

# Company Act overhaul: Experts call for careful, balanced approach

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A company director facing imprisonment for his income declaration falling short by a couple of thousand rupees might sound bizarre but until recently this had high probability. Company law recently went through an overhaul, decriminalising more than 48 offences in one go, removing the prison sentence, and doing away with or reducing the fines.

Decriminalising these provisions has been done with good reason. These have choked the justice system and made it difficult to do business and attract investment. However, there is also a concern if the pendulum has moved too far and as India revisits criminal punishment under various economic laws, experts are calling for a careful approach in making sure that legislation does not become toothless or go overboard in punishing minor lapses.

## De-clogging the courts

There are more than 4 million cases pending as of now in high courts and over 33 million in district and taluka courts. Decriminalisation is expected to bring down this burden significantly. "Today the irony is that where punishment should be meted out, we don't have a system that delivers it speedily, and where people have been dragged into a criminal process and need to be discharged," said Ajay Bahl, chairman of the Confederation of Indian Industry's Judicial Reforms Committee and managing partner of AZB & Partners.

While there has been a lot of stress on building capacity, adding more benches and getting more judges, that has not yielded much result. Many experts say special courts have not reduced the number of cases since the judges often do not have a grounding in economic laws. "Getting more judges will not solve the problem. Finding so many judges and training them is difficult," Bahl said. The best course of action, he suggests, is to reduce the pipeline of cases itself.

Most of the offences that have been decriminalised are procedural and technical in nature. For instance, imprisonment for various lapses in financial statements of the company has been done away with. Failure to file a copy of a financial statement with the registrar no longer attracts a six-month jail term. The corporate affairs ministry has also decriminalised sections where the complainant can enter into a compromise, and agree to have the charges dropped against the accused.

<b>PENDENCY STATUS</b>			
Cases pending in high courts			
Civil cases	<b>29,49,969*</b>	Civil cases more than 1-year old	<b>24,87,100*</b> (84.31%)
Criminal cases	<b>1,88,828*</b>	Criminal cases more than 1-year old	<b>9,49,850*</b> (79.9%)
Total cases	<b>41,38,797*</b>	Total cases more than 1-year old	<b>35,36,950*</b> (83.04%)

Details of pendency before tribunals is not readily available; this will significantly add to the numbers  
\* Case figures do not include high courts of Bombay, Delhi and Madhya Pradesh as these are not shifted to the Case Information System NC 1.0 developed by eCommittee and the Supreme Court of India  
Source: National Judicial Data Grid

However, crimes that involve an element of fraud, collusion, or gross negligence have not been touched in the Company Law amendments.

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## **Making Corporate India Comply**

The decriminalisation exercise is not just limited to the Companies Act. The government is revisiting all economic laws to find the statutes where criminality can be done away with. The Department for Promotion of Industry and Internal Trade, for example, is scrutinising 11 Acts administered by it to ensure more civil charges are brought in to replace criminal charges. While the decriminalisation exercise is to improve India's position in terms of ease of doing business and investor sentiment, there are also concerns around a large-scale easing of such provisions.

### **Law as a deterrent**

A provision that has been decriminalised under the Companies Act is Section 143 (12), which says an auditor has to inform the Central government if he or she has reasons to believe that an offence involving fraud is being or has been committed against the company by its employees. The maximum penalty for the failure to do so was Rs.25 lakh earlier; it has been kept at Rs.5 lakh for listed companies and Rs.1 lakh for any other company. For lapses where there is only a penalty, a repeat offence will attract double the amount in some cases. In most cases the penalty has also been reduced. It is provisions like these that have raised concern that decriminalisation should not reduce their ability to ensure corporate accountability and encourage habitual offenders.

Even so, there is a broad consensus that decriminalising archaic laws is the way forward. "Prosecution provisions are invoked under various laws on 'reasons to believe' and that may lead to violation of Article 21 of the Constitution. It is a settled law that procedure must be in conformity with justice, fairness, and reasonableness," said Abhishek A Rastogi, partner at Khaitan & Co.