

INFRASTRUCTURE OF THE SHIPPING AND PORT SECTOR IN INDIA AND ITS PREDICAMENTS

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ABSTRACT

The relation on a principal level between growth and infrastructure is thought to have been positive in a macro economy. Although one may assume it to be true, there is always a peculiarity that exists in forms of other variables and factors that seep in to reflect the reality. Technological improvement (a broader idea) embodies two very convincing views- learning by doing process and human capital accumulation.¹ As capital accumulation becomes objectives of many developing countries including India for the sake to reap the benefits from the idea, countries primarily then glance at their long-term views on infrastructure, which is generally inclusive of physical capital. Countries inadequate possession of this resource can prove to be very disastrous posing a threat and constraint to the overall economic growth in the country.

INTRODUCTION TO INFRASTRUCTURE

In his paper: *Infrastructure, Accessibility and Economic Growth*, Johansson comprehensively offers his discernment on the meaning of infrastructure. As he puts it, “Infrastructure consists of durable resources which can be used collectively by many firms and households. Infrastructure may be thought of as a landscape of interaction possibilities for resource flows, communication, interpersonal and interfirm contacts as well as other kinds of market contacts.

¹ Dasgupta, Dipankar. “Growth and Infrastructure.” *Modern Growth Theory*, Oxford University Press, 2011, pp. 138–139.

Infrastructure provides economic agents with accessibility to located resources.”² From this we understand the essence of infrastructure and the various relations of the major actors in an economy that play their own discrete role. The emphasis on the ‘durability of infrastructural resources’ showcases the longevity it has to offer while also hinting over the benefits it imparts over being durable such as its utility for more than once and the ability to sell it off in the future. ‘Used collectively by [both] firms and households’ demonstrates the coverage of the entire economy i.e. infrastructure is accessible to all; moreover it reveals that the interaction amongst the two sects is continuously maintained due to its collective usage of the divided resources. The second sentence as remarked by Johansson is similar to the idea aforementioned, that it’s the interaction amongst all the major players of the economy resulting in the flow of resources, communication, and other market players in term of infrastructure. In a nutshell it is said that infrastructure is the means to provide the players accessibility to the ‘located resources’, hence its importance cannot be compromised.

In its recent report of 2017, American Society of Civil Engineers (ASCE)³, aimed to highlight the current status of infrastructure and its solutions to the gap the difference between what is aspired and what is achieved in the U.S. so far. The importance of this study to ours is the categorization of infrastructure into 16 types also known as the critical infrastructure vital to the functioning of the economy, in this paper it would further be narrowed down to the Indian context. Hence the destruction in the critical infrastructure would lead to a detrimental effect on the economy, the damages due to floods or earthquakes may result in a long-term loss. The 16 types include, “Aviation, Bridges, Dams, Drinking water, Energy, Hazardous waste, inland waterways, levees, Parks and recreation, ports, rail, roads, schools, solid waste, transit and wastewater.” In this report as a part of their custom, they have graded the country’s infrastructure as D+, for a fact we know that if the US is so critically evaluated with such a score than India has a long way to go.

The differentiation amongst “Hard” and “Soft” infrastructures may be made. The overlap amongst the both is inevitable however for the sake of clarity we define hard infrastructure as

² B Johansson , *Infrastructure, Accessibility and Economic Growth* , 20 International Journal of Transport Economics 131–156 (1993), https://www.jstor.org/stable/42747236?seq=1#page_scan_tab_contents (last visited Oct 30, 2017).

³ American Society of Civil Engineers , 2017 Infrastructure Report Card- A comprehensive Assessment of America’s Infrastructure <https://www.infrastructurereportcard.org>, <https://www.infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card.pdf> (last visited Nov 2, 2017).

concerning itself with the observable physical instruments such as those aforementioned 16 types of infrastructures i.e. Drinking water, roads, power supply and so forth that are important services for the sustenance of a quality life, whereas soft infrastructures are the institutional infrastructures such as the existence of the technology, government, legal system, financial system, cultural attitudes, educational and health institutions⁴. Moreover the overlap arises when the information technology such as the machineries, become a part of the hard infrastructure.⁵

Infrastructure plays a huge role in the upliftments of the society; there have been many such examples over the decades to show the wonders of infrastructure in the growth of the production and productivity of a country. Therefore for a country to progress in its true physical sense it definitely requires of infrastructure, the difficulty however arises for the third world countries and other such emerging economies, which find it a setback not availing the infrastructure they so require. As a matter of equality and justice, it is the right of all the countries to progress and flourish in order to provide for the better lives of their civilians who may be living in such heartbreaking extreme conditions that calls for an awakening. The assurance of this is in the hands of thousands of politicians of the country who promise to elevate the country far from its poor conditions towards a better one, the ‘catchy’ phrases used for alluring votes certainly and majorly consists of commitment towards the infrastructure, and just as elections get over, so do the bleakly commitments.

Although infrastructure is consisted of hard and soft, there is a common misconception when considering the private and public level infrastructure. It becomes imperative to distinguish amongst the both, as the confusion doesn’t arise in the chapters later. Therefore in terms of land for example, land development and improvement in terms of infrastructure are minute infrastructural concerns.⁶ The reason for such differentiations, are that land are owned properties for the most and thus the inclusion of tractors or canals for irrigation only add to personal welfare of land on not large scale improvement of the village or district and so are

⁴ William A. Niskanen, *The Soft Infrastructure of a Market Economy* , 11 *Cato Journal* 233–238 (1991), <https://web.archive.org/web/20110328213000/http://www.cato.org/pubs/journal/cj11n2/cj11n2-4.pdf> (last visited Nov 2, 2017).

⁵ John Spacey, *Hard Infrastructure vs Soft Infrastructure* Simplicable (2017), <https://simplicable.com/new/hard-infrastructure-vs-soft-infrastructure> (last visited Nov 2, 2017).

⁶ What is land development? definition and meaning, *BusinessDictionary.com*, <http://www.businessdictionary.com/definition/land-development.html> (last visited Nov 2, 2017).

known as land improvements and not land infrastructure. Another distinction may be drawn that infrastructure can either be owned privately or publicly, that is by private companies or the government. The government owned hard and soft infrastructure incorporates charges such as tolls, and taxes or sometimes metered billing such as parking fees, the latter is the only charged in private infrastructures. Majorly, large-scale developmental infrastructure is owned publicly such as the airports, seaports, road, railway, and water systems. Commonly the privately owned infrastructural establishments are telecommunications, information technology and power or energy systems. The discussion on Public- Private infrastructure is extended to the later chapter.

To theoretically prove the benefit of infrastructure, one such model is that of Romer (1987)⁷, who established a relationship between public capital and economic growth, in his proposition he sought to convey the idea that specialization in the sector of infrastructure through production, leads to the reduction in fixed costs since, infrastructure then acts as technology itself. Through his equations, he proves that there is “a positive relationship between the measures of intermediate inputs i.e. specialization, and infrastructure. Prevalence of an inverse relationship between average output of intermediaries and infrastructure. And that there persists of an inverted-U or non-monotonic relationship between the long-run growth rate and stock of infrastructure scaled by the level of national output.” The criticism to such an approach would be that there isn’t enough of variance in the infrastructures in the economy to actually measure the relationship between specialization and infrastructure.

INFRASTRUCTURE: THE SHIPPING AND PORT SECTOR

The Ministry of Shipping, India, deals with a critical infrastructural development: Maritime transport. It incorporates in its ambit “shipping and port sectors including shipbuilding and ship-repair, major ports, national waterways and inland water transport.” Hence here we will consider the hard infrastructure aforementioned by the ASCE, that is one of types- “inland

⁷ Paul M. Romer, 'Growth based on increasing returns due to specialization,' (1987) American Economic Review, Papers and Proceedings 77, 56-62

waterways” however exploring it in broadly in terms of shipping and ports. This sector is responsible for the policy implementation and formulations in order to keep up with the efficiency and development with the shipping sector.⁸ Nitin Gadkari, in his message as the Minister of Shipping, Road Transport and Highways, believes in an “efficient port [system]” by bringing India on the forefront in terms of “global shipping” moreover the objectives of the government extend towards “strengthening Inland waterways.” The means to the dreamt end would be through the parallel walking of the port system and technology therefore both identifying the needs of each in order to cater to the ideal goals of the Ministry and largely the country.

According to the Ministry, the chief mode of transport for cargoes especially objects involving of heavy goods include the inland waterways that are deemed most efficient such as in light of fuel-efficiency and eco-friendliness. In India there exists of 14,500 kms. of navigable waterways involving of all water channels wherein the present time the biggest rivers of the country stand navigable by mechanized vessels they are as big as 3,700 kms. The drawback however exists that out of the navigable canals that amount to 4,300 kms, only about 900 kms are actually navigable by the mechanized vessels.

Currently the Ministry is facing a lag in the policies for efficiency since, the requirements in terms of development increases as the infrastructural needs of this sector is ever dynamic. Moreover the developments and innovations that have been globally catered to for the overseas technologically advanced ships, is something that the country longs for given the need for an up gradation to level up with the foreign world. This need is both for the betterment of the country by improving the shipping sector so as to maintain efficiency within the country as well as on the global market to give a competitive edge to other advanced overseas maritime transport industry.

The importance of Public-Private Partnership in the port sector, is a major concern, and plays a crucial role in the infrastructural development of the shipping sector. Subsequently the Government or State was concerned in the development and investment of the transport and shipping sector especially the port system due to the massive investment that needs to be

⁸ Ministry of Shipping, Government of India, <http://shipping.nic.in/showfile.php?lid=2592> (last visited Nov 2, 2017).

invested in the sector along with the uncertainty in returns. As a result the resources are such that the state would congenially agree to provide for the sector given that the massive requirement historically wouldn't be voluntarily provided for by the private sector. Hence the externalities both positive and negative were borne by government of India. Now, the Private sectors interest in the port system especially has led to a revolution in the infrastructure of the sector. The ministry further has laid down policies most suitable for the private sectors for their contribution to the sector. Moreover joint ventures are promoted between major and foreign ports and non-major and private companies. There also the standardization of the bidding documents such as the Request for Qualification (RFQ) and Request for Proposal (RFP) and concession agreement.⁹

Private companies such as the Reliance defense and engineering limited for the Indian Coastal Guard have associated itself with the ministry of Defense of the country by signing a contract regarding the designing and construction of fourteen Fast Petrol Vessels (FPV) and one training ship, this collaboration is believed to be at the cost of Rs. 916 Crore. The ships are scheduled to be delivered in 2019.¹⁰

The Hindu Business Line¹¹ in its Newspaper had reported, a joint venture that had been signed by the Tata steel and Creative Port Development in order to develop the Subarnarekha Port in a village in Odisha. The agreement included the purchase of 51 percent of stake in the port development firm, as a result of agreement with the government of Odisha to develop the port at 10 million tonnes per annum.

In the contemporary light, infrastructure in India majorly takes place through the Foreign Direct Investment (FDI), and looking in the current light, that is the fiscal year (FY) 2017-18, many such changes have led in the progress of the future projects in terms of finance in India. The

⁹ PRIVATE PARTICIPATION AT INDIAN PORTS Resurgence through Reforms, PRIVATE PARTICIPATION AT INDIAN PORTS Resurgence through Reforms, <http://briefindia.com/wp-content/uploads/2017/05/PPP-report.pdf> (last visited Nov 2, 2017).

¹⁰ Reliance Defence starts steel cutting on 14 fast patrol vessels, Business Standard , August 25, 2017, http://www.business-standard.com/article/news-ians/reliance-defence-starts-steel-cutting-on-14-fast-patrol-vessels-117082500522_1.html (last visited Nov 2, 2017).

¹¹ Tata Steel to take 51% stake in Creative Port Development, The Hindu Business Line , January 25, 2017, <http://www.thehindubusinessline.com/companies/tata-steel-to-take-51-stake-in-creative-port-development/article9501820.ece> (last visited Nov 2, 2017).

India Brand Equity Foundation reports¹², that the country has been part of 33 dealings worth US\$ 3.49 billion compared to previous investments such as US\$ 2.98 billion in FY 2015-16. Most of the deals involve hard infrastructure in terms of public capital, they include, renewable sources, power and road, while companies as reported in the infrastructural concern include, Meinhardt Group, I Square Capital, DP World, Gamma group so forth. India itself hasn't been a penny-pincher, the demonstration of the significance of Infrastructure through investments by the governmental department show the role that infrastructure as a whole plays in the growth in production and productivity of the economy. In the past two years, The Road Transport & Highways Ministry, has approximately invested US\$47.7 billion and The Shipping Ministry around US\$12 billion. The main focus now, of the government lays on the major hard infrastructures since this is which the civilians of the country need the most, and this focus will truly take its flight prior the elections scheduled in 2019.

CONTEMPORARY INVESTMENTS IN THE SHIPPING AND PORT SECTOR

The snapshot reports by the India Brand Equity Foundation¹³, gives an overview of the current developments in light of shipping and port industry as explored in this chapter. India as a whole comprises of 12 major ports and 200 notified intermediate and minor ports. According to Encyclopaedia Britannica¹⁴, Cargo or Freight is majorly commercial goods transported through means of water, land or air, originally they were used for goods transported by ships but now the term covers a much wider aspect. In India, the cargo traffic as against 1,052 Million Metric Ton (MMT) in 2015 has a forecast of rising to 1,758 MMT this year itself. The system of transportation has a huge impact on the transactional aspect of goods that need a trust in availability and speed of the goods hence the trading sector overall is impacted due to the stress on commerce.

¹²Infrastructure, IBEF: India Brand Equity Foundation, <https://www.ibef.org>, <https://www.ibef.org/download/Infrastructure-September-2017.pdf> (last visited Oct 30, 2017).

¹³ *Ibid.*

¹⁴ James Joseph Stilwell & John B. Woodward, Types of Ships Encyclopaedia Britannica, <https://www.britannica.com/technology/ship/Types-of-ships#toc64215> (last visited Nov 2, 2017).

As majority of the infrastructural investment comes from abroad, so does the investment that is the Foreign Direct Investment (FDI) in the port system comes by large investors who receive about 100 percent of it, especially in the automatic route for the port, harbor construction and maintenance of the same. Moreover to promote such investments and future projects those investing in the port system are provided with tax exemptions for a time span of 10 years as an incentive. The recent scenario as observed was during the last few months where the cargo traffic had increased up to 3.26 percent as compared to the previous year and the annual growth is registered as 6.6 percent, such observations definitely makes us aware of the grand developments in this sector. According to the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry¹⁵, so far the port system has received US\$ 1.64 billion in the timespan from 2000 to 2017 FDI.

Upon the scrutinization of the official website of the Ministry of Shipping, the prime focus of the ambitious government project includes the Sagarmala project which sorts to transform the existing ports into much advanced modern ports that reduces the time for transportation and the costs that speeds up trade and commerce in exports and imports.¹⁶ For such an initiative 10 coastal economic regions are to be developed. The publication in The Economic Times¹⁷, in 2016 reported of the incorporation of Sagarmala development Company with the “share capital initially authorized of Rs. 1000 Crore and subscribed share capital of Rs. 90 Crore.” The impact of such projects has a positive benefit to the private sector associated with the shipping sector such as the improved port system.

Other governmental initiatives include the Ministry of Shipping introducing the Residual Maritime projects worth US\$124 billion that is announced to be completed in the next two years. Mr. Narendra Modi, the Prime Minister of India, has been associated with the Kandla Port Trust for the introduction of various new projects such as the Dr. B.R. Ambedkar Convention Centre, Interchange-cum-ROB at Kutch Salt Junction and so forth. The Home Minister himself has been an active participant in the development of the port system such as

¹⁵ Shipping Industry & Ports in India, IBEF : India Brand Equity Foundation, <https://www.ibef.org/industry/ports-india-shipping.aspx> (last visited Nov 1, 2017).

¹⁶ "Concept Note on Sagar Mala Project:Working Paper" (PDF). Ministry of Shipping, Government of India. Retrieved 4 July 2015.

¹⁷ Nod to Sagarmala Development Company with Rs 1,000 crore authorised share capital, The Economic Times , July 20, 2016, <https://economictimes.indiatimes.com/news/economy/policy/nod-to-sagarmala-development-company-with-rs-1000-crore-authorised-share-capital/articleshow/53308267.cms> (last visited Nov 2, 2017).

his collaboration with the Minister of Shipping, Road Transport and Highways, in establishing a new sea route to the Baratang island along with various other Andaman and Nicobar sea projects. The Ministry is also extremely ambitious and has planned on developing 37 national waterways as declared in the National Waterways Act, 2016, where it was planned on a total development of 111 waterways. Moreover the cabinet has given the green flag to the productivity linked reward (PLR) scheme for the workers at the Port and Docks at the cost of US\$ 7.4 million. In terms of international projects the Government in association with Germany has initiated in projects relating to railway and port connectivity along with eco-technology by investing US\$ 15 billion.

PREDICAMENTS OF THE PORT INFRASTRUCTURE

With the advancements in infrastructure and the interest in the port sector, much has been gained and much has been lost. The demonstration of Gautam Adani thus being a major case in India is imperative to consider. World-renowned company, Adani, has its interests rooted in energy, logistics, coal and shipping. Thus the company widely owns six ports while Mundra, is the largest privately owned port in the country. It is also the one of the world's largest coal receiving terminal along with having its associations with the special economic zones (SEZ).¹⁸

On an outward consideration, the project is pioneering and progressive, inculcating the various port related infrastructure. However on a closer look, more than imagined is compromised at the expense of such an establishment. The Mundra Port commenced in its construction in around 1990s, where the operational related initiatives was launched in 2001. The first observable destruction is to the flora and the environment in general, such as the massive destruction of Mangroves and other trees, moreover the Gujarati Fishermen find it extremely difficult rather it may be understood that their jobs have been eradicated due to construction of the port, additionally their village area has been engulfed by the SEZ.

¹⁸Adani's record of environmental destruction and non-compliance with regulations, <http://www.greenpeace.org> (2015), <http://www.greenpeace.org/australia/Global/australia/volunteer/Adani%27s%20record.pdf> (last visited Nov 2, 2017).

The second concern is more of an allegation, such as the “non-compliance in the regulations”, and other “illegal activities” such as bribery, unauthorized construction and tax evasion.¹⁹ The allegations were put forth upon the government investigations and court cases; moreover a committee in 2012 was formed by the Ministry of Environment and Forest (MoEF) to look into the Mundra Port.²⁰ According to the Karnataka anti-corruption department it was learned that the Adani group had been illegally transporting Iron ores causing economic loss to the government. Moreover it has also received iron ores in its other ports not permitted to actually receive the ores, the suspect further extends to the illegal theft of the ores.

Thirdly according to the MoEF and Gujarat High Court, the company as allegedly illegally constructed establishments such as the construction for its power station an intake channel at Mundra despite not receiving a clearance letter on the environmental aspect. As the Indian Express reports, a PIL was filed against Adani and the authorities of SEZ by ten residents, upon the intrusion in the Pastoral Land belonging to Siracha village in Mundra, Kutch, of which the company wasn't permitted to interfere. In spite of the restriction by the authorities, the company went ahead by constructing an illegal establishment therefore the villagers agitations has landed the company in court.²¹

In terms of the environmental concerns, it has been reported that Adani has been least bothered by the increasing worries of the nature, such as that of the fly ash management and effluent temperature monitoring.²² The company was inefficient in maintaining its ash control, which could lead to air pollution. The issues of groundwater salinity have also not been catered to, such that the harm to aquatic life becomes inevitable. The Government's fine imposition of Rs. 200 Crore, though effective may still not prevent all such major dark infrastructural truths.

¹⁹ Ibid.

²⁰ MoEF (2012) Office Memorandum. Constitution of committee for inspection of M/s Adani Port and SEZ Ltd, Mundra, Gujarat. Available from: http://moef.nic.in/downloads/public-information/01_order_AdaniPort14092012.pdf

²¹ Express News Service, *PIL accuses Adani SEZ of land grab, HC issues notices*, The Indian Express, June 21, 2013, <http://archive.indianexpress.com/news/pil-accuses-adani-sez-of-land-grab-hc-issues-notice/1131956/> (last visited Nov 2, 2017).

²² MoEF (April 2013) Report of the Committee for Inspection of M/s Adani Port and SEZ Ltd. Mundra, Gujarat. Ministry of Environment and Forests p80: <http://moef.nic.in/sites/default/files/adani-report-290413.pdf>

LEGAL ASPECT: MAJOR PORT AUTHOTITIES BILL 2016

This bill was proposed as to replace the Major Port Trust Act, 1963, in order to ensure the relevant details and sections of law are maintained for the sake of brevity and preciseness, hence the unwanted and obsolete sections have been removed and the current sections stand strong up till 65 rather than the previous exhaustive 134. Firstly, such a bill has its own merits extending to the firms and PPP associated firms to deal in a more simple and straightforward manner²³. Hence the Board of Port Authority would be compact up to 11 members, having the power to make various decisions and project planning outlines. The benefit of such a government initiative is that all the members would be belonging from the various ministry departments in order to bring a larger pool of knowledge in taking major decisions for the port system. The Tariff authority in the major ports, has the role of making the tariff scenario more flexible in order to fix any problems in the tariff related issues. Such as the fixation of the tariffs would be by the PPP operators looking at the current market requirements.

Secondly, the proposition of an independent review board would sort the conflicts between the PPP projects and provide with effective solutions to the complaints received. Additionally previous PPP projects would get a chance to come back if they hold enough potential to bring a reformation in the Port system. The port authorities also have the powers to act as the onlookers of the contract or enter into contracts themselves, other than that during other State related emergencies. The benefit of this is that it would not be a compulsion to receive the approval of the Central Government to do, as was previously required under the 1963 act.

The area of ports are distinct so are the board members, hence as deemed fit by the members, the relevant changes to the plans of ports can be made. Plans such as the developmental aspect of the port itself as well as the other services such as the telephonic, pipeline,²⁴ power, and other such may be revisited and revised in order to make the overall infrastructural basis of that peculiar port more developed in its respective area. An important addition to the bill includes the provisions of the Corporate Social Responsibility (CSR) of each port related firm hence the

²³ ET Bureau, *Cabinet approves Major Port Authorities Bill, 2016* , The Economic Times , December 15, 2016, <https://economictimes.indiatimes.com/news/economy/policy/cabinet-approves-major-port-authorities-bill-2016/articleshow/55987709.cms> (last visited Nov 2, 2017).

²⁴ *Ibid.*

regard for environment acts a necessity as opposed to the previous environmental harms that have been done.

CONCLUSION

It extremely vital to invest in the shipping and port sector given the benefits it reaps, most importantly the in the speedy transport and commerce that is cost effective due to the excellent infrastructure it would provide with. Hence reviewing the upcoming port infrastructural projects including the Public Private partnerships, we are sure to be positive of the government's steps and look towards a more brighter and optimistic future for the Shipping and Port sector. Major reviews of ports like Mundra need to be regulated and checked into by improving the ethics of the government as well as the policies it declares. The MPA Act 2016, will hopefully bring a change in the infrastructure of the country, and moreover stress on CSR of firms and interrogate them for the unethical and illegal behaviors displayed.

As it is widely known of the significant role that Law in the country plays, it is even more so suggested that the obsolete rules and regulations need to be get done with so as the infrastructural demands increases, so do the changes in the law become more evident. Such a doing would make firms more confident in participating in the development of the shipping and port sector since the law is more accessible thereafter. Hence, the implementation of the Major Ports Authority bill, 2016, would provide with a better check on the necessary functionality of the port system. The pool of members would bring a variety in their knowledge to solve the conflicts of interest as well as note the requirements in the port system. This additionally brings a check on the CSR, such that the environment is not harmed or is least harmed.