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Reform Agenda of India's Philanthropists Needs Public Scrutiny and Debate

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Indian philanthropists are publicly advocating deregulation and decriminalisation of certain laws, which could aid special interests, and weaken protections for consumers and workers. The expanding policy influence of the philanthropists requires closer scrutiny and debate to safeguard rights.

Over the last five years, as key agricultural and labour reforms have stalled, a new reform agenda is in the spotlight, aimed at "curing" Indian governance of its "regulatory cholesterol" with a prescription for decriminalisation and deregulation.

The campaign towards decriminalisation aims to dilute penalties for economic offences by replacing penal provisions allowing for imprisonment with monetary penalties. The deregulation agenda is broader. It advocates that the state withdraw from regulating certain sectors. The result of easing "regulatory cholesterol", according to its chief proponents, will be the unleashing of economic energy and entrepreneurship in India, which will boost economic growth and prosperity. The main champions of this agenda are India's leading philanthropists, some of whom also wear other hats, as investors and captains of industry.

The Decriminalisation Agenda

The decriminalisation agenda is well articulated in this op-ed in the *Indian Express* (19 March 2025) by Rohini Nilekani, founder of an influential philanthropic foundation, and Manish Sabharwal, also a philanthropist and the founder of Teamlease Services. In their piece, Nilekani and Sabharwal argue that the criminal punishments prescribed in Indian laws are far too harsh and disproportionate. This, they argue, opens the door for abuse and bribery by the bureaucracy charged with enforcing these laws.

Rather than demand the decriminalisation of particular offences, they refer to a Vidhi Centre for Legal Policy database. It documents offences under union laws and proposes principles to steer the decriminalisation process initiated by the Jan Vishwas Act, 2023. Nilekani and Sabharwal sign off by urging the government to go ahead with "Jan Vishwas 2.0 and Jan Vishwas 3.0" to achieve the goal of Viksit Bharat by 2047.

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At this point, it should be noted that Jan Vishwas 1.0 was an unmitigated disaster. The stated goal in 2020 when the union cabinet secretariat kicked off this exercise, which culminated in Jan Vishwas 1.0, was to improve the ease of doing business. Ministries were instructed to identify economic offences that could be repealed, but they were not given a policy framework to guide their decisions.

Looking into four offences decriminalised by the Jan Vishwas Act, 2023 illustrates that the entire process had been captured by special interest groups. First is the offence of manufacturing substandard drugs, which can often have lethal consequences. This offence was punishable with a mandatory prison time of one year, but was made compoundable by the Jan Vishwas Act. This allows executives of pharmaceutical companies to escape imprisonment by paying a minor fine of Rs. 20,000.

A second set of offences decriminalised by this law involves postal officers unlawfully opening, detaining, or delaying the delivery of postal items. A third set of offences decriminalised by the Jan Vishwas Act concerns the encroachment or destruction of reserved forests. The punishment of imprisonment under the Forests Act, 1927 has been replaced with a monetary penalty.

A fourth set of offences decriminalised were under the Agricultural Produce (Grading & Marking) Act, 1937, which is essentially a consumer protection law aimed at protecting agricultural produce from adulteration by traders. The existing punishment, allowing for criminal imprisonment, was replaced by monetary penalties.

As should be obvious from these examples, the Jan Vishwas Act had nothing to do with improving the ease of living of ordinary citizens. Rather, it has everything to do with protecting the interests of businesses at the cost of consumer rights and the environment.

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The entire exercise was possible because, as I have written earlier in these pages, the legislative process leading up to the enactment of the Jan Vishwas Act was broken, opaque, and clearly captured by special interest groups. The note prepared by the bureaucracy to brief the cabinet was lacking in candour on the consequences of decriminalising some of these offences. The joint parliamentary committee (JPC) that scrutinised the bill invited and consulted only the bureaucracy of the union government. It did not invite a single expert from outside government.

A more deliberative approach may have led to a more informed conversation on the reform process, starting with the rationale for decriminalisation. The oft-quoted rationale for decriminalisation, including by Nilekani and Sabharwal, is that the threat of imprisonment can be abused by bureaucrats to extract bribes. If we were to take this argument to its logical end, India would have to repeal all its criminal laws because almost every law is abused by the bureaucracy in this country. The probability of a law being abused is not a valid reason for repealing penal provisions in it.

Better data may have helped inform the conversation except that India lacks conviction and sentencing data for economic offences. The National Crime Record Bureau (NCRB) only collects data from police stations. It does not collect data from drug inspectors, labour inspectors, and other enforcers of economic laws.

However, it should be noted that there is plenty of anecdotal data to show that criminal courts in India tend to treat economic offenders very leniently. For example, in cases involving the manufacture of substandard drugs, it is not uncommon for judicial magistrates to prescribe a lenient punishment of “simple imprisonment till the rising of the court”. This means that a convicted pharmaceutical executive must remain in court till proceedings for the day conclude. This approach is followed despite the law prescribing a minimum punishment of imprisonment for a year.

Given the lack of data, the only alternative is to approach the issue of decriminalisation from the perspective of first principles. There are at least two good reasons to continue with the punishment of imprisonment for many economic offences. If penalties are only monetary, companies may start treating violations as a cost of doing business—calculating that breaking the law could be cheaper than complying.

Take, for example, a law regulating the quality of agricultural products. If the law only prescribes a monetary fine instead of imprisonment for deviation from quality standards, a bad actor will decide that the potential profits of adulterating a product far outweigh the risk of a monetary fine. A threat of imprisonment changes the risk for the potential offender, thereby creating a stronger deterrent.

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A second more cynical reason to justify retaining the punishment of imprisonment is that the Indian state is already too weak in its ability to deal with economic offences. To deny the state the ability to threaten industry with the possibility of criminal imprisonment is tantamount to repealing the law concerned. Take labour laws like the Factories Act, which India Inc. constantly complains about in the business press. It is unlikely that labour inspectors will be able to enforce this law without the threat of criminal imprisonment. In effect, decriminalisation becomes a backdoor way to weaken labour laws.

Despite the first iteration of the Jan Vishwas law harming the rights of ordinary citizens, patients, consumers, and the environment, the government is reportedly preparing further versions—Jan Vishwas 2.0 and 3.0—which will decriminalise more economic offences. States like Uttar Pradesh (UP) are introducing their own legislation. From reports in the press, the law primarily targets “the Uttar Pradesh Revenue Code, the laws for urban local bodies that include the municipal corporations, the Fire Services Act, the Tree Protection Act, labour laws and the laws for industry”. That labour, fire safety laws, and environment laws are the prime targets is not surprising given the direction of Jan Vishwas 1.0 enacted by Parliament.

That some of India’s most influential philanthropists are urging the government to continue with the process without acknowledging the failure of Jan Vishwas 1.0 is disappointing. At the very least, if these philanthropists seek to influence public debate, they must clearly articulate the laws they would like to see decriminalised and caution against the decriminalisation of laws meant to protect workers, consumers, and the environment,

It would also help if they could speak up for decriminalising laws directly affecting civil society and ordinary Indians. For example, there are special laws like the Foreign Exchange Management Act (FEMA) and Foreign Contribution Regulation Act (FCRA) that are used by the government to harass both the start-up and non-profit sectors for vaguely defined offences which seem to harm nobody. There are also blatantly unfair preventive detention laws that deprive citizens of their liberty without the courtesy of a public trial.

Similarly, the criminalisation of cheque bouncing has re-opened the door to debtor's prison in India. Most of the civilised world got rid of the offence of imprisoning debtors back in the 19th century. India is one of the few countries that continue to threaten its citizens with imprisonment for failure to discharge their debts. These are the laws that deserve to be the target of a sustained decriminalisation campaign to improve the ease of living.

The Deregulation Agenda

The second limb of the reform agenda, which is deregulation, is being pushed by philanthropists such as Ashish Dhawan and Sanjeev Bikhchandani, who are behind Ashoka University. Dhawan, who made his fortune as one of the founders of Chrys Capital, a private equity fund, is also the founder of the Convergence Foundation, through which he has funded a network of think tanks working on various policy issues to do with economic and education reforms.

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Outlining his vision for deregulation, Dhawan, writing with Bikhchandani in the *Hindu*, argues, "To curb regulatory cholesterol, the regime of inspections, checks and no-objection certificates should be replaced by self-certification-based approvals and renewals, at least in low risk activities." They then identify "low risk activities" as the approval of building plans, labour, fire safety, and lift installations. But fire safety and lift installation are by no means low-risk activities in a country like India.

A news report from 2024 revealed that there were 800 factory fires recorded in Delhi alone in two years. Just one fire in a factory in North Delhi in 2019 killed 43 workers. A detailed report by the People's Union for Democratic Rights (PUDR) released earlier this year documented in detail the recurring problem of factory fires in Delhi and the uphill climb employees have to receive compensation under our labour laws.

Similarly, the installation and maintenance of lifts is a high-risk activity in India. According to a news report, in three years, 34 people died in Mumbai and its surrounding areas in accidents related to lifts. The situation is no better in cities such as Hyderabad, where there have been calls for better regulating, not deregulating, the installation and maintenance of lifts.

The larger problem is that the theme of deregulation being pushed by many in the world of Indian philanthropy echoes libertarian talking points from the United States. The libertarian case for deregulation is that government rules requiring licences and inspections in advance are costly and inefficient. Instead, they say, any harm caused by private enterprise is better handled through lawsuits in the courts after the harm occurs. The possibility of damages ordered by a court after litigation, we are told, will deter risky conduct by private enterprise.

This could work in a world where there is perfect sharing of information and all citizens have equal access to the courts and lawyers. In practice, that rarely ever happens. The less privileged, who the law is supposed to protect, often lack the information and resources to protect their rights in courts.

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The more obvious and glaring problem with the libertarian philosophy is that our judicial system, especially its ability to handle tort litigation, is broken. Those wronged by corporations can litigate away their savings and live before they get to see any compensation from the courts for the harm that they have suffered. Take the Uphaar fire tragedy, where the litigation on monetary compensation for the families of the deceased concluded a long 15 years after the tragedy.

To push for deregulation in this context will be detrimental to the interests of workers, consumers, and the environment. Yet, the campaign for deregulation has captured government attention. The government is going to set up a deregulation commission even

though critics have warned that the body as envisaged by it "is neither accountable to Parliament nor required to engage with civil society, labour unions, consumer rights bodies, or ecological experts".

Private Philanthropy Post-2014

After the Narendra Modi government came to power, it cracked down on foreign philanthropy by tightening the operation of laws like the Foreign Contribution Regulation Act, 2010. It was at this time that many in the world of Indian philanthropy stepped in to fund resource-strapped ventures in Indian civil society.

There have been both highs and lows in the last decade for Indian philanthropy. Take, for example, the Independent and Public Spirited Media Foundation, which has been the driving force behind many of the new, digital journalism ventures that have infused fresh energy into Indian journalism. Or the New India Foundation, which has funded a number of excellent books about the history of post-independent India. In a country where there is almost no public funding for journalism or scholarship, private philanthropy can play an important role.

Other philanthropic ventures like Ashoka University have been roiled in controversies over academic independence, including the resignation of Pratap Bhanu Mehta as the vice chancellor. The common theme in the controversies at Ashoka University appears to be the ham-handed behaviour of the philanthropists backing the university. Bikhchandani's open letter after the arrest of a Muslim professor at Ashoka University for an innocuous post on social media was a crass reminder that philanthropy in India can come with its own baggage.

The ongoing campaign to decriminalise economic offences and deregulate marks a turning point for Indian philanthropists. They are moving from funding social ventures to publicly advocating their own ideas for reform. It is not my case that they should not be advocating reforms. After all, I have worked with another philanthropist who has been campaigning for the reform of India's drug regulatory laws, sometimes at the cost of attracting the ire of the government.

> Even if one were to buy into the libertarian theory of deregulation, it cannot be applied to India until the country has a functioning judicial system that can be used to hold businesses accountable.

The problem with the campaign for deregulation and decriminalisation being pushed for by Indian philanthropists is two-fold. First, the decriminalisation agenda advocated by the more influential philanthropists is far too vague and lacking in detail. Policy advocacy is a serious business and the details matter. Paeans by Indian philanthropists on decriminalisation are of no use if they unwittingly end up providing a smokescreen for special interest groups to water down laws meant to protect the rights of consumers, workers and the environment. Jan Vishwas 1.0 and the pending law in UP are both reminders of how easy it is for the process to be captured by special interest groups.

Second, the deregulation agenda being pushed is fundamentally flawed because it is premised on the flawed notion that businesses will regulate themselves. Even if one were to buy into the libertarian theory of deregulation, it cannot be applied to India until the country has a functioning judicial system that can be used to hold businesses accountable. To push for libertarian reforms in a country without a functioning judicial system is to open the door to undermining the rights of consumers, workers, and the environment.

We are at a turning point in the battle for economic ideas in India. The generals leading the charge on the field are not elected politicians or academics in public universities but philanthropists willing to deploy their personal wealth to shape public discourse. Their ideas and their power to shape policy in India need more scrutiny and debate.

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