



JAILED FOR DOING BUSINESS

The
26,134
Imprisonment
Clauses in
India's
Business
Laws

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Abstract

This report distils the risks of imprisonment faced by Indian entrepreneurs. Using newly isolated data on 26,134 imprisonment clauses embedded in laws enacted by the Union and state governments, it provides the risks faced by entrepreneurs and corporations in doing business in the country. The data is analysed along seven categories—labour; secretarial; environment, health and safety; industry-specific; finance and taxation; commercial; and general—followed by a sub-national scrutiny. Finally, the report offers 10 policy recommendations and 31 sub-recommendations that could help lawmakers reimagine India’s compliance universe. The aim is to serve as the basis of future research into India’s business climate, while providing a vital context within which policymakers can initiate and deliver compliance reforms.

Executive Summary

India suffers from ‘regulatory cholesterol’ that is getting in the way of doing business. The legislations, rules and regulations enacted by the Union and State governments have over time created barriers to the smooth flow of ideas, organisation, money, entrepreneurship and through them the creation of jobs, wealth and GDP.

The presence of hostile clauses in these laws, rules and regulations has grown since Independence, surviving three decades of economic reforms initiated in 1991. The biggest challenges come from the continuance of imprisonment as a tool of control. As automation increases in the coming years, the pre-Independence 1940s-style administrative controls meant to protect labour will prove counter-productive in 21st-century India.

There are 1,536 laws that govern doing business in India, of which 678 are implemented at the Union level. Within these laws is a web of 69,233 compliances, of which 25,537 are at the Union level. These compliances need to be communicated to the governments through 6,618 annual filings, 2,282 (34.5 percent) at the Union level and at the states, 4,336.

These changes in compliance requirements occur constantly and add to business uncertainty. In the 12 months up to 31 December 2021, there have been 3,577 regulatory changes;

over the three years from 1 January 2019 to 31 December 2021, there were 11,043 changes in compliance requirements. This translates to an average of 10 regulatory changes every single day.

Of the 1,536 laws that govern doing business in India, more than half carry imprisonment clauses. Of the 69,233 compliances that businesses have to follow, 37.8 percent (or almost two out of every five) carry imprisonment clauses. More than half the clauses requiring imprisonment carry a sentence of at least one year.

Several of these clauses criminalise process violations, while some of them punish inadvertent or minor lapses rather than wilful actions to cause harm, defraud, or evade. For some laws, delayed or incorrect filing of a compliance report is an offence whose punishment stands on par with sedition under the Indian Penal Code, 1860.

The largest number of imprisonment clauses are found in labour laws, with more than 50 such clauses per law. Five states have more than 1,000 imprisonment clauses in their business laws: Gujarat (1,469 imprisonment clauses); Punjab (1,273); Maharashtra (1,210); Karnataka (1,175); and Tamil Nadu (1,043).

This report argues that the criminalisation of business laws violates Indian business traditions: from the *Mahabharata* to the *Arthashastra*, criminality was never a part of punitive action against businesses in ancient India — only financial penalties were. Reforming these clauses is necessary to restore dignity to entrepreneurship in India. The authors make 10 major, and 31 minor recommendations:

1. Reform the way policies are designed.
2. Use criminal penalties in business laws with extreme restraint.
3. Constitute a regulatory impact assessment committee within the Law Commission of India.
4. Involve all independent economic regulators in compliance reforms.
5. End the criminalisation of all compliance procedures.
6. Create alternative mechanisms and frameworks.
7. Define standards for legal drafting.
8. Introduce sunset clauses.
9. Reform with one legislation.
10. Infuse dignity to entrepreneurs, businesspersons and wealth creators.

I. Introduction

India's business regulation framework needs a 21st-century rethink. This paper provides the basis for it. It seeks to deepen the debate around economic reforms in the world's fifth-largest economy, which is headed towards becoming the world's third largest before 2030. Using newly isolated data, it collects, compiles and analyses 26,134 specific clauses in the country's business legislations, rules and regulations that impose prison terms for violations. As it explores the discourse around what this report calls "regulatory cholesterol" (defined below) that places hurdles before India's entrepreneurs, it situates itself within the ongoing policy discussions around reducing imprisonment clauses in India's business laws. In March 2020, for instance, the Union Cabinet made clear its legislative intent to rationalise such clauses by approving related amendments in the Companies Act, 2013.¹

This planned rationalisation is a crucial policy correction. Seven months earlier, in July 2019, the government had tabled, and Parliament had enacted, the Companies (Amendment) Act, 2013 in which it had amended Section 135 of the law and criminalised violations on corporate social responsibility (CSR) with imprisonment.² "Every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years," Subsection 7 of Section 135 of the amended law states.³ Following

resistance from the corporate sector, the government announced it will not operationalise this clause, less than two weeks after enactment of the law.⁴ While the clause has not been notified so far, it remains etched in law, and could still be executed.

Less than three months after the amendment was enacted, on 7 August 2019, a committee on CSR submitted a report titled, ‘Report of the High Level Committee on Corporate Social Responsibility – 2018’.⁵ Set up 11 months earlier and chaired by the Secretary of the Ministry of Corporate Affairs, Injeti Srinivas, the committee recommended that unspent CSR funds be spent within three to five years. In case a company fails to spend, the money should be transferred to a fund to be specified by the government. Further, a penalty of two to three times the default amount should be imposed subject to a maximum of Rs 1 crore. However, there will be no imprisonment.⁶

There are 176 imprisonment clauses in the Companies Act, 2013 read with 14 related Rules.⁷ The jail terms range from less than three months to as high as 10 years. The Ministry of Corporate Affairs says the offences may be classified into two broad categories: those calling for imposition of monetary penalties; and those calling for imposition of imprisonment, with or without fine.⁸ Only after a new amendment Bill has been drafted and tabled in Parliament would it become clear whether the government is keen on removing or reducing criminal clauses in this law. This will be an important change—a crucial marker in the rationalisation or the removal of criminality in business laws.

Further, labour laws are currently being reformed. The 29 central labour laws are being subsumed into four labour codes—Code on Wages, 2019; Occupational Safety, Health and Working Conditions Code, 2020; Code on Social Security, 2020; and Industrial Relations Code, 2020. Once notified, the four codes are expected to reduce the number of sections from 1,232 to 480, or a 61-percent reduction. On initial assessment, imprisonment provisions will reduce by half.

If the amendments to the Companies Act, 2013 are enacted, it could be the starting point for deeper economic reforms. India’s entrepreneurial landscape is full of laws, rules, and regulations that have raised barriers to doing business. The Factories Act, 1948, for instance, read with 58 rules, contain 8,682 imprisonment clauses. This is an important law as it provides core protections to workers. Even simpler laws similarly have multiple imprisonment clauses: 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.

This report creates the foundations of new information around the unexplored area of imprisonment clauses in business laws. It informs the ongoing debate around simplifying laws, making them less coercive and more investment-friendly to attract capital and entrepreneurs into India as they exit China, and make Indian businesses more comfortable to be able to do what they do best: create value for society, jobs for India's young demographic, taxes for the government, and wealth for investors.

Economic growth today is a political imperative, private sector enterprises the drivers, capital the catalyst, and entrepreneurs the executors. All have to work together and function in unison. Seventy-five years after independence, these four seem to be converging, but the weight of past excesses has now grown into a labyrinth of policy complexities that need to be rationalised. Good economics, or 'good business', is becoming good politics.

The analysis and recommendations this report makes will contribute to a new and original theory that links India's legal system, economic growth and prosperity with the most important and equally condemned factor of production—the entrepreneur. To that extent, this report takes a macroeconomic and legal look at the microeconomics of manufacturing, in particular and business, in general. The report seeks to start new streams of research within which to examine economic growth, and through it sow the seeds of a new 21st-century model of development that turns the current model on its head by focusing on and according dignity to value creators.

The report proceeds as follows. Section I introduces the paper. Section II frames the problem and provides a historical context from which to envision the future. Section III defines this problem as part of what this report expresses as “regulatory cholesterol”, which illustrates how India's policymaking has slowed the country's entrepreneurs, and thereby the country's growth. Section IV places the data sources used. This data is an entirely new addition to India's economic literature. It also explains how the report has classified the data into seven parts: labour; finance and taxation; environment, health and safety; secretarial; commercial; industry specific; and general. Section V analyses the imprisonment clauses within smaller intervals. It will help the country debate and policymakers focus on a

large number of clauses from which to study those that can be easily eliminated. Section VI disaggregates the data and analyses the imprisonment clauses across the seven categories defined above. Section VII disaggregates the data and analyses the imprisonment clauses across the Union and state governments, and explores the extent of excesses across these geographies. Section VIII delves into the philosophy of punishment frameworks in India, and compares India's business laws with the Indian Penal Code, 1860. The results are instructive. Section IX argues for change and offers 11 streams of recommendations to policymakers and lawmakers on how to deliver this change. Section X concludes the paper and offers a new context of India's economic discourse that leans towards compliance reforms in general, and imprisonment clauses within them, in particular.

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II.

Framing the Problem: A Literature Review

In 1920, English economist Alfred Marshall defined three original factors of production: land, labour, and capital. To capital he accorded not merely provisions of production like plants and machinery but also knowledge, which he said was the most powerful engine of production. Finally, he added organisation, which he said aided knowledge.⁹ Essentially, organisation is the ability to bring the other agents of production together. With this idea, Marshall placed entrepreneurship as a distinct agent of production.

Two decades later, Austrian political economist Joseph A. Schumpeter expanded this view, looking at technology as a process of creative destruction,¹⁰ with the entrepreneur as the enabler whose function is to “reform or revolutionise the pattern of production by exploiting an invention or, more generally, an untried technological possibility for producing a new commodity or producing an old one in a new way, by opening up new source of supply of materials or a new outlet for products, by reorganising an industry and so on. Railroad construction in its earlier stages, electrical power production before the First World War, steam and steel, the motorcar, colonial ventures afford spectacular instances of a large genus which comprises innumerable humbler ones — down to such things as making a success of a particular kind of sausage or toothbrush.”

The policy direction of Independent India, however, refused to see the prosperity that technology, innovation and the fourth factor of production, the entrepreneur, was bringing to the world and could bring in India. It was trapped in the allure of the previous century — the Manifesto of the Communist Party,¹¹ authored by Karl Marx and Frederick Engels that wanted the destruction of the entrepreneurial class. “To be a capitalist, is to have not only a purely personal, but a social status in production,” they wrote. “Capital is a collective product, and only by the united action of many members, nay, in the last resort, only by the united action of all members of society, can it be set in motion. Capital is therefore not only personal; it is a social power.”¹²

The resultant policies in India were all inspired by this wealth-shunning, entrepreneur-suspecting idea: from nationalisations under Prime Ministers Jawaharlal Nehru and Indira Gandhi,¹³ to high taxation,¹⁴ controls on pricing issues in the primary market,¹⁵ to restrictions on money flows¹⁶ that focused on controlling this “social power” of capital. “The easy style of socialism mistakes Amiri Hatao for Garibi Hatao; it aims at leveling down and not leveling up,” said Nani Palkhivala.¹⁷ “It is content to satisfy the pangs of envy when it cannot satisfy the pangs of hunger; and since it cannot create income or wealth, it plans for poverty and equal distribution of misery.” An ostrich-like policymaking ignored the changes the world of value creation the developing South was undergoing — South Korea’s export driven industrialisation (1960 to 1980)¹⁸ or China in the 1980s.¹⁹

Teetering on the edge of a balance of payments default, Prime Minister P.V. Narasimha Rao’s 1991 Statement on Industrial Policy⁰ and related policy changes attempted to usher in a more open economy through first-generation reforms. Subsequent prime ministers, from Atal Bihari Vajpayee to Manmohan Singh to Narendra Modi powered the statement through second-generation and more specific reforms. But the singular hold of the rent-seeking clauses in laws, rules and regulations continued—particularly the excessive use of imprisonment as a tool to keep entrepreneurs under check.

The 21st century has added a new factor — technology — that is accelerating economic development. Today, land, labour and capital are easier to get and have been commoditised; it is technology and innovation that are bringing efficiencies of scale into economies, powering extant business practices, consumer behaviour, and government oversight. Look deeper and behind all growth spurts across all geographies and timeframes, it is ideas commercialised and scaled up through entrepreneurs using technology that is imparting a new force to economic growth, poverty reduction, and prosperity. But while entrepreneurs in areas of technology

and innovation are vital for job creation, the gains of entrepreneurship can only be realised if the policy stance to business is receptive to innovation.²¹

With the burden of responsibility on the entrepreneur for the smallest digressions from law being punishable by imprisonment (two years for not painting canteens or not providing spittoons,²² for instance), it is only a matter of time that the innovator-entrepreneur will bring an idea, organise finances, replace labour with robots, and power production with artificial intelligence. This technological change will influence the way governments and policymakers view labour laws. The two bad habits of India's policymaking around businesses — one, excessive regulation; and two, frequent changes to regulation — that curtailed business activity from 1970s onwards are past their shelf life. Instead of supporting, they are harming labour.

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Behind the growth spurts across geographies and timeframes, it is ideas commercialised and scaled up through entrepreneurs using technology that is imparting a new force to economic growth.
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This is a future that is already happening — the change is underway. A 39-percent increase in the sale of industrial robots in 2018 to 4,771 units has taken India to the world's 11th rank in terms of annual installations, after France, Mexico and Spain; it is higher than the robot installations in Singapore, Canada and Thailand. This is not a single-year performance: the five-year compounded annual growth rate of robot installations in India was 20 percent, or doubling every four years.²³ In the US, the wages of labour have doubled over the past 30 years, while the prices of robots have halved.²⁴ Like mobile phones today and personal computers earlier, this trend of reducing prices of robots will only continue.

In the context of the ongoing health crisis wrought by the prolonged COVID-19 pandemic, labour is at an even higher risk — humans are vulnerable to viruses, not

robots — and the acceleration of automation²⁵ will continue, even if prices do not change. Digital technologies that are making intrusions into every aspect of 21st-century society are simultaneously crafting change in the relationships between the other three agents of production. “People with ideas, not workers or investors, will be the scarcest resource,” according to Erik Brynjolfsson, Andrew McAfee and Michael Spence.²⁶ Fortune will favour those who can innovate and create new products, services and business models.

This can complicate the political economy choices around labour reforms, both globally and in India, and within India for both the Union and state governments. Since Independence, India has focused excessively on protecting labour at the cost of those who provide labour opportunities — entrepreneurs. In the 2020s, this will end up becoming not merely an economic but a strategic error. The puzzle before policymakers is to resolve how labour protections (in the form of social security, for instance) can be introduced and strengthened without hurting entrepreneurs. All the State needs to do is to ensure there is no market failure in the system.²⁷ At its disposal the State has the power to coerce the constituents to follow a particular behaviour. But the overreach of these coercions has reached disproportionate levels and created a rapidly-thickening regulatory cholesterol in India — the number of compliance hurdles before entrepreneurs have mushroomed to unsustainable levels.

At some point, the entrepreneur will ask: Why India? As they exit and carry their ability to bring ideas, technologies and capital together, and create jobs in entrepreneur-friendly jurisdictions, the Indian State will ask: What now? This report makes recommendations that will help policymakers answer the second question. These should go a long way in establishing a State-entrepreneur equilibrium.

III.

Regulatory cholesterol

This report defines ‘regulatory cholesterol’ as the policy actions of the three arms of the State, i.e. the executive, the legislature, and the judiciary, using the instruments of legislations, rules, regulations or orders, to create or raise barriers to a smooth flow of ideas, organisation, money and most importantly, the flow of the entrepreneurial spirit. In India, a wrong political choice in the early decades of Independence has created a policy fraternity that shuns data and causalities and leans on rhetoric and ideologies to frame economic policies. Inflation in the 1970s, for instance, was not caused by hoarders and speculators; it was a matter of supply and demand. “Excoriating, coercing, or imprisoning the hoarders and speculators changes nothing in terms of creating new supply,” write Vijay Kelkar and Ajay Shah.²⁸ “The economic theory of people hostile to economic forces is wrong.”

By taking one policy tool — imprisonment — this report highlights the excesses of overregulation and the resultant regulatory cholesterol while doing business in India. Although the biggest constituency at the receiving end of these laws is that of entrepreneurs running for-profit firms and corporations, this regulatory overreach also impacts not-for-profits such as schools and hospitals—both necessary institutions for India with a huge demand. Step

back and in effect, the gap between what the country needs (economic growth from businesses, education from schools and universities and healthcare from clinics, nursing homes and hospitals, for instance) and how the State views the creators of these services has widened to a point where the services the people need are being denied them due to corruption.

Over the past seven decades of Independent India's economic history, the country's regulatory cholesterol has widened across governments (the Union and the states), deepened across legislations (by the Union, the states or their regulatory arms) through amendments, and heightened across areas (labour, safety or secretarial), sectors (manufacturing and services), and industries (textiles, airlines or pharmaceuticals). The instruments of regulatory cholesterol are compliances and filings on the reporting front, and managing inspections of various shades overseeing diverse parts of businesses on the human side.

This regulatory cholesterol has ensured that while India's impressive aggregate gross domestic product (GDP), at US\$2.6 trillion, makes it the world's fifth-largest economy, its GDP per capita, at US\$1,900, stands below Bangladesh, Syria, and Nigeria.²⁹ Excessive regulation has made compliance a full-time department of firms, and placed an unnecessary burden on micro, small and medium enterprises (MSMEs). A typical MSME with more than 150 employees faces 500 to 900 compliances that cost Rs 12 lakh to Rs 18 lakh a year.³⁰

The only way out, even when compliances are in order, is to serve the rent-seeking bureaucracy that has been thriving and continues to do so. Anecdotal and analytical evidence also shows that this is a crucial reason why entrepreneurs choose to remain small, below the regulatory radar. The moment an entrepreneur aspires for growth and attempts to expand its scale and become part of the formal economy, it can lead to more than 400 compliances a year that become applicable as soon as the setup is formalised — overnight.³¹ The State and some of its corrupt arms continue to “bully our job-creating MSMEs.”³²

Regulatory arbitrage between India and other countries is making the threat of businesses moving out of India real.³³ The increasing role of statutory and non-statutory intermediaries such as chartered accountants³⁴ and company secretaries,³⁵ apart from lawyers, to decode, service and manage this regulatory cholesterol shows how complex India's compliance system has become. The intermediaries have become suppliers of regulatory stents, and lawyers, the providers of legal angioplasty to help firms negotiate these hurdles that have the power of not merely slowing businesses down but even grinding them to a halt.

At a time when employment is becoming a political issue, taxes a fiscal necessity, jobs a voter expectation, and the slogan ‘make in India’ putting it all together, the Indian State needs to rethink its approach to wealth creators. At an aggregate, there are 1,536 laws that govern businesses, 678 Union laws enacted by Parliament, and 858 state laws enacted by Legislative Assemblies. Under these laws lies a web of 69,233 compliances, 25,537 at the Union level and 43,696 in the states (See Table 1). These compliances need to be communicated to the governments through 6,618 annual filings, 2,282 at the Union level and 4,336 at the level of states.

Thickening the cholesterol and complicating the issue further is the accompanying uncertainty, with new additions hitting businesses at the rate of 3,000 a year. In the past 12 months, for instance, from 1 November 2020 to 31 October 2021, there have been 3,656 regulatory changes; the quarter, 895 changes; and the month of October alone, 309 compliance changes.³⁶

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A wrong political choice in the early decades of India’s Independence has created a policy fraternity that shuns data and causalities and leans on rhetoric and ideologies to frame economic policies.

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IV. Data

Each data point used in this report lies in the public domain. The data sets are spread across Union and state ministries; Union and state regulatory bodies; municipalities and panchayats and have been procured and collated over the past seven years by TeamLease RegTech, a regulatory technology solutions firm. A team of 50 lawyers identified the numerous Union and state laws, rules, regulations, and compliances containing imprisonment terms, and another team digitised the data.

Although this data exists in isolated form across ministries and departments, no consolidated version is available. Despite being the most comprehensive such resource in India, some points may be missing in this data since not all regulatory changes are placed online or are easily accessible. Nevertheless, this is the most definitive listing of such data so far.

The data have been classified into seven broad domains:

1. Labour: This covers all aspects of employment such as wages and salaries; employee welfare; working environment; the number of working days, holidays and leaves; and women employment and child labour.

2. Finance and taxation: This covers all direct taxes such as income tax, property tax and corporate tax; and indirect taxes including goods and services tax and customs duty.
3. Environment, health and safety: This covers all aspects of regulation that impact activity on pollution, including batteries, biomedical waste, hazardous chemicals, e-waste and hazardous substances.
4. Secretarial: This covers corporate governance and risk management policies, board constitution, code of conduct for directors and senior management, including remuneration of senior management.
5. Commercial: This covers regulations that oversee the trade and sale of goods, including weights and other measurements.
6. Industry-specific: This set of regulations are specific to sectors and industries such as for pharmaceuticals, telecommunications, insurance, banking, textiles, and chemicals.
7. General: These are regulations applicable to specific areas such as municipal corporations or *gram panchayats*.

The data are further analysed across the two entities that enact and execute these laws, rules and regulations: the Union government; and the state governments.

As the first report to collate, present, and analyse this data, this work is foundational. It uses imprisonment as a window through which to examine the way legislations, rules and regulations—and through them the incentives and obstructions to doing business in India—over the past seven decades have been enacted and executed. This report presents new information, delivers new analyses, and creates new knowledge.

V. Clauses of imprisonment

The debate around questioning the extent of imprisonment clauses is one of several in India today. These include demands for reforms, particularly around the politics of labour and land. The big ideas and broad solutions are all present; the problem is in executing them in a noisy democracy powered by an out-of-tune political economy.³⁹ In Parliament and legislative assemblies, on the streets, and in academia, victimhood and peasant exploitation have become the grammar of discourse. Narratives of the past override the needs of the present.

Even a farmer-friendly, game-changing reform such as the three farm laws that have been enacted by Parliament has found a strange political opposition. Strange because some of the parties opposing it are the ones that had these reforms in their 2019 election manifesto—and, by forcing a repeal of the three laws,⁴⁰ are keeping benefits of agricultural reforms away from small and marginal farmers.⁴¹ As a result, to bring any substantial change, governments will need to build political narratives that find resonance with the people and create new and credible institutional structures that can turn alleged exploitation and overstated victimhood into real aspirations.

In the business laws space, Table 1 captures one such data-driven narrative. Apart from the 1,536 laws and 69,233 compliances governing doing business in India, entrepreneurs need to make 6,618 filings every year. The enormity of this data can put the spirit of entrepreneurship back in the bottle labelled ‘do nothing.’ Take the Factories Act, 1948. Compliances that regulate the smallest of actions—from whitewashing⁴² to setting up spittoons⁴³ to constituting a canteen committee,⁴⁴ the non-compliance of which means being jailed—is not the way to encourage free enterprises. The message being sent for a country yearning for manufacturing jobs: if you have capital, it is safer to allocate it across financial instruments than create value, jobs, and wealth.

Behind these narratives, however, what remain invisible are the intricacies of business laws that impact entrepreneurs, slow them down, and raise barriers to investments and doing business. If the resistance to agricultural reforms is political, the opposition to entrepreneurial reforms in manufacturing and services is another narrative that looks at wealth creators as evil. And if evil is to be curbed, punishments are the vehicle. Table 2 illustrates the imprisonment clauses in business laws.

At an aggregate, there are 26,134 imprisonment clauses in India’s 843 economic legislations, rules and regulations that oversee and influence doing business in India. Effectively, almost two out of every five (37.7 percent) clauses pertaining to doing business in India carry imprisonment as penalties. More than half the laws (or 54.9 percent) carry imprisonment clauses. Almost four out of every five (79.9 percent) compliances with imprisonment terms reside with State governments.

The jail terms contained in these clauses range from less than three months to more than 10 years (See Table 3). Almost two out of every five clauses (42.3 percent) have imprisonments of between one and three years. More than four out of every five clauses (86.6 percent) carry imprisonments of less than three years. One-eighth of the clauses (12.6 percent) have jail terms of between three and 10 years. The number of clauses that carry imprisonment of more than 10 years is 207 (or 0.8 percent).

The probability of an entrepreneur or a company being on the wrong side of such laws and clauses—late filings, incorrect information (wilful or otherwise), delays in filing or processes—is high. For the Indian State to expect every business entity to be in full compliance with every clause is a weight that finally falls on value creators. This is not to argue that penalties should not be imposed; it is not anyone’s case that imprisonment where needed must not be drafted into law. But surely 26,134 imprisonment clauses are a regulatory excess, and its biggest contribution would only be to create a rent-seeking climate. Anecdotal evidence points to

the institutionalisation of this corruption. It is almost as if these laws, rules, compliances, and filings have been drafted not to regulate business excesses but to create regulatory excesses, not to keep law breakers in check but to ensure so much burden that they are forced to be in breach and create tributaries of corruption.

The breakdown of the terms of imprisonment in these clauses into six intervals (from less than three months to more than 10 years) makes the process of rationalising them easy, and difficult at the same time. It is easy because the Executive and the Legislature can focus on clauses that have imprisonments of less than three years. But it makes life that much more difficult to plod through 22,625 clauses (11,042 for jail terms of between one and three years, 5,855 for between three months and one year, and 5,728 of less than three months). As this report will discuss further on, the ‘criminality’ in these clauses is more often process violations or lack of disclosures than wilful actions to harm. As a result, amending or removing these clauses will make little or no difference to the State but will ease doing business significantly. These are the low-hanging amendments.

When the number of imprisonment clauses is mapped against the number of laws containing them, it becomes clear that these are more an extension of a careless process of drafting laws, at best, and institutionalised rent-seeking at worst. Ideologies of the past aside, in the 21st century, where economic growth has become a political imperative, no government wants to design a legal mesh that smothers entrepreneurship any further.

For instance, the number of laws that have less than 50 imprisonment clauses stands at 727 (or 86.2 percent) of the total 843 laws that have jail terms. Examining the number of laws that contain 20 to 34 imprisonment clauses, they add up to 138 laws (16.4 percent) with 3,646 clauses (14 percent). Further, as the number of imprisonment clauses rises, the number of laws containing them declines—there are just 61 laws that have more than 100 imprisonment clauses, 24 laws with more than 200 imprisonment clauses, 16 laws with more than 300 imprisonment clauses, 11 laws with more than 400 imprisonment clauses, three laws with more than 500 imprisonment clauses, and just one law with more than 700 imprisonment clauses (Table 4).

Within this subset of laws, with 50 or less imprisonment clauses, the maximum such clauses, all in the 1,000-plus club—that is, containing more than 1,000 imprisonment clauses—are clustered in the 20 to 34 category (3,646 clauses across 138 laws); 25 to 29 (Table 8; 1,325 clauses across 51 unique laws);

30 to 34 (Table 9; 1,270 clauses, 40 unique laws); and 20 to 24 (Table 7; 1,051 clauses, 47 unique laws).

Narrowing the analysis to those laws with 50 or less imprisonment clauses (Table 5), the earlier trend is confirmed. More than nine out of every 10 clauses (or 92.7 percent) in the under-50 category have jail terms of less than five years, 7 percent have imprisonment terms of between five and 10 years, while just 0.3 percent (29 clauses) contain jail terms of more than 10 years (Table 6). Within this 1,000-plus club of clauses, again, more than nine out of every 10 clauses (93.2 percent) are those with jail terms of less than five years. The highest number of imprisonment clauses carry imprisonment terms of three months to one year—1,085 clauses (almost two out of five, or 37.1 percent) across 107 laws. The number of clauses with imprisonment terms of more than five years stand at 197 (or 6.7 percent); and within them, there is only one law, the Narcotic Drugs and Psychotropic Substances Act, 1985 and Narcotic Drugs and Psychotropic Substances Rules, 1985, that has seven clauses with jail terms of more than 10 years, with Section 31A prescribing the death penalty.⁴⁵

Likewise, there are three categories that contain more than 900 imprisonment clauses (Table 10). Cumulatively, they contain 2,821 imprisonment clauses across 271 laws. The findings are similar, with almost nine out of every 10 (or 89.5 percent) imprisonment clauses carrying jail terms of less than five years. The highest number of clauses (1,308) carry imprisonment times of between three months and less than one year. Breaking them down into the three categories yield similar results—the number of imprisonment clauses are 91.8 percent (for five to nine clauses; Table 11), 84.6 percent (10 to 14 clauses; Table 12), and 92 percent (15 to 19 clauses; Table 13).

The sole legislation in the five to nine category to carry an imprisonment clause of more than 10 years is the Chemical Weapons Convention (CWC) Act, 2000⁴⁶ read with the Chemical Weapons Convention Rules, 2016.⁴⁷ Sections 41 and 42 of the law state that whoever produces, acquires, retains or transfers any toxic chemical listed in Schedule 1⁴⁸ and Schedule 2,⁴⁹ shall be punishable with imprisonment for a term that may extend to life. Likewise, Sections 43 and 44 have similar imprisonment clauses for imports and information.⁵⁰

There are two laws that have between 485 and 489 imprisonment clauses (Table 14)—the Factories Act, 1948, which contains 486 imprisonment clauses; and the Assam Factories Rules, 1950, that has 489 clauses. While the broad direction remains the same, with more than nine out of every 10 clauses containing imprisonment of less than five years, both laws contain no clauses in two categories—less than three months, and three to five years.

VI.

Disaggregating imprisonment clauses across categories

This section divides the 26,134 imprisonment clauses in the 843 business laws into seven categories—labour; industry-specific; commercial; environment, health and safety; finance and taxation; secretarial; and general (Table 15 and Illustration 1)—and disaggregates them to showcase the extent of policy excesses on Indian businesses.

Labour

Labour accounts for almost a third (30 percent) of all laws and close to half (47 percent) of all compliances to India's business environment (1,546 Acts and 69,233 compliances). Being on the concurrent list, labour has 32,542 unique compliances between the Union government, 28 state governments and eight union territories. Of them, more than half (17,819, or 54.7 percent) are subject to criminal penalties leading to jail terms. At 48 percent, the Factories Act, 1948, and related rules contribute most of the provisions containing criminal clauses. Provisions of the law also form the basis for criminality in other legislations, such as the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The Factories Act, 1948 contains blanket provisions prescribing penalties for violations of any provision of the Act or related rules drafted by state governments. The law provides for

imprisonment of up to two years for an occupier or manager of a factory for any violation or contravention. The prescription is general and universal, which means that even the most minor offence will have a disproportionately high provision for imprisonment. The equivalent crime under the Indian Penal Code, 1860 is sedition. Consequently, the designation of ‘factory manager’ has had an extremely high level of risk embedded into it.

The Act and the related state rules contain microscopic prescriptions. These include the provision of spittoons,⁵¹ gender-segregated washrooms,⁵² places for storage of clothing⁵³ and for painting the inner walls of canteens.⁵⁴ Some regulations specify lighting (lux levels)⁵⁵ and sound (decibel) levels.⁵⁶ Certain state rules even dictate the precise nature of utilities provided to workers (such as cool drinking water and the quantity of drinking water).⁵⁷ A prominent display of the abstract of the Act is statutorily mandatory in the factory premises,⁵⁸ a common mandate across most labour laws.

The 120 sections of the main Act combined with state rules typically run into over 200 pages of regulation.⁵⁹ They lay down nearly every aspect of running a factory, from fundamental safeguards to the minutest detail of operations. Some instructions even provide for the measurement of distance between machines⁶⁰ and the nature of the marking of utilities (language and visibility) in the factory, such as drinking water.⁶¹ Additionally, the whitewashing of walls is a stated requirement even though more sophisticated materials are already in use.

The factory has to maintain detailed and extensive records of operations that need to be filed in many instances. A violation of any of these provisions amounts to a criminal offence whose quantum of punishment is the equivalent of death due to negligence within the Indian Penal Code, 1860.⁶² Thus, the law effectively makes the non-provision of spittoons or some irregularity in the cleaning and painting of wall partitions a legal equivalent of a homicide. Therefore, it is not tough to see the hostility and distrust embedded in India’s compliances. Unfortunately, a sizable number of provisions are asynchronous with contemporary times and put inordinate power in the hands of factory inspectors, creating rent-seeking tributaries for personal gains rather than any noble objective of law (Table 40).

The next most prevalent set of regulations in terms of criminality deal with contract labour (approximately 14.5 percent). The Contract Labour (Regulation and Abolition) Act, 1970⁶³ and its state rules provide for imprisonment of up to three months for a violation of any of the provisions. Like the Factories Act, 1948, this law also contains

the most minuscule of detailing, covering areas such as auditing and equipment for canteens,^{64,65} and more substantive provisions on wages⁶⁶ and licensing rules.⁶⁷

The Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 contributes 12.5 percent of the compliances with provisions for imprisonment. Although there have been extensive debates on the rights of migrant workers, spurred by the COVID-19 pandemic, there has been little discussion on whether the existing legislative framework provides the necessary protection. The Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is replete with minute rules governing areas such as the basic facilities provided to migrant workers.⁶⁸ Employers and contractors are required to “exhibit” within the premises of the establishment particulars such as hours of work and the nature of duty⁶⁹ or provide for a first-aid kit with trained personnel. A contravention of any of the provisions can lead to imprisonment of up to one year.

The scenario for labour laws and regulations governing social security is similar. The Payment of Gratuity Act, 1972 and allied state rules, such as those of Uttar Pradesh, Karnataka and Gujarat, view contraventions through the lens of criminality. For example, the provisions for obtaining and renewing compulsory insurance by the employer carry imprisonment terms ranging from three months to a year.⁷⁰ Any minor contravention or irregularity in compliance of such provisions can be handled by financial penalties rather than blanket imprisonment. Provisions found in other laws are echoed in this legislation, such as the obligation to display names of authorised officers at the entrance of the establishment.⁷¹ Such information should be made readily available on digital platforms rather than on physical notice boards.

Another pillar of social security, the Minimum Wages Act, 1948, is similarly excessive. Any failure to disburse the minimum wage amount in accordance with the size of the establishment can lead to an imprisonment of up to six months (with the imposition of a token fine).⁷² Imprisonment is also the consequence for failing to meet procedural or logistical requirements, such as providing notices showing the date of payment of wages,⁷³ the maintenance of registers and records,⁷⁴ and the disbursal of identity cards and service certificates.⁷⁵

Likewise, the Maternity Benefits Act, 1961,⁷⁶ critical to establishing gender diversity in workplaces, is laden with bureaucratic rules,⁷⁷ including the statutory obligation to display the abstract of the legislation and its rules in workplaces employing female workers, with an infraction carrying a jail term.⁷⁸ The reasons for such a provision attracting more than a monetary fine for its breach is unclear (while it is unlikely that a jail term will be enforced, the law is needlessly hostile). Penal provisions of

this kind can be counterproductive when it comes to boosting female labour force in establishments. The Act and its relevant state rules are also saddled with all kinds of paperwork, split across various designated forms (Form, A, Form B, Form F, Form O) making the process of obtaining (and providing) maternity benefits only more bureaucratic.

Another social security legislation, The Employees State Insurance Act, 1948 (along with the Central Rules of 1950), contains approximately 42 provisions with criminality attached.⁷⁹ Failure to pay monthly contributions can lead to imprisonment between one and three years. Beyond this, there are largely paperwork and administrative requirements, such as the maintenance of registers,⁸⁰ entry of employee code numbers in all documents,⁸¹ providing temporary identification certificates to employees,⁸² and furnishing half yearly statements of payable contributions,⁸³ all of which can be subject to imprisonment of up to six months. A non-submission of any return required by the Act can lead to an imprisonment of up to a year,⁸⁴ while imprisonment for repeating offences can go up to two years.⁸⁵

The biggest compliance reforms needed in India are in the labour category—almost seven out of 10 imprisonment clauses (68.1 percent) come under the labour category (Table 15). In other words, imprisonment clauses under labour laws add up to more than twice those contained in the other five categories combined—three times more than commercial laws; 4.5 times more than environment, health and safety laws; seven times more than finance and taxation laws; and over 17 times more than secretarial laws.

The average number of imprisonment clauses per law under the labour category is 50.6. This is almost three times the average of all other categories (Table 16)—2.4 times the industry specific category; 2.6 times the finance and taxation category; 3.3 times the environment, health and safety category; and around four times the secretarial, commercial, and general categories. This shows that not only is the absolute number of imprisonment clauses the highest under the labour category, but the intensity of these clauses is the highest as well when gauged on an average number of imprisonment clauses per law. According to practitioners, no firm can comply with 100 percent of labour laws without violating 10 percent of them.⁸⁶ This illustrates why labour laws must be a focus area for compliance reforms by the Union and state governments.

Breaking down the imprisonment clauses in labour laws matches the trends above—95.2 percent (or 16,960 of 17,819 clauses) carry jail terms of less than three

years, and these clauses reside in 93.5 percent of the laws. Another 4.8 percent of the clauses carry imprisonment of between five and 10 years; these are contained in 6.5 percent of the labour laws (Table 17).

These percentages can be deceptive, masking or reducing the gravity of the problem. There are 858 imprisonment clauses in 32 labour laws carrying jail terms of between five and 10 years. While this number may seem to be inconsequential (less than one in 20 clauses), it comprises almost 92 percent of all such clauses under the finance and taxation category and is 1.3 times more than the sum of all imprisonment clauses under the secretarial and general categories.

The 100-plus club

Within the labour category, 47 laws have more than 100 imprisonment clauses each (Table 18). Leading this club is the Factories Act, 1948⁸⁷ read with Karnataka Factories Rules, 1969,⁸⁸ which contains 706 imprisonment clauses. The Factories Act, 1948 read with 22 state rules (Andhra Pradesh, Goa, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, West Bengal, Assam, Delhi, Jharkhand, Karnataka, Chhattisgarh, Mizoram, Haryana, Tamil Nadu, Telangana, Uttar Pradesh, Uttarakhand, Himachal Pradesh, Punjab, and Rajasthan) is on top on two core counts. First, among the 47 laws with 100 imprisonment clauses, this Act accounts for 22 (or 46.8 percent). Second, when mapped against the maximum number of such clauses, the Act read with state rules is on top—the top 15 laws containing the highest number of imprisonment clauses are derivatives of the Factories Act, 1948; it dominates 19 of the top 20 laws, and 21 out of the top 25.

The other laws in the 100-plus club are the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996⁸⁹ read with five state rules (Punjab, Bihar, Gujarat, Haryana, and Maharashtra); the Contract labour (Regulation and Abolition) Act, 1970⁹⁰ read with one Union rule and eight state rules (Orissa, Assam, Haryana, Kerala, Puducherry, Madhya Pradesh, Gujarat, and Delhi); and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979⁹¹ read with 11 state rules (Karnataka, Orissa, Telangana, Maharashtra, Tamil Nadu, Madhya Pradesh, Chhattisgarh, Jharkhand, Kerala, Uttar Pradesh, and Goa, Daman and Diu).

Within this 100-plus club, the Factories Act, 1948 read with state rules has the highest number of imprisonment clauses (8,128; over seven out of every 10 clauses, or 71.6 percent). It is followed by the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 read with 11 state rules (1,419

clauses); the Contract Labour (Regulation and Abolition) Act, 1970 read with nine state rules (1,053 clauses); and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 read with five state rules (745 imprisonment clauses). In other words, even within this smaller subset of labour laws, the Factories Act, 1948 read with state rules has 2.5 times more imprisonment clauses than the other three laws and rules combined.

Industry-specific

The category with the next highest number of imprisonment clauses is industry-specific laws (Table 15). They account for nearly 16 percent of all imprisonment clauses (4,179) in 24.3 percent of all laws (205).

The Drugs and Cosmetics Act, 1940 and its related rules govern the import, manufacture, distribution and sale of drugs and cosmetics in India.⁹² The law links its penalty provisions to the Indian Penal Code, 1860 and contains imprisonment terms of varying degrees. For example, the manufacture or sale of adulterated or spurious drugs can lead to an imprisonment of up to 10 years and can extend to a life term.⁹³ Similarly, adulterated cosmetics can attract an imprisonment of up to three years.⁹⁴ Procedural obligations such as those relating to the maintenance of records and inspection books can attract imprisonment of up to one year.⁹⁵

The rules concerning biosafety⁹⁶ come within the larger purview of the Environment Protection Act, 1986 and its rules on laboratory research. Consequently, their breach also attracts the penalties under the Act, meaning that their violation can lead to a term extending to five years in the first instance. The biosafety rules govern matters of environmental and health protection and carry obligations pertaining to the operations, design, maintenance, and documentation of biosafety laboratories.⁹⁷

The legislations and rules relating to mining contain the highest number of industry-specific compliances drawing imprisonment (784). The Mines Act, 1952⁹⁸ read with the Mines Rules, 1955⁹⁹ governs measures relating to the health, safety, and welfare of workers in the coal, metalliferous and oil mines. It contains wide-ranging legal obligations for mine owners regarding the health and safety of workers,¹⁰⁰ their wages¹⁰¹ and allied issues related to operations and management.¹⁰² Penalty in the form of imprisonment typically does not exceed three months, although the Act and its related rules contain many penal provisions.

The Mines and Minerals (Development and Regulation) Act, 1957 has been enacted to regulate the development and exploitation of minerals and the operation of mines

in India. It deals with prospecting licences, mining leases, and mineral development. A violation of any provision of the Act can lead to an imprisonment of up to two years, irrespective of the nature of the provision violated.¹⁰³

Likewise, under the Petroleum Act, 1934 and its related rules, imprisonment extends up to one month for any breach, irrespective of its nature. This includes regulations dealing with filing of any petroleum class,¹⁰⁴ furnishing of declaration,¹⁰⁵ certificate and licence before importing petroleum by land,¹⁰⁶ and licence for transport of petroleum in bulk.¹⁰⁷

In the banking sector, the Reserve Bank of India Act, 1934 stipulates imprisonment of not less than one year for the registration of non-banking finance companies (NBFCs). For any false declaration or information under the Act, imprisonment can go up to three years.¹⁰⁸ Other circulars pertaining to the Act also provide a similar quantum of punishment for wilfully submitting false documentation of any kind.¹⁰⁹

Similarly, the National Housing Bank Act, 1987¹¹⁰ provides for an imprisonment of up to three years for any wilful declaration of false statement or documentation or any omission contained in any document.¹¹¹ This includes specific stipulations such as those relating to the preservation of deposit registers, disclosures to be made, monthly returns by housing finance companies, and half-yearly reports.¹¹²

Under the Rubber Act, 1947,¹¹³ meant to regulate the development of the rubber industry, any submission of a false document made knowingly is subject to imprisonment of up to one year. The Agricultural Produce (Grading and Marking) Act, 1937¹¹⁴ provides specific stipulations for the grading, marking and packaging of agricultural produce (including raw meats). Any unauthorised grading of agricultural products can lead to an imprisonment term of up to six months. Where a grade designation mark does not correctly indicate the designation of the article, imprisonment may extend to three years.¹¹⁵ Similarly, any counterfeiting of a grade designation mark can also lead to a three-year imprisonment.¹¹⁶

Table 19 shows the breakdown of the 205 industry specific laws containing 4,179 imprisonment clauses. In this set of laws, more than one-third (36.5 percent) carry jail terms of less than three months, while almost three-fourths (74.3 percent) have jail terms of less than three years. There are 681 clauses (16.3 percent) that carry jail terms of between five and 10 years.

Crucially, 94 clauses contained in seven laws carry a jail term of more than 10 years. Four of these are Union laws—Chemical Weapons Convention Act, 2000 and Chemical Weapons Convention Rules, 2016; Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945; Food Safety and Standards Act, 2006 and Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011; and Narcotic Drugs and Psychotropic Substances Act, 1985 and Narcotic Drugs and Psychotropic Substances Rules, 1985. The rest are state laws—Narcotic Drugs and Psychotropic Substances Act, 1985 and Haryana Narcotic Drugs and Psychotropic Substances Rules, 1985; Narcotic Drugs and Psychotropic Substances Act, 1985 and Narcotic Drugs and Psychotropic Substances (Madhya Pradesh) Rules, 1985; and Narcotic Drugs and Psychotropic Substances Act, 1985 and Uttar Pradesh Narcotic Drugs Rules, 1986.

The 100-plus club

There are eight laws that contain more than 100 imprisonment clauses (see Table 20). All laws barring one show little application of mind. Five laws have the same level of jail terms, while two have only two levels. Only one law has jail terms spread across five levels.

There are 909 clauses in five laws that carry a uniform number of jail terms. Four of these carry jail terms of less than three months—the Mines Act 1952, and Coal Mines Regulations, 2017 (216 clauses); the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 and Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2015 (211 clauses); the Mines Act, 1952 and Oil Mines Regulation, 2017 (170 clauses); and the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003 and Gujarat Electricity Regulatory Commission (Standard of Performance of Distribution Licensee) Regulations, 2005 (105 clauses). The fifth law, the Regulations and Guidelines on Biosafety of Recombinant DNA Research and Biocontainment, 2017, has 207 clauses that range between three and five years.

Re-examining these laws can at least lead to the segregation of jail terms. For instance, the “annual calibration of instruments used in physical containment” and “ventilation of one-piece positive pressure suit by a life support system in BSL-4 laboratory” provisions in the Regulations and Guidelines on Biosafety of Recombinant DNA Research and Biocontainment, 2017 law carry varying levels of risk and should not have the same jail term. Likewise, the provisions of “sufficient supply of materials for safety of mine and persons employed in mine” and “submitting annual return in

respect of coal mines” cannot be bound together by a common jail term (less than three months’ imprisonment).

Of the three remaining laws, two carry jail terms across two categories—the Petroleum Act, 1934 and Petroleum Rules, 2002 (120 clauses spread across less than three months, and 33 between three months and one year); and the Food Safety and Standards Act, 2006 and Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (434 clauses with jail terms of between five years and 10 years, and 36 clauses of more than 10 years).

Commercial

This report uses the category ‘commercial’ to define a set of compliances that oversee trade, sales and structures such as packaging and labelling, weights and measures. This sector functions under a wide range of rules and regulations governing different kinds of activities. Altogether, there are 6,928 compliances in this category, of which 1,346 (or 19.4 percent) carry imprisonment penalties (Table 15). Broadly, these laws, rules and regulations pertain to boilers, aviation, electricity related rules, regulations governing motor vehicles, essential commodities, poisons, food safety, legal metrology, and other miscellaneous compliances. Most compliances fall in the domains of legal metrology, arms, food safety and poisons.

The Indian Boilers Act, 1923¹¹⁷ governs safety protocols for the use of steam boilers, with most compliances providing for an imprisonment of up to two years. These include regulations requiring sanctions for works by the chief inspector¹¹⁸ and the reporting of incidents and furnishing of information.¹¹⁹ Specific provisions on the usage of boilers, such as markings or engravings¹²⁰ and arrangement of safety valves,¹²¹ can also attract imprisonment of up to two years.

The Food Safety and Standards Act, 2006¹²² and its related rules are especially important given the volume of food items manufactured and sold in the Indian market. Separate regulations under food safety law are broadly concerned with licensing and registration of businesses,¹²³ distribution of food,¹²⁴ specific stipulations for organic food,¹²⁵ and fortification of foods.¹²⁶

The basic liability in case of unsafe manufacture, storage, sale, or distribution of food articles can attract imprisonment ranging from six months to life imprisonment.¹²⁷ This covers obligations pertaining to the packaging and repackaging of foodstuffs, rules governing the preparation of certain food items, and obligations relating to sanitary and phytosanitary measures. The quantum of imprisonment depends upon

the severity of harm; however, even the absence of an injury does not necessarily preclude a jail term. For instance, the production of false documents can carry an imprisonment term of three months, while regulations for licences (including those required for e-commerce websites) can attract up to six months of imprisonment.

Under the Motor Vehicles Act, 1988,¹²⁸ the maximum imprisonment prescribed does not exceed three years. The Act regulates road transport vehicles and contains regulations pertaining to licensing,¹²⁹ temporary registration,¹³⁰ insurance,¹³¹ accidents and reporting of accidents,¹³² and national permit vehicles.¹³³ Imprisonment of up to three months is provided in cases of unauthorised persons driving vehicles, offences related to licences, and using a vehicle that is not fit for driving. For more serious offences such as driving dangerously or in an inebriated state,¹³⁴ the punishment is imprisonment for six months and a fine for the first offence, increasing to two years for subsequent offences. The unauthorised driving of vehicles containing hazardous substances¹³⁵ or driving unregistered vehicles¹³⁶ can attract jail terms of between one and three years.

The Aircraft Act, 1934¹³⁷ and its related rules regulate the manufacture, possession, use, operation, sale, and the import and export of aircraft. Under this law, punishment can range between six months to two years imprisonment (for the transport of dangerous goods or radioactive materials).¹³⁸

The Electricity Act of 2003¹³⁹ and its rules regulate the production, transmission, and distribution of electricity in India. As a general mandate, it provides for an imprisonment term of up to three months for any breach of its provisions,¹⁴⁰ extending up to three years in the case of theft.¹⁴¹ Provisions governing the installation of electricity transformers carry imprisonment terms extending to three years.¹⁴²

Within the commercial category, the Legal Metrology Act, 2009¹⁴³ has the highest number of compliances involving imprisonment (391). The Act governs standards of weights and measures and regulates trade and commerce therein. In most instances, however, imprisonment only follows in case of subsequent offences and is usually for up to one year. Where a higher penalty is imposed, it is generally concerned with manufacture and sale that does not conform with the standards prescribed. In such cases, imprisonment can extend to up to three years.¹⁴⁴

The importance of stringent penal provisions is more evident in the Arms Act, 1959¹⁴⁵ and the Poisons Act, 1919.¹⁴⁶ Imprisonment under these laws ranges between three months and three years. Under the Arms Act, 1959, provisions governing licensing

and prohibition on import and export of firearms can even attract imprisonment of up to seven years.

In terms of the quantum or severity of imprisonment terms, the Essential Commodities Act, 1955¹⁴⁷ contains the highest number of compliances. Any violation of this law, its orders and the various state orders and rules can attract imprisonment of up to seven years. Obligations pertaining to the furnishing of information¹⁴⁸ and other material particulars attract imprisonment of up to five years. Many of the obligations contained in the Act are procedural and relate to documentation. Nonetheless, the first infraction can attract an imprisonment term ranging from three months to seven years.

In sum, there are 1,346 imprisonment clauses contained in 106 laws in the commercial category (Table 15). Nearly nine out of every 10 (89.9 percent) clauses carry jail terms of less than three years. Of the rest, 166 clauses have jail terms of between three years and five years, and four clauses have jail terms of between five years and 10 years (Table 21).

With 113 clauses carrying imprisonment terms of more than 10 years, the Food Safety & Standards Act, 2006 & Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 stands out. The clauses in this law are at the top end of a hierarchy of offences and apply if the contravention in maintaining a hygienic environment where food is manufactured, processed or handled results in death, and for deaths due to unhygienic conditions, including potable water, cleaning equipment, and the bad maintenance of floors, ceilings and walls.

The 100-plus club

Only two laws in the commercial category have more than 100 imprisonment clauses (see Table 22). The Arms Act, 1959 and Arms Rules, 2016 has 152 imprisonment clauses, all of which are in the three months to one year category, and highlight the little application of mind while drafting the laws. For instance, the violation of “dealer to provide weekly electronic online transfer of data regarding firearms and ammunition deposited with him”¹⁴⁹ may be similar to maintaining several registers but not the same as “obtaining licence in Form VI for export of arms and ammunition.”¹⁵⁰ The other law with 123 imprisonment clauses, spread across three categories, is the Food Safety & Standards Act, 2006 & Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.

Environment, health and safety

Among the 2,922 compliances under 107 Acts and related rules in the environment, health and safety category, 1,179 (40 percent, or two out of every five) across 78 laws carry imprisonment terms as a penalty (Table 15). These include laws relating to environmental protection, pollution, atomic energy, and the regulation of explosives. In addition, there are provisions in other key Acts such as the Factories Act, 1948 and food security related rules. While the environment, health and safety is a sensitive area and strict compliances are necessary, there are some instances where the law takes an unnecessarily hostile view of the entrepreneur. This report assesses the functioning of businesses under these compliances.

Under the Environmental Protection Act, 1986¹⁵¹ and its related rules, compliances concerning the submission and updating of annual reports,¹⁵² mock drills,¹⁵³ and furnishing of information to relevant authorities¹⁵⁴ can be subject to imprisonment extending to five years. A vast majority of the 306 legal regulations under this law are subject to a five-year imprisonment. These include rules on the manufacture, import and storage of hazardous chemicals; rules relating to batteries, construction waste, disposal and management of electronic waste; and regulations on ozone depleting substances. For continuing violations of regulations like the E-Waste (Management) Rules, 2016, the punishment can go up to seven years imprisonment.¹⁵⁵ These include procedural or documentary obligations concerned with the filing of annual returns and the furnishing of information to the authorities, which can carry imprisonment terms even for the first offence.

Like the rest of other business laws, the Environment Protection Act, 1986 makes no differentiation in the quantum of punishment in cases of procedural compliances having no direct causal relationship with environmental harm and those that do. This is a matter of concern because many of these regulations are important for the conduct of business today. For example, the E-Waste (Management) Rules, 2016 will be instrumental as India transitions to electric vehicles and attempts to expand its electronics manufacturing. Similarly, the rules on batteries are pivotal for India's manufacturing sector, and contain important compliances on the use of lead, protection of consumers, the collection and disposal of used batteries, and the general obligation to ensure that no harm is caused to the environment.

For certain kinds of rules, the quantum is justified. For example, the rules on biomedical waste¹⁵⁶ have become increasingly important amid the COVID-19 pandemic for the prevention of contagion. They contain important regulations stipulating a bar-code system for the collection of waste and establishing a system

for reviewing and monitoring waste management. However, there is no distinction between procedural and substantive legal obligations, and requirements such as committee meetings¹⁵⁷ to review activities related to biomedical waste management can carry imprisonment terms of up to five years.¹⁵⁸

Under the Water (Prevention and Control of Pollution) Act, 1974¹⁵⁹ and accompanying rules, the imprisonment can range from three months to six years. For the more procedural requirements, such as those involving the furnishing of information, the punishment terms begin at three-month terms. For substantive obligations, such as the disposal of polluting matter or new discharges and discharge of trade effluents,¹⁶⁰ the quantum of punishment begins from 18 months and can extend to six years in case of repeat contravention. As a bare minimum and where no other punishment is prescribed, a violation under this act can lead to an imprisonment of up to three months.

In the Air (Prevention and Control of Pollution) Act, 1981,¹⁶¹ the minimum imprisonment begins at 18 months and can extend to six years.¹⁶² For continuing violations, punishment can go up to seven years. Primarily, penalties apply to obligations regulating the operation and establishment of industrial plants in relation to the emission limits established by designated authorities.

The Explosives Act, 1884,¹⁶³ which regulates the “manufacture, possession, use, transport, import and export of explosive,” contains the highest number of clauses involving imprisonment (311). Violations of regulation governing the possession and licensing for the import and export of explosives can attract imprisonment of up to three years. The same quantum is applicable for stipulations governing foreign manufactured explosives, the trial manufacturing of explosives, operational aspects of manufacturing explosives such as relief valves, and rules governing inspection of plants.¹⁶⁴ In instances where the sale and transport of explosives violates the Act, punishment can go up to two years.¹⁶⁵

The Atomic Energy Act, 1962 and rules pertaining to the disposal of radioactive or protection from radiation govern “the development, control and use of atomic energy for the welfare of the people.”¹⁶⁶ Section 24 of the Act broadly regulates the penalties prescribed for the violation of its provisions, and imprisonment under the section can range from one year to five years. For most rules pertaining to the safe disposal of radioactive waste, the punishment can extend up to one year. These include regulations relating to restrictions on disposal, maintenance of records of waste disposal, safety measures, and environmental

surveillance.¹⁶⁷ For many of the Radiation Protection Rules,¹⁶⁸ however, the punishment prescribed extends up to five years.

There are 1,179 imprisonment clauses under 78 environment, health and safety laws (Table 15), with the imprisonment terms more evenly divided than in other categories. Two-thirds (66.2 percent) of the clauses command imprisonment terms of between one and five years; 30.3 percent between three and five years; and 27.7 percent between one and three years. There are 675 clauses (or 65.4 percent) with imprisonment terms of less than three years. One in eight clauses (12.5 percent) contain imprisonment terms of between five and 10 years, while there is no clause that carries an imprisonment term of more than 10 years (Table 23).

The 100-plus club

There are only two laws with more than 100 imprisonment clauses in the environment, health and safety category (Table 24). First, the Explosives Act, 1884, and Static and Mobile Pressure Vessels (Unfired) Rules, 2016 has 189 imprisonment clauses. Of these, three carry a jail term of less than three months, while 186 clauses have imprisonment terms of between one and three years. Second, the Atomic Energy Act, 1962 and Atomic Energy (Radiation Protection) Rules, 2004 has 121 imprisonment clauses; 89 with jail terms of three months to one year, and 32 between three and five years.

Finance and taxation

Regulations within the purview of the finance and taxation category cover compliances under the goods and services tax (GST), professional tax, excise duties, foreign exchange management, banking, and other miscellaneous finance laws. In this category, 48 laws carry 929 imprisonment clauses (Table 15), 91 percent of which fall under GST rules and the rest relate primarily to excise and professional tax.

The Goods and Services Tax Act, 2017¹⁶⁹ provides for an imprisonment of up to six months for first time offenders in instances where an invoice has been issued without an actual supply of goods and/or services, a refund has been obtained fraudulently, or there is falsification of documents.¹⁷⁰ In cases of actual tax evasion, imprisonment can go up to five years, depending on the amount involved.¹⁷¹

With compliances relating to the maintenance and furnishing of records and accounts, the potential imprisonment can go up to six months. Such compliances

typically relate to the maintenance of records, furnishing of online statements, and maintenance and preservation of accounts of goods imported and exported. For continuing offences, the imprisonment can go up to five years. Taxation rules emphasise strongly on *mens rea* (intent) where obligations under the regime are concerned. Thus, an intent to evade tax, obtain a refund wrongfully, or otherwise resort to fraudulent practices must be clearly established for an imprisonment penalty to be levied. A person or a company must be shown to have willingly falsified records or fabricated documents to establish criminality.

Imprisonment for non-compliances under Central Excise Act, 1944 can go up to seven years. Offences under the Act include the evasion of duty, removal of goods on which duty is to be levied, possession of goods liable to be confiscated, and failure to supply information. The imprisonment terms for these violations can range from three to seven years.¹⁷³ The quantum of punishment depends upon the value of the duty on the goods. Every repeat offence is liable for an imprisonment term of up to seven years with a minimum imprisonment of six months. The offences under the Act (falling under Section 9) are compoundable, meaning the punishment for such offence can be compromised upon the payment of a designated amount. Moreover, under certain state specific rules (as in the case of Punjab), operational violations such as those relating to the ordinary working hours of a distillery can be liable for an imprisonment of up to two years.¹⁷⁴ Other rules relating to the actual production of spirits are also subjected to a potential two-year imprisonment.

Of the 929 imprisonment clauses under the finance and taxation laws category, almost nine out of every 10 (87.9 percent) carry jail terms of between three and five years, and none with imprisonment of more than 10 years (Table 25).

The 100-plus club

There is just one law that has more than 100 imprisonment clauses in this category — the Central Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 read with Tripura Goods and Services Tax Act, 2017 and Tripura Goods and Services Tax Rules, 2017. All the 104 imprisonment clauses in this law carry jail terms of between three and five years. This law is possibly an anomaly. The two laws with the second-highest number of imprisonment clauses under the finance and taxation category are the Central Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 read with the Himachal Pradesh Goods and

Services Tax Act, 2017 and Himachal Pradesh Goods and Services Tax Rules, 2017; and the Central Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 read with the Uttarakhand Goods and Services Tax Act, 2017 and Uttarakhand Goods and Services Tax Rules, 2017. Both have just 27 imprisonment clauses each.

Secretarial

There are 68 Acts and 3,526 compliances in the secretarial category, including the Companies Act, 2013 and all its allied rules, and the Securities and Exchange Board of India (SEBI) Act, 1992 and related rules. Among these, 247 compliances carry imprisonment terms across 20 laws (Table 15).

The central purpose of the Companies Act, 2013 is to secure corporate governance in India. Compliances governing the role of auditors or the disclosure of interest within the Act can attract imprisonment of up to one year.¹⁷⁵ The Incorporation Rules, 2014 contain regulations related to the incorporation of limited liability companies, conversion of companies, licensing rules, filing of financial statements, and the publishing of notice of incorporation.¹⁷⁶ The contravention of these rules can attract imprisonment terms of up to three years. Similarly, compliances under the rules on share capital and debentures¹⁷⁷ can lead to a three-year imprisonment. Imprisonment under rules on registration of charges can extend to six months.¹⁷⁸ Under the rules governing the management and administration of companies, any tampering with the minutes or proceedings of meetings can lead to imprisonment of two years.¹⁷⁹

The rules for accounts that deal with the maintenance of books and financial statements as per accounting standards provide for an imprisonment of up to one year. Similarly, the auditing rules of 2014¹⁸⁰ and the rules pertaining to the appointment and remuneration of managerial personnel also carry a one-year prison term. An important pillar of corporate governance is corporate social responsibility (CSR). CSR activities include contribution to poverty alleviation and eradication of hunger and malnutrition, contributions made to the Union government's Swachh Bharat Kosh programme, and activities undertaken for the betterment of women and children. Under the CSR Rules of 2014,¹⁸¹ violating stipulations pertaining to the transfer of unspent CSR amount carry an imprisonment term of up to three years.

Credit information companies collect financial data from individuals and share it with their members, typically banks and non-banking finance companies. The

Credit Information Companies (Regulation) Act, 2005¹⁸² and its rules regulate the functioning of such companies. Regulations govern the confidentiality of credit information, uniformity of practices, and authenticity of data, among other things.¹⁸³ Any falsification of documents required to be furnished under the Act and its rules can lead to imprisonment of up to one year.

The SEBI Act, 1992 contains specifications for its regulatory activity, and any violation of the Act or its rules can lead to an imprisonment term of up to 10 years.¹⁸⁴ A failure to comply with the penalty imposed by an adjudicating officer can also attract imprisonment of up to 10 years.¹⁸⁵ This law also contains detailed rules regulating different aspects of financial markets. The SEBI regulations on the buy-back of securities¹⁸⁶ provide for an imprisonment of up to three years in cases of failure to maintain records or books of accounts as prescribed. Provisions such as those relating to the acceptance of securities on the basis of entitlement, the appointment of a merchant banker, buy-back of securities, the furnishing of certificates to SEBI, and making public announcements also attract imprisonment terms of three years.

The secretarial category has the least number of imprisonment clauses (247). Almost three of every five clauses (58.7 percent) have jail terms of between one and three years, while 29.6 percent contain jail terms ranging from three months to one year. Together, the two groups contain almost nine out of 10 (88.3 percent) imprisonment clauses. There are no imprisonment terms of more than 10 years in this category (see Table 26).

Further, no law under the secretarial category has more than 100 imprisonment clauses. At 60, the SEBI Act, 1992 and SEBI (Buy-Back of Securities) Regulations, 2018 has the most imprisonment clauses in this category, with imprisonment terms of between three and five years. Importantly, “making public announcement as per Schedule IV pertaining to buy back through stock exchange,”¹⁸⁷ and “filling a copy of resolution passed in respect of buy-back with SEBI”¹⁸⁸ are certainly not equal crimes—the first involves the public, the second a regulatory filing.

VII

Disaggregating imprisonment compliances — Union and state governments

State legislative assemblies have enacted the larger share of imprisonment clauses compared to the Union parliament. In several cases, the state assemblies have been empowered by parliament. The Factories Act, 1948, for instance, is the base law upon which state legislatures have framed 53 rules. Laws such as the Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979 read with 25 state rules, or the Maternity Benefit Act, 1961 read with 33 state rules, also fall in this category.

Of the 26,134 total imprisonment clauses, 20,895 have been drafted into law by state legislatures and 5,329 by Parliament (Table 2). In other words, nearly eight of every 10 imprisonment clauses (79.9 percent) are found in state laws.

Within the Union laws, almost seven of every 10 clauses carry jail terms of less than three years (Table 27). Two imprisonment intervals—less than three months (1,280 clauses), and between one and three years (1,276 clauses)—are included in almost half the laws (48.8 percent). About 15.3 percent of the clauses (800) have jail terms of between five and 10 years, and 187 clauses (3.6 percent) carry imprisonments of more than 10 years.

Under state laws (Table 28 and Illustration 2), one group dominates—imprisonments of between one and three years, found in 9,766 clauses (46.7 percent). More than nine of every 10 clauses (91 percent) have imprisonments of less than three years. There are 1,021 clauses (4.9 percent) that carry jail terms of between five and 10 years, while 834 clauses (4 percent) have imprisonments of between three and five years. Only 20 clauses (0.1 percent) have imprisonment terms of more than 10 years. Given the greater sample size (20,895 total imprisonment clauses under state laws), this is a smaller number in absolute and percentage terms compared to Union laws. See Illustration 3 for a breakdown of imprisonment clauses across states.

The 1,000-plus club

Five states have more than 1,000 imprisonment clauses in their business laws (Table 29). These are Gujarat (1,469 imprisonment clauses), Punjab (1,273), Maharashtra (1,210), Karnataka (1,175), and Tamil Nadu (1,043). The five states' imprisonment clauses total 6,170—29.5 percent of such clauses in all states taken together, and more than the imprisonment clauses contained in the bottom 21 states combined.

Of the five states, all but Punjab are India's largest by gross state domestic product (GSDP).¹⁸⁹ Maharashtra, with a GSDP of INR 26.3 lakh crore (US\$351.0 billion) and India's largest, ranks third by the number of imprisonment clauses. Karnataka (GSDP of INR 15.4 lakh crore; US\$205.9 billion) and Tamil Nadu (GSDP of INR 16.3 lakh crore; US\$217.4 billion) rank fourth and fifth respectively by number of imprisonment clauses. Gujarat, India's fifth-largest state by GSDP (INR 15.6 lakh crore; US\$200.4 billion) ranks first by number of imprisonment clauses. In these four states, having more imprisonment clauses can be correlated to economic activity. The outlier is Punjab, which is India's fifteenth-largest state by GSDP but ranks second by number of imprisonment clauses.

While almost half the imprisonment clauses (49.2 percent) in these five states carry jail terms of between one and three years, 94.1 percent of clauses (5,809) carry imprisonment terms of less than three years (Table 30). Despite the large number of imprisonment clauses in these five states, no clause carries a jail term of more than 10 years.

The 500-1,000 club

There are 14 states in the next group, that is those that have enacted between 500 and 1,000 imprisonment clauses (Table 31). Together, they add up to 11,216 clauses, or more than half (53.7 percent) of all such clauses enacted by state legislatures. Six of these states have more than 900 imprisonment clauses each; together they stand at 5,730 — Assam (982 imprisonment clauses), Goa (971), Uttar Pradesh (953), Haryana (952), Madhya Pradesh (939), and West Bengal (933).

When examined closely, this category of imprisonment clauses reveals a counterintuitive behaviour. If the economic activity in a state is large it is easy to understand, though not so easy to justify, the complexity and number of laws and clauses being enacted to oversee it. But in this category, there are states with small economies — notably Goa (GSDP of Rs 0.7 lakh crore; imprisonment clauses at 971), Uttarakhand (Rs 2.5 lakh crore; 538), Jharkhand (Rs 3.0 lakh crore; 578), Assam (Rs 3.2 lakh crore; 982) and Chhattisgarh (Rs 3.0 lakh crore; 763) — the legislative assemblies of which have enacted huge numbers of imprisonment clauses.

These five states demand a deeper study, for wider reforms. For instance, Uttar Pradesh, whose economy is almost 23 times larger than Goa, has fewer imprisonment clauses than Goa. Or, take West Bengal, whose GSDP is 1.5 times larger than Haryana's but has fewer imprisonment clauses than Haryana. Compare Andhra Pradesh, whose GSDP is 2.7 times that of Assam but has 27 percent fewer imprisonment clauses than Assam.

Trends in this category of states are similar to in the 1,000-plus category — more than half (51.9 percent) the imprisonment clauses carry jail terms of between one year and three years, while more than nine out of 10 (90.1 percent) such clauses have imprisonments of less than three years (Table 32).

What makes this category unique is the presence of 20 imprisonment clauses that carry jail terms of more than 10 years — 11 of these are in Haryana, seven in Madhya Pradesh, and two in Uttar Pradesh. In the case of Haryana, all the 11 are enclosed in the Narcotic Drugs and Psychotropic Substances Act, 1985 and Haryana Narcotic Drugs and Psychotropic Substances Rules, 1985; in Madhya Pradesh all the seven are situated in the Narcotic Drugs and Psychotropic Substances Act, 1985 and Narcotic Drugs and Psychotropic Substances (Madhya Pradesh) Rules, 1985; and in Uttar Pradesh, all the two fall in the Narcotic Drugs and Psychotropic Substances Act, 1985 and Uttar Pradesh Narcotic Drugs Rules, 1986.

In all three states, the base law is the same — the Narcotic Drugs and Psychotropic Substances Act, 1985 — but expressions in the severity of sentences varies. Curiously, there is no other state that has used the same base law to enact such sentences. Neither of them exists in the Top 5 based on GSDP. While this shows that India's federal structure is well in place, it is accentuated against businesses in the case of these three states; their lawmakers need to debate this issue in their respective legislative assemblies.

The less than 500 club

Seventeen states and union territories in India have enacted less than 500 imprisonment clauses each (Table 33), together adding up to 3,509 clauses. Of these, seven—Bihar, Orissa, Himachal Pradesh, Mizoram, Tripura, Puducherry, and Meghalaya—have between 250 and 500 imprisonment clauses, aggregating to 2,526. Six states and union territories have enacted 100 to 250 imprisonment clauses—Sikkim, Arunachal Pradesh, Nagaland, Dadra and Nagar Haveli, Jammu and Kashmir, and Chandigarh. Four states and union territories have enacted less than 100 imprisonment clauses—Manipur (92 clauses), Daman and Diu (29), Lakshadweep (23), and Andaman and Nicobar Islands (22).

Almost nine of every 10 imprisonment clauses (88.6 percent) in this category carry a jail term of less than three years (Table 34). Another 10.2 percent have imprisonment of between three and five years. Forty-two clauses (1.2 percent) contain jail terms of between five and 10 years, and are spread across four states—Himachal Pradesh (13 clauses), Mizoram (12), Bihar (nine), and Meghalaya (eight). All four states have enacted the five-to-10-year imprisonment terms under two laws: the Factories Act, 1948 and the Essential Commodities Act, 1955.

In Himachal Pradesh, all 13 clauses are under the Factories Act, 1948 and Himachal Pradesh Factories Rules, 1950. Likewise, in Mizoram, all 12 clauses are contained in the Factories Act, 1948 and Mizoram Factories Rules, 2014. In Bihar, eight of the nine clauses are in the Factories Act, 1948 and Bihar Factories Rule, 1950, while one comes under the Essential Commodities Act, 1955 and Bihar Foodstuffs (Display of Prices by Catering Establishments) Order, 1977. Finally, in Meghalaya, seven clauses are under the Factories Act, 1948 and Meghalaya Factories Rules, 1980, and one comes under the Essential Commodities Act, 1955 and Meghalaya Foodstuffs (Display of prices by Catering Establishment) Order, 1982.

Union versus states: By categories

The regulatory priorities of the Union vis-à-vis that of the states vary in terms of imprisonment clauses. Among all the imprisonment clauses in Union laws, more than half (56.9 percent) come under the industry-specific category, followed by environment, health and safety (15.6 percent). Imprisonment clauses in labour laws comprise only 10.2 percent of Union laws, or about in every 10 clauses (Table 35).

In contrast, labour dominates the imprisonment clauses in state rules, with more than four out of five clauses (82.7 percent). In other words, the number of imprisonment clauses in state labour laws is over 32 times the number of such clauses in Union labour laws. This dominance is sharper when seen in overall numbers—the total number of imprisonment clauses enacted by state assemblies is a little less than four times those enacted by parliament. This may perhaps have to do with jurisdictional empowerment, with several states mirroring what others are doing.

The company view of imprisonment policies

While it is important to design policy, enact laws and frame rules based on the requirements of the country's political economy, it is also crucial to understand what these legislations and regulations may lead to. The following details how the macro-compliance universe narrows down to firm-level regulations by studying clients of TeamLease Regtech, three each in the manufacturing and services sectors.

The three clients in manufacturing are small-, medium- and large-sized companies in the automotive components space. The small-sized company is a single entity with a single plant operating in a single state; the medium-sized company is a single entity with five manufacturing plants in five different states; and the large-sized company is a single entity with 10 manufacturing plants spread across 10 different states.

The total compliances for small-, medium- and large-sized companies is 669, 3,109 and 5,796 respectively. Around 70 percent of clauses invite imprisonment for all three (Table 36). In all three cases, more than 95 percent of the jail terms are for less than five years, and more than 80 percent of the terms are for less than three years (Table 37). Looking at this data in another way, two-thirds of all compliances for all the three categories of manufacturing firms have imprisonment clauses appended to them.

Similarly, on the services front, three NBFCs that have been analysed. The small-sized NBFC has one head office and one branch in one state; the medium-sized NBFC has one head office and five branches across five states; and the large-sized NBFC has one head office and 10 branches in 10 states.

The total compliances for small-, medium- and large-sized NBFCs are 784, 1,188 and 1,693 respectively. The clauses that invite imprisonment vary; while the small NBFC encounters one in every five compliances with criminality, this rises to 30 percent for the mid-sized NBFC, and almost 37 percent (two out of five) for the large NBFC (see Table 38). In all three cases, more than 80 percent of the imprisonment clauses are for less than three years (see Table 39).

VIII

Understanding the framework of punishments in Indian law

To understand why the prescription of criminality across the regulations discussed so far is problematic, it is important to first understand the conceptual origins of penal laws. The primary purpose of criminal law is to check behaviours that threaten the larger public interest and necessitate the involvement of the State. This is done through the infliction of punishment (suffering) or penalties that offer some form of retribution against the offence in question. Any punishment so inflicted must be based on certain principles because the consequences of criminal liability are severe, and impact a person's liberty and position in the society. In India, which follows the common law system, such principles are often derived from the English courts.

This report is limited to the *a priori* principles (principles that must be applied before an offence has come into existence and/or has reached the courts).

Incriminating Act Coupled with a Guilty Mind (actus reus and mens rea): Actus reus implies the act that leads to a crime, while *mens rea* indicates a guilty mind or the person's intention to commit that offence. In other words, for an offence to come into existence, one needs to prove both elements, the act as well as the intent. This is a requirement not only in regular offences as they

exist under the Indian Penal Code, 1860 but also in statutory offences where it is presumed to exist.¹⁹⁰

Principles of Punishment: Retribution, Deterrence, Prevention and Reformation: Punishment under criminal law is delivered on the basis of four principles—retribution, deterrence, prevention, and reformation. The foremost is that of retribution which the state attempts to deliver on behalf of the society for certain kinds of offences.

However, this is not the only reason that punishments exist. The purpose of criminal law is also to deter and prevent individuals from committing crimes.¹⁹¹ Deterrence is achieved by prescribing exemplary or extraordinary punishments (for example, the death penalty for offences like murder). Prevention entails the enactment of any measure, such as making arrests, necessary to stop a criminal wrongdoing.¹⁹²

Going beyond retribution, deterrence and prevention, the law must also aim for a reformation of the individual or restoration of the entity. This is especially true of laws that do not strictly fall within the purview of substantive crimes covered by the Indian Penal Code and some of the other distinctively criminalising legislation such as the Narcotic Drugs and Psychotropic Substances, Act, 1985.

Statutory laws that carry imprisonment terms, need to strike a fine balance between what to punish and how much. It is important to remember that the end of statutory law is not the punishment itself. The Companies Act, 2013, for example, does not exist merely to punish wrongdoers but also to facilitate the regulation and conduct of businesses in the country. We must therefore ask ourselves whether excessive criminality across a multitude of different statutory regulations really achieves the necessary balance. For many of these regulations, it is important to ask whether reparations or compensation can fulfil the goal that imprisonment is presumed to accomplish.

Necessity and Proportionality of Punishments: Necessity and proportionality are essentially general principles of law and legislative drafting. In other words, these are principles that ought to be considered whenever a law, a rule or a regulation is being written. Since they do not have a universal definition, for the purpose of regulatory compliance criminality, we will adopt a working definition of the two principles. One, for imprisonment to be justified in a law or regulation creating criminality, it must be fundamental to securing the ends of the regulation itself (necessity). And two, such punishment must be commensurate with the gravity of the harm caused or likely to be caused or it must offer justified restitution

for the damage caused (proportionality). In other words, there must a direct causal link between the seriousness of the offence and the punishment being meted out.

Here, reference may also be made to the four constituent elements of proportionality (with necessity embedded into the term) elucidated by the European Court of Justice. First, a legitimate objective; second, the existence of overriding public interest; third, suitability of the law for attainment of the objective; and fourth, not going beyond what is necessary to secure such objective.¹⁹³ In fact, a growing number of countries have devised specific criteria for the drafting of laws where proportionality has been factored in. These form part of a mechanism known as regulatory impact assessment, discussed below in the recommendations section.

Necessity and Proportionality in the Indian Context: Given the absence of an assessment mechanism, India must look to the Constitution for guidance; Article 21, which covers right to life and liberty, permits the State to take away this right only in accordance with a “procedure established by law.” The Supreme Court has discussed Article 21 at length in several cases and the consensus is that any restriction on individual liberty (even in the context of punishment) must, for all intents and purposes, be just, fair and reasonable.¹⁹⁴ To fulfil these criteria, lawmakers must, at all times, consider the necessity and proportionality of punitive measures. A punitive action that is disproportionately exemplary or prescribed against minor infractions is, by definition, unfair, unjust and unreasonable.

Consequently, there is a need for lawmakers to seriously examine punishment in context of the gravity of the act in question across several regulations. Even in the case of traditional offences falling within the purview of the Indian Penal Code, 1860, the Supreme Court has discussed the principle of proportionality in the ordering of punishments and sentencing.¹⁹⁵ Indeed, in *Bachan Singh v/s State of Punjab* and *Vikram Singh v/s Union of India*, the Court essentially endorsed the view that the selection of punishment by the legislature could not be “cruelly inhumane” and/or “disproportionate.”¹⁹⁶ Both these illustrative cases were concerned with capital punishment, which legislatively is already prescribed for the most serious of offences.

This report does not intend to engage in a detailed discussion on case laws and introduce excessive legalese into a policy debate. However, it does make a simple argument—if heinous offences under the Indian Penal Code, 1860 can be subject to debates, there should be no reason why other laws cannot also undergo the same scrutiny and, where required, be taken up for revision. Tables 40 through 46 measure compliance penalties against offences contained in the Indian Penal Code, 1860 to demonstrate the absence of congruence and the consideration of gravity from the legislative thought process.

That said, there are some stark anomalies, and if challenged in the Supreme Court, several will be swept away in the process of a 21st-Century judicial review. A sample:

- Under Indian Penal Code, 1860, avoiding summons from a public servant or defiling the water of a public spring or reservoir attracts a jail term of less than three months. Under the Contract Labour (Regulation and Abolition) Act, 1970 read with state rules, the submission of annual returns in Form XXI or non-provision of canteen, restrooms, washing areas, urinals and latrines attracts the same term. Under the Child and Adolescent Labour rules, the same penalty stands for violation of a rule that seeks adequate number of spittoons (Table 41).
- Similarly, under Indian Penal Code, 1860, adulterating food or drink to make it noxious, driving so rashly that it endangers human life, and provoking with intent to cause a riot is punishable with imprisonment for three months to a year. The same punishment applies for not displaying the abstract of the maternity law; not maintaining registers and records; and no records of lime washing, colour washing, varnishing or painting of canteen (Table 42).
- The acts of sedition, rioting with a deadly weapon, stalking, extortion, and criminal intimidation attracts an imprisonment of between one and three years under the Indian Penal Code, 1860. A similar imprisonment stands for not whitewashing latrines and urinals once in four months under the Factories Act, 1948 and related rules; not using regional language for indicating weights and measures under the Legal Metrology Act, 2009; and not publishing the name of the Grievance Officer and their contact details on the website under the Information Technology Act and related rules (Table 43).
- Assault or the use of criminal force on women with the intent to disrobe, and the exploitation of a trafficked person attracts an imprisonment of between three and five years under the Indian Penal Code, 1860. The same imprisonment terms stand for not furnishing monthly details of inward supplies in Form GSTR-2 under the Goods and Services Act, 2017 and not furnishing monthly returns to the controller under the Essential Commodities Act, 1955 and related rules (Table 44).

- Extortion by putting a person in fear of death, collecting arms with the intention of waging a war against the Indian government, and assaulting the President of India with intent to compel or restrain the exercise of any lawful power is punishable with imprisonment of between five and 10 years under the Indian Penal Code, 1860. The same imprisonment applies to not displaying stock and price of liquefied petroleum gas at conspicuous place of business under the Essential Commodities Act, 1955 and related rules, and not establishing a network operation centre under the Information Technology Act, 2000 and related rules (Table 45).
- Under the Indian Penal Code, 1860, murder, dowry death, rape, and culpable homicide not amounting to murder carry imprisonment terms of over 10 years. A similar imprisonment is meted out for business compliances such as labelling requirements related to specific food items, a medical practitioner possessing manufactured drugs without licence to maintain register in Form No. 21, and a licensed druggist not obtaining a pass for the export and transport of manufactured drugs in Form No. 19 from Deputy Excise and Taxation Commissioner (Table 46).

Clearly, the dissonance between punishment under sections such as sedition or trafficking and those for errors of omission by the business community are the same under the law. This shows the legislative bias in India's law-making processes, with the entrepreneur seen as an entity worse than a hardened criminal. This needs to be reformed, not only through law but through a social change that brings dignity to the profession of entrepreneurship.

IX. Recommendations

This section offers 10 policy recommendations and 31 sub-recommendations for change to legislators and the judiciary, which the Executive, regulators and officials can execute. This should also serve as an alert to the bureaucracy to refrain from administering such excesses and thickening India's regulatory cholesterol. Politics must become more accountable to the economy, and political actors must ensure that the spirit or intent of the law is not eroded by the indiscriminate imposition of imprisonment clauses on businesses. If India's business environment is to acquire greater competitiveness, compliances must be made less hostile.

This report does not make a case to end all imprisonment clauses. It places the extent of such clauses, compares them with similar clauses in non-business crimes, and urges a policy introspection on their application. It attempts to help policymakers add nuance to regulatory actions around imprisonment clauses as an instrument of enforcement. Nevertheless, the goal is clear—reduce the number and the term of imprisonment.

1: Reform the way policies are designed

In a democracy, laws, rules, and regulations must all have democratic sanctity. While laws and rules are debated in Parliament and legislative assemblies, where there is an electoral oversight, regulations are determined by unelected officials, who draft micro-regulations with little accountability. This process must change.

- 1.1 India needs to put in place a policy documentation process. This must include the precise definition of the problem being addressed by a law, rule, or regulation.
- 1.2 This definition must have a background paper that should exhibit what kind of market failure or policy objective it seeks to address.
- 1.3 It must demonstrate this market failure using data and analysis and not a knee-jerk response.
- 1.4 A criminal sanction, the most intrusive act by a State, must be issued only after exhausting all other means to fix the problem. The licence-permit Raj of the past may have ended, but the criminal provisions in economic laws have increased. Just one reform, the shift from Foreign Exchange Regulation Act to Foreign Exchange Management Act, has seen criminal sanctions creep back into the latter.¹⁹⁷
- 1.5 Those drafting the law, the rule or the regulation must establish and make a compelling case that the punitive action through the legal instrument is the lowest-cost way of fixing the problem.
- 1.6 While laws enacted by elected officials are debated in Parliament and legislative assemblies, regulations drafted by officials are not. The current process lacks democratic legitimacy, with the framer of the clauses behaving like a ‘ruler’ rather than a democratically elected or institutionally accountable 21st century lawmaker. The latter, therefore, must place the legal instrument out in the public domain, illustrate the cost-benefit analysis accompanying the regulation, give economic agents time to decipher it, understand the logic and impact, and take public feedback into account. Officials must provide answers to why the regulation is the best way in the final draft, and only then must it turn it into a legal instrument. This will address the ‘democratic deficit’ contained in the institutional structure of such lawmaking.¹⁹⁸
- 1.7 While considering reform, India must understand and factor-in best practices—and reject those not applicable to the country—from across the developed world. For instance, India can consider adopting measures similar to those of the Organisation for Economic Co-operation and Development (OECD), including a checklist from defining the problem to achieving compliance.¹⁹⁹

2: Use criminal penalties in business laws with extreme restraint

From the *Mahabharata*²⁰⁰ to *Arthashastra*,²⁰¹ criminality was never part of punitive action against businesses in ancient India, but financial penalties were.²⁰² Financial misdemeanours need financial punishments. Indeed, there are some outright crimes, such as the wilful damage to health of workers, the wilful destruction of the environment, or the wilful evasion of taxes, where imprisonment may be necessary. The legal goal of punishing corporations or entrepreneurs should be to exert deterrence and not inflict retribution.

- 2.1 Other than for a handful of wilful crimes, all business punishments must be financial. If an entrepreneur breaks the law to earn ill-gotten profit, the policy answer should be to extract those gains and some more. The ‘more’ could be a multiple of the ill-gotten gain and could range from three times²⁰³ to 10 or more, but only if necessary and when reasonably argued.
- 2.2 A related issue is that of weak enforcement, but increasing criminal clauses will not strengthen this. It is not just compliances or the economy the needs reform. State capacity to enforce the law, including penalties for officials misusing their office, must also increase.
- 2.3 Finally, India needs to debate the idea of entrepreneurship itself. If wealth creators and their contribution to generating jobs, paying taxes, and delivering growth have been shunned so far, it is time for a policy retribution. If all the 26,134 criminal clauses have not been able to deliver, maybe India needs to experiment with their removal or sharp reduction at a time when economic growth has become a political and social imperative.

3: Constitute a regulatory impact assessment committee within the Law Commission of India

A 2011 report of the erstwhile Planning Commission (now Niti Aayog) pointed out that the Indian regulatory system lacks ‘regulatory impact analysis’.²⁰⁴ As indicated in the discussion on the principles of criminal law, several countries are already evaluating the way laws are drafted and where the State must intervene. This report proposes a similar structure in India under the Law Commission. The idea is to adopt some of global best practices into India’s regulatory environment and to reduce the burden on all stakeholders, the business community, the executive and the judiciary.

The idea of having a body performing a regulatory impact analysis within the Law Commission is to streamline regulations, engage with and smoothen the various state interventions contained in them, as well as the offences and penalties prescribed. It is important to give the Union and state governments a clear picture of the areas in which criminality needs to be relooked. In the Indian context, it is also vital that such a body oversees the extent of implementation of the proposed legal reforms. The lack of any oversight in matters of regulatory review is a bane that has long made it difficult to effect changes where necessary.²⁰⁵

4: Involve all independent economic regulators in compliance reforms

All economic regulators, and not just the Union and state governments, must be part of the compliance reform exercise. The criminality clauses in just one regulator (Food Safety and Standards Authority of India) stand at 608. There are similar provisions in the Bureau of Indian Standards (76 clauses), Securities and Exchange Board of India (64 clauses), and the Reserve Bank of India and Insurance Regulatory and Development Authority of India (five clauses each).

- 4.1 There needs to be a criminality clause audit for all independent regulators
- 4.2 Where there is cause, as per general procedures adopted for other laws, the criminality clauses can stay; but the rest need to be rationalised and repealed.

5: End the criminalisation of all compliance procedures

Imprisonment terms are not meant to be prescribed lightly, given the huge socioeconomic costs associated with them. Consequently, it is proposed that any regulatory impact assessment body must be tasked with the process of determining criminality in accordance with the principles of criminal law and the general principles of law. There needs to be an effort towards standardising sentencing across all regulations in proportion to the nature of harm caused or likely to be caused. The goal is for the regulatory impact assessment body to become an effective tool in reducing the burden of the 26,134 compliances that carry imprisonment terms. This can be done through a classification of all non-compliances into two categories—procedural or technical lapses, and serious offences.

Procedural or technical lapses

- 5.1 Such non-compliances are typically inadvertent in nature, arising from lack of awareness. Such lapses include missed timelines in filing returns, maintenance of records in incorrect formats, and incorrect calculations of interest liability. The Law Commission should review the rationale of

retaining criminal liability in all such cases and potentially recommend decriminalisation. Financial penalties of between three to five times the cost should replace imprisonment for such lapses; in the most exceptional cases, the penalties could be more stringent.

- 5.2 The Law Commission should also review the quantum of existing penalties and rationalise these as per the nature and gravity of the default.
- 5.3 Measures must also be taken to enhance awareness about regulations among the business community to prevent procedural infractions.

Serious crimes

- 5.4 Such non-compliances include those in the category of criminal negligence, and that are not an honest mistake or oversight. For instance, lapses that can lead to the loss of life and limb of the employees, clients, and other associated persons. This category should also include financial frauds such as tax evasion, bank and securities fraud, market manipulation, scams, bribery, identity theft, money laundering, forgery, and counterfeiting. The underlying presumption for prosecution must be the wilful acts of commission to do harm, rather than errors of omission.
- 5.5 For such wilful non-compliances that lead to harm, provisions for criminality may continue. The key is to ensure that the *mens rea* element of criminality (intent) is central to any imprisonment term attached to a compliance.

6: Create alternative mechanisms and frameworks

There are several infractions that can be remedied in the first instance using financial penalties.

- 6.1 A framework should be devised whereby certain offences become liable for imprisonment only in the case of repeated violations.
- 6.2 Some of the offences should be made compoundable. In other words, monetary compensation ought to be made acceptable in lieu of imprisonment terms. In 2020, the Union government announced its intention to compound some of the offences under the Companies Act, 2013 to reduce the compliance burden amid the pandemic.²⁰⁶ This should be extended to compliances under other legislations, particularly the four labour codes, as well.
- 6.3 The process of compounding should be made without the interference of the court where the compliance has been done, and the fine or penalty for non-compliance has been tendered.

7: Define standards for legal drafting

Several countries already have established standards for legislative drafting, and India must do so as well.

- 7.1 It is necessary to adopt a general, indicative set of standards of legal regulations to guide lawmakers. These standards, which will include principles of necessity and proportionality and coherence, should be considered by the Parliament and state assemblies while proposing and passing future legislations and amendments.
- 7.2 This process should apply to regulators as well.
- 7.3 These standards should be principles-based upon which Parliament, legislative assemblies and executive bureaucracies can devise rules-based regulations.

8: Introduce sunset clauses

As nations evolve and regroup around new aspirations and activities, existing laws may become liabilities for the future. Nevertheless, laws provide the legislative stability, the legal predictability and the judicial honing needed for economic actors to engage in business as usual without the risk of a sudden disruption. It is thus vital to create a bridge for healthy dynamism to operate within a robust stability framework.

That bridge is the introduction of “sunset clauses”, a tool that terminates a certain law, rule, or regulation at a predetermined time, into India’s lawmaking space. A sunset clause inverts the burden of proof of the need for such legal instruments to remain on those writing them—the elected members of parliament and legislative assemblies, and unelected officials executing them. These actors must prove that a particular sunset clause needs to be reauthorised, and must provide data and analysis to the public in support of this. As part of the knowledge economy operating in a knowledge society, the actions of the State cannot be relegated to the fringes of innovation, more so when such actions determine the legal infrastructure on which business actors create value, jobs, and wealth. Sunset provisions could even be clause specific.

- 8.1 Every imprisonment clause should go through legislative scrutiny at least once every five years. The rate of innovation is faster than this period, but since enacting new laws is an arduous activity, a five-year term, in tune with the terms of Lok Sabha or state assemblies is apt.
- 8.2 When such laws are turned into regulations by State-determined agencies—for instance, officials from SEBI, the Reserve Bank of India or Competition Commission of India—the frequency should be shorter, perhaps two years. In a

dynamically changing environment such as capital markets, which falls under SEBI's purview, there could even be an annual review.

- 8.3 For this, State capacity will have to be strengthened, again through a similar process. A short-term project-based employment, with a sunset clause, or through contractual engagement with experts and expertise-rich institutions.

9: Reform with one legislation

This report contains sufficient raw data disaggregated across regulatory categories and compliance geographies to enable change. However, given India's highly politicised atmosphere and policy inertia, there is danger of these third-generation reforms being held back. Further, there is the threat of bureaucratic power for rent-seeking getting eroded and consequent administrative pushback. Hence, all these reforms must happen at one time through one legislation, and not ministry by ministry or department by department. The 1991 reforms framework was created in a moment of deep crisis and there was no space nor scope for debate. The subsequent reforms over the past 30 years have been debated in Parliament and elsewhere. The compliance reforms sought through this report need a mix of both.

- 9.1 Based on the reports that the Law Commission (Recommendation 3), the Union government must usher in the reforms all at once, through a single legislation that overrides all other laws. Such a model is ready, though the law has not been taken forward, through the 'draft law' framed by the Financial Sector Legislative Reforms Commission.²⁰⁸
- 9.2 Likewise, state governments must introduce changes in the rules all at once.
- 9.3 These reforms should not be subject to intra-ministerial turf wars. Once the Law Commission recommendations have been accepted, both the Union and state governments must establish an overarching body—the Compliance Reforms Commission, legislated by law with a three-year sunset clause embedded in it—to coordinate and take decisions on all these reforms together. This body must be headed by the executive and the judiciary, through the prime minister or finance minister and a retired judge of the Supreme Court for reforms of Union laws, and the state chief minister or finance minister and a retired judge of the respective High Court for reforms of state laws.
- 9.4 It is crucial for the government that undertakes these reforms to have a strong majority in both houses of Parliament for their enactment.
- 9.5 At the same time, it is important for the government to speak to and engage with all stakeholders, notably businesspersons but also labour, environmentalists, and the opposition.

10: Infuse dignity to entrepreneurs, businesspersons, and wealth creators

Policymaking needs a change. Entrepreneurs were systematically shunned and a perception created of them being rogues that had to be tolerated during independent India's early years. Through the repressive economic policies under Prime Minister Jawaharlal Nehru and Prime Minister Indira Gandhi, an anti-business and anti-wealth climate was created between 1947 and 1990. Although Prime Minister P.V. Narasimha Rao changed the underlying policy framework through the 1991 industrial policy and subsequent prime ministers brought several reforms, the anti-entrepreneur stance has continued. This is the climate that India must change to ensure prosperity.

Prime Minister Narendra Modi has repeatedly embraced entrepreneurs as value creating entities in India. Wealth creation is a national service, he said in 2019,²⁰⁹ adding that wealth creators deserve greater respect.²¹⁰ In 2021, he applauded the “new types of wealth creators.”²¹¹

This change at the political level must expand into a transformative socioeconomic mindset. This will bring dignity to India's wealth creators. For this, policymaking is only one determinant. The other factors that will determine such change is less suspicion of and more dignity to entrepreneurs by academia, the media and Indian voters.

X.

Conclusion

Imagining, drafting, and enacting criminality clauses into laws, rules and regulations is easy, and the incentives to do so are high. It is easy because it does not require any application of mind—the penalties of a past law are often blindly replicated in a new one. It carries high incentive because it gets political applause. Legislators worldwide know they will not lose voters by being tough on crime, and with nobody to oppose those clauses, such laws sail through.²¹² In India, the suspicion and contempt for entrepreneurs and wealth creators that has gathered legislative, judicial and societal momentum over the past seven decades makes it easy for lawmakers and their executive branches to insert such clauses into compliances without any political questioning, administrative accountability or logical scrutiny. The mapping of criminality clauses in the Indian Penal Code, 1860 with modern laws, some of which have been enacted as recently as 2017, showcases this underlying distrust.

This report is the first to assess the regulatory compliance excesses on Indian businesses. While the impact of the data and analysis in this report will only be measured over time, it presents a new academic trajectory that can grow through papers, commentaries, reports and debates in legislatures.

This report could lay the foundation to usher in third-generation reforms.

The first-generation reforms happened through the 1991 industrial policy, and the second-generation reforms over the next thirty years across several governments. These reforms opened up the Indian economy, expanded trade, created new regulators, introduced a new system of indirect taxes, and used technology to enable growth, prosperity and direct benefit transfers.

The compliance reforms recommended in this report (Section IX) could attract more investors to India, enable Indian businesses to build world-scale enterprises, power India's growth further and help reduce poverty. It will also strengthen the spine of India's entrepreneurs, freeing them from the burden of unnecessary and excessive compliances to focus on creating jobs and value, paying taxes, and building wealth. However, these reforms will not be easy to undertake; fragmented politics, hardened stances, the weight of virtue-signalling morality, and the opposition to 'povertarian' narratives will make it a steep task.

But the reforms are needed. Policymakers may or may not deliver these reforms, but the larger policy fraternity, including politicians, bureaucracies, businesses, scholars and citizens, can power these ideas to construct new narratives that are in tune with a 21st-century India and its aspirations. Moreover, given that there are only one million formal employers out of 63 million enterprises across India,²¹³ the opportunity is ripe to double or triple this number, or even see it rise 10-fold, through these reforms.

Specifically, there are five major streams of future academic and policy research: First, a state-wise analysis of imprisonment clauses and how to rationalise them. Second, a category-wise rework of the clauses and their rethink. Third, a global benchmarking of imprisonment clauses applied to business laws, which should be done among the top 10 economies. Fourth, an Act-wise deep-dive into imprisonment clauses, beginning with the Factories Act, 1948. And fifth, the intervention of technology—the expansion of the Jan Dhan-Aadhaar-Mobile trinity, for instance²¹⁴—and mapping it with business enterprises. These research streams will be invaluable for future policymakers to study the data's correlational insights, the causal mechanisms it will divulge, the theories it will create, and the policy outcomes it will influence.

Finally, using new data, fresh analysis, and the resultant recommendations, this report aims to encourage policy dignity for those doing business in India through a rethink of how business laws are enacted and executed. Compliance reforms will provide the climate change for small businesses to get formalised, corporate India to attain global scale, and India to unleash its economic vibrancy. Such restrictive policies have no place in 21st-century rajasic India.²¹⁵

Appendices

TABLE 1: INDIA'S BUSINESS REGULATORY UNIVERSE

Number of laws	1,536
Union	678
State	858
Number of compliances	69,233
Union	25,537
State	43,696

Data denotes the number of laws and compliances applicable to businesses at an aggregate.

Source: TeamLease Regtech

TABLE 2: IMPRISONMENT CLAUSES IN INDIA'S BUSINESS REGULATORY UNIVERSE

Number of laws with criminal clauses	843
Union	244
State	599
Number of compliances with criminal clauses	26,134
Union	5,239
State	20,895

Data denotes the number of laws and compliances applicable to businesses at an aggregate.

Source: TeamLease Regtech

TABLE 3: BREAKDOWN OF IMPRISONMENT CLAUSES IN INDIA'S BUSINESS LAWS

Imprisonment terms	Number of clauses	Percentage of total
Less than 3 months	5,728	21.9%
3 months to less than 1 year	5,855	22.4%
1 year to less than 3 years	11,042	42.3%
3 years to less than 5 years	1,481	5.7%
5 years to less than 10 years	1,821	7.0%
More than 10 years	207	0.8%
Total	26,134	100.0%

Source: TeamLease Regtech

TABLE 4: BREAKDOWN OF LAWS BY NUMBER OF IMPRISONMENT CLAUSES

Number of imprisonment clauses	Number of laws	Total number of imprisonment clauses
Less than 5	282	600
5 to 9	134	907
10 to 14	78	937
15 to 19	59	977
20 to 24	47	1051
25 to 29	51	1325
30 to 34	40	1270
35 to 39	13	474
40 to 44	13	547
44 to 49	10	466
50 to 54	8	417
55 to 59	7	397
60 to 64	11	687
65 to 69	4	267

70 to 74	6	434
75 to 79	7	543
80 to 84	5	407
85 to 89	1	86
90 to 94	3	273
95 to 99	3	291
100 to 104	3	308
105 to 109	6	640
110 to 114	4	449
115 to 119	3	352
120 to 124	5	611
125 to 129	3	382
130 to 134	2	260
135 to 139	3	410
140 to 149	0	0
150 to 154	1	152
155 to 159	2	310
160 to 164	1	162
165 to 169	1	168
170 to 174	1	170
175 to 184	0	0
185 to 189	1	189
190 to 194	0	0
195 to 199	1	196
200 to 204	1	204
205 to 209	1	207
210 to 214	1	211
215 to 219	1	216
220 to 224	0	0
225 to 229	1	228
230 to 259	0	0

260 to 264	3	781
265 to 300	0	0
315 to 319	1	319
320 to 334	0	0
335 to 339	1	339
340 to 354	0	0
355 to 359	1	357
360 to 364	1	361
365 to 374	0	0
375 to 379	1	375
380 to 424	0	0
425 to 429	2	854
430 to 434	0	0
435 to 439	1	437
440 to 454	0	0
455 to 459	1	458
460 to 464	1	463
465 to 469	0	0
470 to 474	1	470
475 to 484	0	0
485 to 489	2	975
490 to 514	0	0
515 to 519	1	519
520 to 534	0	0
535 to 539	1	539
540 to 740	0	0
705 to 709	1	706
TOTAL	843	26134

Source: TeamLease Regtech

TABLE 5: BREAKDOWN OF LAWS WITH UPTO 50 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	1,832	215
3 months to less than 1 year	3,904	390
1 year to less than 3 years	1,221	189
3 years to less than 5 years	1,061	67
5 years to less than 10 years	607	82
More than 10 years	29	4

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 6: BREAKDOWN OF LAWS IN THE 1,000-PLUS RANGE

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	524	50
3 months to less than 1 year	1,085	107
1 year to less than 3 years	276	20
3 years to less than 5 years	844	39
5 years to less than 10 years	190	10
More than 10 years	7	1

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 7: BREAKUP OF LAWS WITH 20-24 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	187	19
3 months to less than 1 year	529	37
1 year to less than 3 years	87	8
3 years to less than 5 years	216	10
5 years to less than 10 years	32	2
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 8: BREAKDOWN OF LAWS WITH 25-29 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	135	10
3 months to less than 1 year	425	39
1 year to less than 3 years	66	5
3 years to less than 5 years	586	27
5 years to less than 10 years	113	6
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 9: BREAKDOWN OF LAWS WITH 30-34 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	202	21
3 months to less than 1 year	851	31
1 year to less than 3 years	123	7
3 years to less than 5 years	42	2
5 years to less than 10 years	45	2
More than 10 years	7	1

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 10: BREAKDOWN OF LAWS WITH MORE THAN 900 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	591	85
3 months to less than 1 year	1,308	142
1 year to less than 3 years	509	72
3 years to less than 5 years	117	14
5 years to less than 10 years	292	43
More than 10 years	4	1

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 11: BREAKDOWN OF LAWS WITH 5-9 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	193	38
3 months to less than 1 year	361	64
1 year to less than 3 years	231	44
3 years to less than 5 years	48	9
5 years to less than 10 years	70	18
More than 10 years	4	1

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 12: BREAKDOWN OF LAWS WITH 10-14 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	229	31
3 months to less than 1 year	384	38
1 year to less than 3 years	166	17
3 years to less than 5 years	14	2
5 years to less than 10 years	144	19
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 13: BREAKDOWN OF LAWS WITH 15-19 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	169	16
3 months to less than 1 year	563	40
1 year to less than 3 years	112	11
3 years to less than 5 years	55	3
5 years to less than 10 years	78	6
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 14: BREAKDOWN OF LAWS WITH 485-489 IMPRISONMENT CLAUSES

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	0	0
3 months to less than 1 year	13	2
1 year to less than 3 years	866	2
3 years to less than 5 years	0	0
5 years to less than 10 years	96	2
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 15: IMPRISONMENT CLAUSES ACROSS CATEGORIES OF LAW

Category	Number of clauses	Number of laws
Labour	17,819	352
Industry specific	4,179	205
Commercial	1,346	106
Environment, health and safety	1,179	78
Finance and taxation	929	48
General	435	34
Secretarial	247	20

Source: TeamLease Regtech

TABLE 16: IMPRISONMENT CLAUSES PER LAW, ACROSS CATEGORIES

Category	Average number of imprisonment clauses per law
Labour	50.6
Industry specific	20.4
Finance and taxation	19.4
Environment, health and safety	15.1
General	12.8
Commercial	12.7
Secretarial	12.4

Source: TeamLease Regtech

TABLE 17: BREAKDOWN OF IMPRISONMENT CLAUSES IN LABOUR LAWS

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	3,834	148
3 months to less than 1 year	3,874	230
1 year to less than 3 years	9,252	100
3 years to less than 5 years	1	1
5 years to less than 10 years	858	32
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 18: LABOUR LAWS WITH MORE THAN 100 IMPRISONMENT CLAUSES

Law	State rule	Imprisonment clauses
Factories Act, 1948	Karnataka	706
Factories Act, 1948	Goa	539
Factories Act, 1948	West Bengal	519
Factories Act, 1948	Uttar Pradesh	489
Factories Act, 1948	Assam	486
Factories Act, 1948	Punjab	463
Factories Act, 1948	Chhattisgarh	458
Factories Act, 1948	Tamil Nadu	437
Factories Act, 1948	Gujarat	427
Factories Act, 1948	Haryana	427
Factories Act, 1948	Uttarakhand	375
Factories Act, 1948	Rajasthan	361

Factories Act, 1948	Telangana	357
Factories Act, 1948	Madhya Pradesh	339
Factories Act, 1948	Delhi	319
Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	Gujarat	261
Factories Act, 1948	Andhra Pradesh	260
Factories Act, 1948	Maharashtra	260
Factories Act, 1948	Mizoram	228
Factories Act, 1948	Jharkhand	204
Factories Act, 1948	Kerala	196
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Tamil Nadu	168
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Kerala	162
Factories Act, 1948	Himachal Pradesh	155
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Orissa	155
Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	Punjab	138
Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	Maharashtra	137
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Jharkhand	135
Contract labour (Regulation and Abolition) Act, 1970	Central	130
Contract labour (Regulation and Abolition) Act, 1970	Puducherry	130

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Karnataka	127
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Telangana	127
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Goa	124
Factories Act, 1948	Meghalaya	123
Contract labour (Regulation and Abolition) Act, 1970	Haryana	119
Contract labour (Regulation and Abolition) Act, 1970	Gujarat	116
Contract labour (Regulation and Abolition) Act, 1970	Madhya Pradesh	113
Contract labour (Regulation and Abolition) Act, 1970	Delhi	113
Contract labour (Regulation and Abolition) Act, 1970	Assam	112
Contract labour (Regulation and Abolition) Act, 1970	Orissa	111
Contract labour (Regulation and Abolition) Act, 1970	Kerala	109
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Maharashtra	109
Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	Bihar	107
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Madhya Pradesh	105
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Uttar Pradesh	105

Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996	Haryana	102
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	Chhattisgarh	102

Source: TeamLease Regtech

TABLE 19: IMPRISONMENT CLAUSES IN INDUSTRY SPECIFIC LAWS

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	1,524	63
3 months to less than 1 year	689	60
1 year to less than 3 years	892	80
3 years to less than 5 years	299	11
5 years to less than 10 years	681	33
More than 10 years	94	7

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 20: INDUSTRY SPECIFIC LAWS WITH MORE THAN 100 IMPRISONMENT CLAUSES

Law	State rule	Imprisonment clauses
Food Safety and Standards Act, 2006 and Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011	Union	470
Mines Act 1952, and Coal Mines Regulations, 2017	Union	216
Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003	Gujarat	211
Regulations and Guidelines on Biosafety of Recombinant DNA Research and Biocontainment, 2017	Union	207
Mines Act, 1952 and Oil Mines Regulation, 2017	Union	170
Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945	Union	128
Petroleum Act, 1934 and Petroleum Rules, 2002	Union	120
Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003	Gujarat	105

Source: TeamLease Regtech

TABLE 21: IMPRISONMENT CLAUSES IN COMMERCIAL LAWS

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	187	22
3 months to less than 1 year	857	68
1 year to less than 3 years	166	34
3 years to less than 5 years	4	3
5 years to less than 10 years	19	3
More than 10 years	113	1

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 22: COMMERCIAL LAWS WITH MORE THAN 100 IMPRISONMENT CLAUSES

Law	Union/State rule	Imprisonment clauses
Arms Act, 1959 and Arms Rules 2016	Union	152
Food Safety & Standards Act, 2006 & Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011	Union	123

Source: TeamLease Regtech

TABLE 23: IMPRISONMENT CLAUSES IN ENVIRONMENT, HEALTH AND SAFETY LAWS

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	150	35
3 months to less than 1 year	199	14
1 year to less than 3 years	326	16
3 years to less than 5 years	357	22
5 years to less than 10 years	147	27
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 24: ENVIRONMENT, HEALTH AND SAFETY LAWS WITH MORE THAN 100 IMPRISONMENT CLAUSES

Law	Union/State rule	Imprisonment clauses
Explosives Act, 1884 and Static and Mobile Pressure Vessels (Unfired) Rules, 2016	Union	189
Atomic Energy Act, 1962 and Atomic Energy (Radiation Protection) Rules, 2004	Union	121

Source: TeamLease Regtech

TABLE 25: IMPRISONMENT CLAUSES IN FINANCE AND TAXATION LAWS

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	13	2
3 months to less than 1 year	63	36
1 year to less than 3 years	17	5
3 years to less than 5 years	817	34
5 years to less than 10 years	19	3
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 26: IMPRISONMENT CLAUSES IN SECRETARIAL LAWS

Imprisonment term	Number of clauses	Number of laws
Less than 3 months	1	1
3 months to less than 1 year	73	10
1 year to less than 3 years	145	10
3 years to less than 5 years	0	0
5 years to less than 10 years	28	5
More than 10 years	0	0

Source: TeamLease Regtech

NOTE: The inconsistency in number of laws is because a single law could have multiple clauses on criminality; it could have a few clauses of less than three months and few of between three and five years.

TABLE 27: BREAKDOWN OF IMPRISONMENT CLAUSES IN UNION LAWS

Less than 3 months	1,280	24.4%
3 months to less than 1 year	1,049	20.0%
1 year to less than 3 years	1,276	24.4%
3 years to less than 5 years	647	12.3%
5 years to less than 10 years	800	15.3%
More than 10 years	187	3.6%

Source: TeamLease Regtech

TABLE 28: BREAKDOWN OF IMPRISONMENT CLAUSES IN STATE LAWS

Imprisonment terms	Number of clauses	Percentage of all states	Percentage of total
Less than 3 months	4,448	21.3%	17.0%
3 months to less than 1 year	4,806	23.0%	18.4%
1 year to less than 3 years	9,766	46.7%	37.4%
3 years to less than 5 years	834	4.0%	3.2%
5 years to less than 10 years	1,021	4.9%	3.9%
More than 10 years	20	0.1%	0.1%

Source: TeamLease Regtech

TABLE 29: STATES WITH MORE THAN 1,000 IMPRISONMENT CLAUSES

State	Number of clauses	GSDP (In Rs lakh crore)	GSDP (In \$ billion)
Gujarat	1469	15.6	200.4
Punjab	1273	5.3	70.2
Maharashtra	1210	26.3	351.0
Karnataka	1175	15.4	205.9
Tamil Nadu	1043	16.3	217.4

Sources: TeamLease Regtech, and Reserve Bank of India for GSDPs

Exchange rate: Rs 75 to USD

TABLE 30: BREAKDOWN OF IMPRISONMENT CLAUSES IN THE 1,000-CLUB *

Imprisonment terms	Number of clauses	In percent
Less than 3 months	1,282	20.8%
3 months to less than 1 year	1,489	24.1%
1 year to less than 3 years	3,038	49.2%
3 years to less than 5 years	129	2.1%
5 years to less than 10 years	232	3.8%
More than 10 years	0	0.0%

* States that have more than 1,000 imprisonment clauses each (aggregate numbers for Gujarat, Punjab, Maharashtra, Karnataka and Tamil Nadu)

Source: TeamLease Regtech

TABLE 31: STATES THAT HAVE BETWEEN 500 AND 1,000 IMPRISONMENT CLAUSES

State	Number of clauses	GSDP (In Rs lakh crore)	GSDP (In \$ billion)
Assam	982	3.2	42.1
Goa	971	0.7	9.8
Uttar Pradesh	953	16.7	222.4
Haryana	952	7.3	97.9
Madhya Pradesh	939	8.1	107.9
West Bengal	933	10.9	145.3
Rajasthan	810	9.4	125.7
Chhattisgarh	763	3.0	40.5
Telangana	734	8.6	114.8
Andhra Pradesh	716	8.6	115.1
Delhi	684	7.7	103.3
Kerala	663	7.8	104.2
Jharkhand	578	3.0	39.6
Uttarakhand	538	2.5	32.8

Sources: TeamLease Regtech, and Reserve Bank of India

TABLE 32: BREAKDOWN OF IMPRISONMENT CLAUSES IN THE 500 to 1,000 CLUB *

Imprisonment terms	Number of clauses	In percent
Less than 3 months	2,023	18.0%
3 months to less than 1 year	2,255	20.1%
1 year to less than 3 years	5,824	51.9%
3 years to less than 5 years	347	3.1%
5 years to less than 10 years	747	6.7%
More than 10 years	20	0.2%

* States that have between 500 and 1,000 imprisonment clauses each (Assam, Goa, Uttar Pradesh, Haryana, Madhya Pradesh, West Bengal, Rajasthan, Chhattisgarh, Telangana, Andhra Pradesh, Delhi, Kerala, Jharkhand, and Uttarakhand)

Source: TeamLease Regtech

TABLE 33: STATES THAT HAVE LESS THAN 500 IMPRISONMENT CLAUSES

State	Number of clauses	GSDP (In Rs lakh crore)	GSDP (In \$ billion)
Bihar	480	4.3	56.8
Orissa	465	3.8	50.3
Himachal Pradesh	345	1.3	16.8
Mizoram	335	0.2	2.3
Tripura	304	N.A.	N.A.
Puducherry	302	0.3	3.9
Meghalaya	295	0.3	3.6
Sikkim	159	0.2	2.7
Arunachal Pradesh	145	0.2	2.7
Nagaland	133	0.2	2.9
Dadra and Nagar Haveli	132	N.A.	N.A.
Jammu and Kashmir	126	1.3	16.9

Chandigarh	122	0.3	4.2
Manipur	92	0.2	2.8
Daman and Diu	29	N.A.	N.A.
Lakshadweep	23	N.A.	N.A.
Andaman and Nicobar Islands	22	0.1	0.9

Sources: TeamLease Regtech, and Reserve Bank of India for GSDPs

TABLE 34: BREAKDOWN OF IMPRISONMENT CLAUSES IN THE LESS THAN 500 CLUB *

Imprisonment terms	Number of clauses	In percent
Less than 3 months	1,143	32.6%
3 months to less than 1 year	1,062	30.3%
1 year to less than 3 years	904	25.8%
3 years to less than 5 years	358	10.2%
5 years to less than 10 years	42	1.2%
More than 10 years	0	0.0%

* States that have less than 500 imprisonment clauses each (Bihar, Orissa, Himachal Pradesh, Mizoram, Tripura, Puducherry, Meghalaya, Sikkim, Arunachal Pradesh, Nagaland, Dadra and Nagar Haveli, Jammu and Kashmir, Chandigarh, Manipur, Daman and Diu, Lakshadweep, Andaman and Nicobar Islands)

Source: TeamLease Regtech

TABLE 35: UNION-STATE BREAKDOWN OF IMPRISONMENT CLAUSES BY CATEGORIES

Category	Number of clauses in Union laws	In percent	Number of clauses in State laws	In percent
Commercial	529	10.1%	817	3.9%
Environment, Health and Safety	834	15.9%	345	1.7%
Finance & Taxation	41	0.8%	888	4.2%
General	75	1.4%	360	1.7%
Industry Specific	2979	56.9%	1200	5.7%
Labour	534	10.2%	17285	82.7%
Secretarial	247	4.7%	0	0.0%

TABLE 36: THREE CASE STUDIES ON MANUFACTURING COMPLIANCES*

	Small	Medium	Large
Total Applicable Compliances	669	3,109	5,796
Compliances with imprisonment	461	2,172	4,085
Percentage of imprisonment clauses	69%	70%	70%

* These are real data from three companies operating in the automotive components business

TABLE 37: BREAKDOWN OF IMPRISONMENT CLAUSES IN MANUFACTURING CASE STUDIES*

	Small	Medium	Large
Less than 3 months	25	82	185
3 months to less than 1 year	187	699	1,220
1 year to less than 3 years	178	1,070	1,964
3 years to less than 5 years	59	245	505
5 years to 10 years	12	76	211

* In Table 36

TABLE 38: THREE CASE STUDIES ON NBFC COMPLIANCES*

	Small	Medium	Large
Total applicable compliances	784	1,188	1,693
Compliances with imprisonment	154	362	622
Percentage of imprisonment clauses	20%	30%	37%

* These are real data from three NBFCs

TABLE 39: BREAKDOWN OF IMPRISONMENT CLAUSES IN NBFC CASE STUDIES*

Range	Small	Mid	Large
Less than 3 months	10	42	82
3 months to less than 1 year	67	203	373
1 year to less than 3 years	50	58	68
3 years to less than 5 years	8	40	80
5 years to 10 years	19	19	19

* In table 38

TABLE 40: A SAMPLE OF IMPRISONMENT CLAUSES IN THE FACTORIES ACT, 1948 THAT ARE IRRELEVANT IN TECHNOLOGY-ENABLED 21ST CENTURY INDIA

- Whitewashing or colour-washing the walls, ceiling and partitions of every latrine and urinal once in four months (Section 11).
- Appointment of a canteen committee (Section 46).
- Lime-washing of inside walls of canteen kitchen once every four months (Section 11 and State rules).
- Displaying notice every quarter with respect to leaves carried forward of workers (Gujarat Rules, 1963).
- Furnishing annual returns relating to compensatory holidays in Form 20 (Section 53 and various State rules).
- Maintenance of records of white-washing, colour-washing and varnishing in Form 8 (Goa Factories Rules, 1985).
- Provision and maintenance of spittoon, for instance, maintaining a layer of disinfectant in spittoon made of galvanized iron (Section 20 and State rules).
- Supply of milk and refreshment (various State rules).
- In-charge of first-aid box or cupboard (Section 45).
- Repainting with one coat of paint of inside walls and partitions of factory where they are painted with washable water paints, once every three years (Bihar Factories Rules, 1950).
- Register of painting (Bihar Factories Rules, 1950).
- Serial number for first-aid and fire-fighting equipment (various State Rules).
- Publishing health and safety policy (various State Rules).
- Display of abstract of Factories Act, 1948 and rules (State Rules).
- Maintaining register for dates of white-washing in Form No. 8 (Uttar Pradesh Factories Rules, 1950).
- Maintaining record regarding monitoring of working environment in factory (Kerala Factories Rules, 1957).
- Five-yearly painting and varnishing doors and window frames (Meghalaya Factories Rules, 1980).

Source: TeamLease Regtech

TABLE 41: CLAUSES CARRYING IMPRISONMENT OF UP TO THREE MONTHS

Offences under the Indian Penal Code, 1860...
Appearing in public place in a state of intoxication ²¹⁶
Absconding to avoid service of summons or other proceedings from a public servant ²¹⁷
Preventing service of summons or affixing of any summons of notice, or the removal of it when it has been affixed, or preventing a proclamation ²¹⁸
Omission to produce [document or electronic record] to public servant by person legally bound to produce it ²¹⁹
Refusing to sign a statement made to a public servant when legally required to do so ²²⁰
Obstructing public servant in discharge of his public functions ²²¹
Defiling the water of a public spring or reservoir ²²²
Mischief ²²³
Criminal Trespass ²²⁴
...and contravention of business compliances, such as:
Submission of annual return in Form XXI to Registering Officer by Principal Employer ²²⁵
Provision of Canteen, Rest Rooms, Washing Areas, Urinals & Latrines ²²⁶
Issuance of Identity card in Form X ²²⁷
Maintenance Register of Contractors in Form VIII ²²⁸
Displaying the wage notice ²²⁹
Cleaning of floor of workroom at least once in every week ²³⁰
Medical examination of child worker once in every six months ²³¹
Exhibiting notice of weekly holiday allowed to adolescent at conspicuous place ²³²
Water places to be marked as 'drinking water' in language understood by majority of child worker ²³³
Providing adequate number of spittoons ²³⁴

TABLE 42: CLAUSES CONTAINING IMPRISONMENT OF BETWEEN THREE MONTHS AND ONE YEAR

Offences under the Indian Penal Code, 1860...
Being member of an unlawful assembly ²³⁵
Knowingly carrying arms in any procession or organising or holding or taking part in any mass drill or mass training with arms ²³⁶
Harbouring persons hired for an Unlawful Assembly ²³⁷
Negligently doing any act known to be likely to spread infection of any disease dangerous to life ²³⁸
Knowingly disobeying any quarantine rule ²³⁹
Adulterating food or drink intended for sale, so as to make the same noxious ²⁴⁰
Driving or riding on a public way so rashly or negligently as to endanger human life, etc. ²⁴¹
Taking gratification for the exercise of personal influence with a public servant ²⁴²
Bribery ²⁴³
Cheating ²⁴⁴
...and contravention of business compliances, such as:
Displaying the abstract of Maternity Benefit Act and Rule ²⁴⁵
Supplying of forms on demand to the woman employee ²⁴⁶
Notice showing date of payment of wages ²⁴⁷
Displaying the abstract of Payment of Wages Act and Rules ²⁴⁸
Payment of un-disbursed wages to nominee in cases of death of employed person ²⁴⁹
Application for renewal of license by manufacturer, repairer, dealer ²⁵⁰
Records to be maintained by the manufacturer ²⁵¹
Maintenance of records of lime washing, colour washing, varnishing or painting of canteen ²⁵²
Displaying charge per food item in canteen ²⁵³
Maintaining tables, chairs and benches in canteen ²⁵⁴

TABLE 43: CLAUSES CARRYING IMPRISONMENT OF BETWEEN ONE AND THREE YEARS

Offences under the Indian Penal Code, 1860...
Sedition ²⁵⁵
Joining an Unlawful Assembly armed with any deadly weapon ²⁵⁶
Rioting with a deadly weapon ²⁵⁷
Assaulting or obstructing public servant when suppressing riot, etc ²⁵⁸
Promoting enmity between classes ²⁵⁹
Causing death by rash or negligent act ²⁶⁰
Attempt to commit Culpable homicide ²⁶¹
Voluntarily causing hurt by dangerous weapons or means
Theft ²⁶²
Extortion ²⁶³
...and contravention of business compliances, such as:
Annual auditing of accounts pertaining to canteen ²⁶⁴
Re-constitution of Canteen Managing Committee in every 2 years ²⁶⁵
Lime washing of inside walls of Canteen kitchen once in every 4 Months ²⁶⁶
Cooled drinking water ²⁶⁷
Furnishing annual returns of Holidays to Inspector ²⁶⁸
Maintaining tables, chairs and benches in canteen ²⁶⁹
Displaying charge per food item in canteen ²⁷⁰
Use of regional language for indication on weights and measures ²⁷¹
Employer to return identity card to appropriate Office in case employee leaves employment before completion of service of 3 months ²⁷²
Publishing name of Grievance Officer and contact details on website ²⁷³

TABLE 44: CLAUSES CONTAINING IMPRISONMENT OF BETWEEN THREE AND FIVE YEARS

Offences under the Indian Penal Code, 1860...
Delivery to another of coin possessed with the knowledge that it is altered ²⁷⁴
Import or export of counterfeit coin ²⁷⁵
Effacing writing from substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government ²⁷⁶
Possession of Indian coin by a person who knew it to be altered when he became possessed thereof ²⁷⁷
Assault or use of criminal force to women with intent to disrobe ²⁷⁸
Exploitation of a trafficked person ²⁷⁹
Mischief by killing, poisoning or rendering useless any elephant, camel, horse, etc ²⁸⁰
Mischief by injury to public road, bridge, navigable river or channel and rendering it impassable or less safe for travelling or conveying property ²⁸¹
Offence committed in place of worship, etc ²⁸²
Harbouring offender for a crime punishable with imprisonment for life or with imprisonment ²⁸³
...and contravention of business compliances, such as:
Continuous monitoring and environmental surveillance ²⁸⁴
Employer to arrange health surveillance of workers ²⁸⁵
Medical examination at the initial time of employment ²⁸⁶
Annual environmental audit report in Form V to Pollution Control Board ²⁸⁷
Furnishing information to authorities ²⁸⁸
Mock drill of on-site emergency plan ²⁸⁹
Recycler to mark ``Recycled`` on the lead recovered by reprocessing (Batteries Rules) ²⁹⁰
Submitting information about reduction in the maximum retail price of scheduled formulations ²⁹¹
Furnishing monthly return to controller ²⁹²
Furnishing information relating quantity of petroleum products sold party wise during month to Central Government ²⁹³

TABLE 45: CLAUSES CONTAINING IMPRISONMENT OF BETWEEN FIVE AND 10 YEARS

Offences under the Indian Penal Code, 1860...
Assaulting President, Governor, etc. with intent to compel or restraint the exercise of any lawful power ²⁹⁴
Conspiring to commit certain offences against the State ²⁹⁵
Collecting arms, etc. with the intention of waging war against the Government of India ²⁹⁶
Public servant voluntarily allowing prisoner of State or war in his custody to escape ²⁹⁷
Abetting mutiny, or attempting to seduce an officer, soldier or airman from his allegiance or duty ²⁹⁸
Voluntarily causing grievous hurt ²⁹⁹
Assault or use of criminal force to women with intent to disrobe ³⁰⁰
Kidnapping or abducting a child with intent to take property from the person of such child ³⁰¹
Extortion by putting a person in fear of death ³⁰²
Abetment of an offence punishable with death or imprisonment for life ³⁰³
...and contravention of business compliances, such as:
Display of stock and price of liquefied petroleum gas at conspicuous place of business premises. ³⁰⁴
Displaying working hours prominently at place of business including place of storage on conspicuous place ³⁰⁵
Annual review of planning, development and maintenance of document of authorised personnel having access to “Protected System” ³⁰⁶
Annual review of Vulnerability/Threat/Risk Analysis for the cyber security architecture of “Protected System” ³⁰⁷
Forwarding list of interception or monitoring or decryption authorisations received during preceding fortnight to nodal officers ³⁰⁸
Maintaining secrecy and confidentiality of information while intercepting/monitoring/decrypting information in the course of duty relating to services provided by intermediary ³⁰⁹
Control equipment installed in premises to be kept in good running condition ³¹⁰
Application for obtaining consent of Board for use any new or altered chimney for emission in Form 1 ³¹¹
Installing and operating control equipment of approved specifications in premises ³¹²
Prohibition of manufacture for sale or for distribution, or selling, or stock or exhibition or offer for sale, or distribution of certain drugs and cosmetics ³¹³

TABLE 46: CLAUSES CONTAINING IMPRISONMENT OF MORE THAN 10 YEARS

Offences under the Indian Penal Code, 1860...
Murder ³¹⁴
Culpable Homicide not amounting to murder ³¹⁵
Dowry Death ³¹⁶
Abetment of suicide of child or insane person ³¹⁷
Trafficking of more than one person ³¹⁸
Trafficking of a minor ³¹⁹
Habitually dealing in slaves ³²⁰
Rape ³²¹
Murder in dacoity ³²²
Habitually dealing in stolen property ³²³
...and contravention of business compliances, such as:
Responsibility of Food business operator-In case of unsafe manufacture, store, sell or distribution of articles ³²⁴
Food recall procedure ³²⁵
Labelling requirements related to specific food items ³²⁶
Health warning on certain fortified foods ³²⁷
Submitting evidence of steps taken on quality assurance to Food Authority by manufacturer and packer of fortified food ³²⁸
Medical Practitioner possessing manufactured drugs without license to maintain register in Form No. 21 ³²⁹
Medical Practitioner of indigenous system of medicines to prescribe manufactured drugs included in indigenous system of medicines ³³⁰
Licensed druggist to obtain pass for export and transport of manufactured drugs in Form No.19 from Deputy Excise and Taxation Commissioner ³³¹
Sale of prescription drugs in retail ³³²
Printing content of active ingredients of oral liquid preparation drug whose dose is below 5 millilitres ³³³

ILLUSTRATION 1: HEAT MAP OF IMPRISONMENT CLAUSES BY CATEGORIES



ILLUSTRATION 2: HEAT MAP OF IMPRISONMENT CLAUSES BY STATES

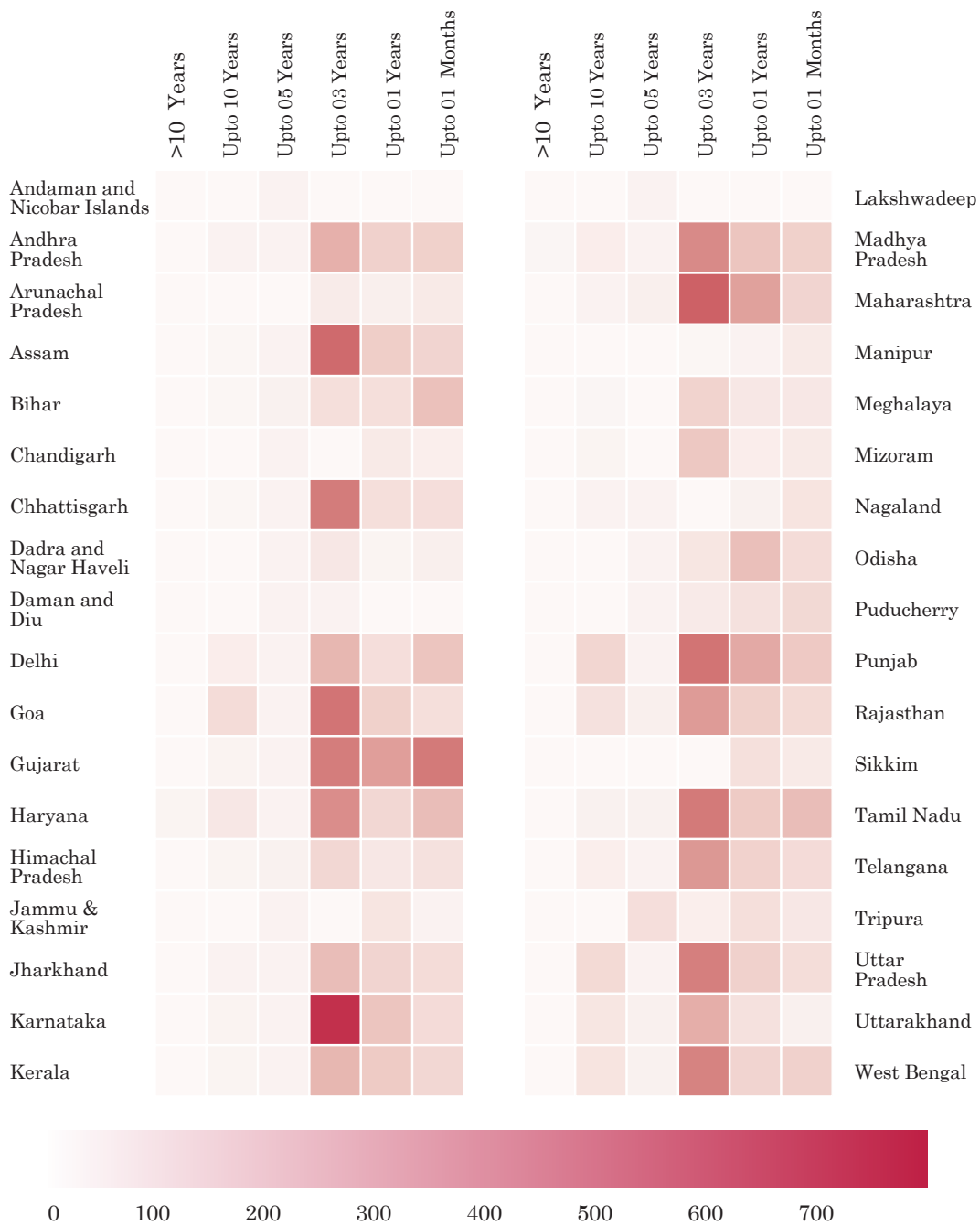


ILLUSTRATION 3: HEAT MAP OF IMPRISONMENT CLAUSES, BY ACT AND RULES GROUP



Endnotes

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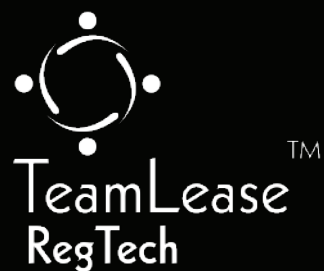
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