

## Small Enterprises Development Bill

### A Step in the Right Direction?

*The small-scale sector has acquired a prominent place in the socio-economic development of the country. This sector plays a major role in providing employment and livelihood to millions of people. It provides employment to approximately 200 lakhs of people. The production value of this sector at constant prices is approximately Rs. 5,15,000 crores. This sector also contributes significantly to India's exports. It is estimated that the share of small scale industry in India's exports is anywhere between 35 to 40 percent. Hence, the need to foster this sector.*

*In India, a plethora of law exists for the small-scale sector, which often overlaps leading to complexities. Thus, the demand to have a comprehensive legislation for the small-scale sector is gaining pace.*

*Keeping this in mind, the Government has introduced a Bill in the Parliament, which is known as the Small Enterprises Development Bill. This parliamentary brief takes a close look at some of the pros and cons of the bill.*

#### The Bill at a Glance

##### Highlights

- ◆ A legislative attempt to extend a comprehensive policy package for the development of small enterprises.
- ◆ Establish a statutory body in the form of a National Small Enterprises Development Board to formulate policies for small enterprises.
- ◆ Makes it statutory for banks and other credit agencies to follow the guidelines issued by the Reserve Bank of India (RBI) in advancing loans or credit to small enterprises.
- ◆ The grievances in respect of access to credit or finances will be heard by the Banking Ombudsman.

##### Lowlights

- ◆ Recommendations made by the National Small Enterprises Development Board will not be binding on the Central Government and this will undermine the importance of the Board. Further, this Board cannot make recommendations to the Central Government on reservation policy.
- ◆ The structure of the board is such that it looks like a council.
- ◆ Bill sustains the legacy of inspector raj by incorporating stringent inspection guidelines.
- ◆ No provision for an ombudsman or an alternative dispute resolution mechanism for matters such as confiscation of property or grievances other than those related to credit.
- ◆ Measures of trade support make it mandatory for the Central Government to notify from time to time its procurement policy but not for the state governments (and through them for other bodies at the sub-national level).

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#### Action Points

- The National Small Enterprises Development Board should be given more powers. The recommendations made by the Board on policy matters should be made binding on the Government. Furthermore, the Bill should enunciate the criteria of selecting various members of the Board.
- The bill should provide for a "clustered" approach for inspections.
- There should be a provision for an Ombudsman for all matters and disputes pertaining to small enterprises.
- A clustered approach should be adopted to carry out inspections.
- The Bill should provide a social security scheme for workers of the small enterprises.
- The applicability of the Industrial Disputes Act to small enterprises should be modified so as to provide enough flexibility to small enterprises in their functioning.
- The Bill should give power to the Central government to direct the state governments regarding the execution of all or any of the provisions of this Act.

## Introduction

The Preamble of the Bill states: "A Bill to provide for development under the control of the Union [the central government] of small enterprises and for matters connected therewith and incidental thereto." Simply speaking, the primary purpose of the Bill is to provide guidelines for the development of the small-scale sector.

This paper examines some major provisions of the bill, in light of the following fundamental questions:

- ◆ How successful the Bill will be in nurturing the small enterprises?
- ◆ Whether the Bill will streamline the complicated procedures that small enterprises have to follow or not?
- ◆ Whether the bill will empower the Indian entrepreneurs to unleash their entrepreneurial energies or not?

## Inspection

One of the biggest drawbacks of the bill is that it has not simplified the procedures related to inspection of small enterprises. It has commonly been witnessed that in the name of inspection, the inspectors of various government departments harass the entrepreneurs of small enterprises. To counter this, the Abid Hussain Committee had proposed the 'clustering' of inspectors. This means that Governments at both central and state levels must "cluster" inspectors to eliminate repeated inspections by inspectors of different departments. Different departments must be made to cooperate so that inspection is done on a consolidated basis.

So if a state, for instance, have a total of 40 inspectors of various central and state departments, clustering must be done to ensure that one particular unit is not subjected to many inspections by different departments. Clustering will make sure that these 40 inspectors carry out inspection on a consolidated basis.

The Bill provides guidelines for inspection of small enterprises. These guidelines draw distinction between routine inspection and special inspection. However, the Bill does not clearly state how inspectors are to be clustered. It only states that the duration of routine inspection shall be no more than what is necessary. The bill should clarify that routine

inspection means 'clustered' inspection.

The Bill, though links routine inspection to the size of the establishment and the nature of the process to be carried out, does not give specific guidelines as to what size of an unit will attract how many and what type of inspections. The provisions vest too much discretion in the hands of the inspectors.

The bill should specify the size of the unit and the number and nature of inspections that a particular kind of unit will be subjected to. This power should be mandated to the National Small Enterprises Development Board. The guidelines should clearly mention that the Board should come out with specifics regarding the inspection.

The guidelines for inspection also mention that no inspector shall seize or remove any records or any other property from the premises of any establishment. However, after recording the reasons in writing the inspector has the power to seize and remove any record or property of an enterprise. There is no need to give seizure power to the inspectors, as this power will be misused.

An important step in reducing the red tapism in inspection is to follow what is given in the excise law. The excise law prohibits the entry of the excise inspector in a factory without prior approval of the assistant or deputy commissioner of that concerned department. This provision should be incorporated in this bill also.

The cardinal point to be understood is that inspection has proved to be a menace for small enterprises. Inspection is a legacy of the inspector raj, which has done more harm than good to the Indian economy. Subjecting small enterprises to the whims and fancies of inspector raj in the era of liberalisation is an incongruity. It is therefore pertinent to restrict, if not eliminate, inspections to bare minimum.

## National Small Enterprises Development Board

In the past, a number of committees, including the Abid Hussain Committee, had recommended the establishment of

All India Small Enterprises Development Board. Establishment of such a board is essential to formulate specific policies and set the tone for the growth of small enterprises.

Taking into account these recommendations, the Bill states that a National Small Enterprises Development Board will be established. The role of the Board shall be to advise the Government of India in matters relating to the formulation of policy for the promotion and development of small enterprises.

However, the Bill has focused much on the establishment of the Board and not on the procedures related to its functioning. It does not clarify the powers of the Board. Though the board will have a statutory status, it is not clear whether policy recommendations made by it will be binding on the Government or not. This (non-binding nature of recommendations) will defeat the purpose of establishing such a board.

The Bill states that up to forty members from small enterprise associations will be a part of the board. This broad based composition of the board makes it look like a council. This will make coordination and decision making difficult in the board. There is also no guideline for choosing the members. The bill must specify the basis on which members will be chosen.

This parliamentary brief proposes that apart from establishing a small enterprises board at the centre, a small enterprises council should be established both at the central and the state level. The role of the board, a smaller body, should be to formulate policies, and the role of the councils should be to give regular and state specific feed back to the board.

## Dispute Resolution

One of the major problems that haunt the small enterprises is that there is no effective and speedy dispute resolution machinery. The entrepreneurs of small enterprises, for the settlement of their disputes, have to undertake costly and time taking litigation. These disputes can range from row in registration to confiscation of property. This leads to undue harassment of entrepreneurs and acts

as a major impediment in the path of unleashing their entrepreneurial energies.

The Abid Hussain Committee had recommended the establishment of “industry facilitation councils” for resolution of conflicts pertaining to small enterprises. It was also recommended to resolve conflicts by arbitration and mediation.

The Bill does not contain any such provision for dispute resolution except for stating that the banking Ombudsman shall hear and receive grievances in respect of measures to ensure access to credit. Similarly, the bill should provide for an Ombudsman for all matters related to small enterprises. An Ombudsman or any other alternative dispute resolution mechanism will keep the small enterprises away from costly and time-taking litigation.

The important point to be understood is that costly and time taking litigation leads to inefficient allocation of resources. Today, the need is to ensure easier and faster access to remedies for small enterprises so as to optimise the use of resources.

### Labour Issues

The implementation of labour laws has been one of the problematic areas for the small enterprises. In this regard, the Bill states that certain provisions of some of the labour laws will be applicable for small enterprises only after modification. It also states how a particular enactment is to be modified before its applicability to small enterprises. This modified application of some of the labour laws to small enterprises is a step in the right direction.

However, one law, which is not mentioned in the Bill, is the Industrial Disputes Act of 1947. It would be interesting to see the application of this law for small enterprises. According to the Industrial Disputes Act, retrenchment and lay off conditions do not apply to those enterprises that employ less than fifty people. The threshold level for the application of the Industrial Disputes Act to small enterprises should be increased from 50 to 100 employees.

### Box 1: Social security scheme

A social security scheme for workers of small enterprises is essential to meet emergency healthcare, provide economic security in old age and protection to families in the event of the untimely death of the breadwinner.

The Government of India has recently introduced a social security scheme for workers working in unorganised sector. The introduction of this scheme is in line with the recommendations made by many committees and boards constituted for the purpose of small-scale sector. The scheme would have contributions from employers and employees. The employees of 18-35 years would have to contribute Rs. 50 and those in the age group of 36-50 would have to contribute Rs. 100. The quantum of contribution by the employers has not been determined in the scheme. The scheme would provide a monthly pension of Rs. 500 on retirement, permanent or temporary disability or to the widow of the worker.

However, the scheme has no provision for unemployment insurance, as recommended by the Abid Hussain committee. The need is to give this scheme a statutory cover and thus, these provisions should be incorporated in the bill.

#### Social security measures

The workers of the small-scale sector live in abject poverty and complete destitution. It is, therefore pertinent to have a social security scheme for these workers. But, the bill does not provide for any social security measure. The bill should direct the central and the state governments to adopt separate social security schemes for workers of small enterprises.

#### Sickness

Sickness in small enterprises is a global phenomenon, but nowhere it is punished as severely as it is done in India. India follows a regressive system where failed entrepreneurs are sent to jail and their properties are confiscated. Such a regressive system is a complete antithesis of the liberalisation process. To enable the entrepreneurs to unleash their entrepreneurial energy it is important that they are given every possible support.

#### Registration

The Bill talks about provisional as well as permanent registration. The bill states that any person who intends to establish a small enterprise may make an application for provisional or permanent registration. The bill further states that small enterprises may make an application for permanent registration irrespective of the fact whether they hold a provisional registration certificate or not. This is a positive feature as it cuts some of the red tape by allowing enterprises to straight away go for permanent registration.

The registration of small enterprises should be voluntary. Abid Hussain Committee had also recommended that registration of small enterprises should be voluntary.

#### Access to Credit

As per the Bill, RBI may issue guidelines for credit facilities to small enterprises from time to time. The requirement is that banks and other financial institutions while advancing credit to small enterprises have to follow these guidelines.

The Bill also states that these guidelines may specify the norms related to quantum, proportion, method of computation, collateral security, completion of formalities, revival packages, etc.

One positive feature of the bill is that it states that the banking Ombudsman as appointed by the RBI shall receive and hear grievances of small enterprises in respect of any action of a bank or a financial institution in relation to advancement of credit. In this regard, one plausible measure could be to appoint judicial officers in the Ombudsman and matters like small-scale credit or recoveries of over due cases should be referred to them.

#### Measures of Trade Support

Measures of trade support, in economic parlance, means those measures that need to be adopted or are being adopted to support or bolster trade, both domestic and external. In other words, it calls for a comprehensive set

of policies aimed at fostering the growth of small enterprises.

The Bill states that the Central Government should notify its procurement policy vis-à-vis small enterprises. Different organs of the Central Government (ministries, departments, public sector undertakings) will follow this policy. Such a policy will be aimed at giving preferences to the products of small enterprises. Such preferences can exist in the form of price preferences. It is important to note that procurement policy in favour of small enterprises is just one of the many possible measures of trade support.

The other important flaw in the Bill is that it talks only about the procurement policy of the Central Government and not the state governments. The state governments (and through them other local bodies at the sub-national level) also procure products of small enterprises. The need for the states to have a procurement policy for small enterprises is equally important.

### Reservation

Several committees have given different views and recommendations on the issue of reservation for small-scale industries. The reservation policy for small enterprises reserves certain products for the exclusive production by these enterprises. The aim is to boost the growth of small enterprises by giving them exclusive production rights of some of the products.

The Abid Hussain Committee had recommended that there is no need to have a reservation policy for the small enterprises. The argument is that the policy of reservation has done more harm than good to this sector and has

<b>Box 2: Reservation and Small Enterprises</b>
With the removal of quantitative restrictions, goods from the outside world are now marketed in India. This has raised basic questions about the role of SSI reservation. In many labour intensive areas with great export opportunities, SSI reservation in India is handicapping the development of efficient economies of scale, while firms in countries such as China are able to compete effectively in the international and in the Indian market. Hence, the process of phasing out of SSI reservation, in consultation with stakeholders, would constitute an important element of policies that foster efficiency and productivity in India.

*Source: Economic Survey of India, 2002-03*

in fact acted as a disincentive. It has prevented them from expanding. Moreover, after the opening up of the Indian economy, the reservation policy has lost its significance and efficacy (see Box 2).

For the purpose of reservation, the Bill proposes to constitute an Advisory Committee. This committee shall be constituted on the basis of recommendations made by the Central government. This committee will make recommendations to the Central Government for inclusion or deletion of any particular product from the list of reserved articles. It is up to the Government to decide whether to reserve an article for the production of small enterprises or not.

The rationale of having an advisory committee for recommending which item to reserve and which item to dereserve is not clear. There is no need to have such an advisory committee when the establishment of a Small Enterprises Board has been proposed.

The proposed Board's statutory responsibility is to formulate policies for small enterprises. There is no need to have an Advisory Committee, as that would undermine the importance of the board. The board has a statutory status

and therefore it is pertinent that the board should be responsible for identifying the items that are to be reserved for the production of small enterprises.

Even if an advisory committee is to be established, it should be established by the small enterprises board and recommendations must be made to the board itself.

### Power to make rules

The bill does not give the power to the central government to direct the state governments regarding execution of all or any of the provisions of this Act. The Central government should be given this power and compliance of state governments should be made mandatory. This will ensure effective implementation of the law.

### Conclusions

The Small Enterprises Development Bill is a timely legislative intervention for the small-scale sector. It expresses the legislative concern and intent to bolster this sector. But, it lacks teeth and is a halfhearted effort for developing the small enterprises sector. It does not take into account many of the real concerns of small enterprises as have been highlighted in this paper.

### Other Bill Blowups

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|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| 1. Competition Bill of India, 2001<br><i>A Right Step in the Right Direction</i> | 4. The Infant Milk Substitutes... Amendment Bill, 2002<br><i>More a Formality than an Attempt to Address the Real Concerns?</i> |
| 2. Communications Convergence Bill, 2001                                         | 5. 98 <sup>th</sup> Constitutional Amendment Bill, 2003<br><i>Seeking to Create a National Judicial Commission</i>              |

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