

Reducing Compliance Burden under State Laws



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Overview

Scenario: Unemployment rate in Rajasthan has been consistently high. The state has received large investment commitments, there have been difficulties in implementation.

Issue: While Rajasthan has attempted to enhance transparency and reduce human interaction in compliances, it has not examined need for compliances.

Objective: Strengthen government's efforts to increase investment and employment, by suggesting reduction in compliance burden under state laws.

Approach: Using elements of Regulatory Guillotine framework, subjecting key compliances to the tests of legitimacy, suitability, and proportionality.

The three-step test

The three-step test	Explanation	Result	Result	Result	Result
Is it legitimate?	The objective necessarily needs to be pursued by the compliance	Yes	Yes	Yes	No
Is it suitable?	The compliance, in its current form, is essential to achieve the objective	Yes	Yes	No	Not Required
Is it proportionate?	Benefits of the compliance are likely to outweigh its costs	Yes	No	Not Required	Not Required
Action needed		Retain	Amend	Abolish	Abolish

Methodology

- Review of single window clearance platform, department websites, reports in local publications and newspapers.
- Interaction with industry representatives, experts, consultants, government departments, through structured and semi-structured questionnaires. Obtained perspectives on cross-cutting as well as sector specific issues.
- Analysis of relevant laws, rules, orders, bye-laws, practices in other states, and recommendations by experts, think tanks.

Fire No Objection Certificate

Problem:

- Pursuant to order issued by UDH and LSG departments, commercial buildings of more than 15 meters height are required to obtain Fire NoC. *This may result in similar treatment of entities potentially having different risk profiles.*
- Such buildings are required to install equipments like fire extinguisher, hose reel, wet risers, down comer, yard hydrants, some detector, automatic sprinkler, detection, alarm system. *This may lead to imposition of disproportionate costs on businesses.*
- Fire cess in proportion to the building height and build up area is required to be paid. *Depending on plot sizes, fire NOC can cost between INR 10 lakhs to 70 lakhs annually.*
- Fire safety officers are authorised to inspect such buildings from time to time. Chief Municipal Officer can seize and prohibit use of such premise. *Such wide and unbridled powers have the potential of being misused.*

Fire No Objection Certificate

Analysis:

- S. 255 of the Rajasthan Municipalities Act authorises municipalities to make arrangements as may be necessary for fire safety and prevention, including requiring fire NoC. *Lack of clarification on the scope of necessity may result in imposition of avoidable compliances.*
- S. 337 authorises state govt to issue rules and orders generally for carrying out purposes of the Act. *While rules are required to be laid before the state legislature, there is no such requirement for orders. Such lack of oversight may result in disproportionate requirements.*
- Karnataka and Maharashtra require buildings with height of at least 24 meters to obtain fire NoC. It appears that the NBC's specification of 15 meters was based on height of manually operated ladder of around 11 meters. *It might be useful to revisit such conditions periodically.*
- Telengana has adopted third-party certifications for fire NoC and has rationalised charges, while Gujarat has prescribed a validity period of three years. Rajasthan has higher charges and shorter validity period. *It might be usefual to rationalise the conditions in Rajasthan.*

Change in Land Use

Problem:

- The process of change in land use is ambiguous, time consuming and expensive.
- Estimates suggest that around 80 percent of budget hotel room occupancy is in residential area. *Without change in land use, they are unable to raise funds, have to pay fixed electricity charges, and are unable to benefit from tourism.*

Analysis:

- Section 182 of the Rajasthan Municipalities Act allows state govt to allow change of land use in public interest. Following a decision of Raj HC, the UDH department issued an order explaining the scope of public interest. *Such wide discretionary powers could lead to uncertainty and have the potential to be misused.*
- The Rajasthan Land Revenue Act prescribes conditions for use of agricultural land for non-agricultural purposes. *It does not provide the desired vision to the executive while dealing with related issues.*

Change in Land Use

- LSG and UDH departments have issued Rajasthan Urban Areas (permission for use of agriculture land for non agriculture purposes and allotment) Rules. The LSG department has also issued the Rajasthan Urban Areas (change in land use) Rules. *These rules have detailed procedure for land use conversion process, which may increase complexity.*
- Gujarat and Maharashtra have amended their principal statutes i.e. Land Revenue Codes to allow use of certain lands for bonafide industrial purposes, on the basis of self-certification, and without the need for approval from any authority. All this has been mentioned in the primary law, which provides certainty. *Similar reforms may be contemplated in Rajasthan.*
- Karnataka is contemplating similar reforms. It has also reduced the number of documents, time and steps for processing of change in land use permission. *Similar reforms may be contemplated in Rajasthan as well.*

Investment Promotion Schemes

Problem:

- Rajasthan has launched several incentive schemes, such as Rajasthan Investment Promotion Scheme, to attract investment and generate employment.
- Incentives include investment subsidy of a portion of state tax due and deposited for specified period, employment generation subsidy of reimbursement of a portion of employers contribution towards EPF and ESI.
- It is claimed that the scheme has stringent eligibility criteria for investments, complicated screening and inspection processes, resulting in delays in disbursement of incentives.

Analysis:

- Several incentives under the scheme kick in after firms making desired investments, becoming operational, and generating revenue. *Such post-facto incentives may not be much attractive to firms which require upfront support, during starting of operations, and might not have adequate working capital.*

Investment Promotion Schemes

- High investment thresholds may disqualify micro and small enterprises (having the potential to generate significant employment).
- The scheme constitutes state level (for large and multi-district investments) and district level screening committees (for MSMEs, tourism, and start-ups) comprising government officials.
- It envisages inspection/ scrutiny by officers of Commercial Taxes and Industries departments (which is the nodal department). Also, the govt can amend the scheme at its discretion.
- In case of withdrawal of benefits, owing to non compliance, recovery of benefits availed with 18% interest is possible. However, there is no provision of interest in case of delay in disbursement of benefits.
- *Such provisions may not inspire confidence and could discourage interested entities from applying and benefitting from the scheme. These need to be reviewed and reformed.*

Use of Industrial Land for Warehousing

Problem:

- Industries are facing difficulties in using land allotted to them in industrial areas for warehousing purposes.

Analysis:

- As per RIICO Disposal of Land Rules, warehousing and logistics are classified as service enterprises. Land allotment for warehousing is made at 1.5 times the prevailing rate in unsaturated industrial areas, and through auction (sealed bids) in saturated industrial areas.
- For using industrial land for warehousing purposes, approval for conversion, on payment of charges at prescribed rates, is required. The rates differ with use: captive, commercial, and modern (warehouse style retail stores/ direct sales).
- Given the increasing need for warehousing and showcasing products near industrial units, businesses seem to consider warehousing essential, and extension of industrial units.
Complicated procedure and avoidable complexities have resulted in cost escalation.

Use of Industrial Land for Warehousing

- Uttar Pradesh has recently granted industrial status to warehousing thereby reducing the conversion rate from 1.5 times of circle rate to 0.35 times. *Similar initiatives may need to be introduced in Rajasthan.*
- The Rajasthan Logistics, Warehousing and Logistics Park Policy 2021, states that warehousing and logistics units satisfying 'Infrastructure Status' conditions shall be granted 'Industry' status, for availing benefit regarding utility charges, service charges, city planning.
- However, the policy states that decision on any land related matter shall be in accordance with prevailing policies / decision of the concerned authorities. *Thus, for use of industrial land for warehousing purposes, high rates and complicated procedure may continue to exist without necessary reforms in the state. A comprehensive review of entire land conversion procedure and cost is overdue, and should aid in ushering desired reforms.*

Demands for Cess and Taxes

Problem:

- The government has been issuing notices to businesses for recovery of fire, urban development, and other cess and taxes. Several of these have been issued to units in industrial areas.
- Many of these demands have been issued from retrospective effect, for past 10-15 years, despite several units having set up in past 5-7 years.

Analysis:

- Section 103 of the Rajasthan Municipalities Act authorises the municipality to levy discretionary taxes, including fire tax, subject to any general or special orders of the state government. The Act also lays down detailed procedure for levy of such tax.
- A municipality can levy development charge as may be determined by the bye-laws under section 106. It also has the power to levy user charges, fees, and fines under the Act. No specific procedure is prescribed in this regard.
- Clause 15 of the RIICO Disposal of Land Rules (Rules) state that all kinds of rents, taxes, charges, claims which the municipal board may impose in respect of the land allotted and building erected therein shall be payable by allottees directly to the authorities concerned.

Demand for Cess and Taxes

- Under the Rules, RIICO also imposes economic rent and service charge on land allottees. These are payable on an annual basis and are typically increased every year.
- In addition, as per clause 15(B) of the Rules, for maintenance of fire fighting facility in the area, fire station charges shall be levied in addition to the service charges in consultation with the industries association of the area.
- Section 12 of the Rajasthan Industrial Area Development Authority Act, 1995, authorises the Authority to levy charges or fees for providing, maintaining or continuing any amenities in the industrial area, with prior approval of the State Government. Section 32 of the 1995 Act prohibits any interference by other local bodies in the functions of the Authority. *There is a possibility of overlap and multiplicity of charges, cess, and taxes. Prescribed procedure might not be followed.*
- Supreme Electrical has filed a writ petition against demand of municipal taxes by Greater Jaipur Municipal Corporation in RIICO area. The matter is pending. *The government should clarify jurisdictions of different authorities, avoid multiplicity and uncertainty.*

Pollution Control Norms

Problem:

- There are inconsistencies between central and state categorisation of industries. For instance, processing of iron and steel is categorised by centre in orange but by state in red category, leading to increase in compliance cost. It has been estimated that 22 companies have migrated from Bhiwadi to other states which apply norms consistent with central norms.
- The process of auto-renewals also appears to be complicated and costly.

Analysis:

- In 2016, Central Pollution Control Board issued categorisation of industries in red, orange, green, and white categories. Industries in red category are required to obtain lesser-duration but expensive approvals from headquarters.
- While Rajasthan Pollution Control Board has issued inconsistent categorisations, states like Haryana, Punjab, Uttar Pradesh, Gujarat, and Madhya Pradesh seem to have issued consistent categorisations. *Rajasthan should consider issuing consistent regulations.*

Pollution Control Norms

- As per Rajasthan Air (Prevention and Control of Pollution) Rules, 1983, an application for renewal of consent to operate is required to be made at least 4 months prior to expiry of the consent, failing which, an additional fee of 25% has been prescribed. If the renewal is applied after expiry of consent, an additional fee of 50% has been prescribed. *While sufficient prior notice for evaluating the application for the first time might be justified, such stringent norms for renewal might be unreasonable.*
- Rajasthan has envisioned auto-renewal of consent, based on self-certification, certification of chartered accountant, submission of relevant documents, along with application 120 days prior the expiry of consent. *Other states like Odisha, Andhra Pradesh, Maharashtra, have introduced further reforms in terms of reduction of time period, documents, and fees. Similar reforms could be explored in Rajasthan as well.*

Good practices for approvals and renewals

- Karnataka has recently launched Affidavit based Approval System as a part of as a part of amended Karnataka Industrial (Facilitation) Act. It aims to enable investors establish businesses without multiple clearances for first three years, based on self-certification.
- Karnataka has also introduced transparent, non-discretionary, online system for auto-renewal of compliances related to factories, boilers, industrial safety, health, labour departments, based on self-certification and payment of relevant fees.
- Punjab has adopted third-party verification system for compliances under pollution control laws.
- Andhra Pradesh has adopted first of its kind Development Planning and Management System which enabled anytime anywhere cloud based digitally enabled automated approvals for buildings and development of layouts for residential, commercial, and industrial purposes.
- Gujarat has adopted paperless inspection process, through use of geotagged visual evidence.

Thank You

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