

INDUSTRIAL LICENSING : WHAT IT IS AND WHAT IT DOES

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Introduction

In the post-Independence era India embarked on an experiment in economic planning which aims at generation of higher incomes, realisation of better living standards, balanced regional development and a judicious utilisation of available resources. The policy frame, as far as industries are concerned, broadly speaking, is provided by the Industrial Policy Resolution of 1948, revised in 1956. The Industries (Development and Regulation) Act, 1951, is one instrument by which this policy is implemented.

Resume of Regulation

The origin of Government regulation of private industry in India may be traced back to the Second World War when, due to shortages in supply of raw materials and the need to conserve scarce resources, controls on production, distribution and investment in industries were imposed. It was expected that after the War, these controls would be discontinued. However, many of these controls lingered on even after the War.

The regulation of industries acquired new dimensions when in 1948, the Industrial Policy Resolution propounded the guidelines and policies governing regulation over industrial development. Government sought to give effect to the policy through a comprehensive statute, *viz.*, Industries (Development & Regulation) Act, 1951. The Act provided a framework for the systematic regulation of industry, with regard to the size and capacity of firms, the level of growth of various industries, their location and investment of resources, both Indian and foreign. Licensing is the *modus operandi* in these matters.

A licence is necessary for the establishment of new industrial undertakings, expansion of existing production facilities and diversification into new lines of production. For purposes of licensing an industry has been defined as a unit engaged in the production of a Scheduled item and the labour force exceeds 50 with the use of power or 100 without the aid of power. By refusing licence Government sought to prevent over-concentration or over-investment as also, regulate the capacity of industrial units and the number of units in a particular industry. The Act empowers Govern-

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ment to prevent over-development of a particular industry if it has already reached the targetted capacity or the estimated demand. Government have also the power to revoke or cancel industrial licences if the purpose for which licences were granted had not been fulfilled or the licences failed to take "effective steps" as defined in the Act.

Structure of the Industries Act

The important provisions of the Act are summarised below :—

- (a) Registration of scheduled industries with the sponsoring authorities *viz.* the Director General of Technical Development, Textile Commissioner, etc.
- (b) Licensing of new units as well as expansion or diversification.
- (c) Investigation into the operation of scheduled industrial units in case there has been or is likely to be an unjustifiable fall in the volume of production or a marked deterioration of quality or an increase in price or is managed in a manner likely to cause damage to consumers.
- (d) In the event of an industry or undertaking not carrying out the directions issued after such investigation the Government can take over its management.
- (e) For purposes of advising the Government on matters concerning the development and regulation of scheduled industries, the Act provides for setting up of a Central Advisory Council of Industries representing owners, labour, consumers and primary producers.
- (f) The major instrument envisaged under the Act for establishing liaison between the public and private sectors and for ensuring that private industry conforms more and more to the planned pattern of development is the institution of Development Councils.
- (g) Central Government can regulate supply, distribution, price etc. of the products of scheduled industries.

The Act is applicable only to industries included in the First Schedule. The Schedule originally contained only 42 industries when the Act was passed. A number of gaps in the scheduled industries came to light, more by accident than by design. For instance, while rayon was included, staple fibre was not mentioned ; though ferro-manganese found a place, other ferro-alloys like ferro-chrome were not covered ; paper was included, but the related item pulp did not find a place in the schedule. An amending Act of 1956 added 28 industries to the First Schedule. The present list contains about 160 items divided into 38 groups.

The structure of the Act is such that it gives extensive delegated powers to the Administration. The Central Government have power to make rules for the regulation of existing undertakings, as also for regulating the production and development of scheduled industries. The statement of Objects and Reasons of the Industries (Development and Regulation) Bill provided for prior consultation with the Central Advisory Council "before Central Government takes certain measures such as the revocation of licence or taking over control and management of any industrial concern." The Act, under Section 5(4) provides that the "Central Government may consult the Advisory Council in regard to any other matter connected with the administration of this Act in respect of which the Central Government may consider it necessary to obtain the advice of the Advisory Council." In practice no specific consultation is made under the section. Cases of revocation, along with licences granted, rejected etc. by the Licensing Committee are, however, brought to the notice of the Reviewing Sub-Committee of the Council, but not other specific matters such as making of rules.

Till 1953, the Industries Act, in so far as its regulatory functions were concerned, was confined to only licensing. In that year, through an amending Act, the regulatory provisions were tightened further by assuming power to cause investigation into the affairs of industrial units and take over their managements.

Licence System and Industrial Policy—an evaluation

According to statement of Objects and Reasons of the Industries (Development and Control) Bill 1949, the object of the statute was to provide the Central Government with the means of implementing the objectives of Government's Industrial Policy. The Industrial Policy of 1948, revised in 1956, demarcates the areas of Government and private spheres of enterprise into three categories. In the first category are industries the development of which will be exclusive responsibility of the State, and the second category is related to areas in which private enterprise is expected to supplement State initiative. All other industries will be left to the initiative of private sector. Besides demarcating the areas for public and private sectors, the policy contains the following objectives also :

- (a) Acceleration of the rate of economic growth and the speeding up of industrialisation and in particular the development of heavy and machine building industries.
- (b) Reduction of disparities in levels of development between different regions.
- (c) Protection of small scale sector.
- (d) Encouragement of co-operative industries.
- (e) Prevention of undue concentration of wealth in a small section of the population.

The above objectives are sought to be achieved through licensing. It is often asked as to what extent the licensing system and the controls that go with it have helped to strengthen the industrial base and accelerate growth. Even before the licensing system was introduced, an industrial base, with several industries such as iron and steel, engineering, textiles and sugar, with some chemicals, to mention a few, was in existence. With the advent of political independence and a national government, the process of industrial growth continued. This was helped, in a great measure, because there was sufficient local entrepreneurship and initiative. Besides, there was a growing market and an expanding infra-structure.

Therefore, it is by no means possible to attribute the development so far achieved to the licensing system. On the other hand, there is reason to believe that the licensing system has exercised a negative influence on industrialisation ; it often limited entrepreneurs' discretion on the choice of operating sizes, location, technique, and, patterns of investment, both domestic and foreign, consistent with economy and efficiency. It has discouraged productive investment in priority industries by the prevention of entry of entrepreneurs with adequate resources on the grounds of monopoly or concentration of power. The granting of uneconomic capacities has in many cases, inhibited proper follow up and implementation. The practice of reference of private sector applications to Government units— incidentally exempt from licensing --has prevented effective private sector participation in several fields. Some basic activities, in which the public sector has a predominant share, as for instance, pyrites, copper alloy steels etc., have not developed according to a proper time-sequence. The licensing system has led to delay in policy decisions in areas where they are most urgently needed.

The development of industries according to priorities is sought to be ensured by restricting licensing according to targets. Such restrictions have given rise to the problem of gaps between licensed capacity and the installed capacity because of the inadequate follow up. The process of banning fresh capacity where no further expansion is considered essential has prevented the entry of entrepreneurs who have the capacity to implement projects quickly.

The prospect of a rejection have often discouraged entrepreneurs from putting forward well-conceived projects or to prepare costly feasibility reports. The economic considerations of location are subjected, in many cases, to considerations of locational dispersal. Where licensing is done with a view to effecting regional dispersal, there is a chance that it is not often the best project that will be chosen for approval.

One of the major objectives of industrial policy is avoidance of concentration of productive capacity in a few units. One criterion of issuance of licences is encouragement to new entrants into industry. This

has been giving rise to the problem of a number of licences having been rendered infructuous due to the fact that licences were often issued to parties who did not have the requisite experience or resources.

The industrial licensing has been the subject of evaluation by a number of committees including the Estimates Committee of Parliament, and the Study Team on Economic Administration of the Administrative Reforms Commission. The various reviews have revealed the following major deficiencies in the licensing system :—

- (a) That the priority industries had not developed to the extent needed and imbalances in different sectors of industry occurred due to the heavy incidence of unimplemented capacity.
- (b) In many of the industries which are open to both public and private sector initiative under the industrial policy, the public sector lagged behind.
- (c) The licensing system did not encourage direction of investment and enterprises to activities which needed development at a rapid pace.
- (d) It failed to provide full scope for business decisions as industrial projects are subjected to administrative judgments.

While investment including foreign exchange envisaged under the Five-Year Plans had been achieved or even exceeded targets in many cases, production in several industries fell short of targets. Where licensed capacities exceeded targets in a large number of licences were rendered infructuous due to non-implementation. The annual rate of revocation of licences was about 200 in 1966. There have been several instances when capacities permitted were lower than what was proposed by the applicants making it uneconomical to implement the schemes. Also, in many cases, the conditions and stipulations of licences proved difficult, thereby preventing speedy implementation.

Resume of Liberalisation and De-control

Regulations and controls initially imposed with some justification often come to outlive their utility with the passage of time. It is also not uncommon that regulations introduced for a specific period continue to be in operation even after the original circumstances have ceased to exist or after better methods have been devised making the original regulations superfluous or obsolete. It is, therefore, imperative to review and to revise the controls and regulations from time to time. It is all the more important to devise means of ensuring that regulations are made to respond to changed conditions and also that the administrative machinery is provided with a certain amount of resilience for quick adjustment to suit changing circumstances.

There have been several attempts at streamlining and simplifying the licensing procedures with a view to reducing delays in processing of applications for licences and other permissions. A committee on Industrial Development Procedures was appointed in September 1963 to go into the question of operation of controls applicable to establishment of additional capacity, the import of capital goods, issue of capital, foreign investment and collaboration, and procedures for import licensing. The Committee submitted an interim report in December 1963 and a final report in March, 1964.

Based on the recommendations of the Committee, Government accepted revised procedures for consideration and disposal of industrial applications particularly for "Key" industries *i.e.*, industries having a higher priority or industries of a basic nature or industries having an export angle. The new procedure envisaged simultaneous clearance of applications for foreign collaboration, industrial licences, capital goods imports etc. for "Key" industries and a streamlined procedure for non-key industries. In order to reduce the incidence of infructuous licences, a system of issuance of 'letters of intent' initially was also devised. The working of the revised procedures was reviewed by the same Committee re-constituted in August 1965. In their report submitted in February 1966 few more modifications were suggested by the Committee with a view to speeding up the process of licensing and initiation of projects. The Committee took into consideration the continuing problem of delay in the issuance and implementation of licences. It was stipulated that, to begin with, only 'letters of intent' should be issued. On fulfilling the conditions of the letters of intent within a stipulated period a licence will be issued. This step was meant to bring down the heavy incidence of unimplemented licences.

The liberalisation measures initiated so far also comprise complete exemption of certain industries and activities from the licensing provisions. Under Section 29(b) of the Industries Act, the Central Government is empowered to exempt industrial undertakings from the operation of all or any of the provisions of the Act. Under this section, a notification was issued on 26th February 1960 exempting from licensing industrial undertakings in the scheduled industries employing less than 100 workers and having fixed assets not exceeding Rs. 10 lakhs in value. By another notification issued on 13th January, 1964, undertakings other than those pertaining to coal, vanaspati, textiles, and roller milling industry, oil-seed crushing, leather and matches, having fixed assets not exceeding Rs. 25 lakhs in value were exempted.

From time to time, the representatives of industry and organisations like the Federation of Indian Chambers of Commerce and Industry, have been suggesting to Government that there should be a concerted effort towards relaxation of controls. One of the suggestions made in this regard

was the complete exemption of some industries from the licensing provisions. It is felt that the establishment of industrial undertakings be left to the economic judgment of the entrepreneurs as they were free to decide whether or not to make an investment decision according to their own calculation of the market demand and indicative targets. Consequently, on 13th May 1966, eleven industries were exempted from the licensing provisions of the Act irrespective of the investment involved. The industries included iron and steel castings and forgings, electric motors, pulp, power alcohol, solvent extracted oil, glue and gelatin, sheet and plate glass, optical glass, fire bricks, portland cement and plywood. Two more industries viz. paper and newsprint and hand-tools were de-controlled in July 1966 on the recommendation of the reconstituted Industries Development Procedures Committee. Subsequently, on 14th November 1966, 29 more industries were exempted from licensing provisions of the Industries Act. In de-licensing industries Government had kept in view the following considerations :

- (i) Industries that did not involve a substantial import of components or raw materials.
- (ii) Industries which did not hamper the growth of small and cottage industries.
- (iii) Industries having an export potential.

Freedom to industrial units to diversify production by manufacture of new articles without obtaining a licence has also been given to both engineering and non-engineering industries provided no additional plant and machinery except minor balancing equipment procured indigenously is installed and no additional foreign exchange is involved. The diversified production should not exceed 25% of the total production. The liberalisation does not, however, include 71 specified industries in order to afford protection to small scale sector. A further measure of relaxation was announced on 10th November, 1967 under which priority industries will have the freedom to expand up to 25% of capacity even if this involves import of balancing equipment and raw materials.

The progressive measures of liberalisation outlined above appears to indicate a certain change in official thinking towards controls. In the context of the retarded tempo of industrial development during the last few years, there is a paramount need for stimulating economic recovery. Towards, this, it is expedient to initiate practical measures of de-control which will bring about quick results. It is also imperative to allow sufficient elbow room to entrepreneurs to take business decisions according to market conditions and considerations of economic feasibility as these will go a long way towards launching well-conceived projects in appropriate time sequence.

Exemption from licensing does not denote that industries are free from all regulations. It is obligatory for de-licensed industries to get registered even if no imports are involved. In case, a project needs foreign exchange for capital goods imports and foreign collaboration is envisaged, registration is not merely a formality. In such cases, the applications for registration are judged by the same criteria as in the case of licensing. Before an application is cleared, it is scrutinised from the point of view of demand, installed capacity, regional dispersal, import requirements and priorities of development. Thus, if the concept of registration in respect of licensing was devised as a measure of relaxation as compared to the rigours of licensing it has hardly succeeded in achieving the desired objective *viz.*, that of reducing delays.

It is worth noting that even after the adoption of a streamlined procedure for licensing and registration, the time lag between submission of applications and their clearance has not been considerably reduced. Against a period of six months or so previously, even now it takes about four to five months on an average for clearance of applications. Taking note of the continuing problem of delay, the Study Team on Directorate General of Technical Development had some time ago suggested that the procedure of technical scrutiny by D.G.T.D. be further simplified to bring down the time lag between submission of application and final clearances since it is in the matter of technical scrutiny that maximum delay takes place.

Control over working of scheduled industries

The scope of the Industries Act extends not only to the establishment of industries but also to their management. Controls can be exercised over production, distribution and pricing. Many of these latter provisions overlap with provisions of other statutes ; for instance, the Companies Act regulates the form, structure, organisation and management of enterprises and thus duplicates the provisions of the Industries Act. Powers of investigation can be exercised under Section 15 of the Industries Act and this overlaps with the powers under Sections 235 and 237 of the Companies Act.

Prices, production and distribution can be controlled under Essential Commodities Act. There have been several instances when more or less similar orders were issued under the Industries Act and the Essential Commodities Act. The Cement Control Order 1961 under the former had many provisions in common with the Cement (Quality Control) Order, 1962 issued under the Essential Commodities Act. In regard to textiles, the Study Team on Textile Commissioner's Organisation has taken note of the following anomaly :

“The Cotton Textile (Control) Order was there long before the Industries (Development and Regulation) Act was enacted and its provisions remained applicable even though in some respects the latter enactment made this

control order out of date. The result is that today licences have to comply with requirements of both sets of statutory provisions.”

These conflicting provisions have been a source of avoidable inconvenience and cost to entrepreneurs.

Powers of investigation

Up to the middle of June, 1966, Government undertook investigations in respect of 33 scheduled undertakings, of which 28 related to cotton textile mills. In some cases direct management was also assumed. In many cases investigation or direct management by Government were resorted to not because the concerned units were managed badly. These in many cases related to units which badly needed rehabilitation which in turn was prevented by the dearth of financial resources, the high cost of imported components and machinery etc. It would appear that before taking over managements in many cases the genuine problems of rehabilitation of the concerned units were not fully gone into.

Control over production, distribution and prices

The prices and distribution of several items—motor cars, scooters, ethyl alcohol, molasses cement (de-controlled from 1.6.1966)—were brought under control under the provisions of the Industries Act. In some cases like automobiles the control on distribution came to be exercised in view of shortage of supply against large demands whereas ethyl alcohol and molasses were controlled in order to ensure diversion of supplies to proper industrial uses. In any case, whatever may be the official justifications for these controls they tend to introduce certain rigidities by discouraging expansion and improvement in efficiency besides distorting the market mechanism. There is, therefore, scope to review these controls with a view to eliminating those which have no justification to continue. A significant feature of de-control is evident from the fact that in many cases—soaps, vanaspati, etc.—the prices did not go up, but were even reduced after de-control.

Consultative bodies under the Industries Act

Finally, a word may be said about the advisory bodies constituted under the Act *viz.*, the Central Advisory Council of Industries and the Development Councils. The Central Advisory Council is concerned with the discussion not only of broad principles of industrial policy but also of specific issues. The Reviewing Sub-Committee of the Central Advisory Council of Industries constituted under Rule 18 of the Registration and Licensing of Industrial Undertakings Rules 1952 provides for the review of all licences issued, revised, varied, amended or revoked from time to time and advise Government on the general principles to be followed in the issue of licences for establishment of new undertakings or substantial expansion of existing undertakings. Both the Council and its Sub-Committee have

contributed towards simplification of procedures and liberalisation, as well as the adoption of suitable criteria for scrutiny and disposal of applications and in general functioned as forums to put forth the grievances of industry.

Under Section 6 of the Industries Act, Government is empowered to establish Development Councils for specific industries. The Development Councils are required to make recommendations regarding targets of production, co-ordination of production programmes, norms of efficiency, optimum utilisation of installed capacity, better marketing and distribution, standardisation, development of new materials, and their commercial exploitation, promotion of training and scientific research. Broadly speaking, the Development Councils are meant to advise Government as to how to achieve co-ordinated development and increased productivity. In all, there are at present 15 Development Councils. Besides, there are special panels constituted for industries like instruments, bicycles, sewing machines, glass and ceramics, and light electrical industries.

The Development Councils are not autonomous bodies. Some of them do not meet frequently. The organisations representing trade and industry are not associated with them though businessmen in their individual capacity are nominated to the Councils. Reports of the Councils are not given sufficient publicity among concerned industrial associations and chambers of commerce. All these have prevented the Councils from functioning in an effective manner. It has been recognised that the Councils should be made more effective as consultative bodies on such vital matters as formulation of industrial targets, suggestion of measures for import substitution and export promotion in the respective industries.

Conclusion

The licensing system is only one of the many controls on industry though having a bearing on the course of industrial growth. The measures for de-control and liberalisation initiated so far encompass mainly licensing and even here, the liberalisation is only partial. Many other controls continue to exist. Since the different types of controls have come to exercise a negative influence on industrial growth, there is a paramount need to eliminate all those controls which have proved superfluous or unnecessary. The experience in de-control so far has been quite satisfactory. No piecemeal efforts at liberalisation can bring about the desired results. There is no denying the fact that only concerted measures at liberalisation can revive the confidence of entrepreneurs, both Indian and foreign, and help the launching of well-conceived industrial projects, and their implementation in proper time sequence. In short, what is required, is a greater dependence on market forces than on licensing as a means of achieving balanced industrialisation.

The Industries (Development and Regulation) Act, 1951 which governs the existing system of regulation over industry is extensive and encom-

passes every facet of establishment and running of industries. Its regulatory provisions are more pronounced and many of the provisions such as those providing for controls over pricing, distribution and management overlap similar provisions in other statutes. It is also doubtful whether all the detailed controls as envisaged under this statute are necessary in the present context.

In all matters concerning industrial development of the country, it is necessary to take industry into confidence. Consultation with industry is indispensable for the success of our plans, while controls might prove self-defeating by hurting initiative and enterprise.