

## **One-stop-shop for start-ups**

**Syed Mustaq. P, Kaushik. S**

*School of Law, SASTRA DEEMED TO BE UNIVERSITY, India*

---

**Abstract:** India finds its place as developing country in the world. It possesses its written constitution which is said to be the lengthiest in the world. This constitution through the Directive Principles of State Policy enshrined under Part IV provides the duty to frame policies for the welfare of the society. In adherence to this Startup India initiative has been undertaken by the Government of India. This article takes its course in three folds. Primarily on the startup culture of America by bringing into notice various legislation enacted by it. Secondly on the startup culture of India by highlighting the efforts undertaken by the government in the promotion of entrepreneurship. Finally, the article tries to address the issues in the implementation and provides panacea in the form of suggestion for the betterment of the policy.

**Keywords:** startup, Standup, Incubators, entrepreneurship, Innovations, exemptions, Policy, Eligibility.

---

Date of Submission: 06-08-2019

Date of Acceptance: 22-08-2019

---

### **I. EXORDIUM**

India is one of the developing countries in the world and it is standing as a democratic country. It has its written constitution which is the largest written constitution in the world. Indian Constitution contains fundamental rights, duties and state policies which enable the citizens to enjoy it without any fear and hesitation. Part IV of the Indian Constitution states the Directive Principles of State Policy. The constitution gave the obligation to the state through DPSP to create a state as a Welfare state. According to the authors, the Welfare state can be achieved through eradicating Unemployment, Poverty, etc. In order to achieve the object of Welfare state, the Government Of India has introduced the startup India and Standup India Schemes.

### **II. STARTUP CULTURE OF AMERICA**

America, after the economic crisis faced by it in the year 2008 has taken enormous efforts to put back in place the wrecked economy. The unemployment rate stood at 9% in the year 2012. Barrack Obama in his presidential proclamation tagged November 16, 2012, as Entrepreneurs day in order to promote the startup culture which would result in job creation by which the issue of unemployment can be checked. The author in the following paragraphs will try to showcase the entrepreneurship promotion environment created by the USA.

#### **2.1 Small Business Act, 1953**

Small Business Administration office has been established under this legislation at various levels as headquarters, regional offices and district offices. It makes a partnership with lenders and facilitates credit advances to small businesses while minimizing the risk of lenders by setting guidelines in the sanction of loans. It targets specifically and separately veterans, women, native Americans, and the LGBT community.

Office of Veterans Business Development (OVBD) was established under Veteran Entrepreneurship Act, 2015 and §2 of the act amended §7(a)(31) of Small Business Act and provided guarantee fee waiver to veterans. Veterans and service-disabled veterans in order to do business with the government were given priority in federal contracts. Veterans business outreach program and veteran entrepreneurship training program are conducted which provides business plan workshops, mentorship, concept assessments, and training. The Military Reservist Economic Injury Disaster Loan program (MREIDL) provides credit advances up to \$2 million to handle the operating cost when an essential employee called for active duty by Reserves or National Guard is lost.

Office of Native American Affairs focuses on Native Americans, American Indians, Alaska natives, and native Hawaiians and involves in tribal consultations, produces promotional materials and participates in national economic development conferences.

Office of Women Business Development ensures awarding five percent federal contracts to small disadvantaged businesses under §8(a) of Small Business Act, 1953(hereinafter act called as SBA). In addition to this several programs have been conducted to provide training and counseling to promote women entrepreneurship. The SBA made credit advances worth up to \$2 billion to women entrepreneurs, while SBA

licensed intermediaries made nearly 1,230 microloans worth over \$13.8 million to businesses 51 percent or more women-owned. In addition to these 38 women-owned businesses received \$26.8 million in investment capital through the SBA's small business investment companies<sup>1</sup>.

### **2.2 Small Business innovation development Act,1982**

This legislation provided for the establishment of the SBIR(Small Business Innovation Research) program and STTR(Small Business Technology Transfer) program.

The SBIR program provides the startup an award for the promotion of research and invention of new ideas in order to ensure the USA points up the table in tackling the challenges imposed by the ever-growing world and cutting edge over other countries. National Science Foundation (NSF) established under the Presidentship of Truman in the year 1950 powered America's Seed Fund, an SBIR program which provided the startups fulfilling the requirements, an award up to \$225,000, by doing so \$6.5 Billion was awarded to different Small Business Companies in a plethora of fields.

Small Business Technology Transfer program involves federal agencies like Department of Defence, Energy and Health & Human Services and NSF and National Aeronautics and Space Administration to set apart a piece of the research and development funds for the program. The program dwindles down in three phases.

In the preliminary phase, an award of \$100,000 is awarded to the Small Business Company (SBC) for the purpose of research and innovation of ideas.

In the second phase where the Small Business Company would have completed the research period of two years with the award money of \$500,000, the focus is shifted to the feasibility of commercial exploitation of the idea.

In the final phase, the idea innovated is dropped into the market to face success or failure and financial assistance provided by the program comes to an end.

### **2.3 Jumpstart Our Business Startups Act, 2012**

In the year 2012 unemployment rate stood at 9% in the USA, in order to check this, cut in payroll taxes were made to companies who hire new veterans and people who have been unemployed for a period of more than six months and to promote entrepreneurship, crowdfunding regulations were relaxed while protecting retail investors through the legislation, JOBS Act. The legislation was the consolidation of Reopening American Capital Markets to emerging growth Companies Act, Small Company Capital Formation Act, Entrepreneurs Access to Capital Act, and Access to Capital for Job Creators Act and also the bills Private Company Flexibility & Growth and Capital Expansion.

The act specifically targets 'emerging growth companies' defined under §101(a), as an issuer that had total annual gross revenue of less than \$1,000,000,000(as such amount is indexed for inflation every five years by the commission to reflect the change in Consumer Price Index for All Urban Consumers published by the Bureau of Labour Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. Emerging growth company tag can be held for up to a maximum of five years, if,

- ✧ The issuer's total gross revenue does not exceed \$1 billion during the five-year period.
- ✧ The issuer's market capitalization does not exceed \$ 700 million.
- ✧ The issuer does not issue more than \$1 billion in nonconvertible debt in a three-year period.

The privileges enjoyed by the emerging growth company are as follows,

§102 of JOBS Act make two years of audited financial statements in an initial public offering and other registration statements necessary. In addition to this, non-requirement to comply any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under sec 2(a) of Sarbanes-Oxley Act,2002) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

The mandate of Security Exchange Commission (SEC) for the registration of securities by the companies which is slightly an expensive procedure to be adopted, throws a heavyweight on the newborn startup to bear such expenses, hence their funding is limited to accredited investors. The tag of accredited investor is given to a person who has an annual income of \$200,000 for the last two years and if jointly with a spouse, minimum of \$300,000 for the last two years. In case of the accredited investor being a company, net worth of \$1 Million or assets of \$5 million, as provided under Regulation D of SEC. The JOBS Act has widened the bracket of accredited investors by including a person who has experience and expertise in unregistered securities thereby it enables small investors to invest and widens the scope of funding receivable by the startups.

The JOBS Act,2012 has exempted emerging growth companies for the first five years after going public from compliance of §404(b) of Sarbanes- Oxley Act,2002, which requires reports on the company's Internal Control over Financial Reporting (ICFR) to be attested by external auditors.

### III. START UP CULTURE OF INDIA

This startup India scheme gives any person an opportunity to start a business in India. This will have a boom in the creation of employment. Starting a business requires a lot of courage and confidence. In order to encourage this, the Government of India has been providing ample support through schemes.

The word ‘Startup’ has been defined by G.S.R. Notification 127E<sup>ii</sup>. (visited on 10-07-2019).

According to this notification startup means:

1. It is an entity, if it is a company (Private Limited Company) it shall be registered under Companies Act, if it is a Partnership it shall be registered under §59 of Partnership act, and if it is a Limited Liability Partnership it shall be registered under Limited Liability Partnership Act, 2008.

2. An entity will be considered as a start up for a period of 10 years after its incorporation in either of the supra acts.

3. It should not exceed its turnover to 100 crore rupees.

4. This entity should be for the innovation, development or improvement of product or process or service.

The notification also provided to know how the startup will be recognized:

If any person interested to start a startup, for recognition of that startup, the procedure is that the application can be sent through the mobile portal to the DPIIT (Department of Industrial Policy and Promotion).

The application shall be accompanied by

- 1) The copy of Incorporation or Registration.
- 2) The DPIIT after receiving the information or required document, they can:
  - a) If it is eligible, they can recognize the company as startup.
  - b) Reject the application of the startup, while rejecting they shall state the reasons for it.

The entrepreneur of the startup company shall be aware of the laws of the land in which the company is going to be established. If the startup company is going to be established in India, the laws of India shall comply before and after the incorporation of the company. For the incorporation of the company, the entrepreneur of the company has to comply with the prescribed provisions in the Companies Act, 2013 and the amendments as to the date it has passed. The Companies act, 2013 provides the form for the incorporation of the company, the entrepreneur has to submit everything prescribed in the provisions, after complying with the provisions, the company for the next 10 years shall be recognized as a startup.

#### 3.1 Schemes - startup India

Under the startup India, there are schemes which will provide to the development of the startup by providing financial assistance and awareness, etc. There are totally 49 startup schemes<sup>iii</sup>. Authors would like to brief about 10 schemes from those:

1. Software Technology Park (STP) Scheme: This scheme is headed by Software Technology Parks of India and shortly known as STPI.

Its main objective is to boost and encourage software exports from India. It also provides services namely: Statutory service, Value-added services, etc.

2. Electronic Development Fund scheme (EDF): This scheme is headed by Department of Electronics and Information Technology.

Its main objective is to develop the electronic system design and manufacturing and to achieve ‘Net Zero Imports by 2020’. This scheme also provides funds such as Angel funds, seeds funds, etc.

3. New Gen Innovation and Entrepreneurship Development Centre (New Gen IEDC): This scheme is headed by New Gen Innovation and Entrepreneurship Development Centre.

Its main objective is to promote educational institutions so as to create the entrepreneurship culture among students.

4. Raw Materials Assistance: This scheme is headed by National Small Industries Corporation.

Its main objective is to help MSME (Micro, Small and Medium Enterprises) by financial assistance to purchase raw materials.

5. Single Point Registration Scheme: This is headed by National Small Industries Corporation and shortly known NSIC.

To register under this scheme there are eligibility criteria, which is All Micro and Small enterprises registered with the Director of Industries (DI) and District Industries Centre (DIC) as service enterprise.

6. Coir Udyami Yojana: This is headed by Coir Board

To avail this scheme, there is an eligibility criterion which is all coir processing Micro, Small and Medium Enterprises units shall be registered with the Coir Board. This registration should be done according to the Coir Industry (Registration) Rules, 2008.

There is no fixed ceiling limit for the financial assistance for setting up a project and can be availed by Companies, Individuals, Non-governmental organizations, etc.

7. Atal Incubation Centers (AIC): This is headed by National Small Industries Corporation as shortly known as NSIC. To avail this scheme there is an eligibility criterion which is to fulfill that the center can be established in public/ Private/Public-Private partnership model and Educational Institutions etc.
8. The major role-play among all these schemes and which is known to be a plethora of people is the Pradhan Mantri Mudra Yojana(MUDRA): This is headed by Micro Units Development and Refinance Agency Ltd.

There is an eligibility to avail this service which is to be a non-corporate Small Business Segment and Partnership firms.

Its main objective is to support banks for lending loans up to 10 Lacs for small micro business.

This scheme is of three types:

1. Shishu: Under this covering loans up to Rs.50,000/-
2. Kishor: Under these covering loans up to Rs. 50,000/- to 5 lakhs
3. Tarun: Under this Loan above 5 Lakhs to 10 Lakhs.
9. Standup India: this is headed by Small Industries Development Bank of India(SIDBI)

The eligibility to avail service in this is that the enterprise shall be in trading and manufacturing or service. This is specially for SC (Scheduled Caste)/ST( Scheduled tribe) and women. The bank branch should provide them from Rs10Lakhs to 1 crore.

10. Access to Energy Scheme under KfwLine: This is headed by Indian Renewable Energy Development Agency (IREDA). There shall be techno commercial projects.

Its main objective is to increase the supply and ensure that there will be usage of sustainable clean energy services in rural areas.

### **3.2 Labour Laws**

After the startup company has registered under the associate acts the next step will be that they should know the laws of the land to enable the company lawfully. There are laws which each startup company should follow for the purpose of benefiting the employees in their company. There are a list of Labours laws which a startup has to follow according to the vide notification<sup>iv</sup> (Ministry of Labor and Employment) and they are listed infra:

1. The Payment of Gratuity act: This act explains that the employer has to pay the gratuity when the employee retired or resigned from the service and he was injured in the due course of employment due to which he has become permanently disabled.
2. The Employee's State Insurance Act,1948: This act gives benefits to the employee according to the condition and prescribed limits of the act. Ex: Maternity Benefit, Medical Benefit, Disablement Benefit.
3. The Employee Provident Fund and Miscellaneous Provisions Act, 1952: This act is to provide old-age benefits and those benefits include Superannuation Pension, Provident Fund, and Family Pension, etc.
4. The Contract Labor (Regulation and Abolition) Act, 1970: This act provides for the protection of the contract labors. As stated in the RK Panda vs. Steel Authority of India<sup>v</sup>: This act is protecting the contract labors from the exploitation of employers or the establishment.
5. Building and Other Construction Workers (Regulation of Employment and Conditions of Service Act),1996: This act is enacted to provide health, safety measures of the workers and it also regulate the employment as well as the condition of service of building and other construction.
6. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service Act): This act regulates the conditions of service of Interstate workmen and it has also defined who will come under the ambit of Interstate migrant workmen.

The supra vide notification also exempted to inspect the first year of its commencement or establishment and it also provides to submit their self-certificate declaration through online.

### **3.3 Taxation law**

As the entrepreneur starts a business in India, as usual, it's a practice that the companies have to fill the income tax returns. This government has given some of the exemptions to the startup companies.

Through vide notification G.S.R. notification 127(E)<sup>vi</sup> this government has listed exemptions to the startup Companies.

1. Exemption from Section 80 IAC of Income Tax Act. This section deals with Special Provisions for in respect of Specified Business and also exclusively for Start Up.

Startup to be eligible for the supra exemption, there are requirements to fulfill

1. It should be recognized as a startup.
2. This exemption is exclusively for the Private Limited or Limited Liability Partnership through the vide notification G.S.R.364(E)<sup>vii</sup>

The second is that Tax exemption is under section 56 of the Income Tax Act which is known as Angel Tax. §56 of the Income Tax Act deals with Income from other resources.

To avail the exemption of this section eligibility criterion is:

1. DPIIT( Department for Promotion of Industry and Internal Trade) has to recognize the status of the startup
2. The share capital and share premium of the startup after issuing the shares, the aggregate amount of those shares should not exceed 25 crores. Through the vide notification No.GSR 127(E)<sup>viii</sup> by the Central Board of Direct Taxes, in the month of March has said that: §56(2)(viib) will not be applicable to the startups who are receiving the consideration of the issue of shares greater than their face value if such funds have been received in accordance with the DPIIT<sup>ix</sup>.

### 3.24 Intellectual Property Rights

Intellectual Property Rights (hereinafter IPR), the rights include Copyright, trademark, patent, etc.. The innovation started by the new company to protect it from the outsiders the IP access or IP rights is essential. For Instance: A Start-up company has invented a new product which is not invented by anyone till now, through the registration of Intellectual Property Rights; the entrepreneur can get the right to such product so that no one can make a replica to that product. The entrepreneur who gets the right to such product can file a complaint against the alleged cheater.

The government of India while announcing the startup India Scheme, it also announced the Scheme for IPR i.e; Scheme for startup facilitating Intellectual property Rights (SIPP)<sup>x</sup>

The authors would like to elucidate the said scheme. This schemes main object is to promote awareness about the IPR, and to assist them and to provide the high quality of IP services and Resources.

#### Eligibility to apply:

1. A startup should have been recognized according to the Notification GSR 180(E).
2. That said startup shall give self-declaration stating that they have not availed any funds under government schemes.

The Controller General of Patent, Trademark, and Design (hereinafter CGPDTM): shall panel the Facilitator.

There will be a question as who can be a facilitator,

1. He can be any trade agent registered with CGPDTM
2. He can be an advocate, who fulfilled all requirements to be an advocate and said advocate should be well versed in filing and disposal of applications for trademarks.
3. He can be of a government department or organization or agency.

### 3.5 Reforms in 2019 Budget on startup:

The maiden budget of Madam. Nirmala Seetharaman as finance Minister of Govt. of India, has given more scope for the startup to grow their business<sup>xi</sup>

1. Tv Programme: The Union Budget has announced that startup will have a new TV program in Door darshan, it will lead to a big advantage to the start-ups to discuss about the ecosystem.
2. This budget also offered the exemption under the §54GB of the Income Tax Act: which deals with the Capital gain on transfer of residential property not to be charged in certain cases for the period of two years, such amount can be utilized for the growth of start-up.
3. Income tax filed by the startup, the Income tax assessing officer has to get approval from the supervisor officer to verify the Income tax turns.

## IV. CRITICAL ANALYSIS OF THE STARTUP CULTURE OF INDIA

The Press Information Bureau, Government of India, Ministry Of Commerce and Industry released on 28/06/2019 shows the figure of 19351 as the number of startups recognized under startup India scheme out of which only 247 startups have received investments made by AIF under Funds for startups (FFS). This showcases the hurdles faced by the startups in capital pooling<sup>xii</sup>.

Technology Business Incubators established in many educational institutions in collaboration with the Department of Science and Technology suffers from the lack of awareness among the student community regarding the role-play of Technology Business Incubators. The authors are of the opinion that the curriculum structures of the Under Graduate courses are job centric, not job creation centric when the unemployment rate is at an all-time high, why pedagogy the people for jobs which we don't have. It is high time to develop the startup culture among the student community.

The best way of learning anything is by doing it(Quoted by Richard Basner). The authors suggest that the educational institutions should provide entrepreneurship courses at the least as an open elective course as a baby step towards the achievement of the giant.

The problem in restricting the entrepreneurship course as an open elective lies in the eligibility criteria, mandating exceptional performance in the academic perspective. Students, academically sound tend to get settled with a job thereby minimizing the risk, though the statement suffers from stereotyping this can be taken with a pinch of salt.

In addition to this encouragement by educational institutions on club activities in the theme of innovative idea exchange, enable the students in different field of study to come together and exchange their thought processes facilitating the process of problem identification and the solution. The Atal tinkering labs established pan India hits the figure of 5,441 out of which only 1,812 are funded<sup>xiii</sup>. This showcases the lacuna in the funding of ATL.

## V. CONCLUSION

The authors are welcoming the startup and Standup scheme and acknowledged that under this scheme there are exemptions for the startup, but the authors would like to plead the parliament and the executives to frame rules under the Undergraduate program by making it compulsory in the college curriculum to be aware about the startup and entrepreneur skills irrespective of their courses.

The notion that the government has introduced to the nation is welcoming one but how far it is implementing that's the author's concern. These authors had an encounter with the students of undergraduates and the author came to an opinion that major chunk of the students was not aware the plethora of startup schemes and initiatives that have been undertaken by the government. The authors conclude by reemphasizing the need for awareness and implementation by appropriate government officials (Parliament and Executives) in order to build a better startup ecosystem in India. The views are personal.

## REFERENCE LIST

---

<sup>i</sup><https://www.sba.gov/offices/headquarters/wbo/about-us>

<sup>ii</sup><https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf>

<sup>iii</sup><https://www.iidt.edu.in/Articles/49startup-Govt-Schemes.pdf>

<sup>iv</sup>[https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/notification/Compliance\\_Regime\\_based\\_on\\_Self-certification/3.%20notification\\_Self\\_certificationformatsforcomplianceundertheLabourLaws.pdf](https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/notification/Compliance_Regime_based_on_Self-certification/3.%20notification_Self_certificationformatsforcomplianceundertheLabourLaws.pdf)

<sup>v</sup>(1994) 5 SCC 304

<sup>vi</sup><https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf>

<sup>vii</sup>[https://dipp.gov.in/sites/default/files/startup\\_Notification11April2018\\_0.pdf](https://dipp.gov.in/sites/default/files/startup_Notification11April2018_0.pdf)

<sup>viii</sup><https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/198117.pdf>

<sup>ix</sup><https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/cbdt-notifies-relaxed-norms-for-start-ups/articleshow/68289888.cms>

<sup>x</sup>[https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/notification/Legal\\_Support\\_and\\_Fast-tracking\\_Patent\\_Examination/1.%20notification\\_notification\\_SIPP\\_IPR\\_Scheme.pdf](https://www.startupindia.gov.in/content/dam/invest-india/Templates/public/notification/Legal_Support_and_Fast-tracking_Patent_Examination/1.%20notification_notification_SIPP_IPR_Scheme.pdf)

<sup>xi</sup><https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/budget-2019-decoded-what-smes-startups-stand-to-gain/articleshow/70101598.cms>

<sup>xii</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=190914>

<sup>xiii</sup> <https://www.aim.gov.in/hubs-of-innovation.php>