

Gol must end India's business-stifling inspector raj that thrives on ridiculous imprisonment clauses

End Regulatory Brutality



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Those legally literate, term the phenomenon as regulatory excesses. The politically driven see it as legislative virtue-signalling. The ideologically blind worship it as a mission to keep India small. Public intellectuals encapsulate it as regulatory cholesterol. But the manner in which the business community has been relegated to the dark, danky swamps of India's political economy is nothing short of regulatory brutality.

This brutality has taken a toll on India's business energies. It has slowed the formalisation of enterprises. Only 1 million out of 63 million enterprises are in the formal sector. It has harmed job creation, value and wealth creation, and kept enterprises small.

In the Observer Research Foundation (ORF) report, 'Jailed for Doing Business: The 26,134 Imprisonment Clauses in India's Business Laws' (bit.ly/3sU0Kdm) released earlier this month, Avantis RegTech CEO Rishi Agrawal and I explore the root cause for bureaucratic rent-seeking, bribery and extortion. The report isolates imprisonment clauses that surround doing business in India, of which there are hundreds of anecdotes but no macro data. Data now firms up these anecdotes. Take the following:

► The imprisonment term for not constituting a canteen committee un-

der the Factories Act, 1948, and related rules carries the same imprisonment term as sedition under the Indian Penal Code (IPC), 1860.

► Not submitting information about reduction in the maximum retail price of scheduled formulations under the Essential Commodities Act, 1955, and related rules has the same jail term as assault or use of criminal force on women with intent to disrobe under the IPC.

► Not displaying working hours prominently at place of business, including place of storage, carries the same imprisonment as collecting arms with the intention of waging war against Gol.

The list is long and ridiculous. And if you're wondering how India's legislative mechanism managed to infiltrate businesses with such micro-regulation, there's worse. The 26,134 imprisonment clauses are almost two in five of the total compliance universe of India's business laws. Of the 69,233 compliances that businesses face at an aggregate, 37.7% carry jail terms. These terms range from less than three months to more than 10 years.

Prisoner of Law

Of the 1,536 laws — at the Union and state levels — that oversee doing business in India, 843 (that is, more than half) carry imprisonment clauses. Out of the 26,134 imprisonment clauses, labour-related account for 68.2%, or almost 7 out of 10. To put this number in perspective, the number of imprisonment clauses per law under labour is more than 50.6% per law, while secretarial carries 12.4%. To see it in another way, labour laws and compliances comprise 30% of the number of laws (through 463 Acts), 47% of the number of compliances (32,542), and 68% of the number of criminal clauses (17,819). The biggest culprit is the Factories Act,



Catch the business serial-killer

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1948, and related rules that holds one out of three imprisonment clauses.

Among states, where rules are framed, there are five that have more than 1,000 imprisonment clauses each — Gujarat (1,469 imprisonment clauses), Punjab (1,273), Maharashtra (1,210), Karnataka (1,175) and Tamil Nadu (1,043). These add up to 6,170 clauses, or 29.5%. These five states have enacted more imprisonment clauses than the bottom 21 states put together. While four of these states are potentially trillion-dollar economies, Punjab stands out as an aberration.

Step back from this data and the conclusions write themselves. First, the number of laws and compliances that regulate doing business in India is high. Second, the number of compliances carrying imprisonment clauses is excessive. Third, while Parliament has enacted 20% of the laws and the states 80%, rule-making by the latter is incumbent on the imprisonment directions of the former. Fourth, while large companies can hire talent to endure these excesses, this brutality can destroy MSMEs and startups. And, fifth, it prevents formalisation.

Among the 10 recommendations the report makes, three need to be highlighted. One, led by the Union government, India needs to rationalise impi-

sonment clauses. Not all such clauses need to be scrapped. But most, including procedural infractions, do.

Two, India needs to change the way economic policy is drafted. Policymakers at the top should stop unleashing serial killers of businesses through a rent-seeking bureaucracy at the bottom. And, three, every compliance that carries imprisonment needs to have a sunset clause — a use-by date. If it needs to be carried forward, there should be adequate reasons given.

Stable this Horse

Conversations with senior government officials as well as top industry leaders tell us that while they were cognisant of the problem, they did not know its scale and magnitude. This 70 years-long anti-business policy drift contains in it an opportunity of hope. The economic reforms P V Narasimha Rao unleashed in 1991 ended the licence raj. Three decades later, by rationalising compliances, Narendra Modi has the opportunity to end the inspector raj.

This is essential for India's MSMEs and startups. It is a tool for formalisation, crucial to generate jobs and wealth, and increase tax revenues.

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