



Making Maharashtra #1 in Ease of Doing Business in India

Centre for Civil Society

Doing Business Report 2016 by the World Bank analyzes the performance of 189 economies on several parameters such as starting a business, getting electricity, registering property, paying taxes, trading across borders, etc. This report shows that the best performing economies on the ease of doing business indices have regulations that allow businesses and markets to function efficiently and transparently while simultaneously protecting public interest. Economies with high ease of doing business rankings also perform well on other international parameters such as Global Competitiveness Index and Transparency International's Corruption Perceptions Index.

The World Bank has placed India at rank 130 out of 189 economies in 2016. This is an improvement over 2015 when India was placed at rank 134. The Department of Industrial Policy and Promotion in the government of India as well as international organizations such as the World Bank group have been conducting analysis of the performance of various Indian states on the ease of doing business parameters from time to time.

Maharashtra's position on Ease of Doing Business

The Assessment of State Implementation of Business Reforms, conducted by the World Bank in September 2015 ("State Assessment Report")¹ ranked Maharashtra at rank 8 with an overall implementation score of 49.43%. This report acknowledged several good practices being implemented in Maharashtra to facilitate ease of doing business.

For example, Maharashtra is one of the few states where the single window mechanism is supported by a truly effective online portal called MAITRI.

Maharashtra's commendable performance is also visible from the following data:

- Rank 1 in obtaining infrastructure related utilities with an implementation score of 88.89%
- Rank 1 in enforcement of contracts with an implementation score of 55.56%
- Rank 3 among all states in allotment of land and obtaining construction permits with an implementation score of 70.27%
- Status of being the only state other than Gujarat to implement computerized risk assessment for environmental inspections

Since the publication of this report, the state government of Maharashtra has initiated and implemented many other measures targeting ease of doing business in the state.

¹ This Report analyses the reform measures taken and best practices implemented by the states during the period between January 2015 and July 2015.

Randomized risk-based inspections and self certification for labour and environmental clearances have been introduced. The number of permits and licenses required in various sectors has been drastically reduced, for instance, recently, five kinds of licenses required for setting up and running hotels.²

Other reform measures include:

- Online portal for environmental clearances set up recently.
- Significant changes have been made in some labour legislations. Hiring limit for contract labour has been extended from 20 to 50 under the Contract Labour (Regulation and Abolition) Act, 1970 without requiring permission of the labour commissioner for registration and other clearances. Definition of “factory” under Section 2 of Factories Act, 1948 has been amended empowering the state government to increase the number of workers from 10 to up to 20 (where manufacturing carried on with the aid of power) and from 20 workers to up to 40 (where manufacturing carried on without the aid of power). More such changes are on the anvil.
- The registration process for VAT and professional tax has been merged with a single process and single ID
- Large-scale digitization process of government services is underway. The **Aaple Sarkar program** is a commendable step in this direction.³ The state government also plans to make available online about 250 more government services in due course.⁴

As a result of these reforms, Maharashtra shows great promise to stand #1 in the next state-wise rankings. This fact has been acknowledged by ASSOCHAM in a study which placed Maharashtra as the most attractive investment destination in India, overtaking Gujarat.⁵

² See “Maharashtra govt. drops five kinds of licenses needed for hotels”, DNA, Jan. 30, 2016, at <http://indianexpress.com/article/business/business-others/maharashtra-up-mp-join-race-to-improve-ease-of-doing-business/>.

³ The portal can be accessed at <https://aaplesarkar.mahaonline.gov.in/en>.

⁴ See “250 govt. services to be available online by Oct. 2”, The Indian Express, Jan. 30, 2016, at <http://indianexpress.com/article/cities/pune/250-government-services-to-be-available-online-by-oct-2/>.

⁵ See “Maharashtra topples Gujarat to become most attractive investment destination: ASSOCHAM study”, Dec. 30, 2015, at <http://www.assochem.org/newsdetail.php?id=5421>.

Suggestions for being #1 on Ease of Doing Business

Reform Area: Enforcement of contracts

Though Maharashtra has attained Rank 1 among all states in contract enforcement, the implementation score of 55.56% has scope for improvement. Contracts lie at the base of all business relationships in any industry. Hence, effective enforcement of contracts is the key to generating investor trust and confidence in the business environment in the state. The Maharashtra government can take the following measures to make contract enforcement more robust in the state.

- **Model contract templates and guidelines** should be introduced which can help in standardization of contracts. Standard terms and conditions which are easily enforceable can be introduced in these templates. This can ensure that contracts are executed without much ambiguity or too many loopholes. With better clarity regarding these terms and conditions, court cases with respect to contract-related disputes can also be reduced this way. The Department of Industrial Policy and Promotion in its guidelines to states has also made this recommendation.
- **Make arbitration compulsory** for all commercial disputes. The hierarchy and jurisdiction of courts regarding civil cases in Maharashtra can be understood as follows:

Areas where the Bombay High Court has original civil jurisdiction:

The original civil jurisdiction of the Bombay High Court extends to the territory of Greater Bombay as per the rules of the High Court.⁶ The state government has the power to alter this jurisdiction and even abolish it. This power of the state government has been upheld by the Supreme Court in the landmark case of *Jamshed N Guzdar v State of Maharashtra*⁷. This judgment upheld the transfer of original civil jurisdiction from the Bombay High Court to the City Civil Court without any pecuniary limits. However, by a notification in 2012, the state government raised the pecuniary limit of the original civil jurisdiction of the Bombay High Court to Rs. 1 crore and above.⁸ Now, only suits valued up to Rs. 1 crore have to be filed in the City Civil Court in Mumbai.

⁶ <http://bombayhighcourt.nic.in/libweb/rules/OSrules/PART%2002.pdf>

⁷ AIR 2005 SC 862.

⁸ See "Suits valued up to Rs. 1 crore to be filed in City Civil Court in Mumbai", Times of India, Sep. 8, 2012, at <http://timesofindia.indiatimes.com/city/mumbai/Suits-valued-up-to-Rs-1-crore-to-be-filed-in-City-Civil-Court-in-Mumbai/articleshow/16313244.cms>.

Areas where the Bombay High Court has no original civil jurisdiction:

In these areas outside of Greater Bombay, presently, the district courts and other judicial officers such as the Civil Judges (Senior Division) and the Civil Judges (Junior Division) have the pecuniary jurisdiction to decide commercial disputes.⁹ Appeals would lie to the Bombay High Court.

In both the above territorial areas, arbitration should be made mandatory as the primary method for resolving commercial disputes. This will enable parties to a dispute to arrive at an out-of-court settlement and avoid long delays involved in the litigation process in courts, resulting in time and cost savings. With the recent amendments to the Arbitration and Conciliation Act, 1996, the arbitration process is set to become more robust. Arbitral institutions can also be encouraged to offer differential services and varied fees to cater to all kinds of litigants.

Here it is to be noted that Maharashtra has already set up seven specialized benches at the High court level to resolve commercial disputes. However, given the wide power of the state government to restructure, and even abolish, the original civil jurisdiction of the Bombay High Court, appropriate measures through notification/legislation can be undertaken for making arbitration compulsory.

- *Alternatively*, similar to the model at the High court level, **specialized commercial benches/courts should be set up at the lower court level** to resolve commercial disputes. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 also provides a discretion to the state government to set up such courts in consultation with the High court.¹⁰
- **Reducing delays in the court system:** At a broader level, to reduce long delays and backlogs in the state judiciary, a system of **Registrar's court** presently existent at the High court level should be set up at the lower court level as well for completion of filings/pleadings and evidence. Judges should be involved only in the admission stage and final arguments. Further, in order to limit repeated adjournments by the parties to a dispute and prevent long delays in litigation, an innovative measure is **Rule 68** of the Federal Rules of Civil Procedure in the USA. This rule involves civil commercial cases/contractual disputes involving monetary claim. Before the trial starts, the defendant can make an offer to the plaintiff to settle the case. If the plaintiff accepts the offer, the dispute does not go to the court resulting in time and cost savings. If the plaintiff rejects the offer, the judge is

⁹ See, for instance, the website of the District and Sessions Court at Nagpur at http://court.mah.nic.in/courtweb/static_pages/rti/nagpur.htm.

¹⁰ See Section 3.

informed about the rejection but not the terms of the offer that was rejected (this is kept in a sealed copy with the court).

If the plaintiff wins and the sum awarded in the judgment is less favorable than the offer made by the defendant before the trial started, the plaintiff has to bear the costs incurred by the defendant from the date the offer was made by the defendant. Both parties therefore make their own assessment in terms of cost and time before taking the dispute to litigation. This rule thus creates incentives for reducing litigation in the system.
