

Ease of Doing Digital Business in India

Background and Problematique

India plans to create up to US\$1tn of economic value from the digital economy in 2025. Among other initiatives, the Government of India (GoI) has promoted Ease of Doing Business (EoDB) and significantly enhanced India's position in the World Bank's EoDB rankings. Specifically, the GoI decriminalised offences under various business regulations. However, the EoDB rankings do not feature ease or unease of doing digital business, nor any factors governing the ease of business-building in the digital economy.

According to the Ease of Doing Digital Business (EoDDB) 2019 Rankings by the Fletcher School at Tufts University, India was placed 38th amongst 42 countries covered. Some of the key reasons for such a ranking include domestic and foreign digital businesses' difficulty navigating challenging policy environments and frequent regulatory changes.

For digital businesses in India, the regulatory framework is increasingly becoming convoluted. The provisions in the Information Technology Act, 2000 (IT Act) provide punishment with imprisonment and fine, in case of non-compliance by intermediaries. Similarly, the provisions of the recently notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 originally intended to provide safe harbour to intermediaries, prescribe punishment under any law, including the IT Act and the Indian Penal Code (IPC) on non-compliance.

Such provisions also make the employees of digital businesses criminally liable and are at odds with modern corporate jurisprudence. Moreover, other factors, such as policy reversals and inconsistencies, burdening regulatory compliances, prospective restrictions on data flows and management, digital and physical infrastructure constraints, etc., may have added to the unease of doing digital business in India. Consequently, it may adversely impact investment and innovation in the Indian digital economy as well as the economic growth and social mobility of consumers.

CUTS Study

Given the ever-evolving and growing digital economy, examining how and what factors, including criminality provisions, restrictive and inconsistent policies, affect Indian digital governance and EoDDB in India is pertinent. On this, an impact analysis is essential of the potential benefits and negative impacts on the growth of the digital economy, including the stated aim of GoI to foster EoDB in the country.

Proposed Objective

With this background, the objective of the CUTS study is to examine the factors that facilitate the ease or

unease of doing digital business in India in existing and proposed laws on digital businesses and their impact on them, including the indicators of economic growth.

Methodology & Approach

The study will take an evidence-based and bottom-up approach to understand the impact of regulatory provisions imposing criminal liability on employees of digital businesses, innovation, investment, freedom of speech and expression, among other economic indicators using the following methodology:

- **Secondary Research:** A detailed review of literature consisting of prevailing regulatory frameworks, studies, research reports on digital businesses and EoDB in India and other jurisdictions will be done. This will build an understanding of regulatory objectives, possible concerns, compliance challenges, etc. It would also help in the identification of indicators for analysing the impact of EoDDB.
- **Gap Assessment:** Based on the understanding from a detailed literature review, information gaps will be identified and evaluated through stakeholder interactions. For this, questionnaires for stakeholder interaction would be prepared to understand their perception, concerns and challenges, for the regulatory framework and criminal provisions for digital businesses, among others.
- **Survey of Digital Businesses:** A survey of an appropriate number of digital businesses (also those who qualify as intermediaries under the Act) operating in India, across size, sectors will be conducted.
- **Analysis and Discussions:** The data collected from the survey would be analysed to ascertain key findings and takeaways on the impact of criminal liability on digital businesses across indicators, such as EoDB, innovation, investment, economic growth, and utility for consumers.
- **Focus Group Discussions (FGDs):** Key findings will then be presented in an FGD consisting of key stakeholders, policy influencers, government officials, and experts for their feedback and suggestions on meeting regulatory objectives without unnecessarily impacting EoDDB in the country, while also discussing approaches in other jurisdictions.

Envisaged Outputs

- Slide Deck highlighting Key Findings of the study
- Policy Brief highlighting Detailed Findings of the study
- Media engagement through Op-Eds

Envisaged Outcomes

- Better understanding of the state of Doing Digital Businesses in India and its interplay with EoDB and EoL initiatives of the GoI
- Improved understanding of the coherent approach towards regulation of digital businesses
- Informed narrative for an empirical, inclusive and participative approach towards EoDDB in India

Project Duration

The study is envisaged to be implemented in a period of four months.

