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**DECRIMINALIZATION OF CORPORATE CRIMES IN INDIA: A
CRITICAL EXAMINATION UNDER COMPANIES AMENDMENT
BILL, 2020**

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ABSTRACT

Since the Companies Act of 2013, India's government has taken a proactive approach, proposing and implementing a variety of steps to make it easier for companies to conduct business in the country. Criminal penalties can be applied in cases of minor, technical, or procedural non-compliances under the Act, which is a relic of its previous law. According to the Companies (Amendment) Act, 2019, which was enacted by the Indian government to simplify the punishments provided under the Act, sixteen infractions were classified as civil defaults. Soon after the Companies (Amendment) Act, 2019, was enacted, the government attempted to implement more reforms in this area as part of the Companies (Amendment) Bill, 2020, which suggested further decriminalization of the Act's fifty-four compoundable crimes.

INTRODUCTION

The government's usual action appears to be amending the Companies Act of 2013. The Companies Amendment Act of 2015, 2017, 2019, and now, as planned, 2020 have all modified the Act. Every time, the aim of the modification varies, ranging from convenience of conducting business to corporate life.²

On September 18, 2019, the government established a Company Law Committee intending to make it easier for law-abiding businesses to operate. The government and the Committee's main objective were to decriminalize some additional elements of the Act depending on their

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². A critical analysis of the Companies (Amendment) Bill, 2020, iPleaders (July 1, 2021, 5:19PM), <https://blog.ipleaders.in/critical-analysis-companies-amendment-bill-2020/>

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seriousness, as well as take other essential steps to make life easier for the country's companies. The Committee's report was presented in November 2019.³The Company Law Committee was created in the context of the government's efforts to make business life in India more comfortable and to make certain key modifications to the decriminalization of some offenses, in line with the Companies (Amendment) Act 2019.

The Companies (Amendment) Bill, 2020⁴ was presented in the Lok Sabha on March 17, 2020, proposing changes to the Companies Act, 2013. The Companies (Amendment) Act, 2020 gained presidential assent on September 28, 2020, and went into effect on September 28, 2020.

Previously, the Companies (Amendment) Act, 2019 was introduced to reflect the committee's recommendations. The Companies (Amendment) Act, 2020 reflects the central government's ongoing attempts to make punitive measures for the corporate sector more lenient. It also seeks to relieve the National Company Law Tribunal (NCLT), the criminal justice system, and small businesses of the burden of protracted litigation.

KEY AMENDMENTS UNDER THE BILL OF 2020

The 72 proposed modifications will reclassify 23 of the 66 compoundable offenses that have been judged objectively or otherwise to be free of any element of fraud and are not in the public interest. In-house adjudication will be used to deal with 23 crimes. Nonetheless, seven crimes are left out.

- *Decriminalization*⁵ -A slew of new charges has been suggested to modify the Act, ranging from being tried criminally for imprisonment to a monetary punishment or no penalty. The imprisonment of businesspeople will have an impact on public perception, commerce, and the economy. Criminal prosecution of an Indian company will aim to reduce consumer trustworthiness, resulting in increased imports of items from other nations, which will have an impact on the economy's growth.

³. https://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf

⁴. https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

⁵. *Analysis of Companies (Amendment) Bill 2020: Reasons for Decriminalization & Intent Behind Proposed Relaxations*, Tax Guru (July 05, 2021, 02:01PM), <https://taxguru.in/company-law/analysis-companies-amendment-bill-2020-reasons-decriminalization-intent-proposed-relaxations.html>

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The suspected transgressions will be investigated in an in-house adjudication framework rather than in a judicial setting. The major goal is to decrease crime as a result of 35 procedural errors.

The three phases of the proposed amendment are as follows -

Firstly, the penalty that applies to stockholders who violate the Act should be removed. For example, when no particular punishment is specified, the Bill imposes a penalty of up to ₹10,000 for continued default, with a daily penalty of up to ₹1,000.

Second, 11 crimes are no longer punishable by jail. Section 8 of the Act, for example, deals with the formation of charity corporations that have all of the rights and duties of a limited company. If the firm fails to comply with the section's obligations, the directors and any defaulting officers will be sentenced to jail for not more than three years. The Bill, on the other hand, proposes to replace jail with a monetary punishment.

Finally, the monetary punishment for various infractions has been suggested to be reduced for six offenses. Section 86, for example, deals with penalties for violating Chapter VI Registration of Charges; under sub-section (11), the company is subject to a fine of up to ₹1,00,000/-, and the official is liable to jail or a fine. However, the bill merely aims to punish with a fine of ₹5 lakh and ₹50,000 on the corporation and its officials, respectively.

The second phase of decriminalization is a follow-up action by the Central Government to Bill 2019, which previously changed 16 compoundable non-compliances from criminal to civil wrongs with just a monetary punishment. Small businesses, one-person businesses, and producer businesses will face fewer fines under the bill.

- *Unlisted companies must provide Interim financial statements* -Previously, unlisted firms were not obliged to provide a financial statement during the fiscal year; however, listed companies must submit a quarterly financial statement, and Debt listed companies must submit a half-yearly financial statement.

The bill mandates that an unlisted business produce a periodic interim financial statement to assess its creditworthiness, provide transparency into its operations, and strengthen corporate governance at a frequency to be determined later. In addition to financial statements, failure to submit MGT14 after approving resolutions in Shareholders/Boards/Creditors meetings is subject to a reduced penalty of ₹10,000 +

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₹100 per day. Banking firms, non-banking financial companies, and home finance companies are excluded from this.⁶

- *Remuneration to Independent Directors and Non-Executive Directors* -Schedule V mandates that IDs and NEDs be given a minimum salary regardless of profit. They must be compensated well for their work, on par with the Executive Director, even if profits are insufficient.

- *Respite to debt-listed companies* -Securities are separated into equity and obligations under Section 2 (52). They become a listed business when the debentures are issued for the listing. Various compliances in the filing procedure are quite tough to meet.

However, the Bill seeks to include a proviso that allows the central government to exclude a specific class of firms based on their stock market listing and consultation with the Securities and Exchange Board; these companies would not be required to comply with the regulations.⁷

- *Direct Listing Overseas* -SEBI was the first to propose a direct foreign listing of shares. Previously, firms that did not have equity shares listed in India were unable to list their shares in other countries. This law had an impact on a variety of businesses, particularly startups that were unable to acquire money, hurting their trade, company, and expansion. The Bill, which seeks to allow Indian public firms to directly list securities in foreign acceptable jurisdictions without having equity shares listed in India, will provide relief to entrepreneurs looking to connect into the international market.

- *Producer companies* -This is a reintroduction of Part IXA of the Act of 1956, which was renamed Chapter XXIA in 2002. Firms that participate in the production, marketing, and sale of agricultural commodities or cottage industries are known as producer companies. The Bill proposes to eliminate these provisions and replace them with a new chapter in the Act.

A producer company, according to the CLC Report, is a group of farmers and agriculturists who collaborate to improve living conditions and obtain easier access to financing, technology, markets, and other resources.

⁶. *The Companies (Amendment) Bill, 2020: Decriminalizing Offences Under The Companies Act, 2013*, Mondaq (July 05, 2021, 02:12PM), <https://www.mondaq.com/india/corporate-governance/944056/the-companies-amendment-bill-2020-decriminalizing-offences-under-the-companies-act-2013>

⁷. *Companies (Amendment) Act, 2020: A step in the right direction?*, SSC Online (July 05, 2021, 02:24PM), <https://www.ssconline.com/blog/post/2020/11/16/companies-amendment-act-2020-a-step-in-the-right-direction/>

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- *Corporate Social Responsibility (CSR)* - In 2013, the Minister of Corporate Affairs, Sachin Pilot stated that “CSR is a statutory provision and not a penal provision; therefore, it is not mandatory but reflects a sense of responsibility to comply. If not, the company has to explain the reason for non-compliance”.⁸

The CSR law requires an expenditure on 12 different schedules, although it has a broad reach. CSR expenditures by Indian corporations total more than ₹10,000 crores each year. Legislators, on the other hand, are concerned that CSR is not being taken seriously. The bill includes a penalty for non-compliance that is equal to double the value of the failed transfer up to ₹1 crore. Officers who fail to pay 1/10th of the unsuccessful transfer, up to a maximum of ₹2 lakhs, are responsible. While Sections 135 (5) and 135 (6) do not require jail for CSR offenses, the maximum penalty for corporations under Section 135 (7) has been suggested to be increased from ₹25 lakhs to ₹1 crore.

Every company is required to form a CSR Committee; however, the Bill aims to exclude enterprises with CSR obligations of less than ₹50,000 from doing so. To compensate for the higher CSR requirement, surplus spending in one year might be adjusted (carried forward) in the next year/years. CSR Amendment Rules, 2020 is a separate document that discusses all of the clauses in detail.⁹

- *Proposed Policy* - Companies having a net profit of ₹500 crores, sales of ₹1000 crore, or a net profit of ₹5 crores must spend 2% of their net profit on CSR in the previous three financial years.¹⁰

CRITICAL ANALYSIS

Based on the penalties imposed, the crimes under the Companies Act of 2013 can be divided into three categories. Offenses generating solely civil responsibility, compoundable offenses, and non-compoundable offenses are the three kinds. Civil responsibility, according to Black's Law Dictionary, is a duty deriving from private rights. It is a legal need to pay a third party for any harm caused by the company's representatives while on the job.¹¹

⁸. *Analysis of Companies (Amendment) Bill, 2020*, Lex Repository (July 05, 2021, 02:21PM), <http://www.thellexrepository.com/analysis-of-companies-amendment-bill-2020/>

⁹. Supra 5

¹⁰. Supra 5

¹¹. <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf>

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Compounding an infraction is a method of resolving non-compliance by giving the offender the choice of paying a fine rather than facing prosecution, therefore avoiding lengthy litigation. Any crime punished by a fine or punishment exclusively under a specified section is compoundable under the 2013 Act. Furthermore, under any specified law, any offense punished solely by imprisonment or by imprisonment plus a fine or punishment is not compoundable.

By eliminating or lowering penal penalties and omitting imprisonment for numerous procedural and technical crimes, the Companies (Amendment) Act, 2020 has decriminalized 48 sections. The endeavour to decriminalize business rules began shortly after the economy was liberalized. Today, however, such an amendment is more important than ever. The continuing epidemic has put a strain on businesses. The Companies (Amendment) Act, 2020 is intended to provide some relief to businesses in this situation.

The standard of proof in criminal proceedings is beyond a reasonable doubt, which is greater than the balance of probability level used in civil matters. As a result, the effectiveness of criminal law in dealing with corporate wrongdoing has been repeatedly questioned. Furthermore, India's criminal justice system is overburdened, with cases taking years to resolve. The Ministry of Corporate Affairs has sought to de-clog the criminal justice system by this modification, based on the aforementioned arguments. The law, on the other hand, must find a balance between criminal and civil penalties. Excessive decriminalization of the rules might lead to firms seeing civil fines as a cost of doing business, making them ineffective as a deterrent. Furthermore, if the penalties of disregarding a warning do not influence his lifestyle, a businessman will not respond. A business executive's fear of genuine economic deprivation, loss of privileges, and stigmatization, on the other hand, might make them more receptive.¹²

The central government has said that severe violations, such as fraud and those that cause harm to the public interest or deception, would not be tolerated. It has also been confirmed that the Act's number of "non-compoundable" crimes would stay unchanged at 35. However, the government's ongoing efforts to decriminalize the clauses may render the Act ineffective. It should be mentioned that the administration decriminalized 16 sections of the Companies

¹². Stephen A. Yoder, *Criminal Sanctions for Corporate Illegality*, 69 J. Crim. L. & Criminology 40 (1978)
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Act in the most recent revision. Both of these changes were inspired by the same goals. Furthermore, the Companies (Modification) Act, 2020 was suggested less than a year after the last amendment was notified, which is rare. The time between the two amendments is insufficient to analyse the effects of legal changes on business organizations.

CONCLUSION

The bill aims to establish certainly expected relaxations that might assist boost business and trade emphasis while also saving expenses connected with compliance requirements. The Bill appears to lower the effective burden on start-ups and SMEs by focusing on relatively minor non-compliance by new firms due to a lack of expertise and resources.

While companies in India are likely to applaud the decriminalization of some offenses, other groups on the other end of the spectrum may believe that the Bill went too far since some of the non-compliance that was intended to be decriminalized may have harmed the public interest. Adding more NCLT benches and raising the judge cap to the full strength of the bench will assist to reduce the backlog and make it simpler for plaintiffs to access the appeals body. It is important to note that the Bill aims to transfer significant powers to the Central Government, which will be exercised as appropriate after consultation with the authorities, including the ability to grant exemptions and preferential treatment to groups or corporations deemed appropriate under the Act. It would be fascinating to see how the Indian Parliament adopts the Bill in its ultimate form, as well as whether any additional revisions to the Act are suggested in light of the present pandemic.

The final revised Act will be fascinating to examine in terms of future growth and corporate governance. In the aftermath of this epidemic, this step toward reduced penalties, removal of jail, and direct listing in the international market can only help and assist established businesses and start-ups. Nonetheless, at a time when India is looking for new ways to grow its economy, this Bill offers hope and strength.

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