

By doing away with excessive compliances, the government's new labour codes are game-changers

Up the Ease of Doing Work



Bhupender Yadav

Narendra Modi's 2021 Independence Day speech made lowering 'regulatory cholesterol' a policy priority. 'We want such an India where the government doesn't interfere with the lives of citizens. Every rule, every process that has stood before the people of the country as a hindrance, as a burden, we have to remove it,' the prime minister had said.

The new labour laws are accordingly designed to ensure that interests of both businesses and people who work for businesses are protected. The new laws are in tune with the changing labour market trends. At the same time, they accommodate the minimum wage requirement and welfare needs of unorganised sector workers, including the self-employed and migrant workers.

Labour reforms have been completed by subsuming multiple laws into four labour codes that have addressed existing central labour laws, encompassing a plethora of authorities, burdensome compliances, registrations, inspections, licences, registers and forms. The reforms will strengthen workers' social security in both organised and unorganised sectors.

Game-changing aspects of the labour codes include freeing India's entrepreneurs from the burden of unnecessary and excessive compliances and provisions under old labour laws like imprisonment for 3 months-1 year for not maintaining records of colour

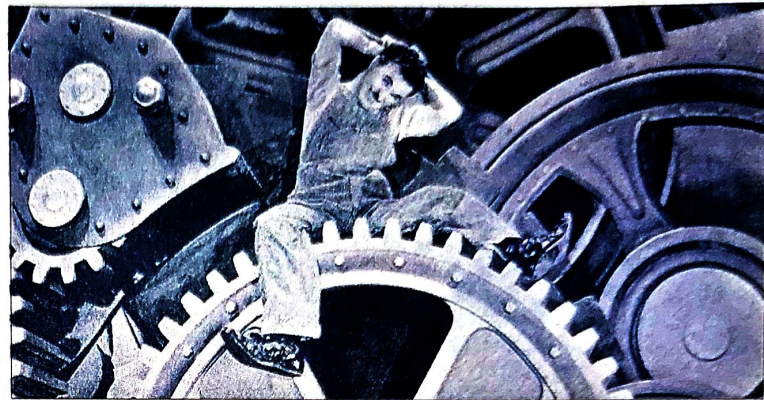
washing, varnishing and painting of canteens under the Factories Act and related rules; imprisonment for 1-3 years for not furnishing annual return of holidays to the inspector under the same Act and rules; and imprisonment for 3 months-1 year for not displaying a notice showing date of payment of wages under the Payment of Wages Act, 1936.

Considering the old laws to be a hindrance in India's growth story, Parliament passed the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health and Working Conditions Code, 2020. In doing so, GoI addressed the issue of excessive criminal provisions in labour laws. The root cause of such excessive 'regulatory cholesterol' of criminalising minor offences stems from a particular section in almost all Acts, referred to as 'General Penalty for Offences'.

Reordering the Shopfloor

For instance, the Factories Act provides in Section 92, under the General Penalty for Offences: '...if in, or in respect of, any factory there is any contravention of any of the provision of this Act or any rules made thereunder, or of any order in writing giving thereunder, the occupier and the manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend up to 2 years or with fine which may extend to 1 lakh rupees or with both....' Similar 'General Penalty' clauses exist in most Acts, including the Environment Protection Act and Inter-State Migrant Workmen Act.

Such General Penalty clauses have been removed under the new labour codes. At the same time, to ensure that an employer has a well-oiled internal organisational and operational mechanism to check non-compliance, mone-



It's working!

etary fines have been increased multifold. Imprisonment is too severe a consequence for economic offences that do not involve mala fide intent. These reforms will significantly contribute to India's ease of doing business.

There were, however, concerns that the labour codes would not adequately provide for the prosecution of employers, and may be lenient towards employers committing offences. But appropriate safeguards have been incorporated to ensure this does not happen. Prosecution for certain offences, such as insurance and provident fund (PF) contributions that have been deducted by the employer but not paid, are construed as intentional and wilful default and have been strictly dealt with under the law.

The codes do not allow employers' grave and intentional contraventions to go unpunished. The grounds for prosecutions have, however, been restructured to ensure that an unintentionally errant employer, or a one-time offence, does not lead to undue harsh consequences.

A statutory provision has also been introduced which states that an inspector may give an 'Improvement Notice' to an establishment or a delinquent employer to amend mistakes and make good the losses suffered or improve the situation, or default that the inspector or assessing officer has noticed. Such an approach not only promotes principles of natural justice, but al-

so strengthens the relationship between employer and employee. It also unburdens courts from the pressure of handling minor issues.

No Need to Take Offence

For the first time, compounding of offences — except those grievous in nature — has also been introduced. If punishable with imprisonment of up to 1 year, crimes committed for the first time can be compounded by an authorised officer. Compounding of repeat offences is also possible after a 3-5-year gap, with the procedures made simple. Money collected from the composition of violations shall be credited to the social security fund maintained by state and central governments. Such funds can be utilised for the welfare of unorganised workers.

Labour being on the concurrent list, decriminalisation of offences in central labour laws will automatically apply to areas falling within the jurisdiction of both state and central governments. The four labour codes have reduced the number of sections from 1,228 to 480. There will be only 22 sections in the codes that will contain imprisonment as penalty for a first-time offence. This allows GoI to focus on universalising various benefits such as minimum wages and social security for all the country's workers.

The writer is minister of labour and employment, GoI

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