal-based thermal power plants, etc. This act also provides incentives and tax exemption to private or foreign investors.

Road: The National Highways Act 1956 and the National Highways Authority of India Act governs the National Highway in India. The National Highways Authority of India manages and maintains the functions related to national highways. Foreign Direct Investment is permitted in the maintenance and construction of highways, roads, toll roads, ropeways, rail beds, pipelines, etc. Several fiscal incentives are given to the investors like tax exemption, duty-free imports, concessions, etc.

Water: The National Water Policy 2002 governs the projects related to water. It encourages private investors in the development, planning, and management of water resources projects. Several massive plans are initiated by the government of India to utilize the large rivers for providing pollution free and less expensive method of transportation.

Railway: Railway sector is covered in the list of those industries that are reserved for the public sector. This sector is exempted from industrial licensing requirements. Several components of railways have been DE licensed in the last few years. FDI is also permitted in the railway sector with sectorial caps.

Port: Major Ports Trusts Act, 1963 governs the ports of India and several amendments have been done to this act since it was enacted. 100% FDI is allowed in the port sector. The government provides several incentives and exemptions to private players.

Several statistics of various projects confirm that the infrastructure sector in India is booming and a phenomenal growth can be seen in the next few decades which make it a good investment sector.

CONCLUSION

In this article, we have discussed the crucial role of infrastructure in the development and growth of a country's economy. As we discussed, the infrastructure sector is crucial for rapid human development, economic growth, poverty reduction, and better living conditions. We also discussed the legal framework and dimensions surrounding each infrastructure sector. This article focuses on the legal dimensions of infrastructure development in India. We have discussed how the current position of infrastructure in India is lacking and what changes are required to fast-pace its growth and development. If proper efforts are made in sectors such as education, health, and physical infrastructure then high rates of economic growth can be achieved in India in terms of economy. Moreover, improvements in the budgetary allocation and governance are required to improve human development and revive the economic growth of India.

This article highlighted the challenges faced by each infrastructure sector in India. In conclusion, we can say that several legal reforms have been made in the past decade to

encourage private partnerships and privatization. However, more steps and reforms are required in each infrastructure sector so that India can grow its economy and be a world power in the coming years. Several statistics and research studies have been quoted in this article to support the argument. Various data show that infrastructure sector plays a huge role in sustaining a country's economy and adequate steps must be taken by the government to sustain the economic growth by encouraging more investment and reforms in the infrastructure sector.