



Legal framework and policies related to startup in India

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Abstract

A startup is not just an idea, but a concrete plan of action that aims to solve a problem or fulfill a need in the market. It is the execution of an idea in a systematic and strategic manner, with the ultimate goal of generating revenue and creating value. This article provides an overview of startup policies and Initiatives in India, including the definition of a startup, the application process for the Startup India scheme, and the benefits of starting up in India. It also discusses some mandatory licenses required for startups and the legal framework that they need to follow. The article highlights the evolution of the startup ecosystem in India and its current status as a hub for innovation and entrepreneurship.

Keywords: Startups India, registration and application process for startup in India, legal framework

Introduction

In August 2015, Indian Prime Minister Narendra Modi launched the "Start up; Stand up India" initiative to promote entrepreneurship and support start-up companies in the country. This move has led to the creation of more employment opportunities, and online businesses like Flipkart, Amazon, Myntra, Snapdeal have emerged as some of the most successful private companies in India. NASSCOM's report in October 2015 showed that India ranks third in the world for start-up ecosystems, trailing only the US and the UK. To provide funds and facilitates to startups, Indian government initiated "Startup India Scheme" and its primary objective is to promote startup, generate employment and create wealth that launched on 16th January, 2016 by Prime Minister Narendra Modi under the Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade) at Vigyan Bhavan, New Delhi. Currently more than 99,000 startups existing in India and it is expected that the number is to reach over 1.8 lakh by the end of 2023.

According to the Start-Up India Action Plan, companies that meet the definition set out in G.S.R. notification 127 (E) can apply for recognition under the program provided they furnish the necessary support documents. To be eligible, the start-up must fulfill the following criteria:

1. It should be registered as a private limited company, partnership firm, or a limited liability partnership
2. Its turnover in any previous financial year must be less than INR 100 Crores
3. The entity must be considered a start-up for up to 10 years from the date of its incorporation
4. The Company should be developing innovative products, services, or processes that have the potential to generate employment or create wealth. However, any entity formed through splitting or reorganizing an existing business will not be recognized as a start-up.

Grand Thornton (2016) defines startup business as an organisation which is

- a. Up to 5 years or less from the date of its incorporation/ registration

- b. At a funding stage of Series B or less (B Series means second round of funding)
- c. An entrepreneurial venture/a partnership or a temporary business organisation
- d. Engages in development, production or distribution of new product/services or processes
- e. Revenue of up to INR 25 crores.
- f. Not formed through splitting or restructuring
- g. Employing 50 people or less

A proprietorship or a public limited company is not entitled as startup. A one person company, being a private limited company is allowed to be recognized as a 'startup'

Evolution

The term startup was referred back for the first time in the year 1550 which referred to a company that is new. The term was first used by Forbes magazine in the year 1976, and in 1977 an article was published in business week associating startups with 'fast- growing' and with 'high - technology fields'. The startup can be dated back to the period when the first company, British East India Company was formed. But the term gained its importance during the formation of the Silicon Valley business ecosystem, where the era of the dot- com bubble or the 'Internet bubble' took place during the late 90's and the beginning of the 20th century. The rapid emergence and growth of internet-based companies as well as the success of pioneering ventures like IBM, Apple and Microsoft had a significant influence on the economy and stock market value.

India, being the second most populated country in the world, has been facing the issue of unemployment and lack of job opportunities. To combat this problem, the Indian government launched a start-up program in August 2015, providing a platform for individuals with innovative business ideas. Two successful examples of such start-ups include Swiggy, an online food delivery platform that began as a courier service, and Paytm, originally a digital payment service for recharges and bill payments that has now expanded into India's largest online marketplace. Start-ups have the potential to drive economic growth and job

creation, thus making a positive impact on India's economy and per capita income.

The Department of Industrial Policy and Promotion (DIPP) has developed a set of frequently asked questions (FAQs) to provide clarity on the Start-up India Program. The FAQs address various queries related to the definition of a start-up, the process for registration, documentation required, procedures to avail tax and intellectual property benefits, and the establishment of the Inter-Ministerial Board. The Government has also launched dedicated online portals and a mobile application for start-ups to register and access information on benefits provided under the Program. New and existing start-ups can now apply for registration online, and upon acceptance, will be eligible for various benefits and plans announced by the government.

The Indian government has been actively promoting entrepreneurship and taking necessary measures to provide adequate support. In 2014, the 'Make in India' campaign was launched to attract foreign investors and encourage domestic companies to participate in the manufacturing sector. To instill confidence in startups, foreign direct investment limits were enhanced, and intellectual property rights protection was strengthened. In 2015, the 'Startup India' campaign was introduced to support and promote entrepreneurship among women and make India the top destination for startups. Another far-reaching initiative 'Digital India' was launched to ensure government services are easily accessible through an online platform, which presents significant business opportunities for startups. The recent 'Aatmanirbhar Bharat' campaign launched in 2020 has given startups the importance to be innovative and self-reliant.

Definitions of startup

1. According to Investopedia A startup is a newly established company in its initial stages that is funded by its founders and aims to develop a product or service for which there is a demand. Additional funding is often required from venture capitalists to sustain the business in the long term due to limited revenue or high costs.
2. A startup is a company that is dedicated to solving a problem where the solution is not immediately apparent, and success is not guaranteed, according to Neil Blumenthal
3. Adora Cheung suggests that startup is a state of mind, which refers to the mentality of a person or group that is constantly innovating, seeking new opportunities, and embracing risk-taking
4. Merriam-Webster defines startup as either the act of initiating or the process of launching a new venture or a new and inexperienced business entity

The Department for Promotion of Industry and Internal Trade (DPIIT) has provided a definition for a startup.

- For a maximum of ten years following its incorporation/registration, provided it is established as a private limited company (as outlined in the Companies Act of 2013), a partnership firm (registered under section 59 of the Partnership Act of 1932), or a limited liability partnership (under the Limited Liability Partnership Act of 2008) in India.
- The entity has had a turnover of less than Rs. 100 crore (1 billion) in any financial year since its incorporation or registration.

- An organization is focused on creating new, advancing, or enhancing products, processes, or services, or demonstrating a scalable business strategy capable of generating substantial employment opportunities and financial prosperity.

If a business is created through the division or reorganization of an existing one, it will not be classified as a 'Startup.' (DPIIT, 2019).

An overview of startup policies and Initiatives in India

The government's policies, frameworks, legislation, initiatives, and programs have a significant impact on the survival and progress of a startup. Joshi and Satyanarayana (2014) assert that the government has implemented several measures, both in infrastructural and financial aspects, to support startups. Here are some of the key initiatives and policies:

The Indian government is determined to support and promote entrepreneurship, particularly at the start-up level, and has implemented various initiatives to achieve this. One noteworthy effort is the 'Make in India' campaign launched in September 2014, which seeks to attract foreign investments and encourage domestic manufacturing companies. The government has also raised the foreign direct investment limits and implemented stronger intellectual property rights protection to instill confidence in start-ups. In 2014, Prime Minister Narendra Modi launched the "Make in India" campaign aimed at promoting investment in the manufacturing sector for its expansion. This effort was centered on attracting foreign direct investment while simultaneously advocating for the inclusion of local companies in the industry's growth. The government implemented several initiatives, such as creating an online platform for clearances and income tax filing and extending the validity of industrial licenses, among others, to improve the business environment. Additionally, the government raised the FDI limit in most sectors and worked to upgrade infrastructure and cutting-edge technology while securing intellectual property rights. The government has introduced the 'Stand-up India' campaign in 2015, which focuses on funding start-ups through banks and promoting women's entrepreneurship. This initiative is characterized by support for green field projects in the non-agricultural sector, with the aim of promoting at least two such projects per bank branch. It aims to assist a minimum of 250,000 borrowers within the first three years of implementation, with a focus on creating a more favorable regulatory environment and considering tax benefits for businesses. To ensure inclusivity, the Department of Industrial Policy and Promotion (DIPP) is currently working on a clear definition of a startup. Additionally, the 'Digital India' initiative launched in 2015 aims to provide online government services to every citizen and to connect rural areas by enhancing digital infrastructure, thus providing a considerable business opportunity for start-ups.

Application process under startup India scheme Follow these Steps for registered under Startup India Scheme

1. Visit Startup India portal and register.
2. Enter Legal Entity and Registration/Incorporation No.
3. Add Registration/Incorporation Date.

4. Enter PAN number (optional).
5. Enter complete address.
6. Enter details of Authorized Representative.
7. Add details of all Directors and Partners.
8. Upload necessary documents and self-certify them.
9. Submit Registration/Incorporation certificate of the company.

Benefits of startup in India

1. Easy Procedure: The Indian government has set up a Smartphone app and a website aimed at simplifying the process of business registration for entrepreneurs. The procedure involves completing an online form and submitting the required documents, all through a web-based platform.

2. Support from the Indian government: The Indian government has launched various initiatives to promote startups, like the Startup India program. The government has also implemented various funding schemes, tax rebates, and simplification of compliance requirements to support the growth of startups.

3. Streamlined legal framework: The Indian government has implemented a streamlined legal framework that enables startups to register and operate their businesses much more easily. The government has also introduced various laws and regulations to protect the interests of startups and investors, which creates a conducive environment for growth.

4. Simple termination in the event of departure: A startup has the option to wind up its business and complete the closure process within a 90-day period starting from the date of application.

Some mandatory licenses to start “startup in India

Running a business start-up such as Zomato or Swiggy is a significant undertaking with numerous legal considerations that must be addressed. These licenses are mandatory and must be obtained not only by Zomato, but also by any start-up operating on similar principles.

1. Shop and Establishment Act License: The Shop and Establishments Act License is a requirement for businesses to comply with the regulations set forth by the government regarding employee health, safety, wages, and working hours. The license is issued by the State Government and varies depending on the State where the business is located. Therefore, businesses must approach the relevant State Government authority to obtain the necessary license.

2. Health Department Permits: If one's professional focus lies within the food or healthcare sector, they may need to acquire a permit from their local health department.

3. Environment Permits: Certain businesses may need to obtain permits pertaining to compliance with environmental regulations.

4. FSSAI License or registration: The FSSAI license or registration is mandatory for any food business operator in India. This license ensures that the food product being sold is safe for consumption and meets the required standards.

Food businesses must display their FSSAI license or registration number in their premises and on their products. Consumers can also verify the license or registration number by visiting the FSSAI website or using the FSSAI mobile app. Failure to obtain an FSSAI license or registration can result in fines and legal actions.

Under FSSAI, the license or registration is divided into three categories namely:

- FSSAI Central License
- FSSAI State License
- FSSAI State Registration

Legal framework of startup

In order to run a business both ethically and effectively, it is essential to comply with different legal regulations. Failure to do so can result in severe legal consequences, making it crucial for businesses to adhere to these laws.

1. The Companies Act: The formation and operations of companies are governed by the Companies Act 2013, which outlines specific rules and provisions that companies must follow in order to ensure their smooth functioning and successful operation

A company is a group of two or more individuals who come together to achieve a common business objective. It is considered a separate legal entity from its members, meaning it has its own identity and can own property, engage in legal disputes, and enjoy perpetual succession. Registering under the Company Act 2013 is mandatory for establishing a company or proprietary, while obtaining licenses such as FSSAI and Shop and Establishment Act License are necessary for starting a retail shop, restaurant, or other trade outlets. Understanding these provisions is crucial for setting up a successful startup.

- **Section 2(68):** This portion describes a "Private Company" as a favored option for startups because of its less complex regulatory demands.
- **Section 3:** This section deals with the formation of a company and its classification.
- **Section 77:** states that any company, whether located in India or abroad, must register any charges on its property or assets, tangible or intangible, within or outside India, with the Registrar within thirty days. This registration must include all relevant information about the charge as well as the instruments used to create it. The company and the charge-holder must sign the registration and any associated fees must be paid, as designated by the Registrar.
- **Section 139:** Section 139 mandates the selection of auditors and sets forth the necessary auditing standards that companies must adhere to, emphasizing the importance of adhering to regulations and maintaining openness and clarity.
- **Section 149:** This Section deals with the outlines the prerequisites for appointing directors and the structure of the board of directors.
- **Section 164:** deals with regulations regarding the ineligibility of directors for serving as a company director.

2. The Environment (Protection) Act of 1986: is a crucial legislation concerning environmental and pollution control that businesses must give due consideration to.

- The Air (Preventions and control of Pollution) Act of 1981, Government passed this act to clean up air by controlling pollution.
- The Water (Prevention and control of Pollution) Act of 1974, to prevent the pollution of water by industrial, agricultural and household waste war.

3. Labour Laws: Every business requires some manpower to do the work and they are known to be employees of such company. Appointing an employee require certain provision to be followed which are set by the labour laws. Irrespective of the size of the establishment, you need to adhere to the labour laws. These laws could be with regard to minimum wages, gratuity, PF payment, weekly holidays, maternity benefits, sexual harassment, and payment of bonus and so on.

Some certain statutory laws are: The Factories Act, 1948 is a crucial statutory law that aims to protect the interests of workers by ensuring their safety, hygiene, and overall welfare while they are at work. This legislation places various responsibilities on the occupier of a factory and the factory manager to prevent exploitation and promote the well-being of workers. Additionally, amendments to the act and court rulings have broadened the definition of occupier, particularly in relation to hazardous processes within factories. The act governs the working conditions and provides regulations for health, safety, welfare, annual leave, and special provisions for young persons, women, and children working in factories.

- **Section 2(1) Worker:** A "worker" is someone who is hired either directly or through an agency (such as a contractor), with or without the principal employer's knowledge or for remuneration, to perform any manufacturing process or related work, including cleaning machinery or premises used for manufacturing. However, it does not include members of the armed forces of the Union.
- **Section 11-20 Healthy:** pertains to multiple elements of health, such as maintaining hygiene, appropriate management of waste and fluids, proper ventilation, and regulation of temperature and humidity.
- **Section 21-41 Safety:** The provisions outlined in Sections 21-41 of the Act focus on ensuring safety measures are in place in factories, with specific attention paid to fencing machinery, establishing protocols for working with moving machinery, handling hazardous substances, and other related matters. To protect workers, the Act mandates that machinery should be securely fenced, young workers should not operate dangerous machinery, and adequate manholes must be provided in confined spaces to enable emergency escapes.
- **Section 42-50:** Provisions for welfare, as outlined in Section 42-50, entail the provision of various amenities for workers, including washing facilities, first aid, canteens, shelters, and restrooms.

- **Section 78:** pertains to rules regarding annual leave and wages, specifically addressing the entitlement and payment of annual leave
- **Special Provisions:** The law has specific clauses in sections 34, 35, 36, and 48 that provide special provisions for the safety and working hours of children, women, and young persons.
- **Section 51-59:** According to sections 51-59, the working hours for adult workers in factories should not exceed 48 hours per week and they must be given a weekly day off.

Conclusion

India is a country known for its stunning beauty and charm. However, the Indian market has a significant pool of talent and workforce, making it an attractive and affordable option for starting a business. Successful start-ups like Swiggy, Zomato and Blinkit have demonstrated impressive growth and generated considerable revenue while creating job opportunities. To gain a better understanding of this industry, a research document was created to explore how Indian restaurant aggregator businesses operate, the relevant laws governing them, the impact of these laws, and the necessary licenses required for expansion. One example of a multinational startup in this industry is focused on restaurant aggregation and food delivery services. There are abundant sights to explore and ample chances to build a business network. Failing to seize new opportunities should never be regarded as an excuse. In the present situation, there are countless financial prospects available. In India, startups have a great likelihood of succeeding since people possess a strong understanding of business.

Indians are not hesitant to explore new endeavors, as seen by their willingness to embrace disruptive startup names. However, some of the leading Indian startups may seem conventional. To establish a highly profitable business in India, a unique startup concept that attracts customers and generates profit is indispensable. Given the high failure rates of startups, investors carefully evaluate the team's idea and experience. Angel investors are cautious about investing their funds as they cannot afford to incur losses.

The growth of e-commerce and online food businesses has significantly impacted consumer businesses in the food industry, leading to remarkable advancements in customer access to food and subsequent growth. To ensure compliance with regulations, food businesses must adhere to laws such as the Food Safety and Standards Act 2006. This legislation consolidated food laws in India and established the Food Safety and Standards Bureau, which sets scientific standards for food products and regulates their production, storage, distribution, sale and import.

To ensure top-notch safety and quality standards of the supplied is essential food, it is essential to comply with all the laws mentioned above. These legislations have been put in place owing to the grave concerns raised by customers, hence, making it necessary to regulate or conduct trials to address the issues. Moreover, it is imperative to include a clause regarding the primary objective of the online grocery store to gather valuable information from vital stakeholders like manufacturers, buyers, sellers, distributors, and franchises. Following the standard requirements explicitly

stated by FSSAI is also a must to maintain the food safety and standard for every client who places their faith in the brand and order its goods.

In order to ensure ethical and successful management of a company, there are various laws that must be observed. The Environmental Act of 1986 is an important law for pollution and environmental control, and the company must take it seriously. These laws were created and categorized by the state and central government into different regulatory bodies to ensure proper functioning of the business. Compliance with all relevant acts, such as the Hazardous Waste Act of 2008 and the Air Act of 1981 is mandatory for the company.

Suggestions

The government should create a specific law for start-ups in India that addresses the unique challenges faced by start-ups in India, such as lack of funding, market access and regulatory hurdles. This law should provide tax incentives, easy access to capital, simplified regulations and other benefits to startups. The Indian government should provide guidance and awareness programs for startups to assist them in various aspects such as legal formalities, registrations, accounting, compliance, marketing, and branding. These programs should be conducted by experienced professionals. Here are some suggestions for awareness and guidance programs for start-ups in India like: Entrepreneurship boot camps in which the government should organize entrepreneurship boot camps in schools, colleges, and universities to promote a startup culture among students. Moreover, Workshops and Seminars in which the government should conduct workshops and seminars for entrepreneurs, covering topics like legal formalities, accounting, compliance, marketing, and branding.

To foster a thriving entrepreneurial ecosystem, the government should provide a range of resources to support startups. These include online resources such as blogs, podcasts, and videos to educate individuals on starting, growing, and managing their businesses. Mentorship programs that connect successful entrepreneurs with first-timers are also crucial, providing guidance and support. Skill enhancement programs covering essential skills like digital marketing, coding, and data analytics should be launched to help entrepreneurs succeed. Networking opportunities, including events and connections with peers, mentors, and investors, are essential for exchanging ideas, showcasing products/services, and receiving feedback. By providing these resources, the government can help entrepreneurs overcome challenges, build successful businesses, and contribute to the economy.

The Indian government has proposed the creation of a dedicated portal for startups, known as the Startup India Portal. This platform will serve as a central hub for all information related to startups and their regulatory compliance requirements. The portal will provide a range of services, including registration, licensing, tax compliance, and funding options, among others. The Startup India Portal aims to promote awareness and facilitate ease of doing business for entrepreneurs, investors, and the wider society.

In order to foster the growth of startup, the government should streamline the regulatory process for establishing new businesses. This should encompass all facets of business registration, inspections, licenses, and permits necessary for conducting commercial activities. By

simplifying these requirements, aspiring entrepreneurs will be able to navigate the regulatory landscape with greater ease and efficiency, reducing the time and resources required to launch their ventures. This, in turn, will facilitate the creation of new businesses, which will contribute to economic growth and job creation.

Collaboration with universities and research institutions there should be smooth collaboration between universities, research institutions, and start-ups to promote innovation, entrepreneurship, and knowledge-sharing.

Law Consolidation: The Indian legal system is complex and fragmented, with multiple laws and regulatory frameworks governing different aspects of business operations. This can create confusion and uncertainty for startups, as they may not be aware of all the applicable laws and requirements. To address this challenge, the government can consolidate and simplify the legal and regulatory frameworks to make them more accessible and user-friendly for startups. This can involve the integration of multiple laws into a single framework, the elimination of redundant laws, and the streamlining of procedures.

Startup Success Rate: The success rate of startups in India is relatively low, with many startups failing to scale up and generate sustainable revenue. This can be attributed to various factors, such as lack of access to capital, talent, and technology, as well as regulatory and legal barriers. To address this challenge, the government and private organizations can provide startups with access to capital, talent, and technology through various initiatives, such as incubation programs, accelerators, and angel networks. These initiatives can also provide startups with mentorship, coaching, and networking opportunities to help them navigate the legal and regulatory landscape and overcome the challenges they face.

In summary, to improve the legal and regulatory frameworks for startups in India, the government and private organizations can focus on increasing awareness, consolidating laws, and providing startups with the resources and support they need to succeed. By addressing these challenges, India can create a more conducive environment for startups to thrive and contribute to the country's economic growth.

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