Enforcing Contracts For Better EoDB

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This article is based on **Enforcing contracts key to 'ease of business'** which was published in The Hindu BusinessLine on 01/09/2021. It talks about the improving ease of doing business in India and the constraint still dragging it behind.

India needs investment of USD 4.5 trillion to build sustainable infrastructure by 2040. Thus, it is imperative to rapidly boost India's global ranking in the **World Bank's Ease of Doing Business (EoDB)** in order to attract foreign investment.

However, there are several challenges (especially Enforcing Contracts) which need to be resolved before we could break into the TOP 50 in the Worlds' EoDB list.

Recent Development in Ease of Doing Business (EoDB)

- India's world ranking, from **142 in 2014** among 190 countries, went up to **130 in 2015, 100 in 2017, 77 in 2018** and **63rd in 2019.**
- India was lauded by the World Bank for being among **10 top world reformers,** especially for a large country.
- This EoDB ranking is calculated on **10 parameters** — 'starting a business', 'construction permits', 'getting electricity', 'getting credit', 'paying taxes', 'trade across borders', 'enforcing contracts', and 'resolving insolvency'.
- India's progress has been steered by dramatic improvement in a few parameters, mainly in **'resolving insolvency' (from 108 in 2018 to 52 in 2019).** But it has remained **stagnant at 163 in 'enforcement of contracts'.**
- For investors this is one of the most essential indicators for measuring time and cost to resolve a commercial dispute and evaluating a country's risk.
- Currently, only Delhi and Mumbai are under the purview of the Ease of Doing Business survey by World Bank.
    - Whereas, Kolkata and Bengaluru are likely to be included in the forthcoming Doing Business Report.

Enforcing Contracts

- The Enforcing Contracts indicator is essential to the success of the Doing Business report.
- It measures **time and cost** to resolve a standardized commercial dispute as well as a series of **good practices in the judiciary.**
- Therefore, Time, Cost and Quality of Judicial Process are the three variables which the World Bank has taken into account for ranking the countries on the Enforcing Contracts parameter of the Ease of Doing Business Ranking.
- The **Department of Justice** is the nodal department for the Enforcing Contracts Indicator.

Some Measures Taken

- The Department of Justice has been monitoring an array of **legislative and policy reforms** in coordination with the e-Committee of the Supreme Court and the High Courts of Delhi, Bombay, Calcutta and Karnataka.
- A **new portal for Enforcement of Contracts** has been set up. The idea is to ensure fair, well laid out rules, clear laws, reduce litigation involving the government and strengthen commercial dispute resolution mechanisms and enforcement of contracts.
- The government has also set up two **high level task forces in NITI Aayog,** to give recommendations for a policy framework for enforcement of contracts and an effective conciliation mechanism.
    - This is expected to accelerate investments in infrastructure and provide comfort to investors
- The Government has been aggressively pursuing various reform measures to create an effective, efficient, transparent and robust **'Contract Enforcement Regime'.**
    - Several rounds of meetings have been held with leading law firms, corporate bodies, chambers of commerce and industry to work in an integrated manner along with the judicial fraternity to improve the quality and efficiency of commercial courts.

Challenges With the Enforcement of Contracts

- **Incongruous and Flawed Interpretation:** India is not considered as a preferable seat of arbitration as there have been incongruous and flawed interpretations by the judiciary when compared to the foreign jurisdictions.
- **Delay in Completion of Proceedings:** There is unwarranted delay in completion of proceedings, leading to backlogs and delays of resolution of claims and cases.
    - On an average, it takes four years to resolve a commercial dispute in India — as against 164 days in Singapore, the top-ranked nation, in terms of dispute resolution.
- **Backlogs of Cases:** India is known for backlogs in its judicial system which has been a major drawback for the country from becoming a commercially preferable jurisdiction for enforcement of contracts and administration of justice.

- **Tribunals are Not Helping:** Tribunals were formed for tackling this problem but with the ever-increasing number of cases, they have not significantly helped in reducing the burden of the courts.
- **Vacancies and Infrastructural Deficit:** There have been discussions on increasing the number of benches in various courts and tribunals. No concrete step has so far been taken in this regard. Vacancies at almost all levels of judiciary continue to be a **hindrance in combating the backlog.**

Way Forward

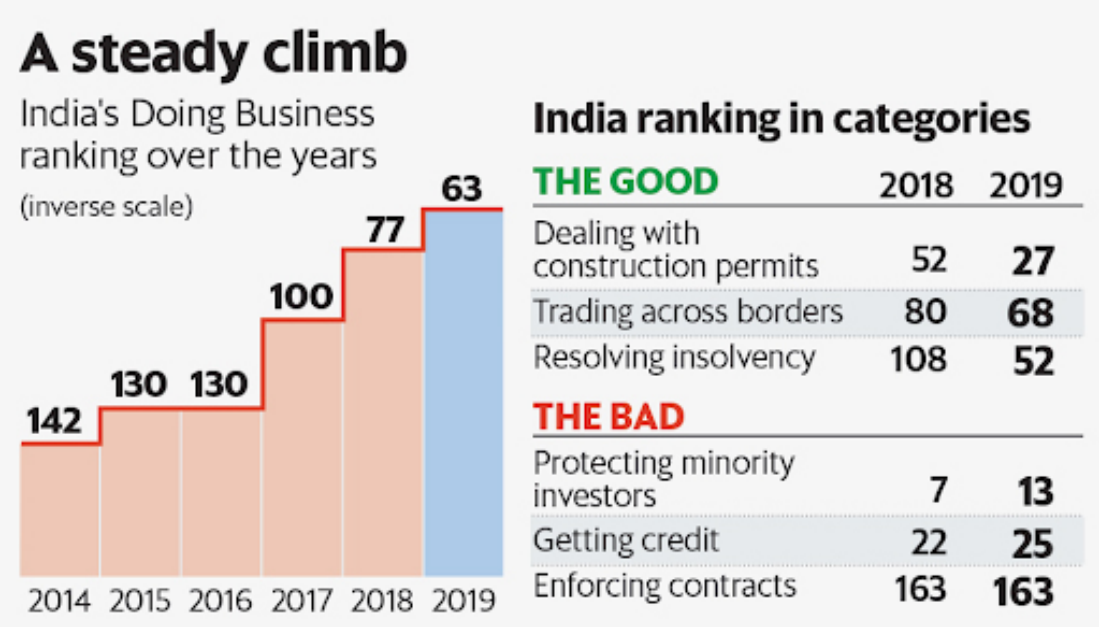
- **Dispute Resolution Mechanism:** With India becoming a hub of foreign investments, policy stability and access to a fair, speedy and effective dispute settlement mechanism is imperative.
    - Most foreign investors choose arbitration as their dispute settlement mechanism in their contracts, with the seat of arbitration being in a neutral country.
    - Being able to enforce such awards in India is vital to strengthening investor confidence.
- **Need For Reduction of compliances:** Recently the Centre and State governments decided to review and systematically phase out over 6,000 tedious compliances both at State and Central levels.
    - This will greatly help both domestic and foreign backed companies and promote EoDB.
    - India today is the first choice for global investors in the on-going geo-political situation.
    - It is of utmost importance to reduce the compliance burden so that firms can focus on the deliverables.
- **Adopt a multi-pronged approach:** This includes strengthening the capacity of the judiciary to implement the **provisions of the Commercial Courts Act** on priority basis.
    - Aspects such as making arbitration and pre-trial hearings mandatory, adopting the latest **case management practices and technological tools,** and training of dedicated judicial officers could make a significant difference.
    - The focus of the government has to be on **improving judicial infrastructure,** not just land and buildings, but the number of judges at all levels.
- **Time Bound Disposal of Cases:** There is no time-bound procedure to hear cases of breach and enforcement of contracts.

    Time-bound disposal of cases, like the **way it happens in the United States,** will ensure contracts are enforced in a timely manner.
- **Honour the Contract:** Industry bodies and trade associations could play a role in sensitising their members on the sanctity of contracts. Some experts highlight the need for governments — Centre and the states — and public sector undertakings to be made more accountable for honouring contracts.

Conclusion

While India has consistently improved its score in EoDB, there is still a long way to go.

Also there is lately a **shift of supply chains from China,** it is important to focus on some of the issues that have prevented India from improving our contract enforcements. This is important to instil investor confidence as it signals predictability and commercial viability of the transactions.



Drishti Mains Question

'The Enforcing Contracts indicator is essential to the success of the Doing Business report.' Discuss how better enforcement of contracts will go a long way in attracting foreign investments in the evolving geopolitical situation.