Gautam Chikermane

70 POLICIES THAT SHAPED INDIA

1947 TO 2017, INDEPENDENCE TO $2.5 TRILLION

ORF

Foreword by

Rakesh Mohan

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FOREWORD

Rakesh Mohan

The story of India's economic development since Independence is a fascinating one. After a hundred years of stagnation before 1947, the Indian economy has grown at a steady clip ever since. The period between 1950 and 1965 was one of great optimism, as the basic institutional structure for development was put in place through the enunciation of new policies, setting up of new institutions, and enactment of the basic legal structure underlying economic activities. A certain degree of success was achieved during this period in rousing a somnolent economy, with economic planning, import substitution and self-reliance as the basic guiding principles. However, just as other Asian countries began to exhibit their export-oriented high-growth strategies, Indian policies became more rigid and inward-looking, and consequently, the 1965 to 1980 period exhibited relative economic stagnation. The 1980s were a period of hesitant transition from the hitherto dirigiste framework, but we had to wait till 1991 for a full-blown balance-of-payment crisis that then induced the beginning of comprehensive economic reforms, setting in motion the transformation of India towards a modern open economy.

There are many books and articles that chart this story, but none like this innovative compilation by Gautam Chikermane. It tells the story through 70 policies and enactments made over the 70 years since Independence, which can be described as forming the changing bedrock of Indian economic strategy over time. How does economic policy change come about? Economic theories undergo transformation, ideologies wax and wane, old leaders are replaced by new ones. At the same time, there is a great degree of continuity in institutions once they are set up. The expression of policy change is done through explicit policy announcements: legislative enactments are made and old ones repealed; new institutions are created, old ones shut down. These are the things this book covers.

Gautam has designed this handbook as a reference work that any busy economic kibitzer can access. It will be of equal interest to current policymakers who may want to quickly see the origins of the policies they want to change; keen economics undergraduate or graduate students who want to trace the evolution of the Indian economy since Independence; professors who want to find the references that they have been searching for to buttress their lectures; researchers on the Indian economy who want minimise their Google search time; businesspeople who want to see the origins of the various laws that they operate under; and the lay reader who is just curious.

Each of these 70 policies/enactments could demand a full-scale chapter, but Gautam has worked under a self-imposed restriction of 350 words for each, so that they are easily digestible. Such a collection could easily be just a boring reference work that you buy but keep on you shelf, never to be read again! But this is no dry compilation meant only for the policy aficionado. Gautam peppers each piece with his opinionated commentary so that it can even be read as a whole: a quick snapshot of the shifting sands of Indian economic ideology and policy practice.

The 70 narratives in the main text are only the tips of the many icebergs buried in the 683 endnotes that form the documentary basis for his 350-word policy descriptions. So, any interested reader can easily dive into the active digital links that almost all endnotes embody, and then take off into their own voyage of discovery that today's digital media enables. One thing leads to another, so the reader could also take this as a starting point to write their own interpretations of each of the policies and acts covered. As a former policymaker and a current teacher and researcher, I can attest to the days and months of painstaking research that this vast enterprise must have entailed.

Economic journalists, who have to be slaves to daily or weekly deadlines, are not known to have the patience to do detailed research and trace down long-forgotten documentary sources. That Gautam was not shy of taking up this massive enterprise is not surprising. If he can tackle the Mahabharata as a fiction writer and provide new subaltern insights, this work is clearly child's play. Moreover, it must be his classical Dhrupad training that provided him the discipline needed to do this painstaking work.

The Indian economy has miles to go. I hope that this snapshot of policies since Independence will enthuse us to continue making the changes that carry the country successfully into the 21st century.

Rakesh Mohan *is Senior Fellow at the Jackson Institute for Global Affairs, Yale University; Distinguished Fellow at Brookings India; and former Deputy Governor of the Reserve Bank of India.*

INTRODUCTION

This is a handbook, a ready-reckoner, a window through which to look at the 70 landmark economic policies that have been crafted over the 70 years of Independent India. Behind these policies lie stories of political choices and the ideological slants of thwarted ambitions and rising aspirations, of economic directions made to serve political ones. These policies are outward expressions of India's deeper economic experiments, first with an inward-looking import substitution model, then—with increasing globalisation—an expanding consumer market and an exports-led initiative.

The policies highlight the transformation of the economy from agriculture to services, from shortages to surpluses, from basic survival to global goals. If we consider these policies a mirror reflecting the mind and the will of the nation, they allow those interested in India's policies as well as the policymaking process a glimpse into objectives and outcomes, across the seven decades of policy-design, construction and execution. The book examines the laws and the rules, the constrictions and the freedoms that India's entrepreneurs, savers, investors and consumers have negotiated from 1947 to 2017 and which have made India a $2.5 trillion economic powerhouse, soon to be the world's fifth largest.

Shortlisted out of a vast pool of economic dalliances and broken into 70 chapters, one for each policy, this book proceeds as follows.

All policies have been tracked over the decades and their evolution into present form captured as they were launched and modified. The choice of policies comes from my personal experience with engaging, reading and analysing the Indian economy, first as a journalist in newspapers and now in Observer Research Foundation, India's top think tank.

There are 10 primary source documents of these policies. One, the Constitution of India that set the tone and tenor for policy formation. Two, the economic laws enacted by Parliament. Three, the 12 Five Year Plans drafted by the Planning Commission. Four, the 86 Union Budgets (these include 15 Interim Budgets and one white paper). Five, reports of various Law Commissions. Six, reports of various Standing Committees of Parliament. Seven, sector-specific government committees created for specific policy interventions. Eight, government resolutions on various issues and institutions. Nine, Supreme Court and high court judgements that have questioned, interpreted and overseen the evolution of laws and policies. And 10, papers in peer-reviewed journals. All these have informed the 70 policies and embedded varying perspectives—legal, political, administrative and economic—into them. From financial to fiscal, land to disinvestment, institutes of technology to development finance institutions, these policies have defined India's journey so far.

Each policy has been encapsulated in 350 words and is sufficient for any person to get a working knowledge about why it was drafted, what its contours are and how it has or has not delivered the desired outcomes. Lay readers, with their busy lives, will find these jargon-free synopses adequate to understand and engage with the complex economic policymaking process around them. In an age of knowledge and specialisation, even experts and policymakers will find these useful. An authority in industrial policy, for instance, could get a working knowledge about crop-pricing, a banker about slavery, a macroeconomist about the nationalisation of civil aviation, a microeconomist about land acquisition.

Scholars may feel that 350 words are inadequate to capture policy details. (I would argue that even a 3,500-word chapter or entire books would not be enough to describe the enormity and the subtlety of India's economic policymaking.) For them, each of these 70 chapters are a starting point, a context. Should they wish to pursue any of these policies, they can deep dive into the extensive endnotes. Every argument made in every policy has citations from original sources, laws, government documents, judgements, commission reports and peer-reviewed journals, all of which provide tributaries for policy adventurers to sail into the large rivers of India's policymaking. Bring all the rivers together, and they will show the depth of the country's policy ocean. Barring a handful, most of these 683 endnotes are open source, with digital links.

Another way to explore this deep policy ocean is to pull out trends. Although each policy tackles one aspect of India's seven-decades-long journey, together you can examine them through several lenses. Ideologically, you could argue whether the socialist pattern of economic development was the right path for us then. Politically, you could examine whether the remnants of the British Raj that built policies to 'control' rather than 'catalyse' India echoed themselves subsequently; or, how the movement from a single party to a coalition form of governance has moulded economic policies. Administratively, you could question how far any policy can go when the underlying delivery structure of civil services draws its power from rent seeking and smothering entrepreneurship; or the halfway outsourcing of economic governance to relatively independent regulators from direct government licensing. Finally, you could debate how the Indian voter accepted political independence and economic imprisonment simultaneously, and how that began to change in 1991. Above all, you could scrutinise the minds of the people behind India's political economy and build lessons for a future, where our country would be the world's third largest by GDP, middle income by per capita income, all the while balancing growth and welfare.

I am grateful to Observer Research Foundation for giving me the time and space to indulge in my passion for economic policy. In particular, I would like to thank our Chairman Sunjoy Joshi and President Samir Saran for their support and encouragement. To Shailaja Fennell at Cambridge, who taught me in college and continues to guide my thoughts even today, thank you for your patience, dedication and support to your most wayward student. To Rana Hasan at Asian Development Bank, who helped me polish several arguments in this book (this is aside from the hundreds of discussions we've had over the years), thank you for being an unbiased inquirer, a brilliant economist and a beautiful mind. To Rakesh Mohan, one of the most experienced policymakers India has seen, thank you for writing an incisive and thought-provoking foreword. His wide and deep knowledge about the Indian economy can only be matched by his warmth, encouragement and generosity. To Monika Halan, my harshest critic: not an argument passes by to which she hasn't added her weighty and informed perspective. One of the finest economists in Indian journalism, she is changing the contours of India's household finance. She is currently an editor with *Mint*, and I lucked out when she chose to walk the journey of life with me.

Questions, comments, critiques? I look forward to hearing from you. Write to me at gautam@orfonline.org.

Gautam Chikermane
20 April 2018
New Delhi

THE FIRST DECADE

Chapter 1

Controller of Capital Issues, 1947

One of the last laws to be passed by Parliament four months before Independence, the Capital Issues Control Act,[1] enacted on 18 April 1947, showed who would be in charge of capital in a socialist India: the government, through the Controller of Capital Issues (CCI). Under this Act, the government decided which company could raise how much capital. No company shall, "except with the consent of the Central Government, make an issue of capital", the Act stated.[2] The control over the amount as well as its pricing converted the office of CCI into a zero-risk, high-return lottery-ticket dispenser, as the prices of the shares offered to the public through capital markets were tremendously undervalued, giving a huge margin to investors and speculators on listing. Since the asymmetric information was in favour of companies, the government possibly considered its role as one that created a balance in favour of investors. On 21 December 1957, the law was amended and made more stringent with the Capital Issues (Control) Amendment Act,[3] by giving CCI the power to revoke the consent or recognition accorded under any of the provisions[4] or, where such consent or recognition is qualified with any conditions, change all or any of those conditions. As instruments to translate ideas and entrepreneurship into wealth, the role of capital markets, particularly equity markets, is key. Given that mutual funds did not exist then, choosing, applying, taking the risk and getting the returns was left to individual households. By ensuring that the prices of shares were kept low, the government ensured gains to small investors. But this meant that enterprises were not able to get the right value. Following the gradual opening up of the economy, the CCI was repealed on 5 August 1992[5] and gave way to Securities and Exchange Board of India[6] (SEBI, more below[7]) on 12 April 1992. Through a series of regulations, SEBI has steered the capital markets and enabled them to arrive at sensible pricing, something that neither the government nor the entrepreneurs could achieve on their own. Predictably, this transition was opposed by the status quo, which argued that the capital market, particularly the primary market, was getting murkier because SEBI permitted free pricing of initial public offerings, thereby inviting the private sector to exploit the gullible public. As we know in hindsight, and on the contrary, this freedom has allowed the capital markets to soar and catalyse the real economy in ways that were impossible to imagine before 1992.

Chapter 2

Minimum Wages Act, 1948

Seven months into Independence, the dominance of socialist thinking and a welfare model of development weighed heavy on India's lawmakers. Even before the country could get a handle on industrialisation, Parliament, through the Minimum Wages Act,[8] enacted on 15 March 1948, declared that governments (both central and states) not economic agents would decide the amount of wages paid. As an idea, minimum wage was embedded in the Constitution to ensure a decent standard of life,[9] but in India, the law became a tool for control rather than regulation: there are more than 1,200 minimum wage rates in India.[10] Clearly, casual and politics-led implementation of minimum wages has reached stratospheric levels of inconsistency and shows signs of market failure in a policy of excessive control. But this is not the end of all wages-related laws. The Trade Union Act of 1926[11] (amended in 2001[12]) permits trade unions to regulate relations between workmen and employers. The Industrial Disputes Act of 1947[13] allows trade unions to take up the issue of wages to "make provision for the investigation and settlement of industrial disputes". The Equal Remunerations Act of 1976[14] entitles equal wages to women for same or similar work. The Contract Labours (Regulation and Abolition) Act of 1970,[15] to "regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances", ensures that contractors pay wages, with the liability of non-payment resting on the principal employer. Despite all these provisions, only eight percent of the workers were aware of the Act.[16] Moreover, there are informal workers, who add up to 92 percent of all workers but lack the power of collective bargaining and are not organised. This means that there is an economic disconnect between job creation and output. Smaller enterprises are perhaps not equipped to deal with the complexity of so many laws governing the working conditions of labour, or the entitlements these laws give are not economically viable for them. Either way, this is an area that needs legal attention and legislative consolidation.

Chapter 3

Factories Act, 1948

A legacy law operating since 1881, The Factories Act[17] was comprehensively enacted on 23 September 1948 to protect workers in factories, by consolidating and amending the law that regulated condition of labour in factories. In tune with the thinking of the day, that all entrepreneurs are evil and all government good, it has provisions for penalties of up to seven years'[18] imprisonment for violations of hazardous processes and six months for minor violations, with a 'chief inspector' holding the power to prosecute. Amongst other things, the chief inspector can enter any factory, make examinations, seize records and report violations that could relate to painting (once every five years), internal walls (once every 14 months), toilets, canteens, and cool drinking water during the months of March, April and May. The Act created an entire factory of inspecting bureaucrats, from chief inspectors to officers. Since labour is in the concurrent list, in addition to this Act, there are various 'shops and establishment' acts that regulate the working conditions of labour, which entrepreneurs need to follow. The Factories Act has been amended seven times,[19] in 1949, 1950, 1951, 1954, 1970, 1976 and 1987. The Bhopal Gas tragedy in 1984,[20] for instance, introduced a separate chapter on hazardous processes[21] in the 1987 amendment. The 1987 amendment inserted sections for precautions against dangerous fumes,[22] precautions in case of fire,[23] and compulsory disclosure of information by the occupier.[24] In the 30 years since then, the Act has remained unchanged. Being an emotive and human issue, policies that try and align the interests of capital and labour, unless in favour of the latter, are difficult to debate, let alone enact. The Factories (Amendment) Bill of 2016, for instance, attempts to double the limit of overtime hours to 100 hours per quarter,[25] but empowers the central and state governments to grant exemptions.[26] The Factories Act ensures that working conditions of Indian labour are humane and entitles them to protection against loose processes. It also raises the cost of such entitlements and, in an era of artificial intelligence and robotics, may nudge capital away from labour.

Chapter 4

Development Finance Institutions, 1948

The first financial institution and development bank to be created after Independence, Industrial Finance Corporation of India (now IFCI Ltd), was formed on 27 March 1948 by legislation[27] to fulfil the long-term finance needs of the country's fledgling industry. Through a repeal[28] of the Act in 1993, IFCI became a company under the Companies Act. In 1955, seven years after IFCI was formed but could not singly deliver the financial requirements of the country, the government formed the Industrial Credit and Investment Corporation of India (ICICI) to provide medium-term and long-term project financing to Indian businesses, with the World Bank[29] and private investors as partners. Almost a decade later, in 1964, Parliament created yet another institution, the Industrial Development Bank of India (IDBI) in 1964.[30] With the transformation of the economy since then, ICICI and IDBI have become successful banks. As the economic environment liberalised during the 1990s, ICICI began to change itself from an entity offering project finance to industry, to one serving consumers directly as a universal bank. Following the merger with ICICI Bank in 2002, it completed the journey from institutional finance to retail finance. Under the recommendations of the 1998 Narasimham Committee II, which stated that IDBI should be corporatised and converted into a company on the lines of IFCI and ICICI,[31] on 30 December 2003, the IDBI Act was repealed[32] and IDBI was deemed to be a banking company.[33] Effective 2 July 2004, the repeal corporatised IDBI and transformed it into a bank. In addition to these transformations, the role of development finance institutions in pre-liberalisation India was noteworthy. According to a December 2016 UNCTAD report,[34] their contribution to total capital formation has grown significantly over the years, with 70 percent of the total directed to the private sector in the form of loans as well as equity. In their new avatars, ICICI Bank and IDBI Bank command the size and scale to repeat that performance for household finance, while IFCI is teetering under the weight of sharp deterioration of asset quality and deviations from lending norms, according to the Comptroller and Auditor General.[35]

Chapter 5

Banking Regulation Act, 1949

Enacted by Parliament on 10 March 1949, the Banking Regulation Act[36] laid the foundations of banking in India. It gave India's central bank, the Reserve Bank of India (RBI), powers to license banks,[37] regulate shareholding and voting rights,[38] supervise board appointments[39] and control over managements,[40] regulate banking operations,[41] lay down instructions for audits[42] and liquidation,[43] and impose penalties.[44] In 1965, the Act was amended to include cooperative banks.[45] Stability of banks has been RBI's sole focus for the past 70 years, an idea the central bank has nurtured since its nationalisation on 23 September 1948, under the RBI (Transfer to Public Ownership) Act.[46] However, stability has come at the cost of rural penetration, which began only recently through payments banks. Weighed down by the concerns of financial stability, RBI has ignored consumers. It has overseen financial repression through the lowest possible interest rates on saving deposits to consumers until rates were freed only 54 years after Independence, on 25 October 2011.[47] It has given banks a freeway to mis-sell financial products such as insurance, without any restraint or regulatory oversight. It has allowed banks to let interest rates on floating loans rise with increases in policy rates but not cut them on the way down. It is only now that RBI is increasing the pressure on commercial banks to serve consumers. Given its late start, there is much to be done. In a way, the process of consumer-focused modern banking is beginning only now. On the other hand, RBI has not allowed a single commercial bank to fail, nudging public sector banks to take over failing banks. Whether that is good or not is debatable, but in the absence of a law for resolving financial bankruptcies,[48] this was perhaps the best RBI could do. A May 2016 amendment[49] to the RBI Act, 1933 gave RBI's monetary policy a statutory focus to target inflation. Finally, the future of banking is increasingly moving towards electronic and mobile money, which is both an opportunity to reach the unbanked and a threat from criminals, and thus an area where RBI needs to keep pace.

Chapter 6

Planning Commission, 1950

Created by a 15 March 1950 Resolution,[50] the Planning Commission became the centre of Independent India's economic policy universe, and its Five Year Plans the effective economic direction of the country. Its mandate included assessing the resources of the country and formulating plans. In his 28 February 1950 Budget,[51] then Finance Minister John Mathai announced the setting up of the Planning Commission and subsequently resigned. He felt the commission would be a kind of parallel authority to the cabinet, but extra constitutional and, therefore, not subject to the usual disciplines of the democratic system, an argument that has been echoed by many[52] in subsequent years. Since then, the Planning Commission never looked back, becoming an increasingly powerful institution with every passing plan. Such was the faith in the planning process, as adopted from the former Soviet Union, that Union Budgets were drafted keeping in mind the commission's plans, overtly[53] in the initial decade and subtly in later ones. The First Plan (1951–56) was based on the Harrod-Domar Model[54] and focused on agriculture, price stability, power and transport. The Second Plan (1956–61), led by P.C.

Mahalanobis, gave concrete expression[55] to the "conception of a socialist pattern of society". The 11th Plan (2007–12) aimed at faster and more inclusive growth.[56] To ensure the states fell in line, a 6 August 1952 Cabinet resolution[57] created the National Development Council (NDC), a body comprising leaders from the centre (the prime minister, who headed it, and all cabinet ministers), the states (all chief ministers), and all members of the Planning Commission that ratified and signed the Five Year Plans. This was a loose institutional structure, whose legalities as well as operations have been questioned, meant to secure the cooperation of states in the execution of central plans, mobilise resources to finance them, promote common economic policies, and ensure balanced and rapid development. But an analysis of the agenda papers and records of the first 50 meetings[58] indicates the dominance of a central economic thought, articulated by the prime minister and union ministers, with states following that direction. The Planning Commission was finally dissolved on 1 January 2015[59], making way for the creation of NITI Aayog.[60]

Chapter 7

Finance Commissions, 1951

Formed on 16 May 1951 under an Act of Parliament,[61] Finance Commissions—constituted every five years, there have been 14 so far, with the 15th underway—derive their authority from Article 280 of the Constitution[62] to decide the distribution taxes between the centre and the states, and is the key financial lever determining the federal structure of the Indian economy. It makes recommendations about how central levies collected by states, taxes and duties levied and collected by the centre but assigned in whole to the states, and grants and loans are distributed. In its last set of recommendations, the 14th Finance Commission, headed by former RBI Governor Y.V. Reddy, raised the share of states in taxes by 10 percentage points to 42 percent.[63] It also said that the FRBM Act[64] needs to be amended and made more specific about targets relaxation.[65] "The challenge is to design a basic incentive-compatible framework for the Union and State governments to hold each other accountable over agreed fiscal targets," the report stated.[66] However, even though Finance Commission is the Constitutional authority on centre–state distribution of financial resources, the Planning Commission[67] had eroded its powers. "[The] role and function of the Finance Commission, as provided in the Constitution, can no longer be realised fully due to the emergence of the Planning Commission as an apparatus for national planning," the Third Finance Commission noted.[68] Citing the overlap of Finance Commissions with the Planning Commission and the resultant anomalies, the Second Finance Commission stated[69] that it had become a "statutory body with limited functions". On the other hand, the Planning Commission was often called a "super-cabinet",[70] with functions such as determining and allocating resources being under it. This Constitutional debasement ended on 1 January 2015, when the Planning Commission was dissolved, giving the 15th Finance Commission[71] the opportunity to begin with a clean slate.

Chapter 8

Industries (Development and Regulation) Act, 1951

India's infamous Licence Raj began here. Just four years after political independence, the future of the country's economic independence was sealed with the Industries (Development and Regulation) Act,[72] enacted by Parliament on 31 October 1951. The law declared "in the public interest"—a term that would get echoed over the next five decades for several laws and policies, to mean the curbing of all economic freedom—that the central government "should take under its control" the industries specified in the First Schedule.[73] The First Schedule included 38 industries, from defence and machine tools to telecommunications and electrical equipment; and 171 articles, from precious metals and coal to fans and sewing machines. The law created a Central Advisory Council[74] to advise the central government "on matters concerning the development and regulation of scheduled industries". It also prevented the establishment of any new industrial undertaking, unless it was under, and in accordance with, a licence issued in that behalf by the central government.[75] Additionally, it handed the government the power to decide conditions such as where an industry would be located or what its size would be.[76] To set up a small-scale enterprise, for instance, the government would look at six factors[77] before giving a licence: investment in plant and machinery, or land and buildings; nature of ownership; smallness of the number of the workers employed; nature, cost and quality of the product; foreign-exchange requirements for the import of any plant or machinery; and "other relevant factors as may be prescribed". The other clauses included the power to investigate,[78] to assume management control of an enterprise,[79] and to take over an enterprise without investigation. The prices charged for various products would not be a function of business activity but of the government's opinion on whether it was equitable.[80] The law delegated immense power to the inspector, who could enter and inspect any premise and examine any document or person. Based on the recommendation by the Law Commission,[81] a 2015 amendment transferred the authority to regulate potable alcohol to states.[82] Finally, in trying to change the geography of economic development, the best the government managed to do was create "company towns", with little trickle down to neighbouring areas.[83] Its most powerful contribution to the Indian economy, however, was to curb enterprise.

Chapter 9

Indian Standards Institution (Certification Marks) Act, 1952

The Indian Standards Institution (ISI) was established on 6 January 1947 to operate the Certification Marks scheme and facilitate consumer protection. ISI was based on a 3 September 1946 memorandum of the Department of Industries and Supplies,[84] written by Institution of Engineers (India). This preceded the 14 October 1946 meeting of 25 countries in London, of which India was a founding member and the only "developing" country,[85] and which decided to create an international organisation with the objective of facilitating international coordination and unification of industrial standards, through the creation of International Organisation for Standardisation. This was legitimised by law on 21 March 1952, with Parliament enacting the Indian Standards Institution (Certification Marks) Act[86] to certify standards. As companies and producers began to embrace and communicate their adherence to the "ISI Mark" as a virtue, the mark and the quality it certified soon became a household name. But there remained a gap in the creation of standards. What could have been an amendment through the addition of standards setting to the law was instead legislated through the enactment of another law, the Bureau of Indian Standards (BIS) Act[87] on 23 December 1986, which led to the creation of the BIS[88] on 1 April 1987 for the "harmonious development of the activities of standardisation, marking and quality certification" to provide reliable quality goods and minimise health hazards through standardisation, certification and testing. The BIS took over all the functions of ISI and began formulating standards, certifying products, registering trademarks and granting patents. One of the shortcoming of the law was the lack of specific provisions for certifying precious metals and jewellery. The BIS Act of 1986 focused only on producers, while in the case of gold, for instance, the seller needed to be certified as well. This needed an enabling provision. As a result, along with other changes, the BIS Act of 1986 was repealed and on 21 March 2016, and the BIS Act of 2016[89] came into force. The new law provides for compensating consumers if a product does not confirm to standards. It also gives flexibility to companies to conform to standards through self-declaration, which, if violated, attract punishments in the form of fines and imprisonment of up to two years.[90]

Chapter 10

Nationalisation of Air India, 1953

For a poor country whose politics was burdened by socialism, the decision to nationalise nine functioning airlines into two entities was rather strange. If airlines symbolised the travel of the rich, they should logically have been banned altogether or taxed heavily. Instead, the government nationalised them, destroyed the civil aviation industry and set India back by decades. Under the Air Corporations Act[91] of 1953 that came into force on 28 May 1953, Parliament voted to nationalise nine airlines—Air India Ltd, Air Services of India Ltd, Airways (India) Ltd, Bharat Airways Ltd, Deccan Airways Ltd, Himalayan Aviation Ltd, Indian National Airways Ltd, Kalinga Airlines, and the Air India International Ltd—and replaced them with Indian Airlines and Air India International. The function of the corporations was to provide safe, efficient, adequate, economical and properly coordinated air transport services, whether internal or international or both.[92] Overnight, the business of running airlines by private citizens was made illegal, with punishments ranging from a minimum fine of Rs. 1,000 to a maximum imprisonment for three months, or both[93] for each flight. In tune with socialism, the nationalisation of airlines hurt only capital; all employees were shifted to the new corporations, turning a market-driven, services-oriented, consumer-centric business into the domain of overpaid, sullen and highly entitled employees. The political success of this single Act captured and consolidated government's attitude towards the private sector and set the pace for the nationalisation of several other sectors, notably banking,[94] life insurance,[95] general insurance[96] and mining.[97] This nationalisation facilitated politicians, senior bureaucrats and the very rich, but destroyed India's civil aviation, a sector that has a multiplier effect on the economy. Although J.R.D. Tata was appointed Chairman of both corporations, he found the processes stifling. "If government want them [Air India and Indian Airlines] run as commercial concerns, they should pick the best men they can get and let them get on the job, subject only to general policy control," Tata wrote to then Civil Aviation Minister Humayun Kabir, expressing his angst on long-winded board meetings, 100- to 150-page agendas and the unending discussion of previous agendas.[98] The recent failure of Air India's strategic disinvestment,[99] which could have helped reduce the burden on taxpayers, shows the government needs to get real and rethink the sale pragmatically.

Chapter 11

State Bank of India Act, 1955

Following the launch of the first Five Year Plan with development as a priority, Parliament passed a law on 8 May 1955 that enabled the government to take over the Imperial Bank of India through the State Bank of India Act.[100] The bank was constituted on 1 July 1955 but amendments followed, the most interesting of which is based on a story that has been widely reported[101] and which bankers informally call the "Talwar amendment". Then SBI chairman R.K. Talwar refused to give a loan to a sick cement company unless the company's promoter, chairman and CEO made way for a professional. The promoter was a friend of Sanjay Gandhi, whose message to step back was given to Talwar. Talwar refused to relent. Sanjay Gandhi wanted to sack him, but there was no legal provision to do so. The 'solution' was the 1976 amendment to the SBI Act, under which appointments of chairmen, vice chairmen and managing directors as well as their removal were handed over to the central government. The chairman, henceforth, was to be appointed by the central government in consultation with the Reserve Bank[102] for a term "not exceeding five years",[103] and the central government was given the right to terminate the terms of office of the chairman at any time before the expiry of the term.[104] For every Talwar who didn't bow before powers, there could be dozens who did, leading to hundreds of bad loans given out of political considerations rather than commercial ones, a practice that created a fiscal monster and has contributed to the ongoing non-performing assets crisis, particularly amongst public sector banks. The Lok Sabha on 10 August 2017 passed a bill[105] to amend the SBI (Subsidiary Banks) Act, 1959,[106] State Bank of Hyderabad Act, 1956 and further amend the State Bank of India Act, 1955, allowing for the merger of five associates with SBI. Through the six decades of its presence, the initial objective of extending "banking facilities on a large scale, more particularly in the rural and semi-urban areas" has remained a policy fig leaf, and it is only now, through payments banks and Jan Dhan Yojana,[107] that it is being fulfilled.

Chapter 12

Oil and Natural Gas Division, 1955

From "division" to "directorate" to "commission" and finally to a "company", the evolution of Oil and Natural Gas Corporation (ONGC) has moved with the times. Following the planning process, which brought oil and gas under the commanding heights and thus under government control, an Oil and Natural Gas Division was set up in October 1955 under the Geological Survey of India[108] to explore and develop hydrocarbon resources of India. The same year, the division was converted into an Oil and Natural Gas Directorate under the Ministry of Natural Resources and Scientific Research. On 14 August 1956, the directorate became a commission,[109] with enhanced powers but under the government.[110] Three years later, on 18 September 1959, the commission was converted into a statutory body under the Oil and Natural Gas Commission Act[111] of 1959, with the mandate to plan, promote, organise and implement programmes for the development of petroleum resources.[112] After a series of small discoveries, some of which turned out dry, in 1974, the organisation made a major discovery at the Bombay Offshore Basin and began commercial production two years later. The other big discoveries were at the Heera, Panna and Mukta oilfields.[113] In 1982, it made its biggest onshore gas discovery in Gujarat's Gandhar field. In tune with liberalisation, a structural change was underway. On 4 September 1993, the Act was repealed[114] and the commission converted into a company following which the government disinvested two percent of its shares through competitive bidding. Intermingled with ONGC's corporate structure, however, was India's strategic goal of energy security, the route to which was through global acquisitions. A 2011 agreement to explore oil blocks in Vietnam's waters, for instance, created tensions with China,[115] which claims the region as its own. In 1989, it created a subsidiary company, ONGC Videsh, with a mandate to prospect for oil and gas acreages abroad, including the acquisition, exploration, development and production of oil and gas fields. ONGC Videsh has stakes in 39 oil and gas projects in 18 countries.[116] The company, therefore, needs to be seen not simply as a body corporate but equally as an instrument of strategic importance in which the government's stake has reduced to 68.9 percent.

Chapter 13

Essential Commodities Act, 1955

Enacted on 1 April 1955, the Essential Commodities Act[117] is a law that has helped the government regulate the production, supply and distribution of 'essential' commodities such as drugs, oils, kerosene, coal, iron, steel and pulses. Under delegated powers, the Act empowers state governments[118] and Union Territory administrations to implement the law, which the central government monitors. This it has done by making the commodities available to consumers at 532,000 fair price shops[119] spread across India, which have been licensed to distribute such commodities. At a time when India was emerging from the aftermath of Partition and shortages, the objective was to protect citizens from exploitation by unscrupulous traders.[120] The executive tool of regulation was to control the hoarding of a commodity. Hand in hand with the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980,[121] government officials could detain or imprison hoarders (when introduced as an ordinance, it was criticised as being used to supress political opposition to detain without trial[122]). According to a Department of Consumer Affairs report,[123] between 2009 and 2014, under the ECA, 1.1 million raids were conducted, of which about 54,000 people (five percent) were arrested and 30,000 (2.7 percent) prosecuted, but only 1,381 or 0.12 percent were convicted. This shows a potential arbitrariness in the enforcement of the Act, part of which could be ascribed to errors of omission and part to commission. Certain provisions in the Act that discourage large-scale private investments in agricultural markets must be re-examined.[124] This re-examination and the accompanying changes must be done keeping the first principle of the law—ensuring essential supplies to the people and preventing exploitation by 'unscrupulous' traders—in mind. This may be done, for instance, by providing exemptions to exporters, food processors, multiple outlet retailers and large departmental retailers from applicability of stock limits, a 2015 NITI Aayog occasional paper titled *Raising Agricultural Productivity and Making Farming Remunerative for Farmers* noted. What the Act fails to see is that the era of shortages is now well behind us and the law needs to move with the times.

Chapter 14

Industrial Policy Resolution, 1956

Nine years into Independence, the government modified its hurriedly drafted 1948 policy and replaced it with the Industrial Policy Resolution[125] on 30 April 1956. By this time, the socialist pattern of development was etched in the minds of not just India's leaders but thinkers as well, who advised businesses to recognise that there would be no reversals in the policy direction and that they needed to map out a course of action consistent with the government's.[126] What were these? The state will "assume a predominant and direct responsibility for setting up new industrial undertakings", the resolution stated, reeking of an inherent suspicion of and contempt for the private sector. In its wisdom, the government classified industries into three types. One, industries whose future development will be the exclusive responsibility of the state.[127] Two, industries that will be progressively state-owned, and in which the state will generally take the initiative in establishing new undertakings but private enterprise will also be expected to supplement the effort of the state.[128] And three, all the remaining industries, which will be left to the private sector.[129] The resolution emphasised on support for cottage, village and small-scale industries by restricting production for large players, differential taxation or direct subsidies.[130] It also factored in the losses public sector enterprises would make to pursue the greater good of the people. Another objective of this resolution was to reduce regional inequalities.[131] However, as the Report of the Industrial Licensing Policy Inquiry Committee (also known as the Dutt Committee) noted, the actual operation of this policy resulted in increased regional inequalities: the four industrially advanced states of Maharashtra, Gujarat, West Bengal and Tamil Nadu benefited the most from the operation of this policy, receiving three-fifths of all licence approvals.[132] Given the socialist direction the country had taken, which required the government to plan every twist and turn—from state-granted licences to state-directed financing—the policy delivered larger political goals, but at a huge cost to wealth creation, economic growth and entrepreneurship. Effectively, it set the stage, over the next few decades, to the play of what is known as the Licence Raj.

Chapter 15

Nationalisation of Life Insurance, 1956

"The nationalisation of life insurance is an important step in our march towards a socialist society," Prime Minister Jawaharlal Nehru announced in Parliament.[133] "Its objective will be to serve the individual as well as the State." Six decades ago, the answer to every policy problem, in the case of life insurance unfair trade practices, was nationalisation. And thus—first through an Ordinance of 19 January 1956 and then by a law on 19 June 1956, the Life Insurance Corporation (LIC) Act[134]—the government nationalised 154 Indian, 16 non-Indian insurers and 75 provident societies into a single entity,[135] LIC, created on 1 September 1956. While the ostensible reason for nationalisation and the obliteration of all competition was unfair practices of the companies[136] and the protection of policyholders,[137] neither found a mention in the new law from which LIC derives its authority, powers and products: a legislative vacuum.[138] However, this Act was completely aligned with the ideological drift of the government and Parliament, and followed the Second Five Year Plan and the industrial policy resolution of 1956,[139] both of which codified the Licence Raj and looked at all private enterprises with suspicion. Effectively, LIC became a monopoly as far as offering insurance and low-return savings products to consumers was concerned. As a government-run Corporation, LIC has played—and is expected to continue to play—a prominent role in meeting social-sector obligations of the government. Complicating the equation further is Section 37 under Chapter VII of the LIC Act that ensures, by law, a sovereign guarantee on all "sums assured by all policies issued by the Corporation, including any bonuses". This not only gives an unfair advantage to LIC over private players but legitimises inefficient decisions taken by employees and agents, both of which, through their respective associations, objected to the removal or reduction of the guarantee when a Bill amending the Act was floated in 2009. As a result, Parliament sees LIC as yet another tool to pursue its social objectives at the cost of consumers. The only way to resolve this conflict would be to privatise LIC completely. However, since the politics of India still has one leg iron cast in socialism, this is unlikely in the foreseeable future.

THE SECOND DECADE

Chapter 16

Institutes of Technology Act, 1961

The idea for India to have scientists and engineers to drive its economic development and build industry came from Ardeshir Dalal,[140] a Resident Director at Tata Iron and Steel Company, a few years before Independence. As the idea grew, the government appointed a committee[141] in 1945, under Nalini Rajan Sarkar, that submitted its report in 1946. The committee recommended creating higher technical institutions, based on the Massachusetts Institute of Technology model,[142] following which five institutes of technology (IIT) were established at Kharagpur (1950), Bombay (1958, with assistance from UNESCO and the Soviet Union), Kanpur (1959, with a consortium of US universities), Madras (1959, with the government of West Germany) and Delhi (1961, with UK). The committee further recommended that the institutes should be managed by a small governing body, appointed by the government in consultation with the All India Council for Technical Education. It also noted that it "may be necessary to establish these by statute as corporate bodies". Following the report, the IIT Act[143] was enacted on 19 December 1961 to "declare certain institutions of technology to be institutions of national importance". The definition of "national importance" remains vague, however, the closest being something that serves as a "pivotal player in developing highly skilled personnel within the specified region" of the country/state.[144] The list also includes NITs and AIIMS, in addition to the IITs. Admission to an IIT is granted through competitive exams. Compared to other institutions, IITs receive huge grants, can create their own curriculum, and have minimal intervention from the government through a representation on the IIT Council, along with three Members of Parliament and chairmen and directors of all IITs. Today, there are 23 IITs. Several of them are merely a change in name—at Varanasi and Roorkee, for instance—and incorporated into the IIT brand through several amendments that culminated in the Institutes of Technology (Amendment) Act[145] of 2016. The IITs deliver world-class education to thousands of students, many of whom have become leaders in the government, corporate sector and not-for-profits in India and abroad. None of this would have happened without an active political will of then Prime Minister Jawaharlal Nehru, who centralised higher education for industrialisation.[146] However, while building institutions is hard, maintaining them is even harder: in the latest global university rankings of 950 universities for 2018,[147] only two—Delhi[148] (rank: 172) and Bombay[149] (rank: 179)—figured in the top 200.

Chapter 17

Food Corporation of India, 1965

Enacted by Parliament under the Food Corporations Act[150] on 10 December 1964 and set up on 14 January 1965, the primary purpose of Food Corporation of India (FCI) included the purchase, storage, movement transport, distribution and sale of food grains and other foodstuff.[151] The objective was to safeguard the interests of farmers, maintain buffer stocks for food security and make grains accessible at reasonable prices to the weaker and vulnerable through the public distribution system. An important idea during the era of shortages, inflation and the related problems accompanying them, the role of the FCI is being questioned today, when India has a food surplus. According to NSSO data for 2012–13, only 13.5 percent paddy farmers sold their output to any procurement agency.[152] With food shortages well behind India, the FCI, with a total storage capacity of more than 80 million tonnes,[153] must be re-examined. A high-level committee on restructuring FCI recommended, amongst other things, that the institution hand over all procurement operations of wheat, paddy and rice to states,[154] revisit the minimum support price policy,[155] and gradually containerise[156] the movement of grains to reduce transit losses and to have faster turnaround time. It also recommended that farmers be given direct cash subsidy[157] to plug the diversion of urea. The new FCI should be a market-friendly agency for food management,[158] with a primary focus on creating competition in every segment of foodgrain supply chain, from procurement to stocking to movement and finally distribution in TPDS, so that overall costs of the system are substantially reduced, leakages plugged, and through it serving farmers and consumers. It also needs to focus its grain management techniques in areas where farmers have often not been able to receive the minimum support prices. Above all—politically, economically and administratively—the FCI must look into and get rid of the strange and repeated phenomenon that the Planning Commission in its Mid-Term Appraisal (1997–2002) called a dangerous situation of "huge surplus in FCI godowns coupled with widespread hunger" and warned that if the consumption of the poor did not increase, there would be "serious demand constraints on agriculture", making the growth target of 4.5 percent per annum unachievable.[159]

Chapter 18

Agricultural Prices Commission, 1965

The year 1965 began with the setting up of the Agricultural Prices Commission, later renamed Commission for Agricultural Costs and Prices (CAPC), with a mandate to recommend minimum support prices[160] (MSPs) and raise productivity and grain production[161] to serve the emerging demands of the country. Today, the CACP recommends MSPs of 23 commodities: seven cereals (paddy, wheat, maize, sorghum, pearl millet, barley and ragi), five pulses (gram, tur, moong, urad, lentil), seven oilseeds (groundnut, rapeseed-mustard, soyabean, seasmum, sunflower, safflower, nigerseed) and four commercial crops[162] (copra, sugarcane, cotton and raw jute). These it determines by analysing demand and supply; cost of production; price trends in the market, both domestic and international; inter-crop price parity; terms of trade between agriculture and non-agriculture; and the likely implications of MSP on consumers of that product. Effectively, the CAPC regarded itself as an arbitrator in the distribution of real incomes between producers and consumer, with cost-plus as its intellectual foundation.[163] Completely aligned with a control mindset, this practice of ensuring that farmers get a fair return on their production in an era of food surpluses continues till date and seems more a political tool than an economic one, a tool used for collective bargaining by farm leaders in a sector bereft of market-driven structures to control other voter constituencies and inflation. Several committees have raised this issue, but their mandate, ironically, was to recommend MSPs. Effectiveness of a price policy as an incentive to higher production would depend upon several other factors, some applicable to the whole economy in general and others more particular to agriculture, the Jha Committee on Foodgrain Prices stated[164] in its 1965 report. "The agricultural problem is not really a price problem but is a net farm income problem," noted the S.R. Sen Committee[165] in its 1980 "Cost of Cultivation" report, the echoes[166] of which are still heard today. An October 2007 study by the Planning Commission was even sharper: "The gains accruing to society (producers and consumers of rice and wheat) is at the cost of rising fiscal burden," it stated. [167] Further, the MSP nudge as part of directing the production of food has created serious imbalances in the demand and supply of principal crops in the country, and shortages of pulses and edible oils,[168] pushing the country to import its requirements. As the June 2005 Committee to Examine Methodological Issues in Fixing MSP stated,[169] "India is a 'food grains secure' country but not 'food secure'." Despite this, the use of MSP as a tool to increase farm incomes still continues. Budget 2018 stated that the MSP would be 1.5 times the cost.[170] These anomalies and contradictions must be smoothened out.

Chapter 19

Special Economic Zones, 1965

To provide fiscal incentives to industrialisation, infrastructure and technology, the instrument of a special economic geography was created in 1965 in Gujarat with the setting up of the Kandla Free Trade Zone, Asia's first,[171] to substitute the Karachi Port with the Kandla Port.[172] Along with the Santa Cruz Export Processing Zone, the two were the only 'economic zones' in India. Following the failure to speed up processes due to cumbersome procedures and red tape, governments at the centre as well as in the states have been modifying rules to deliver outcomes. In just six years, between 1978 and 1984, there were seven attempts to fix the problem: a committee to look into the problem hindering the growth of KAFTZ (1978); Alexander Committee on Import & Export Policies (1978); Review Committee on Electronics (1979); Dagli Committee on Controls and Subsidies (1979); Tondon Committee on Export Strategy (1980); Committee on FTZs and 100 percent EOUs (1982); and Abid Hussain Committee on Trade policy (1984).[173] Finally, on 23 June 2005, Parliament enacted the Special Economic Zones Act for the establishment, development and management of SEZs for the promotion of exports.[174] This was, and still remains, a difficult legislation to turn into action. Part of the problem is that the legislation and regulation of SEZs is a concurrent subject and different states have varying objectives. Karnataka wanted it to attract foreign investment; Tamil Nadu sought large dividends; Andhra Pradesh, West Bengal and Kerala pushed for employment generation; Maharashtra aimed for ease in doing business through simple procedures; and Uttar Pradesh wanted to promote industrial and economic growth.[175] Six states enacted their own SEZ Acts: Madhya Pradesh[176] and West Bengal[177] in 2003, Gujarat[178] in 2004, Haryana[179] and Tamil Nadu[180] in 2005, and Punjab[181] in 2009. On 31 March 2017, there were 218 SEZs in operation, largely in the information technology sector, employing 1.7 million workers, and delivering exports of more than Rs. 500,000 crore.[182]

THE THIRD DECADE

Chapter 20: Public Provident Fund, 1968

Chapter 21: Nationalisation of Banks, 1969

Chapter 22: Monopolies and Restrictive Trade Practices (MRTP) Act, 1969

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Chapter 28: Bonded Labour System (Abolition) Act, 1976

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Chapter 30: Standards of Weights and Measures Act, 1976

Chapter 20

Public Provident Fund, 1968

Even while jobs were scarce, opportunities few and entrepreneurship bound by the Licence Raj, the savings infrastructure was being expanded to serve small savers, the most important of which was the enactment by Parliament of the Public Provident Fund Act[183] on 16 May 1968 to "provide for the institution of a provident fund for the general public". For small savers that were neither government employees nor working in the organised private sector, the PPF offers a starting point. Apart from getting a higher interest rate on the investment made in this 15-year scheme, subscribers had—and still do have—complete protection against attachment of this money, "under any decree or order of any court" in respect of any debt or liability incurred by the subscriber.[184] Initially offered by post offices and branches of select public sector banks, today, most private sector banks can offer this scheme to the public, though they try and dissuade investors and distract them towards higher fee generating options like insurance. In 2014–15, savings in PPF stood at more than Rs. 50,000 crore, or 17.5 percent of total small savings at a gross level but, being a long-term scheme, shot up to 91.4 percent at the net level.[185] For those who are starting out on their savings and investments journey and are risk averse, the PPF, with its Rs. 1.5 lakh per annum investment limit, is the first and best destination to get assured and government-guaranteed returns. But these are not sustainable and pension products must be delivered to the masses on a commercial basis.[186] Given the buoyant markets and excellent regulatory framework by SEBI,[187] those with a little risk appetite are shifting to equity mutual funds and creating wealth. Lost in the transition to market-linked pension products, however, is the National Pension System that began with much fanfare with the launch of the Pension Fund Regulatory and Development Authority but lost its way.[188] Given that by 2020, India's demographic dividend would have peaked,[189] there is an urgent need to set up and deliver an extremely low-cost but market-linked product. Until then, PPF will remain the backbone of small savers.

Chapter 21

Nationalisation of Banks, 1969

In a 7 August 1969 speech on All India Radio, Prime Minister Indira Gandhi called upon the ghost of “a socialist pattern of society” with control over the commanding heights of the economy to justify an ordinance that nationalised banks. She highlighted the purpose of nationalisation: removing control of the few; providing adequate credit for agriculture, small industry and exports; giving a professional bent to bank management; encouraging a new class of entrepreneurs. “Nationalisation,” she proclaimed,[190] “is necessary for the speedy achievement of these objectives.” None of those objectives materialised. Instead, the ordinance was turned into law by Parliament, under the Banking Companies (Acquisition and Transfer of Undertakings) Act[191] of 1970, deemed to have come into force on 19 July 1969, “to provide for the acquisition and transfer of the undertakings of certain banking companies, having regard to their size, resources, coverage and organisation, in order to control the heights of the economy and to meet progressively and serve better, the needs of development of the economy in conformity with national policy and objectives”. Under this law, 14 banks with 85 percent of deposits totalling Rs. 50

crore were nationalised—Central Bank of India, Bank of India, Punjab National Bank, Bank of Baroda, United Commercial Bank, Canara Bank, United Bank of India, Dena Bank, Syndicate Bank, Union Bank of India, Allahabad Bank, Indian Bank, Bank of Maharashtra and Indian Overseas Bank—to serve better the needs of development of the economy in conformity with national policy objectives. The government had come prepared, having passed the enabling provisions through the 1 February 1969 amendments to the Banking Regulation Act of 1949. But it did not stand before the Supreme Court, which held that the Act was "invalid", and thus, the action taken in exercise of the powers under the Act were declared "unauthorised" through its 10 February 1970 order.[192] The reasons were that the Act was discriminatory, restrictive and allowed for unfair compensation.[193] Once the compensation problem was addressed, nationalisation of the 14 banks went through. It was later followed up with a second round under the 15 April 1980 Banking Companies (Acquisition and Transfer of Undertakings) Act,[194] which nationalised six other banks: Andhra Bank, Corporation Bank, New Bank of India, Oriental Bank of Commerce, Punjab & Sind Bank and Vijaya Bank.

Chapter 22

Monopolies and Restrictive Trade Practices Act, 1969

It is surprising that a five-decade-old issue—concentration of economic power, dominance in the hands of the few and the resultant inequalities—remains alive even today, not only in India but across the world. Following the February 1964 P.C. Mahalanobis report on the subject,[195] the government appointed Justice K.C. Das Gupta as chairman of the Monopolies Inquiry Commission, three months later. In its 28 October 1965 report, the commission placed the issue upfront:[196] "Concentration of economic power is the central problem; monopolistic and restrictive practices may be appropriately considered to be 'functions' of such concentration." The commission took the top industrialists of the day into confidence. These included Tata Group Chairman J.R.D. Tata, who said that unless these orders were made mandatory by law, the permanent body would become emasculated purely on political grounds or without ground at all.[197] In other words, he insisted on the primacy of the rule of law over good intentions. A 'Draft Bill' accompanied the recommendations—a practice that has been given the go-by since and was resurrected only by the 2013

Financial Sector Legislative Reforms Commission, which, apart from the recommendations,[198] has also written the draft of the Indian Financial Code[199]—based on which the Monopolies and Restrictive Trade Practices Act Commission was set up. Accordingly, on 18 December 1969, Parliament enacted the Monopolies and Restrictive Trade Practices Act[200] with five objectives: prevention of concentration of economic power to the common detriment, control of monopolies, prohibition of monopolistic practices, prohibition of restrictive trade practices, and prohibition of unfair trade practices. While the law has been successful in keeping its mandate of preventing concentration of economic power, its fallout is that today, India has only a handful of companies that are of global scale. Following the economic shift towards an open and liberalised economy, the Act was amended in 1984 and in 1991. Finally, on the recommendations of the S.V.S. Raghavan Committee[201]—which said that the MRTP Act lacked the provisions to deal with anti-competitive practices that may accompany the implementation of WTO agreements—the law was repealed and the commission wound up[202] to give way to the Competition Act in 2002.[203]

Chapter 23

Nationalisation of Coal, 1971

If insurance and banking could be nationalised, for how long could coal mining stay private? With the 30 April 1956 Industrial Policy Resolution[204] already in force,[205] and which had articulated the government's policy of placing 17 industries including coal in Schedule A—a grouping that only the state could run, not private entrepreneurs—nationalisation was only a matter of time. That it took 15 years to begin the process is surprising. As part of the "Commanding Heights" of the Indian economy, the ownership and management of India's primary energy source could only be in the government's hands. Accusations of inadequate private investment and the prevalence of unscientific mining practices already behind it, the poor working conditions of labour, particularly safety conditions, turned an economic activity into a political argument that led to nationalisation. The process of nationalisation came through four acts of Parliament. First, the Coking Coal Mines (Emergency Provisions) Act[206] of 1971 took over the management of coking coal mines and coke oven plants pending nationalisation. The Coking Coal Mines (Nationalisation) Act[207] of 1972 followed, and on 1 May 1972, the government nationalised coking coal mines and coke oven plants (excluding Tata Iron & Steel Company Ltd and Indian Iron & Steel Company Ltd) and brought them under a new PSU, Bharat Coking Coal Ltd. The next year saw the enactment of Coal Mines (Taking Over of Management) Act[208] of 1973, under which the government took over the management of coking and non-coking coal mines in seven states. Finally, all these mines were nationalised, following the enactment of Coal Mines (Nationalisation) Act[209] on 1973, under Coal Mines Authority Ltd. In November 1975, the government formed Coal India Ltd[210] as a holding company.[211] In this bout of takeover, the government nationalised 937 mines: 226 coking coal mines and 711 non-coking coal mines. Because nationalisation was done in a piecemeal manner, by the time it reached non-coking coal mines, many mines were reported to have been stripped of their plant and equipment.[212] In terms of outcomes, the first decade of coal nationalisation saw "political patronage of mafia activities" and bureaucratic corruption.[213] Essentially, the 'ills' of private ownership and profit passed on to mafias, unions and bureaucrats.

Chapter 24

The 93.5 Percent Marginal Rate of Taxation, 1971

In her 28 February 1970 Union Budget speech, then Prime Minister Indira Gandhi, who also held the Finance Minister's office, increased the marginal tax rate by 11 percentage points to 93.5 percent on all incomes above Rs. 200,000.[214] This meant that for every Rs. 100 earned above Rs. 200,000, a citizen could take home just Rs. 6.50. When a surcharge of 15 percent was taken into account, the highest marginal rate rose to 97.5 percent.[215] "Taxation is also a major instrument in all-modern societies to achieve greater equality of incomes and wealth. It is, therefore, proposed to make our direct tax system serve this purpose by increasing income taxation at the higher levels as well as by substantially enhancing the present rates of taxation on wealth and gifts," she said.[216] This increase followed the 1969 split in the Congress, and experts said[217] it was done to give the party a "pro-left image". This was completely in tune with a politics that saw wealth creators as parasites and high-income earning and tax-paying citizens as evil and believed in the distribution of wealth without creating it. The intellectual framework for high taxes was set by Finance Minister C.D. Deshmukh two decades earlier in his 27 February 1953 Union

Budget speech, where he set up the Taxation Enquiry Commission[218] under the chairmanship of John Mathai, with six other members, including V.K.R.V. Rao, who recommended a maximum marginal rate of 13.5 annas in the rupee[219] or 85 percent on incomes above Rs. 150,000, which seemed to them "as far as one can go in present circumstances". But even high taxes weren't enough. "Fiscal instrument must be deployed to discourage payment of high salaries and remunerations which go ill with norms of egalitarian society," Finance Minister Y.B. Chavan said in his 28 May 1971 Union Budget speech, while placing a ceiling of Rs. 5,000 per month on salaries, with Rs. 1,000 as perquisites.[220] To put these rates in context, it wasn't just the socialist influence that created such tax abominations; they also mirrored global benchmarks. The marginal rate in the US around this period was 70 percent, significantly lower than in 1944–45, when it stood at 94 percent.[221] These high rates penalised wealth creation, turned average households into criminals, kicked entrepreneurship in the face and created a whole new industry of organised tax evasion.

Chapter 25

Nationalisation of General Insurance, 1972

If life insurance could be nationalised, why not non-life insurance? And with that idea, Parliament, on 20 September 1972, passed the General Insurance Business (Nationalisation) Act[222] (GIBNA) for the "acquisition and transfer of shares of Indian insurance companies and undertakings of other existing insurers". Amongst its objectives: to serve better the need of the economy, to develop the general insurance business in the best interests of the community, to prevent concentration of wealth and to regulate and control the industry. In one stroke, Parliament nationalised the general insurance business of 55 Indian companies and the undertakings of 52 foreign insurers. The next month, these 107 companies were amalgamated into four separate companies—National Insurance Company Ltd, Oriental Insurance Company Ltd, New India Assurance Company Ltd and United India Insurance Company Ltd—with geographical equity embedded into the structure by placing their head offices at Kolkata (then, Calcutta), New Delhi, Mumbai (then, Bombay) and Chennai (then, Madras) respectively. On 22 November 1972, General Insurance Corporation (GIC) was incorporated to control and run the business of general insurance. The government transferred all its shares of the four companies to it, turning GIC into a holding company. Following the formation of the Insurance Regulatory and Development Authority on 19 April 2000 through an Act,[223] an amendment ended the monopoly of GIC over the general insurance business. The amendment to the ACT—General Insurance Business (Nationalisation) Amendment Act—turned GIC into a reinsurer,[224] removed its supervisory role over the four subsidiaries and transferred the shares vested with it back to the government. From 1972 to 2002, this journey of GIC—from nationalisation to a general insurance monopoly to opening up to private competition and finally to become a reinsurer—mirrors the direction of India's overall economic path over three decades. As with the nationalisation of life insurance, the government's main objective seemed to have been "pooling in of people's money and mobilising them to invest in key sectors",[225] which the government deemed important from the point of view of development. In other words, financial repression of citizens to support socialist and political objectives.

Chapter 26

Foreign Exchange Regulation Act, 1973

The writ of control as the driving force was not restricted within the country; Indian entrepreneurs couldn't look outside either. The Foreign Exchange Regulation Act (FERA) of 1947, with roots that went as far back as the Defence of India Act[226] of 1939, extended controls[227] to "the use or disposal of, or dealings in, coin, bullion, securities or foreign exchange". It was also a temporary law[228] that would expire on 31 December 1957, following the end of World War II. Since the shortage of foreign exchange was likely to continue, the Act "to regulate certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion" was made permanent. Prosecution under the Act, however, was laced with lack of evidence and want of proof. This, in turn, was due to inadequate staff to detect, investigate and prosecute offenses. As a result, convictions were few. A 1972 Law Commission report, Trial and Punishment of Social and Economic Offences,[229] observed lacunae in the Act and recommended changes in the law. Read alongside the June 1971 report, Leakage of Foreign Exchange through Invoice Manipulations,[230] FERA 1947 was repealed and FERA 1973 enacted by Parliament on 19 September 1973. The new law imposed restrictions on foreign equity, and on the growth and expansion of foreign-owned companies: all foreign companies had to dilute their shareholdings to 40 percent and needed permission from the RBI (as the regulating agency) to operate, if their shareholding was higher. Out of the 881 companies that applied to retain their higher share, only 150 were allowed; those who found the terms unacceptable began to wind up: 54 companies applied to exit India by 1977–78 and nine in 1980–81.[231] Amongst the high-profile exits were IBM and Coca Cola, both to protect intellectual property: the codes for IBM and the formula for Coca Cola. On the other hand, consumer goods giant Hindustan Unilever (then, Hindustan Lever) stayed on and diversified[232] into exports, high-technology sectors and chemicals manufacturing, with more than 60 percent of its assets in the core sector. One of the unintended consequences of FERA in its 27-year-long run, when it was repealed and Foreign Exchange Management Act (FEMA)[233] was introduced, was the high returns that Indian investors received by investing in companies that stayed in India, divested their equity, became 'Indian' companies and stayed 'blue chips' for decades.

Chapter 27

Sick Textile Undertakings (Nationalisation) Act, 1974

The lack of modernisation by textile mill owners on one side and a violent labour collective that greatly strengthened the trade unions on the other turned one textile mill after another sick during the 1960s and the 1970s. With cloth production and jobs on the line, Parliament on 21 December 1974 used its first instinct—nationalisation—and enacted the Sick Textile Undertakings (Nationalisation) Act[234] to acquire sick textile units, reorganise and rehabilitate them to "subserve the interests of the general public by the augmentation of the production and distribution, at fair prices, of different varieties of cloth and yarn". In one stroke, 103 sick textile mills were nationalised and transferred to the National Textile Corporation (NTC). The mill owners were collectively given Rs. 34.75 crore, while individual compensation ranged between Rs. 1,000 for 12 mills and more than Rs. 1 crore for seven mills, with a princely sum of Rs. 2.36 crore paid for Ahmedabad Jupiter, Spinning, Weaving and Manufacturing Mills. Two decades later, on 8 September 1995, the Act was amended[235] to allow NTC to transfer, mortgage or dispose of land, plant, machinery or other assets "for the better management, modernisation, restructuring or revival of a sick textile undertaking". On 17 December 2014, the Act was amended again. The Textile Undertakings (Nationalisation) Laws (Amendment and Validation) Act[236] ensured that leasehold rights on the nationalised mills remained vested with the central government on payment of lease-hold rents.[237] It also stated that no court shall have jurisdiction to order divestment from NTC of the property vested in it by the central government.[238] The sale of land, allowed under the amended law, has resulted in the explosion of plush offices and residential buildings in Mumbai's Lower Parel area, amongst others, and generated huge monies for the government. Possibly enthused by the socialist celebration of nationalisation as a silver bullet for all things market, the nationalisation of these mills failed to achieve the desired objectives of rehabilitating or reorganising them. Worse, they failed to deliver yarn, cloth, fair prices or jobs. Clearly, an industry needs more than a lazy law to keep it going.

Chapter 28

Bonded Labour System (Abolition) Act, 1976

The horrific system of slavery in the form bonded labour continues to exist in India even today. By lending a small amount of money at usury rates, a moneylender was able to get free and bonded labour, or slaves, for generations. Across states, this phenomenon has several nomenclatures: Adiyamar, Baramasia, Cherumar, Harwai, Kamiya, Khundit-Mundit, Kuthia, Munshi system, Seri, Vetti and so on. A government release stated that 282,429 bonded labourers were released and rehabilitated[239] by 20 July 2016, three-fifths of whom were from Tamil Nadu, Karnataka and Odisha. "Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law," Article 23 (1) of the Constitution of India states.[240] A right guaranteed by the Constitution was not enough, and on 9 February 1976, Parliament enacted the Bonded Labour System (Abolition) Act,[241] following an ordinance promulgated four months earlier. The Act has three-year jail terms for those enforcing bonded labour or advancing bonded debt. And yet, the practice has continued. According to a 1984 study, about 98 percent of labourers rehabilitated were enslaved due to loans taken by them, their parents or their relatives,[242] and the remaining two percent due to social malpractices, largely in Bihar, Karnataka, Odisha and Rajasthan.[243] About two in every five were made bonded labour at less than 15 years of age and eight percent at less than 10 years.[244] Further, 83.2 percent of them were from Scheduled Castes and Scheduled Tribes.[245] As if the ills of the practice were not enough, implementation of the law was found to be shabby. Under the 28 February 1976 rules, district vigilance committees were supposed to maintain registers containing details about freed bonded labour, including benefits such as land, loans and employment.[246] These registers were not maintained properly.[247] Beginning 25 October 1975, every bonded labourer has been set free and discharged from any obligation to render any bonded labour; their bonded debts have also been extinguished, and they are protected from eviction from their homestead. However, like most societal ills that laws try and grapple with, the practice of bonded labour persists.[248] Clearly a case of shoddy execution, bonded labour is a blot on the nation's collective conscience. Parliament has done its part by enacting laws, as has the Executive by putting processes in place, the latest being the 18 May 2016 Central Sector Scheme for Rehabilitation of Bonded Labourer.[249] Now district magistrates, who are the implementing authority, must come down on violators with the strong arm of the law.

Chapter 29

Urban Land Ceiling and Regulation Act, 1976

Thick in the middle of the Emergency, Parliament decided that the state needed to establish and usher in an urban land market and place ceilings on the ownership and possession of vacant land. As a result, on 17 February 1976, it enacted the Urban Land (Ceiling and Regulation) Act.[250] Its objective: to provide for the imposition of a ceiling on vacant land in urban agglomerations for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings. Once again, this was to prevent the concentration of urban land in the hands of the few and bring equity to subserve the common good.[251] Since land is a state subject, initially, 11 states—Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Odisha, Punjab, Tripura, Uttar Pradesh and West Bengal—adopted the Act.[252] Later, six more states followed: Assam, Bihar, Madhya Pradesh, Manipur, Meghalaya and Rajasthan. The ceilings an individual could own or possess were precise: 500 sq. m in category A urban agglomerations,[253] 1,000 sq. m in category B,[254] 1,500 sq. m in category C[255] and 2,000 sq. m in category D.[256] All excess land could be acquired by the state governments.[257] The impact: distortion of land markets in urban areas, rise in slums, creation of artificial land scarcity, skyrocketing land prices. Worse, the Act became a vehicle for corruption,[258] by invoking Sections 21 and 22, under which state governments could grant concessions in certain cases[259] and under certain circumstances,[260] handing them a discretionary tool. According to India Infrastructure Report 2009, out of 220,675 hectares of estimated excess land, 50,046 hectares were with state governments, while physical possession was acquired only of 19,020 hectares, of which the state governments could put to use only 10,909.85 hectares.[261] "Thus, only 9 percent land could be acquired physically in 23 years of its enforcement."[262] Promulgated in the name of securing equitable distribution of urban land, the Act had too many loopholes to allow any meaningful implementation. It did offer windfall profits for builders, land mafia and the powerful landed community. Out of tune with a liberalising India, the Act was repealed on 22 March 1999.[263]

Chapter 30

Standards of Weights and Measures Act, 1976

In tune with standards the world over to protect consumers, the Indian Parliament enacted the Standards of Weights and Measures Act[264] on 8 April 1976. The Act, which repealed the Standards of Weights and Measures Act[265] of 1956, laid the foundations of establishing standards on goods sold by weight, measure or number. The metric system was adopted as the unit of measurement, with kilogram becoming the base unit for mass, second for time, ampere for electric current, and so on. The Act also laid down Indian numerals as the base unit of numeration and declared that it should be made in accordance with the decimal system. Such standardisation spread across the country made it convenient for consumers to choose and evaluate products. It also ensured that all products were sold with a label that identified the commodity, informed the quantity in standard units, and the sale price. Giving inaccurate information would invite a fine and a prison term of up to five years. Enforcement being a state subject, Parliament enacted the Standards of Weights and Measures (Enforcement) Act[266] on 4 September 1985, with several overlapping clauses, strengthening the Inspector Raj, under which an inspector could search, seize and forfeit goods that were not conforming to the act. With imprisonment ranging from one to five years, the incentives for an inspector to be fair were few. The 29 July 1997 order of the Andhra High Court in the Lucas Indian Service Ltd and Others vs. the State of Andhra Pradesh matter is a case in point, where entrepreneurs were criminally charged and sentenced to be imprisoned for two years for using “M.R.P.” instead of “Maximum Retail Price”, which the high court reversed.[267] Both these laws were repealed once the Legal Metrology Act[268] of 2009, effective 1 April 2011, came into force, with standards set by the central government and enforcement by state governments. Amongst other changes that simplified procedures, the Legal Metrology Act brought in a verification process through government-approved test centres. Further, it did away with the regulation of in-house weights and measures, as well as regulation for prepacked commodities for exports, scientific investigation or research.

THE FOURTH DECADE

Chapter 31

Abolishment of the Right to Property, 1978

The spirit behind reducing the right to property from a fundamental right to a legal one was to abolish the zamindari system. And if you think that the 2000s have been the time of greatest tension between the executive, the legislature and the judiciary, think again: the war to remove the right to property from fundamental rights in the 1970s was far more intense and unrelenting. Between 1951 through 1976, seven amendments—1st[269] (1951), 4th[270] (1955), 17th[271] (1964), 25th[272] (1971), 39th[273] (1975), 40th[274] (1976), and 42nd[275] (1976)—were brought in, all of which were struck down by the Supreme Court. Effectively, successive governments felt they would not be able to pay the market price, which, under Article 31(2), was the Supreme Court's reading of the word "compensation", to acquire or nationalise private property for the huge public works it had envisaged. "While the Congress Government for over a quarter of a century had eaten into the vitals of Article 31(2) … it was left to the Janata Government to eliminate the right to property altogether from the list of Fundamental Rights," wrote legal expert Durga Das Basu[276] in his commentary on the Constitution of India. Thus, after a long legislature–judiciary tug-of-war, it was with the 44th Amendment[277] (1978) and the repeal of Article 19(1)(f) that the right to property was taken away. But there are two exceptions: one, minorities "to establish and administer educational institutions of their choice" and two, "persons holding land for personal cultivation and within the ceiling limit to receive compensation at the market value". Thus, with a 13-word insertion, the right to property was debased to a legal right from a Constitutional one.[278] On the issue of compensation, the state must offer full market value. Although the right to property has been removed as a fundamental right, obligation to pay adequate compensation remains a legal right, under Article 300A. Regardless of political views and the legislature–judiciary tension, every time the Supreme Court struck down a proposed amendment, it led to a deeper debate and public deliberation. This is an important lesson in the strength of India's robust democracy.

Chapter 32

Nationalisation, then Privatisation, of Maruti Udyog, 1980

Born to personal aspirations of Prime Minister Indira Gandhi's son Sanjay Gandhi, dying in the hands of a failed venture, resurrected through nationalisation, and developed through partnership and disinvestment, the journey of India's largest carmaker has been across terrains of citizenship, changing policy environment, controversies and, above all, consumer embrace. The journey began with the incorporation of Sanjay's Maruti Motors Ltd on 4 June 1971, one of the three out of 11 applicants given the licence to manufacture cars. When the Janata government came to power, post-Emergency in 1977, it appointed the D.S. Gupta committee[279] to probe for irregularities or undue favours to Maruti. But with the change of government, nothing came of it.[280] When Indira Gandhi returned to power in 1980—the same year that Sanjay died in an air crash—she nationalised her son's 'dream', first through an ordinance and finally with a 27 December 1980 law, the Maruti Limited (Acquisition and Transfer of Undertakings) Act,[281] with objectives that went beyond the takeover. These included, "securing the utilisation of the available infrastructure", "modernising the automobile industry", "effecting a more economical utilisation of scarce fuel", and "ensuring higher production of motor vehicles". The price of this nationalisation: Rs. 4.34 crore. This is the only time in India's history that a private company, owned by the prime minister's family, has been nationalised and was debated and questioned in Parliament.[282] On the operations side, a partner was necessary to bring the knowhow. Renault was the first and absolute choice,[283] but the government explored other companies too—Fiat, Peugeot, Volkswagen, Dalmier-Benz, MAN, Daihatsu, Toyota, Nissan, Honda—before homing in on Suzuki, with a 14 April 1982 MoU to provide technical collaboration and licence to manufacture an 800-cc car, a carry van and a pick-up truck.[284] This laid the foundations of not only a car company but also an automobile revolution that has made India one of the largest auto nations, both as a producer as well as a consumer. On 14 May 2007, the government exited the company[285] through a two-stage process: a rights issue of Rs. 400 crore followed by the sale of its existing shares through a public issue. Maruti shows how a private limited company was first nationalised, then disinvested in parts, then turned into a public limited company, in the process creating wealth for the Indian government, a huge auto market in India, and a company that makes more cars in India than in Japan and whose value and profits are greater than its promoter's.

Chapter 33

Sick Industrial Companies Act, 1985

If a business is not doing well, it must be fixed or shut down. But in the scarcity economy that India was dealing with, every resource needed be protected with attempts made by the government to prevent a company from imploding. Driven by this idea, on 8 January 1986, Parliament enacted the Sick Industrial Companies (Special Provisions) Act.[286] The objective was a timely detection of sick and potentially sick companies and speedy determination by a "board of preventive, ameliorative, remedial and other measures". The process of closing companies began in 1975 with the setting up of the Tandon Committee[287] from the banking side, followed by the H.N. Ray Committee the next year, and the Tiwari Committee in 1981.[288] Based on the Tiwari Committee recommendations to usher in a regime for revival and rehabilitation of distressed corporate entities by the setting up an exclusive quasi-judicial body, Parliament enacted the law and established the Board for Industrial and Financial Reconstruction (BIFR) that began functioning in 1987[289]. It also placed the responsibility of informing the BIFR about potential sickness—accumulated losses eroding 50 percent of the company's peak net worth in the preceding four financial years[290]—on the board of companies, within 60 days[291] from the finalisation of its accounts. One of the important tools of an entrepreneurial society is the ability of an entrepreneur to fail without losing his shirt or being turned into a pariah by society. Not all problems of business failures—mismanagement of resources, bad financial management, or external risks like foreign exchange fluctuations and technological disruptions, for instance—are deliberate fraud. Because of people's extreme suspicion of entrepreneurs, however, it is easy to call out fraud, a fuzzy concept that is almost impossible to prove. The "mean delay" at BIFR was 749 days, while in "19% of the cases, it took more than three years to arrive at a decision", the 13 July 1993 Omkar Goswami Committee report stated.[292] The Act was repealed on 1 January 2004,[293] and BIFR was dissolved[294] on 1 December 2016[295] to give way to the Insolvency and Bankruptcy Code (IBC), 2016.[296] Effectively, SICA put in place a debtor-friendly regime, in which defaulting borrowers could delay resolution for long periods of time and strip assets of value,[297] a tactic the IBC takes head on.

Chapter 34

Consumer Protection Act, 1986

The need for protecting consumers comes from the nature of asymmetric information and the associated power that comes with it; an organised entity such as a company, an agency, a trader or a shop will always have more of both compared to a consumer. Around the time that India began to experiment with the idea of an open economy, Parliament enacted the Consumer Protection Act,[298] on 24 December 1986, and established consumer protection councils and a three-tier structure of dispute redressal through quasi-judicial bodies: 629 District Forums and 35 State Consumer Disputes Redressal Commissions, with the National Consumer Disputes Redressal Commission in New Delhi.[299] The law offers remedy for goods as well as services. This structure has disposed of 91 percent of the 4,868,991 cases filed since inception.[300] But the law is not all about litigation. It gives consumers the right to know about quality, purity, standard and price of goods and services. The Act was amended in 1991[301] to ensure every hearing at the district and state levels was conducted by the president and a member.[302] Another amendment in 2002[303] raised the compensation that district fora could deliver to Rs. 20

lakh,[304] that of states up to Rs. 1 crore,[305] and higher amounts for National Commission. The legislative evolution is not over: pending in Parliament is the Consumer Protection Bill of 2015[306] that seeks to prevent unfair trade practices[307] and establish Central Consumer Protection Authority,[308] a regulatory body to promote, protect and enforce the rights of consumers. This authority will be the executive agency that will make interventions when necessary and initiate class action—a missing piece in the consumer movement in India—including enforcing recall, refund and return of products. Going forward, as the Indian economy gets more complex and consumption increases with prosperity, protecting consumers will become a political issue and this law will gather greater importance.

THE FIFTH DECADE

Chapter 35

Prevention of Corruption Act, 1988

As in every nation, corruption—defined as getting monetary or non-monetary benefits by a public servant through bribery—has been a function of India since before Independence, was institutionalised over the past seven decades and threatens to continue for as long as it can be forecast. Chanakya's Arthashastra devoted many pages to exploring it and defining punishments.[309] In October 1913, Munshi Premchand's short and poignant story *Namak Ka Daroga* illustrated it through literature.[310] And while the first anti-corruption law in independent India was the Prevention of Corruption Act of 1947[311] to supplement the provisions of the Indian Penal Code,[312] it was on 9 September 1988 that Parliament, feeling the law was too narrow, enacted the Prevention of Corruption Act.[313] Its objective was to consolidate and amend the law relating to the prevention of corruption. The law defines acts of corruption in fair detail, with punishments that include fines and imprisonments of between six months and 10 years. Being nationalised, the books of banks too came under the swathe of this law, which, according to Finance Minister Arun Jaitley, is deterring some banks from taking honest decisions.[314] In

2013, the government proposed amendments on as many as 19 sections of the Act, through the Prevention of Corruption (Amendment) Bill.[315] These included attacking the "supply side" of corruption by deleting a provision that protects a bribe giver from prosecution. The Act proposed that an 'offer' of a bribe to a government servant would be punishable with imprisonment of not less than three years and could be as high as seven, the same as the bribe receiver's. However, this could deter bribe givers from becoming witnesses. The Select Committee took note and added, "Mere offering of bribe may not be appropriate to be an offence unless it is accepted or demanded,"[316] suggesting the removal of the word "offer". Further, if the bribe giver reports the matter to the police within seven days of paying the bribe, he may be given immunity from criminal prosecution. It also recommended that the minimum term of sentence for the bribe giver should be left to the discretion of the court. India's fight against corruption continues.

Chapter 36

National Highways Authority of India Act, 1988

India's national highways comprise two percent of the country's total road length but cart 40 percent of all traffic. The strengthening of these arteries of trade, commerce and transport has been well-documented and has been a high priority for all governments and kingdoms, from ancient India till date. The first legislative step to consolidate and look at highways as an enabler of economic growth in Independent India was through the enactment of the National Highways Authority of India Act,[317] on 16 December 1988, to oversee the development, maintenance and management of national highways. The authority was operationalised seven years later in February 1995. Amongst other powers, the most important was the fact that any land NHAI needed to acquire to build highways was deemed as needed for "public purpose", under the provisions of the National Highways Act[318] of 11 September 1956. The other institution NHAI brought to the country in a big way, both in terms of value and impact, was the public–private partnerships (PPPs). Although PPPs have delivered benefits and value—national average time overrun of non-PPP projects is 22 versus 15 for PPP projects[319]—between land acquisition and government approvals, the sector has not been able to grow as fast as it can. One reason could be financing and the rise of non-performing assets (NPA) in the sector. According to a 10 August 2016 Parliamentary Standing Committee report on Transport, Tourism and Culture, NPAs stood at 52 percent of total loan disbursed for road sector.[320] It went on to say that it was "bizarre" that banks work under the fear of CBI and CVC.[321] It also recommended that the model concession agreement of NHAI be restructured in a manner that was acceptable to banks and under which they should not end up accumulating NPAs.[322] As the government proposes to spend Rs. 100,000 crore to take highway construction to 41 km/day from 22 km/day,[323] these are the policy problems it needs to resolve to accelerate the journey. It is heartening to note that every year since 2011–12, the length of the highways constructed has been rising, tripling to 6,467 km in 2016–17 from 2,013 km.[324]

Chapter 37

Statement on Industrial Policy, 1991

If the Industrial Policy Resolution of 1956 was the single-most important policy that shut India down, the Statement on Industrial Policy of 1991[325] is the overarching architecture that opened all doors. To suggest that the statement completely changed the philosophical direction and structural contours of the Indian economy will, however, be a gross exaggeration, with "self-reliance"[326] continuing to dominate the discourse. The resolution was thrust upon India—a crisis-driven outward-in call to reform, not an inward-out course-correction—following the double-digit inflation and rock bottom foreign-exchange reserves.[327] This economic state of affairs followed the excessive control of the state, with RBI being unable to regulate money supply.[328] In the economic history of India, 24 July 1991 will be remembered as the date when five major initiatives were unleashed. First, the abolishment of industrial licensing for most industries,[329] automatic clearance for projects where imported capital goods were backed by foreign equity,[330] the backing off of the central government from giving industrial approvals in cities with populations of more than 1 million[331] and so on. Second, flexibility in FDI approvals, with 51 percent foreign equity, allowing "priority" industries,[332] trading companies,[333] and the formation of a Special Empowered Board[334] to negotiate it. Third, foreign technology agreements, under which automatic permission would be given in "high-priority" industries[335] but all other proposals would need specific approvals.[336] Fourth, a review of the public sector portfolio through a de-reservation of areas it could function in,[337] referring sick public sector enterprises to the Board for Industrial and Financial Reconstruction,[338] and formation of professional boards.[339] And five, the amendment of the MRTPC Act to remove threshold limits of assets,[340] with emphasis on controlling and regulating monopolistic, restrictive and unfair trade practices.[341, 342] Despite the clearly visible political-bureaucratic reluctance in the policy, economic reforms have continued till date, best expressed through India's GDP growth: it was 3.6 percent during 1960s, 3.4 percent in 1970s, 5.6 percent in 1980s and 1990s, 8.6 percent in the 2000s and 5.9 percent between 2011 and 2015.[343] Today, as India becomes the world's fastest-growing economy, it rides on the shoulders of this resolution that unleashed the energies of its entrepreneurs.

Chapter 38

Foreign Investment Promotion Board, 1991

Set up in August 1991 as part of the Prime Minister's Office, the Foreign Investment Promotion Board became India's landing point for processing proposals for foreign-direct investment (FDI) and making recommendations to the government, following the 24 July 1991 Statement on Industrial Policy.[344] The approvals were made through a three-tier system: a committee of senior officials, the finance-minister-chaired Empowered Committee on Foreign Investment for investments up to Rs. 300 crore, and the Cabinet Committee on Foreign Investment for higher investment amounts.[345] Five years later, in 1996, the board was transferred to the Department of Industrial Policy and Promotion under the Ministry of Commerce. By a 30 January 2003 Presidential Order, FIPB was transferred to the Department of Economic Affairs, Ministry of Finance, as an inter-ministerial body, responsible for expeditious processing of FDI applications and making recommendations for government approval on the basis of the Extant Policy, Press Notes, RBI notifications and other related notified guidelines.[346] While the institution did facilitate investments into India, the structure was opaque. Its executive committee assessed matters on a case-by-case basis,[347] not by any system of rules. The functioning of the board betrayed a regulatory hubris. "When proposals are rejected, FIPB often does not articulate reasons for such rejection," the 30 July 2010 Report of the Working Group on Foreign Investment stated[348]. This was a lost opportunity, as decisions of the FIPB could have built a body of principles, if not rules, around which policy execution could have been transparently made for future investors. Finally, 26 years after its formation, FIPB was abolished by a 5 June 2017 Office Memorandum,[349] a 10-week-long transparent and standard operating procedure[350] laid out, and the approval granting mechanism transferred to the 11 administrative ministries and departments: from mining (Ministry of Mining) and defence (Ministry of Defence) to telecom (Ministry of Communications) and banking (Ministry of Finance). Now that the decision to allow or disallow foreign investors has been left to the administrative ministries, it remains to be seen how such a decentralisation of power, and the journey from the PMO to the ministries, works on the ground. Taking a step back, it is clear that in the liberalisation of foreign-investment rules, the road has been one of loosening controls and removing barriers, both financial and technological: a drive to facilitation.

Chapter 39

Disinvestment, 1991

India's disinvestment programme follows the overall gradualism in dismantling yet another icon of the past: public sector enterprises, where the government has no business being in business. In his 4 March 1991 Interim Budget speech, Finance Minister Yashwant Sinha announced that up to 20 percent of the equity of selected PSEs would be disinvested in favour of mutual funds and investment institutions in the public sector.[351] Finance Minister Manmohan Singh repeated this in his landmark 24 July 1991 final Budget speech. He further added "as also to workers" in these firms.[352] Both governments—the BJP and the Congress—chose to replace direct government ownership of these enterprises with an indirect one through government-owned financial institutions such as UTI and public sector mutual funds. Worse, even within these confines, those bidding for shares had to buy them in groups of companies bundled together into a single package of loss-making and profit-making PSEs. Transparency not being a factor, it is not clear which company was sold to which institution in the first year (1991–92) but the total aggregated to Rs. 3,038 crore. On 23 August 1996, a Disinvestment Commission[353] was set up to recommend and supervise the process of disinvestment, the facilitation of which was done through a Handbook of Disinvestment through Public Offerings.[354] Of the 72 PSEs referred to it, the commission recommended disinvestment in 58, including 31 through strategic sale.[355] The next two years saw 27 PSEs disinvested and Rs. 4,704 crore brought in, mostly through heavyweights such as BPCL, HPCL, MTNL, IOC and SAIL. Since then, the government has disinvested its share in several PSEs, most of them listed. So far, the government has realised more than Rs. 212,000 crore from the sale of central PSEs.[356] Under strategic sales, the government disinvested 15 companies—Modern Food to Hindustan Unilever in 1999–2000, BALCO to Sterlite in 2000–01, CMC to Tata Sons in 2001–02, IPCL to Reliance Industries in 2002–03—and individual properties of IDTC to various buyers. Despite all these efforts of successive governments to get out of business, as of financial year 2015–16 (the latest available data), there are 320 operational PSEs in India[357] (from five in 1947 and 217 in 2007[358]). Going forward, the big disinvestment would be Air India.[359]

Chapter 40

Securities and Exchange Board of India, 1992

Established in 1988 by an administrative order and without any powers to oversee the capital markets, and finally empowered by the Securities and Exchange Board of India Act[360] (SEBI) on 4 April 1992 "to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market", India's capital market regulator has been the most investor-focused amongst all financial regulators. In its 25-year-long history, coinciding with the opening up of the Indian economy, SEBI has been able to steer the direction of markets and its participants, ensuring price discovery and governance of securities, in the process allowing efficient mobilisation and allocation of capital, all the while keeping the interest of investors in mind and staying abreast of global evolution in finance. While it was created as the next logical step after the end of the Controller of Capital Issues (see above),[361] its birth coincided with the Harshad Mehta scam—a diversion of funds to the tune of over Rs. 3,500 crore from the banking system to various stockbrokers[362] in a series of transactions (primarily in government securities) between April 1991 and May 1992—at its peak, exposing loopholes in the banking sector that

SEBI had to face in stock markets. Since then, SEBI has turned India's capital markets arguably into one of the world's best regulated. It has also overseen and guided the transition of markets from a point where government-controlled institutions such as LIC and UTI drove shallow markets to one where foreign institutional investors and mutual funds balance one another and provide a greater depth. SEBI has steered the increase in competitive forces in capital markets, pushed for greater disclosures and transparency in intermediaries and companies, reduced transaction costs and information asymmetries,[363] strengthened corporate governance[364] and, through mutual funds, created a transparent, low-cost, high-disclosure vehicle for investors. The one thing about capital markets is their dynamism and immediate transference of ideas, particularly loopholes. On this front, SEBI has kept pace with change. However, given the disruptive nature of markets, this is a watchdog that must continue to keep a sharp vigil while catalysing and serving India's growing capital-market needs.

Chapter 41

Debt Recovery Tribunals, 1993

The failure of a company to repay the principal or interest leads to creditors initiating steps to recover their debt. Various laws have enabled the creation of these systems, of which Debt Recovery Tribunals (DRTs)—set up under the Recovery of Debts due to Banks and Financial Institutions Act[365] and passed by Parliament on 27 August 1993—is one. The M. Narasimham Committee (1991) on the Financial System had recommended the setting up of Tribunals[366] with special powers for the adjudication and speedy recovery of debt as critical to the successful implementation of financial-sector reforms. This was timely, given that as of 30 September 1990, there were more than 1.5 million cases pending in various courts, which had been filed by public sector banks and 304 cases by financial institutions, involving recoveries of more than Rs. 6,000 crore.[367] The Act provided for the establishment of DRTs for "expeditious adjudication and recovery of debts due to banks and financial institutions". The idea was to take the long litigation out of civil courts and speed up the process of recovery to balance the asymmetry in protecting creditors. The Act was challenged, with more than 600 cases being filed in various courts. "Since the Act erodes the independence of judiciary, it is unconstitutional," the Delhi High Court ruled in its 10 March 1995 order.[368] The court further noted that the Act's provisions were loaded in favour of banks, as if the debt to be recovered was a tax.[369] In its 12 June 1998 report, the Committee on Subordinate Legislation took cognisance of the verdict and recommended that DRTs and Debt Recovery Appellate Tribunals should be restructured on the lines of revenue court/special courts with codified rules and procedures and should be liberated from the deemed judicial status to a full-fledged judicial authority.[370] A 25 March 2000 amendment[371] fixed this problem. On the execution side, the functioning of DRTs has been unsatisfactory. Reasons include insufficient number of tribunals and presiding officers, recoveries taking two years instead of the recommended statutory six months, lack of sufficient judicial experience by recovery officers, and inconsistency of the decision-making process between tribunals.[372] Delays occur largely due to three reasons: 43 percent because parties seek more time to file documents; 15 percent because the tribunal (the presiding officer or the recovery officer) is absent; and 12 percent because the lawyer is absent.[373] With the Insolvency and Bankruptcy Code now firmly in place to fix the problem of non-performing assets, perhaps it is time to say goodbye to DRTs, which have become a non-performing legislation.

Chapter 42

National Stock Exchange, 1994

Incorporated in 1992, recognised by SEBI in 1993 and in business since 1994,[374] National Stock Exchange (NSE), when launched, brought about a fundamental and technological shift in the way equities were traded.[375] Out went the opaque practice of open outcry, physical floor-based cries (then prevalent at the Bombay Stock Exchange (BSE) and other regional exchanges), and in came computer-based order-matching trading,[376] reduction in transaction costs, and improvements in efficiency, transparency and safety. With the setting up of India's first depository, National Securities Depository Ltd, in August 1996, which enabled the dematerialisation of securities, the NSE led the shift to electronic trading. It took only one year for the NSE to surpass the BSE and become India's largest stock market.[377] After dragging its feet, the BSE followed, and today, both the exchanges stand amongst the world's largest and best-governed. The anonymous order matching system adopted by NSE was considered one of the best world over.[378] Since then, NSE has expanded its portfolio to include derivatives (equities, currencies and global indices), debt and sovereign gold bond issuances. The reasons for NSE's fast growth to becoming

India's leading exchange were transparency and the resultant competition. This it did by first offering the same access to traders across India, and not just to those in Mumbai and Delhi. Second, it created a market in securities intermediation infrastructure, with easy entry and exit for traders. Third, it brought in electronic order matching.[379] Fourth, through computer-based trading screens, it offered anonymous trading with a guaranteed settlement. And fifth, it was run by a professional management rather than an association of brokers. In a little more than a year, liquidity of the most traded shares shifted to NSE from BSE, and brokerage fees dropped[380] from 2.5 percent to less than 0.5 percent. By the sheer success of its strategy, NSE, through competition, nudged BSE to reform. Today, both the exchanges compete for business and service, and investors get value. Stepping back, the success of NSE is as much due to political economy as to the organisation: its ability to undertake a radical reform agenda was made possible by an environment of support from the SEBI and the Ministry of Finance that lasted until 1995.[381]

Chapter 43

National Telecom Policy, 1994

From a point where it took an MP (Member of Parliament) to recommend two landline telephone connections every month to one where several operators now slug it out in the market for every subscriber, the journey of India's telecom—a perfect mirror of the economy's shift from shortages to surpluses—is a success story of governments, companies, regulator and consumers. Set up in 1994, the National Telecom Policy[382] (NTP) aspired to make telephones available on demand by 1997. An important shift in the approach to NTP 1994 was the realisation that achieving these goals wouldn't be possible without private sector involvement.[383] With a greater focus on landlines, the policy opened up hardware manufacturing: switching equipment, telephone instruments, optical fibre cables.[384] Private companies were allowed into the sector, with tariff, revenue share and urban-rural targets. Two years earlier, the government had opened value-added services such as email, voice mail, data, and audio and video text services. With NTP, it proposed a tender-based licensing system that would take into account technology, national security and commercial terms for paging and cellular mobile services.[385] The scheme was badly designed and could not deliver on most of its goals. One of the reasons ascribed to its failure was overestimation by operators and the consequent high bids, when the real demand was much lower than projected. In basic services, three rounds of bidding saw six licences being issued, of which only three had commenced limited operations. While it was a bold step in the early years of liberalisation, NTP 1994 continued to propagate a centralised decision-making approach,[386] at odds with the emerging needs. Making matters worse, global changes were ushering in a convergence of markets and technologies, rendering the 'silo' approach redundant. While the policy could not deliver the results it had planned, and was followed by the New Telecom Policy 1999,[387] it was the first step towards acknowledging the role of telecom as a catalyst to the country's economic development. It also set the stage for recognising telecommunications as part of critical infrastructure in the knowledge economy and ushered in a regulator, through the Telecom Regulatory Authority of India Act[388] of 1997.[389]

THE SIXTH DECADE

Chapter 44

Tarapore Committee on Full Convertibility, 1997

As the Indian economy began to catch up with the rest of the world, the one hurdle was capital account convertibility (CAC) of the Indian rupee. Realising that a liberalised economy needed to have free flow of transborder capital, the Reserve Bank of India appointed S.S. Tarapore as Chairman to the Committee on Capital Account Convertibility to review the international experience, indicate the preconditions for CAC, recommend measures for achieving CAC, specify the timeframe, and suggest domestic policy measures and changes in the institutional framework.[390] Submitted on 3 June 1997, the Tarapore Committee report laid the foundations of India's baby steps towards full convertibility and argued that since India had already adopted current account convertibility in August 1994 under IMF obligations and CAC was already instituted for foreign investors, non-resident depositors and resident corporates,[391] controls that remained on resident individuals must end. The committee recommended a phased, a three-year implementation plan[392] for CAC, with preconditions that included reducing fiscal deficit[393] from 4.5 percent to 3.5 percent, keeping the average inflation rate[394] between three percent and five percent, and strengthening the financial system by reducing non-performing assets[395] of banks from 13.7 percent to five percent by 2000. It also recommended that individual residents be allowed to invest in assets in financial markets abroad, up to $25,000 in Phase I, $50,000 in Phase II, and $100,000 in Phase III.[396] These, the committee said, needed legislative changes, particularly in FEMA[397] of 1999.[398] This was around the time that the Asian Crisis[399] was in full swing, and financial conservatives argued that one of the reasons India (as well as China) was protected from the crisis was due to the non-implementation of CAC.[400] Nine years later, a plan for a 'fuller' convertibility was explored in the 31 July 2006 Report of the Committee on Fuller Capital Account Convertibility,[401] again chaired by Tarapore. But Tarapore's conservative approach that was appropriate in 1997 was seen to be barely incremental in 2006, a dissent note in the report stated.[402] Since then, politics seems to have embraced a more, if not completely, open trade as the economic model and is steadily progressing on the path set by Tarapore two decades ago.

Chapter 45

Telecom Regulatory Authority of India, 1997

Once India's telecom got on the growth path, it was only a matter of time before a regulator would be created to oversee the sector. As a result, on 28 March 1997, Parliament enacted the Telecom Regulatory Authority of India Act[403] (TRAI) to regulate services, adjudicate disputes, dispose of appeals and protect the interest of the service providers and consumers while promoting and ensuring the orderly growth of the telecom sector. Despite the Act, TRAI was critiqued for being a body without regulatory authority,[404] constantly the victim of sniping by the government's Department of Telecommunications—in the domestic long-distance sector,[405] for instance—that could neither discharge its function of ensuring a level playing field nor inspire consumer confidence. Through a 25 March 2000 amendment,[406] the Act established the Telecom Disputes Settlement and Appellate Tribunal[407] to adjudicate in disputes between a licensor and licensee, two or more service providers, and service providers and consumers.[408] The main task of TRAI is to give policy recommendations to the government. Unlike SEBI[409] or Competition Commission of India,[410] TRAI is not an independent regulator and the government that funds it has the power to issue directions that are binding on TRAI. Effectively, therefore, the regulator makes recommendations and fixes tariffs and rates for telecom services. Following a political controversy, the Act was further amended on 17 July 2014 to enable the TRAI chairperson and full-time members to accept employment in the central or state governments, as well as in any telecom company two years after they cease to hold office.[411] Because of the high-stakes nature of the industry—from spectrum auctions and economic power to security implications and critical infrastructure status—the sector has become as much a political as an economic cesspool. But all through, and despite allegations against it, TRAI has managed to walk the thin line of credibility, encouraged competition and, through them, ensured that Indian consumers pay the world's lowest tariffs.

Chapter 46

New Normal in Tax Rates, 1997

It took more than a quarter of a century for individual income tax rates to reach a new normal. In his 1997–98 Union Budget, Finance Minister P. Chidambaram cut income tax slabs to 10–20–30 percent from 5–30–40 percent, with the marginal rate being applicable on incomes of Rs 1.5 lakh.[412] Given that successive finance ministers have retained both the number of slabs and the rates on them, with only the applicability on incomes changing, these have become the new normal for India's income tax rates. The rationalisation of tax rates began with the 24 December 1971 K.N. Wanchoo Direct Taxes Enquiry Committee report, which noted that high taxes caused evasion and recommended that the marginal rate of taxation, then 97.75 percent, be brought down[413] to 75 percent. In his 1974–75 Union Budget, Finance Minister Y.B. Chavan reduced the marginal rate[414] to 70 percent. Six years later, Finance Minister R. Venkataraman lowered it to 66 percent in his 1980–81 Union Budget.[415] Finance Minister Pranab Mukherjee followed and cut it further to 55 percent in his 1984–85 Union Budget.[416] The next year, Finance Minister Vishwanath Pratap Singh lowered it to 50 percent in his 1985–86 Union Budget,[417] with four slabs of 25–30–40–50 percent. Seven years later, powered by the Raja J. Chelliah's Tax Reforms Committee report,[418] Finance Minister Manmohan Singh shaved off another 10 percentage points off the marginal rate and brought it to 40 percent, while reducing the number of slabs to three in his 1992–93 Union Budget.[419] But after Chidambaram's rates on three slabs, successive Finance Ministers have retained both the number of slabs as well as the rates on those slabs, and only raised the income on which they are applicable. The marginal rate today applies on income of more than Rs. 10 lakh, a number that Finance Minister Pranab Mukherji authored in his 2012–13 Union Budget,[420] which incumbent Finance Minister Arun Jaitley has continued with and is likely to sustain going forward. While taxation remains a dynamic entity, the past two decades have brought about a never-seen-before tax stability. Now, clampdown on tax evaders must be unrelenting and the Income Tax Department must bring in customer-focused reforms, as recommended by the Parthasarathi Shome-chaired First Report of the Tax Administration Reform Commission.[421]

Chapter 47

New Exploration Licensing Policy, 1997

A tool for exploiting energy assets, delivering energy security and attracting foreign technologies and capital into the oil and gas exploration sector, New Exploration Licensing Policy[422] (NELP) was a mechanism of global competitive bidding in an area that was thus far the exclusive domain of government-owned, government-managed ONGC and OIL, through contracts. The task of providing a level playing field to private players was placed on Directorate General of Hydrocarbons. Amongst other things, the policy allowed 100 percent FDI in the sector,[423] no mandatory state participation through ONGC or OIL or any carried interest of the government,[424] and blocks awarded through open international competitive bidding.[425] Effective from February 1999, and the first production-sharing contract (PSC) signed in 2000,[426] the policy has seen nine rounds delivering PSCs for 254 out of 360 exploration blocks offered across an area of 1,500,957 sq. km to 117 companies: 11 public sector undertakings, 58 private Indian companies and 48 foreign companies.[427] Otherwise a step forward from a regime where the government had a monopoly in the sector, the policy needed finetuning, since factors such as the separate policies for different hydrocarbons and varying financial terms led to inefficiencies in the sector. The consistently shifting methodology of pricing in gas, for instance, has led to disputes and arbitration delays. There are other technical issues such as the fixing of royalties in shallow waters, where exploration, drilling and production costs and risks are much lower than deep or 'ultra-deep' fields. Such muddy waters gave way to a vicious politics in the 2014 general elections. Moreover, the furious pace of India's GDP growth needs energy, whose consumption has doubled between 2000 and 2015.[428] By 2040, production of oil and gas is expected to fall short of the demand and India's reliance on oil imports will rise to more than 90 percent, according to International Energy Agency estimates.[429] When launched, NELP had an important role. Since then, there have been major changes in discoveries, technologies, input costs, and the economics of oil and gas, with oil-producing countries such as Venezuela teetering on the edge. As in rest of the world, India's energy policy remains a work in progress: in March 2016, NELP was replaced by Hydrocarbon Exploration and Licensing Policy.[430,431]

Chapter 48

Electricity Regulatory Commissions Act, 1998

That it took India five decades to bring some order in the country's electricity sector speaks volumes about the failure of India's politics to electrify the nation. Enacted on 2 July 1998, the Electricity Regulatory Commissions Act[432] (ERCA) is the basis for the establishment of a Central Electricity Regulatory Commission[433] and State Electricity Regulatory Commissions[434] for rationalising electricity tariffs and bringing transparency in electricity subsidies. Being in the Concurrent List,[435] the authority to frame power policies (barring nuclear) vest with both the central and state governments. Whether the Act was the culmination of a need brought about by liberalisation or whether it gave pace to it is open to debate. What it did was to boldly face the problems of the sector—lack of rational retail tariffs, high level of cross-subsidies, poor planning and operation, neglect of the consumer, limited involvement of private sector—and fill the vacuum of an independent regulatory authority, by establishing a CERC and SERCs to regulate and determine tariffs of central- and state-controlled power-generating companies respectively, for wholesale, bulk, grid and retail. The Electricity Act[436] of 2003 consolidated all the laws relating to generation, transmission, distribution, trade and use of electricity. This Act repealed all earlier electricity laws (The Indian Electricity Act[437] of 1910, and ERCA) and brought the electricity commissions under its ambit. It mandated institutional reform by introducing competition in distribution. Further, it created the Central Electricity Authority to advise the government on technical and planning issues,[438] and Appellate Tribunals for Electricity[439] to hear appeals or petitions against the orders of CERC or SERCs. The Act was critiqued as being "a tip without an iceberg", as it had an enabling framework to introduce competition in generation and privatisation in distribution but had left the transition issues undone.[440] Even a decade after liberalisation began, socialism continued to invoke the fear of markets. Some states were sceptical about the unbundling of distribution and generation and, invoking the concurrent nature of the reform, sought to make it non-binding[441] or demanded tariff flexibility.[442] On their part, utilities seem to have been caught between private sector's competitive pressures and political pressures to maintain populist rates,[443] with the problem of non-payment of bills reaching criminal proportions.[444]

Chapter 49

Insurance Regulatory Development Authority of India, 1999

As India began to liberalise its economy, the entry of private sector into insurance was a natural fallout. To enable that, the government formed the R.N. Malhotra committee, which in its 1994 report recommended, amongst other things, the entry of private companies into the sector, the establishment of an independent authority like SEBI to regulate the sector, appointment of institutional agents, and the introduction of unit-linked pension plans by insurance companies. As a result, Parliament enacted the Insurance Regulatory Development Authority of India (IRDAI) Act[445] of 1999 by amending the Life Insurance Act[446] of 1938, the Life Insurance Corporation Act[447] of 1956, and the General Insurance Business (Nationalisation) Act[448] of 1972. However, the first objective of IRDAI—"to protect the interests of holders of insurance policies"—has been compromised to serve other objectives, namely, "to promote and ensure orderly growth of the insurance industry". Instead of bringing in regulation, IRDAI has become a case study in how not to regulate. While the objective of attracting private insurers back into the country has been achieved, the Hyderabad-based body has failed consumers. In sharp contrast to other new financial regulators, particularly SEBI,[449] that have been focusing on reducing costs and increasing transparency, IRDAI has been behaving more like a captured industry association, working for and serving companies and agents rather than consumers. At Rs. 150,000 crore, the loss to policyholders[450] is big enough politically to invite reforms to tame this regulator. On 20 March 2015, the IRDAI Act was amended and replaced by Insurance Laws (Amendment) Act[451] of 2015, which has focused on raising FDI to 49 percent in insurance companies from 26 percent. While the Law Commission had recommended the constitution of an Insurance Appellate Tribunal[452] to make appeals in its June 2004 report, the amendment has gone ahead by situating this within the Securities Appellate Tribunal.[453] Curiously, the Insurance Laws (Amendment) Bill, 2015 had brought a focus on consumer welfare,[454] with penalties for misconduct and mis-selling that have not been incorporated in the final law, a lacuna that needs fixing. On their part, investors are steadily moving towards the better-regulated, flexible, low-cost and transparent mutual funds, leaving IRDAI to serve its purpose as a pipeline that catalyses the purchase of government bonds, enables mis-selling, and has become a sinecure for retired bureaucrats.

Chapter 50

Foreign Exchange Management Act, 1999

Once the political climate changed and liberalisation was ushered in, the Foreign Exchange Regulation Act of 1973 (FERA, see above)[455] became incompatible with the direction the country had taken. "As we progress towards a more open economy with greater trade and investment linkages with the rest of the world, the regulations governing foreign exchange transactions also need to be modernised," Finance Minister P. Chidambaram said in his 1997–98 Budget speech[456] while laying the new foundations of foreign-exchange management. Four months later, S.S. Tarapore submitted his report on CAC, strengthening the policy base for a law that would facilitate sequencing of CAC.[457] On 29 December 1999, Parliament repealed FERA and enacted a more liberal Foreign Exchange Management Act[458] to "consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign-exchange market in India". The Act takes current account convertibility as a base and allows for progressive liberalisation of the capital account.[459] Worshipped for years by the bureaucracy, overnight, FERA became the bad guy of business. The differences between FERA and FEMA are stark: FERA regulated foreign exchange, FEMA facilitated[460] and managed it;[461] FERA was a criminal offence, FEMA a civil one;[462] FERA functioned in an era of low foreign-exchange reserves, FEMA when reserves were satisfactory; under FERA, everything was prohibited unless special permissions were received, while under FEMA, everything was permitted unless specifically restricted or regulated.[463] All exceptions to the Act are the prerogative of the RBI that has been empowered to grant “general or special permission” for all foreign-exchange related activities,[464] and current account[465] and capital account[466] transactions. While going several steps ahead of FERA, the most important of which is its civil (not criminal) penalties, the Act is not flawless. It allows wide exercise of discretion[467] by the RBI and the central government. In the absence of clear objectives for exercise of this discretion, it leads to a collapse of the spirit of the rule of law in its administration.

Chapter 51

Information Technology Act, 2000

Following the mushrooming of India's information technology industry in the late 1990s, which found salience across the earth, the world of bits and bytes needed regulation, particularly for transactions through e-commerce. The need to regulate e-commerce in particular and the newly opening universe of information technology in general was not restricted to India: a 16 December 1996 Resolution adopted by the United Nations General Assembly recommended the creation and adoption of a Model Law[468] on e-commerce. Along with the rest of the world, the Indian Parliament enacted the Information Technology Act[469] on 9 June 2000, "to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as 'electronic commerce', which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies". The Act enabled the creation of a cheaper, faster and more efficient system around which individuals, businesses and governments could function. It has penalties, both civil (such as unauthorised access, copying, downloading files) and criminal (tampering, publishing obscene electronic information, breach of confidentiality and privacy). It has also amended the Indian Penal Code[470] of 1860, the Indian Evidence Act[471] of 1872, the Bankers' Books Evidence Act[472] of 1891, and the RBI Act[473] of 1934 (one section). With changing times, the Act was amended on 5 February 2009.[474] In addition to forward-looking and harmless amendments such as the substitution of the words "digital signature" with "electronic signature",[475] the Act added a controversial Section 66A, under which a person could be punished for sending "offensive messages through communication service". This included information that is "grossly offensive" or has "menacing character", or causes "annoyance" or "insult", or was misleading, which would all be "punishable with imprisonment for a term which may extend to three years and with fine". Following protests and a writ, the Supreme Court, in its 24 March 2015 order,[476] struck the section down for "entirety being violative of Article 19(1)(a) and not saved under Article 19(2)". Given the fast-paced changes ahead, and the increasing digitalisation of India and changes the world over, e.g. the introduction of cryptocurrency, the law will need to keep pace.

Chapter 52

The Prevention of Money Laundering Act, 2002

Extortion. Smuggling. Drug trafficking. Prostitution. Insider trading. All these are activities that generate high economic returns. Since the activities are illegal, so are the gains. Money-laundering is the process by which this illegal money, also known as 'dirty money', is made to appear legitimate. This is a threat to financial systems of nations. To prevent an illegal activity originating in one country from being legitimised in another, the world got together and signed up on United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[477] in 1988 to fight drugs. In December 1988, the Bank for International Settlements laid out a path for the banking sector so as to curb these crimes and outlined principles through its Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering[478] statement of principles. Two years later, in February 2012, the Financial Action Task Force made 40 recommendations[479] to prevent the misuse of financial systems. As part of these initiatives, Parliament enacted the Prevention of Money-Laundering Act[480] on 17 January 2003, which came into force from 1 July 2005 and laid the foundations of India's legal framework to fight money-laundering. The law defines "money-laundering" as any process or activity connected with the proceeds of a crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property.[481] Penalties for such crimes include rigorous imprisonment for three to seven years, fines and attachment of properties. The responsibility of enforcing the law was placed on the Directorate of Enforcement in the Ministry of Finance. The law was amended in 2009[482] to expand its ambit and bring full-fledged money changers and money transfer service providers such as Western Union, as well as international payment gateways such as VISA and MasterCard, within the reporting regime of the law.[483] Again, with a 2012 amendment,[484] the law widened the expanse to include concealment, acquisition, possession and use of the proceeds of crime.[485] Under the law, the RBI created KYC (know your customer) guidelines[486] for banks and financial services companies, under which the institution needs to undertake a due diligence process and verify every customer. However, with technologies racing ahead and crimes shifting their medium to digital, more amendments are expected.

Chapter 53

Competition Commission of India, 2002

"The Monopolies and Restrictive Trade Practices (MRTP) Act has become obsolete. We need to shift our focus from curbing monopolies to promoting competition." The transition from MRTP[487] to Competition Act followed Finance Minister Yashwant Sinha's 27 February 1999 speech.[488] Like the evolution of FEMA[489] from FERA,[490] the Competition Act[491] of 2002 that received Presidential assent on 13 January 2003 was a transition from the MRTP Act. Both FEMA and the Competition Act under which the Competition Commission of India was formed on 14 October 2003, were created to serve a liberalising economy. While the legislative focus of MRTP Act was to prevent "concentration of economic power in the hands of few" and "prohibit monopolistic and restrictive trade practices", that of the Competition Act is "to promote and sustain competition in markets, protect interests of consumers, and ensure freedom of trade carried on by other participants in markets". To this were added "prohibition of abuse of dominant position", a clause missing in the MRTP Act, which prohibited dominance altogether. However, despite best intentions, the Act was badly designed and challenged by two writs, one each in the Madras High

Court and the Supreme Court, on the ground that the commission was more of a judicial body and chairman had to be a retired judge. Following a legislative nudge by the Supreme Court in its 20 January 2005 order,[492] the Act was amended and the Competition (Amendment) Act[493] of 2007 was enacted on 24 September 2007. The amendment created the Competition Appellate Tribunal[494] to hear and dispose of appeals against the orders of the Competition Commission. At the heart of an economy's performance, competition is the key to efficient, productive and innovative markets that deliver growth, create wealth and reduce poverty. Because competition is not a natural process, it is the job of the commission to regulate and ensure competition by providing a level playing field and dismantling cartels. It treads a thin line of encouraging competition without getting in the way of efficient companies from attaining scale. In the age of constant disruption that allows companies to offer and deliver services at low cost, or even for free, there will be several challenges to deliver this goal. With faith in markets as a starting point, price discovery as its expression, rule of law as its tool, CCI is cut out to ensure competition, which in turn will deliver a level playing field to businesses.

Chapter 54

Pension Fund Regulatory and Development Authority, 2003

Pension reforms—essentially the shifting of government servants, including the elite civil services, to a defined contribution plan from a hugely-entitled inflation-linked rank-equalising defined benefit plan—could have been one of the biggest challenges for any government, anywhere across the world. But the way it was handled shows how political parties of different hues can come together and deliver good economics. Initiated by the S.A. Dave-led 11 January 2000 Project OASIS Report,[495] Finance Minister Jaswant Singh's 28 February 2003 Budget speech[496] made the first policy announcement:[497] "The Ministry of Finance will oversee and supervise the Pension Funds through a new and independent Pension Fund Regulatory and Development Authority (PFRDA)." But the road to law being long (and due to government liabilities because of rising pension), an interim body was formed through a 10 October 2003 resolution[498] and introduced a defined contribution pension system for all new government employees, barring the armed forces. Pending legislation, the government created an interim PFRDA with a 14 November 2008 resolution.[499]

Divided by politics, it took Parliament almost five years to enact the PFRDA Act[500] on 18 September 2013; it was notified[501] on 1 February 2014. All government servants, barring the armed forces, were declared part of the National Pension System (NPS) from 1 January 2004, to which the general public could also subscribe. The structure of NPS was such that pension fund managers had to go for an auction to be able to manage money; all bidders would have to match the lowest cost. Under the bidding process, when UTI sought to manage funds at a cost of 0.0009 percent, it created a distortion[502] that made fund management unviable. Intermediaries wouldn't sell NPS, as they were getting commissions of up to 40 percent in insurance and six percent in mutual funds. Moreover, the structure of the scheme is such that on retirement, 40 percent of the money is invested in an annuity,[503] a market that is yet to evolve and one that will continue to be high-cost, pro-industry, pro-agents and anti-consumer, given the way IRDAI[504] has been functioning. Until IRDAI is fixed, the compulsory annuity must be replaced with a systematic withdrawal plan of mutual funds. To sell the scheme, and in a race to the bottom, PFRDA has raised incentives for intermediaries[505] as well as for fund managers.[506] In an age of financial technologies, led by inclusive schemes such as the Pradhan Mantri Jan Dhan Yojana,[507] NPS must think creatively and expand its footprint without increasing costs.

Chapter 55

Fiscal Responsibility and Budget Management Act, 2003

With a huge revenue deficit of 4.4 percent of GDP in 2002–03, which meant the government was borrowing to finance its running expenses, political parties across the spectrum got together and enacted the Fiscal Responsibility and Budgetary Management (FRBM) Act[508] on 26 August 2003 and notified it on 5 July 2004. A landmark step towards the prudence of government finances, the FRBM Act makes the central government responsible for ensuring macroeconomic stability by generating revenue surplus, removing fiscal impediments to monetary policy and limiting borrowings. The Act set a target of eliminating revenue deficit by 31 March 2015.[509] Targets for revenue and fiscal deficits may be exceeded only due to national security and national calamities, with flexibility thrown in under "exceptional grounds" as the central government may specify.[510] Such a legislation requires action on two fronts. One, an increase in taxes, both at the absolute level as well as in the tax–GDP ratio. And two, a control of expenditure, by curbing the desire to indulge in political freebies through real revenues. This means ensuring that government policies deliver growth, and taxes are paid through a modern tax system. The goods and services tax (GST),[511] in operation since 1 July 2017, is one such tax system. From inflation[512] and investments[513] to economic growth[514] and expenditure composition,[515] the control of government finances is a critical lever that impacts every aspect of the economy. There being no penalties for exceeding targets or breaching debt ceilings, the law has become more a statement of intent than a programme for prudent government finances. Based on the recommendations of the 13th Finance Commission,[516] an amendment in 2012 got the Comptroller and Auditor General to conduct an independent annual review on the fiscal implementation.[517] Overall, however, the legislative direction of achieving fiscal targets has been too flexible: the 2015 Finance Act pushed the dates for achieving fiscal deficits to 31 March 2018.[518] In its January 2017 report "Responsible Growth: A Debt and Fiscal Framework for 21st Century India", the N.K. Singh-chaired FRBM Review Committee recommended[519] reducing the three key ratios over the next six years until FY2023: debt–GDP ratio to 38.7 percent from 49.4 percent, fiscal deficit to 2.5 percent from 3.5 percent, and revenue deficit to 0.8 percent from 2.3 percent. It also recommended repealing the existing FRBM Act and FRBM Rules and enacting a new "debt and fiscal responsibility" law.

Chapter 56

National Policy on Airports, 2003

Long seen as the preserve of the rich or of senior government officials, civil aviation was a missing link in India's growth story. One major constraint was airports, the lack or small scale of which was, and continues to be in smaller towns, a limiting factor to connectivity. Chaired by former Cabinet Secretary Naresh Chandra, a 30 November 2003 report[520] paved the runway to change. It showed how civil aviation is a GDP- as well as a jobs-multiplier and argued that—given the key concerns of inadequate management of existing facilities and the need for additional capital to augment capacity—beginning with Mumbai and New Delhi, airports be privatised[521] and Aviation Economic Regulatory Authority[522] (AERA) be set up to regulate them. The Airports Authority of India (Amendment) Act[523] of 2003 introduced the term "private airport"[524] and authorised Airports Authority of India (AAI) to transfer operations and management of its existing airports by way of long-term lease to private players. Four days after this amendment, the government constituted an Empowered Group of Ministers to hand over airports to private players. Following a bidding process, and beginning with Bengaluru's Kempegowda International Airport on

24 May 2008,[525] there are now five airports[526] functioning under a successful public–private partnership (PPP) model, including Cochin International Airport (the first greenfield PPP airport), Delhi International Airport, GMR Hyderabad International Airport and Mumbai International Airport. Currently, 375 out of 450 airstrips/airports do not have scheduled operations, the revival of which will be "demand driven", according to the National Civil Aviation Policy 2016.[527] Further, of the 125 airports of AAI, only 95 are operational, of which 71 have scheduled commercial operations.[528] To change this, the government has granted "in-principle" approval to set up 18 greenfield airports across the country.[529] However, while building airports is relatively easy, making them profitable is not: only five percent of India's airports are profitable and the rest of them are loss-making, noted an International Civil Aviation Organisation paper.[530] The Airports Economic Regulatory Authority of India Act[531]—to regulate tariff and other charges and to monitor performance standards (along with an appellate Tribunal)[532]—enacted by Parliament on 5 December 2008, could nudge airports towards profitability, provided the political economy allows it to.

Chapter 57

Mahatma Gandhi National Rural Employment Guarantee Act, 2005

India's struggle to provide rural livelihoods has been a long and tedious evolution, each step carrying its own problems. The first attempt came five years after Independence through the Community Development Programme[533] launched in 1952. A quarter century later, the government launched the Food for Work Programme[534] (renamed National Rural Employment Programme or NREP) in 1977 to create additional employment in rural areas with the use of surplus food grains available in the buffer stock for payment as wages. However, the endeavour failed[535] due to "inadequacy of stocks, delayed payments, remoteness of the distributing centres and overcrowding in fair price shops". Six years later, the Rural Landless Employment Guarantee Programme[536] (RLEGP) was launched in 1983 to improve and expand employment opportunities amongst the rural landless families, through guaranteed employment to at least one member of every landless household for up to 100 days a year. The Million Wells Scheme in 1988–89 attempted to provide open irrigation wells free of cost to poor, small and marginal farmers belonging to Scheduled Castes, Scheduled Tribes and freed bonded Labour, but the assets generated turned out to be "brittle".[537] Likewise, the Jawahar Rojgar Yojana of 1989 that merged NREP and RLEGP, the Employment Assurance Scheme (EAS) of 1993, the Sampoorna Grameen Rojgar Yojana of 2001 (created by the merger of Jawahar Gram Samridhi Yojana that was launched in 1989 and EAS) all made attempts to deliver jobs for the rural poor for over three decades.[538] On 5 September 2005, following the UPA coalition's Common Minimum Programme, Parliament enacted the National Rural Employment Guarantee Act,[539] later prefixed with "Mahatma Gandhi" to become MGNREGA through a 2009 amendment.[540] Begun on 2 February 2006 in 200 districts and expanded across the country on 1 April 2008,[541] under this law, adult members of every rural household are entitled to 100 days of guaranteed wage employment,[542] making it the world's largest social security scheme.[543] Administratively, the scheme has set high standards of transparency (data from all sites can be viewed real time) and accountability (social audits and district-level ombudsman) by using technology and direct transfer of payments through post offices and banks. This can be replicated across several other schemes. Amongst the unexpected consequences of MGNAREGA has been a gradual increase in the real wages[544] of both farm and nonfarm works, while spawning numerous policy and practice innovations at the centre[545] and amongst states,[546] such as labour budgets, intersectoral convergence, information communication technology for data management and citizen feedback, and various ways of social mobilisation.

THE SEVENTH DECADE

Chapter 58

Foreign Contribution (Regulation) Act, 2010

Although the first controls on accepting foreign contributions came through the Foreign Contribution (Regulation) Act[547] (FCRA), enacted on 31 March 1976 during Prime Minister Indira Gandhi's Emergency months (June 1975 to March 1977), the law became a burning public issue only four decades later, when it was executed. Resonating with the overall atmosphere of control, the 1976 law provided for regulating foreign contribution and hospitality "by certain persons or associations"—candidates fighting elections,[548] correspondents, columnists, cartoonists, editors, owners, printers or publishers of a registered newspapers,[549] members of any legislature[550] and political party or its office-bearer[551]—to ensure "Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life" functioned in a manner consistent with the values of a sovereign democratic republic. The law required companies and non-governmental organisations (NGOs) that received foreign funding to register with the Ministry of Home Affairs, submit audited accounts every six months and provide details of monies received.[552]

When Indira Gandhi returned to power in 1980, the policy pause on FCRA by the Janata government was turned over. In 1981, the Justice P.D. Kudal Commission of Enquiry was set up to investigate the misuse of funds[553] by NGOs and recommended "regulatory and punitive measures to control wayward NGOs" that were "generating hostility and suspicion between them [NGOs] and the government". A 1984 amendment expanded the scope of FCRA requirements to judges, government servants or employee of any corporation,[554] and gave additional powers to the government to enter any premises "before sunset and after sunrise" to inspect the books.[555] Sixteen years later, on 26 September 2010, Parliament enacted a new FCRA law, Foreign Contribution (Regulation) Act,[556] 2010, that further tightened the rules and consolidated the law on foreign contribution and foreign hospitality. In the very first year of its coming into force, notices were issued to 21,000 associations (10,343 associations in 2014) for not filing annual returns continuously for three years; 4,138 registrations were cancelled in July 2012 and 10,117 in March 2015; 15 cases were referred to the CBI and 10 to state police for further investigation and prosecution; and accounts of 23 associations were frozen.[557] The strange thing about this law was the victimhood being claimed by NGOs, some of which did not abide by the law to file returns for years.

Chapter 59

FDI in Retail, 2012

India's policy on foreign direct investment (FDI) in multi-brand retail sector is clouded by its politics. Despite huge benefits to a large number of voters in the form of consumers and farmers, the policy has been held hostage by the politics of a small but loud constituency of traders. Despite the importance of the sector to the economy—retail accounts for 11–12 percent share of India's GDP,[558] compared to six percent in Brazil, eight percent in China, and 10 percent in the US—and being a no-brainer in terms of creating and catalysing growth, it has remained in the backwaters of reforms at worst and extreme gradualism at best. The attraction between India and FDI is mutual, and yet, policies and debates have been more focused on the extent of barriers than in removing them. In the 24 July 1991 statement on industrial policy,[559] FDI in trading was allowed only for exports.[560] Six years later, on 17 January 1997, 100 percent FDI was permitted for exports, and cash and carry wholesale trading.[561] This brought an advantage for small vendors, who would line up and buy here, possibly because of greater margins. Five years later, on 20 September 2012, the government allowed 100 percent FDI in single-brand retail,[562] with a mandatory

30 percent sourcing from small Indian industries, "preferably from medium and small and micro enterprises, village and cottage industries, artisans and craftsmen", which would be self-certified by the company and checked by statutory auditors. The idea was to expand manufacturing. The upshot was a barrier, in terms of quality management, from companies like Ikea. The next year, on 22 August 2013, the government allowed 51 percent FDI in multi-brand retail,[563] provided half of it was invested in 'backend infrastructure'—processing, manufacturing, distribution, logistics, storage and warehousing—within three years of the first tranche of FDI; at least 30 percent of procurement was sourced from Indian 'small industries'; and outlets were set up only in cities with a population of more than 1 million. Finally, on 10 January 2018, Cabinet approved 100 percent FDI in single-brand retail under the automatic route.[564] Going forward, the big challenge lies in opening up multi-brand retail to FDI.

Chapter 60

Companies Act, 2013

The journey to regulate Indian companies formally began 135 years ago in the 19th century, on 24 February 1882, with the Companies Act of 1882[565] for the "incorporation, regulation and winding up of trading companies and other associations", under which firms such as Century Textiles and Otis, and banks such as Allahabad Bank and Punjab National Bank operated. Three decades later came the Companies Act of 1913,[566] bringing companies such as Kesoram Cotton Mills, Tata Hydroelectric Power Supply Co. and Raymond under it. After Independence, the Companies Act of 1956[567] followed and had a tumultuous 57-year-long run, with 25 amendments[568] that have overseen 29,283 companies in 1957 multiply to 883,611 in 2013.[569] With the sharp complexity in company affairs in these years, another set of amendments to the law, or even repeal, had been on the cards, for which three bills—one each in 2008,[570] 2009[571] and 2011[572]—were placed before Parliament. The push was towards greater disclosures and accountability through corporate governance and protection of minority investors. Finally, on 29 August 2013, the Companies Act of 2013[573] was enacted by

Parliament, an important legal reform that aligned Indian company law with global standards. But it created practical difficulties for companies, particularly in corporate social responsibility,[574] related-party transactions,[575] and criminal liabilities for mis-statements in prospectus while raising capital.[576] The fear was that the new law would hurt the ease of doing business. An amendment followed through the Companies (Amendment) Act[577] of 2015. These too were found wanting, and therefore, a committee[578] chaired by Tapan Ray was created to look into the problems and suggest changes. Its 1 February 2016 recommendations sought amendments of 78 sections, and more than a hundred changes in the Act.[579] Not all these recommendations were accepted when the Companies (Amendment) Bill of 2016 was introduced in the Lok Sabha on 16 March 2016 and then referred to the Standing Committee on Finance[580] the next month: the issue of the government deciding compensation exceeding prescribed limits,[581] for instance. A law governing companies is complex anywhere in the world. The key is in designing a policy that allows transparency and accountability while making it easy to do business. The 2016 bill remains a work in progress.

Chapter 61

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

In a country where 60 percent of the people live on the produce of the land, either through ownership or tenancy, acquiring land by the government to build large infrastructure projects, such as dams and roads, or create industrial complexes instantly becomes as much an issue of political rhetoric as economic arguments. Although the 20 June 1979 notified 44th Constitution Amendment removed the right to property as a fundamental right, it was made a legal right through Article 300A of the Constitution[582] and stated, "No person shall be deprived of his property save by authority of law." Most of the land acquired in India so far—for projects such as airports, universities, water, irrigation, industry, housing and urban development—has been done under the Land Acquisition Act[583] that came into force on 2 February 1894 and has been amended 17 times[584] since then. While this Act addressed compensation, it overlooked issues of rehabilitation and resettlement of the affected people, which included not only land losers but also livelihood losers. From Tata Motors[585] in West Bengal to POSCO[586] in Odisha at the company level, and 13 laws from the Railways Act[587] of 1989 to the Special Economic Zones Act[588] of 2005 on the legislative side, land acquisition has remained complex and controversial. Lack of resettlement shows up in shocking numbers. According to Development Challenges in Extremist Affected Areas, between 1947 and 2004, the number of displaced persons exceeded 60 million (more than the population of France) in the process of acquiring 25 million hectares of land (more than the area of the UK) with only a third of them being resettled.[589] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,[590] passed by Parliament on 26 September 2013, attempted to fix these anomalies. For instance, companies now need to acquire 80 percent of the land through negotiations, with the government stepping in only for the balance 20 percent; for PPP projects, it is 70 percent. Going forward, India is going to see a rise in the public–private capital mix in the amount of land to be acquired and the resultant politics around it. Finally, Parliament can only go so far. Land being a state subject and every state having its own laws, the new laws balancing economic development with compensation and resettlement will need to be made in state legislatures.

Chapter 62

Pradhan Mantri Jan Dhan Yojana, 2014

When Prime Minister Narendra Modi launched the Pradhan Mantri Jan Dhan Yojana (PMJDY) on 28 August 2014,[591] there was a festival of financial records and a flood of political slogans. "Never before would insurance companies have issued 1.5 crore accident insurance policies in a single day," Modi said. "Never before in economic history would 1.5 crore bank accounts have been opened in a single day. Never before has the Government of India organised a programme of such scale: over 77,000 locations." The financial inclusion scheme helps unbanked Indians open a bank account, get a RuPay debit card, and access social security schemes such as insurance and pension. In other words, it enables the financialisation of India at a scale that no country across the world has seen. The speed with which the scheme has gathered momentum is spectacular: as of 17 January 2018, there were nearly 310 million beneficiaries, three-fifths of them in rural areas,[592] with a total balance of Rs. 73,690 crore. The average balance of Rs. 2,377 per account shows that despite there being no minimum balance requirements, the first steps of unbanked Indians towards banks have begun. Going granular,[593] in 27 out of 36 states and Union Territories, the coverage of this scheme was 100 percent. The lowest coverage was in Jammu and Kashmir with 99.71 percent and Odisha with 99.85 percent. Since this a government scheme backed by the prime minister, it is not surprising to see public sector banks taking the lead. The foot dragging by the private banks, however, sharpens the contrast. While the number of beneficiaries through public sector banks stand at 244.3 million, private banks managed to get only 9.7 million beneficiaries. There is clearly an element of exchequer-funded cost in the scheme that has not been factored into the desired social push, which can be ascribed to the political economy. However, the real benefits will come once beneficiaries link their Aadhaar and mobile numbers to their bank accounts and avail of services and subsidies directly, wages from MGNREGA or gas subsidies, for instance. As part of a tripod, with identity and communications as its other legs, the Jan Dhan Yojana ensures that the digitisation of India is not restricted to the wealthy or to urban areas but empowers the last citizen standing.

Chapter 63

Benami Transactions (Prohibition) Amendment Act, 2015

In India's long war against corruption, the loudest expression of unaccounted-for, tax-evaded money has been through property, particularly by buying it in one person's name while being financed by another, who controls it. This is known as "benami" practice. While most of it is to avoid paying taxes and to defraud creditors, the Law Commission's 57th report in 1973[594] pointed to political and social risks as motives behind benami properties as well. The Benami Property Transactions Act[595] of 1988 attempted to prohibit such transactions and the right to recover benami property. This Act defined 'benami' as a property that has been transferred to or held by one person while being paid for by another person, for the latter's benefit.[596] But this act suffered from four key infirmities: no powers of a civil court, no specific provisions for vesting of confiscated property with the central government, no appellate structure defined, and procedural matters relating to its administration.[597] An attempt was made to amend this law in 2011,[598] but the bill lapsed. Enacted on 10 August 2016 and in force since 1 November 2016, the Benami Transactions (Prohibition)

Amendment Act[599] has ironed out these wrinkles. The new law and its administrative enabler, the 25 October 2016 Prohibition of Benami Property Transactions Rules,[600] empower authorities to provisionally attach and eventually confiscate[601] benami properties—defined as assets of any kind, whether movable or immovable, tangible or intangible[602]—in addition to prosecuting the wrongdoer with jail terms of between one and seven years, plus a fine that can be up to 25 percent of the "fair market value" of the property.[603] Within six months of the Act coming in force, the Income-tax Directorates of Investigation identified more than 400 benami transactions, including deposits in bank accounts, plots of land, flats and jewellery. Of these, more than 240 properties with a market value of Rs. 600 crore or more were provisionally attached.[604] The Act has also envisaged the establishment of an Appellate Tribunal[605] to hear appeals against the orders of the Adjudicating Authority, tasked with attachment and confiscation of property. In India's fight against corruption, this Act, as well as other announcements about a crackdown on benami properties,[606] has become a loud political rhetoric with little on-ground action against leaders who have allegedly purchased properties in the names of their "drivers and cooks".[607]

Chapter 64

The Arbitration and Conciliation (Amendment) Act, 2015

Given that speed is an important aspect of resolving conflicts and delivering justice, the move from India's informal and oral panchayat system to a modern and evolving legal system to serve a complex society, while following rules and processes, has taken a toll on time. From the Indian Arbitration Act[608] of 1899 and the Arbitration (Protocol and Convention) Act[609] of 1937 to the Arbitration Act[610] of 1940, the journey for speedy resolution in commercial disputes has been long. But on this journey, India wasn't travelling alone. With the growing complexity in doing business across borders and the resultant disputes, most countries signed on and adopted the United Nation's UNCITRAL Model Law on International Commercial Arbitration[611] in 1985. India followed and enacted the Arbitration and Conciliation Act[612] on 16 August 1996. The problem: while the UN Model Law focused on inter-country disputes, the Indian law followed and left anomalies in intra-country disputes. In its 176th Report,[613] the Law Commission highlighted the changes needed in the law. While the government accepted all recommendations and set up the Justice

Saraf Committee on Arbitration[614] to make an in-depth study of the implications, it stated that the changes upon which the Arbitration and Conciliation (Amendment) Bill of 2003 had been proposed would lead not only to greater interference by courts in the process of arbitration but also to arbitration being conducted under the supervision of the courts and have the courts sitting in judgement over the arbitrators, before arbitration, during arbitration and after arbitration.[615] As a result, the Standing Committee[616] recommended that a fresh legislation be drafted. Enacted on 31 December 2015, the Arbitration and Conciliation (Amendment) Act[617] ironed out these legislative wrinkles. Amongst several other things, such as disclosures by arbitrators[618] that could create conflicts of interest[619] and model fees,[620] the law demands that all arbitrations must end within 12 months,[621] giving the original objective of arbitration—speed—the force of law. As a result, there is enhanced certainty[622] for the parties regarding the outcome and the costs involved in arbitrations seated in India, a boon for business in general and those engaged in the development of infrastructure such as roads, bridges, housing, ports and airports in particular.

Chapter 65

Hydrocarbon Exploration and Licensing Policy, 2016

In the process of framing India's oil and gas exploration and production policy, the shift to Hydrocarbon Exploration and Licensing Policy[623] (HELP) from NELP (New Exploration Licensing Policy,[624] on 10 March 2016, is a step that attempts to clear the cobwebs of stalemate between the government and private companies, and generate new interest in a sector that is currently besieged by falling prices and geopolitical implications on one hand and new energy sources and their disruptive applications—electric cars, for instance—on the other. The fiscal model of HELP has shifted to revenue-sharing[625] from NELP's profit-sharing, which was a major reason for stalemate in the sector. Under HELP, the government needs to audit only the production and revenue of companies (not costs), thereby reducing micromanagement of expenses, which in turn reduces the regulatory burden and administrative discretion. As a result, the problematic and subjective criterion of cost recovery has ended, and the government will now get revenues based on production. The policy gives a uniform licence for exploration and production of all forms of hydrocarbon such as coal bed methane, shale gas and oil, tight gas and gas hydrates. This replaces hydrocarbon-specific policies: often, while exploring for one type of hydrocarbon, a different one would be found, and companies needed a separate licence for it. The policy has also allowed greater marketing and pricing freedom for natural gas[626] (crude oil already had this freedom under NELP). This not only gives producers more autonomy over pricing their assets but also rewards companies that plan to develop larger, riskier fields.[627] The open acreage policy allows companies to select the exploration blocks on their own, without waiting for the formal bidding round from the government. Whether HELP will deliver what NELP couldn't is an open question for now. What is certain is the evolutionary nature of India's hydrocarbons policy[628] in the exploration and production space: from state monopoly in 1948, to the beginning of deregulation in 1991 through nomination, to competitive bidding in 1997 under NELP, to gas pricing guidelines in 2014, to discovered small field policy in 2015 and, finally, to HELP in 2016. This slow but systematic evolution has reduced the biggest risk to India's exploration and production sector—political risk—by making policies stable and the business environment more predictable.

Chapter 66

Aadhaar, 2016

In a country where elections are won on promises of basic entitlements, ensuring that these benefits—from wages to pensions—reach the targeted beneficiaries has remained a challenge for wealth distributive policies. Add to that the lack of a unified identity tool, and the benefits to residents and governments alike multiply. The result: Unique Identification Authority of India (UIDAI), functioning under the Planning Commission, through a 28 January 2009 notification.[629] Responsible for issuing an identity through Aadhaar, a unique number, UIDAI lacked statutory backing. On 3 December 2010, the government attempted to change this by introducing the National Identification Authority of India Bill[630] in Parliament. The Standing Committee,[631] chaired by Yashwant Sinha, raised several objections on its conception and potential outcomes, including the legitimising of "illegal immigrants".[632] It also raised the issue of a data protection law.[633] Changes were made in the bill, but it was not passed. The new government proposed a new law, the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act[634] of 2016, and Parliament enacted it on 26 March 2016. With the identity of individuals in place, it was only a matter of time before the Aadhaar number was turned into the most credible identity currency, making it a requisite to filing taxes, getting and linking it to the Permanent Account Number, as a Know Your Customer (KYC) tool for financial products such as mutual funds. This—along with linking direct benefits such as the public distribution system,[635] employment guarantee schemes, cash transfers to the poor, and opening bank accounts—was challenged in various courts, and objections were raised to the state collecting personal information such as fingerprints and iris scans. The key objections are unauthorised use of information, illicit profiling through linked databases and, for the poor, inaccuracies in data leading to mistaken identities. Activists want privacy and protection of information collected, and rightly so. While the judiciary is still to decide on these issues and the government has initiated a data-protection legislation,[636] the fact remains that benefits have started reaching the poor for whom it was intended. It is also facilitating state arms such as the Income Tax Department to map and match incomes earned with taxes paid. Once cleared, Aadhaar has the potential to be one of India's soft exports.

Chapter 67

Insolvency and Bankruptcy Code, 2016

When Parliament enacted the Insolvency and Bankruptcy Code[637] (IBC) on 28 May 2016, it had one key focus: time-bound resolution of insolvency. In other words, to speed up and catalyse doing business. According to the World Bank, against the 2016 world average of 2.5 years to resolve insolvency, it took Japan 0.6 years, Singapore and Canada 0.8 years, the US 1.5 years, China 1.7 years, and Russia and South Africa 2.0 years. India, however, took 4.3 years.[638] All other objectives of this law—ease of doing business in India or bringing balance between debtors and creditors—are derivatives of the primary objective, i.e. speed with which insolvencies are resolved. The IBC aims to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner, to maximise the value of assets of such persons, promote entrepreneurship and availability of credit, and balance the interests of all the stakeholders. It amended 10 Acts of Parliament,[639] including the Recovery of Debts due to Banks and Financial Institutions Act,[640] and repealed the Sick Industrial Companies (Special Provisions) Repeal Act.[641] The law establishes an Insolvency and Bankruptcy Board of India[642] that has regulatory oversight over insolvency professionals, insolvency professional agencies and information utilities, and is responsible for implementing the code. This law was first laid down in Finance Minister Arun Jaitley's 10 July 2014 Budget speech,[643] in which he mentioned it in the context of small and medium enterprises (SME): "Entrepreneur friendly legal bankruptcy framework will also be developed for SMEs to enable easy exit." The ability to exit from a failing business is an important part of a business environment. The faster a company can exit, the faster the new owners or the money opened out by the exit can be deployed for more productive uses. But it is the management that runs the company in the interim. Effectively, therefore, equity oversees its own exit and how debt ought to be paid, or not. On the other hand, creditors have the first right over a company going down, and their incentive is to extract whatever they can. The code has brought in a new regulated entity—the insolvency professional—to oversee and ensure compliance in the process. To complete the circle, the National Company Law Tribunal has been appointed the adjudicating authority. When it was found that defaulters were bidding under the insolvency proceedings, the law was amended[644] in 2017 to prevent them from getting away by paying a fraction of their dues.[645] However, with an ordinance[646] promulgated on 6 June 2018 that turns allottees in a real estate project into financial creditors, populist politics is staining an otherwise good law.

Chapter 68

Demonetisation, 2016

On 8 November 2016, Prime Minister Narendra Modi's address to the nation announced[647] what is arguably the most disruptive policy in his tenure thus far: the Rs. 500 and Rs. 1,000 currency notes would cease to be legal tender from that midnight. The objective was both economic and political. By tuning into corruption at high places and the widespread black money in the economy, Modi articulated a political angst against "anti-national and anti-social elements", while stating that the "rights and the interests of honest, hard-working people will be fully protected". An additional objective of this scheme was to curb fake currency and terror financing from across the border. People could exchange notes worth Rs. 4,000 per person, and ATM withdrawals were restricted to Rs. 2,000 (later raised to Rs. 4,000) per day, with an overall limit of Rs. 20,000 a week.[648] Had there been short- to medium-term positive outcomes, as had been envisaged while drafting and delivering the scheme—first through Modi's speech, then by an 8 November 2016 Reserve Bank of India press release,[649] then a 30 December 2016 Ordinance,[650] and finally by the Specified Bank Notes (Cessation of Liabilities) Act[651] passed by Parliament on

27 February 2017—the human inconvenience and pain could have been assuaged. But with 98.96 percent of the notes returning to the banking system,[652] demonetisation only managed to create acute individual distress, which the finance minister declared anecdotal.[653] But it hit real estate,[654] slowed growth[655] due to reduced demand, disrupted supply chains[656] and increased uncertainty.[657] Additionally, it caused a decline in cash-sensitive stock-market sectoral indices such as realty, fast-moving consumer goods and automobiles, and particularly hurt the informal, cash-driven economy.[658] All this, without any tangible destruction of unaccounted-for money, reduction in bribery or fall in the number of counterfeit notes. Digital transactions amongst new users did, however, increase sharply.[659] Modi's wasn't the first attempt at demonetisation in India. On 30 March 1978, Parliament had enacted the High Denomination Bank Notes (Demonetisation) Act,[660] a retrospective law that came into force more than two months earlier, on 16 January 1978, under which high-denomination notes of Rs. 1,000, Rs. 5,000 and Rs. 10,000 ceased to be legal tender.[661] While the policy caused short-term problems for the economy, particularly the informal sector, the fact that almost all the money has been returned through KYC-linked accounts into the banking sector holds potential to map and track unaccounted-for inflows.

Chapter 69

Real Estate (Regulation and Development) Act, 2016

One of the most striking and tragic contradictions of India's policymaking has been around real estate. Acute housing shortages, lack of developed land, speculator-driven bubble-like asset prices, with unaccounted-for income and an overriding ecosystem of personal, corporate and government corruption, has placed citizens at the mercy of those who bring all these together: builders. Builders are as much victims as perpetrators of these anomalies, best highlighted by the late-2017 implosion in NOIDA, near Delhi, that hurt all economic agents, from producers to regulators to elite consumers alike. For more than a decade now, there has been a desperate need for a regulator to oversee this complex industry. Complicating the issue is that while land and its development is a state subject,[662] consumers are mobile, migrating from one state to another with ease. The Real Estate (Regulation and Development) Act[663] of 2016 attempts to fix this by establishing a Real Estate Regulatory Authority (RERA) to regulate the sector and "protect the interest of consumers in the real estate sector" through an adjudicating mechanism and the Appellate Tribunal.[664] Thus, the disclosure–registration–redress trinity will create a balance between a developer and a consumer. This mechanism is to be adapted by each state and Union Territory. Under the law, each real estate project larger than 500 sq. m[665] or with more than eight apartments is mandated to register with RERA and will be regulated. Further, all real estate agents[666] must also register themselves with RERA. Financial discipline has been embedded into the law: a promoter can't accept more than 10 percent as an advance payment[667] without a written agreement for sale; they must deposit 70 percent of the amount in a separate account, and the funds withdrawn must be in proportion to the percentage of completion of the project.[668] If any false or incorrect statement is given to a consumer, the promoter is obligated to provide a full refund with interest.[669] This law needs to be enforced by state governments, most of which have notified it but are dragging their feet on access, compliance and delivery to consumers.[670] Overall, the implementation of RERA by states has diluted its original objective,[671] and today, it is on the verge of being classified as a wasted opportunity.

Chapter 70

Goods and Services Tax, 2017

The goods and services tax (GST) is arguably the most complex law in the history of Independent India. Following the enactment of the Constitution (One Hundred and First Amendment) Act[672] on 8 September 2016, Parliament passed four central laws—the Central Goods and Services Tax Act,[673] the Integrated Goods and Services Tax Act,[674] the Union Territory Goods and Services Tax,[675] and the Goods and Services (Compensation to States) Act[676]—on 12 April 2017, and ushered the GST into India, aligning the indirect taxes system of the country with those of 140 other nations. The GST replaces eight central taxes and nine state taxes,[677] but leaves five petroleum products (crude, petrol, diesel, ATF and natural gas) as well as alcohol for human consumption out of its ambit.[678] The enactment of the laws and their implementation from 1 July 2017 is arguably the biggest post-1991 economic reform. It is big because it brings to the fiscal table the governments at the centre, the 29 states and the seven Union Territories. The Uttar Pradesh (UP) legislature, for instance, enacted the UP GST Act[679] on 18 May 2017, while a 28 June 2017 notification[680] ensured the relevant GST provisions to come into force in all Union

Territories. The GST is also one of the longest reforms undertaken in India. In his 16 March 1985 Union Budget speech, Finance Minister V.P. Singh announced the formulation of a long-term fiscal policy[681] to bring tax stability and map it to the Five Year Plans. Based on this policy, the next year, he introduced MODVAT[682] (modified value added tax), which had been termed MADVAT, a sting he read out in his speech: "…I shall stress MODVAT, not MADVAT…". Several committee reports—headed by Raja Chelliah, Y.V. Reddy, Parthasarathi Shome and Vijay Kelkar—followed. There were many attempts to bring in VAT, with institutional implementation as a tussle between the centre and the states being the key constraint. On 1 April 2000, the CENVAT[683] (Central VAT) was introduced. It has taken three decades of legislative wrangling to reach a point where India has a single indirect tax, the GST. With the structural reform over, minor tinkering over rates and compliance will continue. Technical snags and the accompanying compliance burden notwithstanding, the law has seen the number of taxpayers rise to 112 million from 6.4 million. Sooner rather than later, this increased base will deliver higher taxes. Up next: convincing states to bring the five fuels and alcohol for human consumption into the GST network, all of which will increase India's tax-GDP ratio.

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This is a wonderful book, very unlike any other book on India's post-Independence economic evolution that I can think of. Typically, economists do not appreciate the importance of legislation in promoting, and even more importantly, in constraining growth. Gautam does (probably comes from his deep understanding of the Mahabharata). Having read the book, I wondered—why didn't someone else think of writing a book like this earlier? It will give you 70 insights (sometimes unexpected ones) on why India lost several development decades.

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