

Distrust of employers is bred into Indian policy. It needs to end

Jan Vishwas Bill 1.0 recognised this problem but couldn't do enough. A Jan Vishwas 2.0 that aims higher is needed, so that job creation can be accelerated

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Tulsidas's Ramacharitmanas asks, Jaum mrigapati badha medukanhi bhala ki kahai kou tahi (if a lion kills frogs, will anyone speak well of him)? The Indian Penal Code makes the Indian state very powerful — does it really need jail provisions in half of the 1,536 laws that touch employers?

The recent Jan Vishwas Bill, now a law, has reduced corruption demands on employers by removing 113 jail provisions across 23 laws. I make the case for Jan Vishwas Bill Version 2.0 with a shift in policy strategy from retail to wholesale filtering after next year's general elections to further reduce corruption and accelerate good job creation.

Labour laws are the biggest culprit. The Factories Act, 1948, read with 58 rules, contains more than 8,682 imprisonment clauses. But even simpler laws are hardly innocent: The Legal Metrology Act, 2009, read with 29 rules, has 391 imprisonment clauses; the Electricity Act, 2003, read with 35 rules, has 558; and the Motor Vehicles Act, 1988, read with nine rules has 134. Overall, there are 25,000+ employer jail provisions, of which 5,000+ arise from central legislation.

Stalin's Secret Police head, Lavrentiy Beria, often said, "Show me the person, and I'll show you the crime". Beria's technology for corruption — selectively using imprisonment clauses in vaguely drafted laws — is hardly unique. Our employer regulatory cholesterol — including thousands of compliances and filings — breeds corruption because some of our 25 million civil servants and 3 million election winners find personal gain in subjectively creating transmission losses between how those laws are written, interpreted, practised and enforced.

More painfully, this cholesterol rewards informal enterprises with a sense of humour about the rule of law while punishing the high-productivity enterprises that pay high wages by combining technology, capital and skills. Regulatory arbitrage — corruption — and informality are corrosive because India's economic challenge is wages, not jobs.

This article's title comes from a book published in 1950 with six essays by 20th-century writers on their conversion to and subsequent disillusionment with communism and socialism. It chronicles how their search for the betterment of humanity led them to false gods and the personal agony that subsequently caused them to reject them. India's tryst with false economic gods — articulated in the Avadi Resolution of 1955 — bred distrust of employers that manifested itself in many ways, but among the most poisonous was the false legislative god of criminalisation.

Jan Vishwas Bill 1.0 tackled this with innovation, judgement and stamina. Its innovation lay in a single law amending many laws. Its judgement lay in keeping "good" jail provisions that deter or

deliver consequences for bad behaviour while eliminating “bad” jail provisions that discourage good behaviour.

Its stamina lay in constructing the list of 113 “bad” jail provisions eliminated for employers by asking each central ministry to reflect on their criminal provisions and voluntarily surrender the bad ones. This “retail” approach had inclusivity but ended up defending the status quo — few institutions cut the tree they are sitting on — and only about 4 per cent of the 678 Central Acts that matter to employers were touched. Consequently, only 2 per cent of 5,239 jail provisions in central legislation were removed by Jan Vishwas.

The government has wisely signalled Jan Vishwas 2.0 with higher aims. Success requires a new strategy for filtering decriminalisation that shifts from retail (ministry’s volunteering) to wholesale (a positive list). A government committee with cognitive diversity should identify criteria where jail for employers is merited, like harm to others, theft from employees, etc. Subsequently, every central ministry must remove all the 5,000+ jail provisions that do not meet the committee’s criteria.

Early evidence from decriminalisation suggests it reduces the load on the judicial system. Over the last four years — outside the Jan Vishwas Bill — the Ministry of Company Affairs decriminalised over four dozen violations. These cases are now decided by the Registrar of Companies, and MCA data suggests ROC orders issued jumped from 157 in 2019 to 765 in 2023. These orders entail a penalty but no prosecution and are rarely challenged in court.

A fertile habitat for job creation hardly implies zero compliance, filings or jail provisions. If that worked, SWAT Valley in Afghanistan or Waziristan in Pakistan would be hotbeds of entrepreneurship. But every doctor knows the dose makes the poison — anything powerful enough to help has the power to hurt, and our excessive regulatory cholesterol currently hurts productive and compliant employers.

More good enterprises will create the good jobs that tackle our biggest economic challenges: Low wages, low tax-to-GDP ratio, missing middle of enterprises, demand for reservations, low labour force participation by women, financing skill development and slow farm-to-non-farm job transition.

The most sustainable reform for keeping regulatory cholesterol low is civil service reform. But life is second best at best, so decriminalisation is urgent. Also because our excessive laws breed excessive change; there were 11,000+ regulatory changes in 2023, more than 10 daily!

India will soon have the world’s third-largest GDP because of higher formalisation, urbanisation, financialisation, industrialisation and human capital. But becoming a top 10 per-capita GDP country is currently sabotaged by the siblings of corruption and informality.

There is nothing cultural about either; suggestions that there is something “Indian” about the siblings is, at best, the soft bigotry of low expectations and, at worst, racism. India’s war on poverty will struggle till millions of good jobs in productive enterprises are assassinated before birth by the failed legislative god of excessive jail provisions and regulatory cholesterol. The Vishnu Sahasranama knew this long ago: Saha-srarchi sapta-jihvah saptai-dha sapta-vahanah, Amoorti

ranagho chintyo bhaya-krudbhaya-nashanah (amateur translation: Fear is created so it can be taken away).

A new wholesale strategy for amendments to the Jan Vishwas Bill will deliver lower corruption, higher wages and productive enterprises. All three bring India's new tryst with the destiny of combining mass democracy with mass prosperity within grasp.

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