

## CRITICAL ANALYSIS OF THE JAN VISHWAS BILL – TO TRUST OR NOT TO TRUST?

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### INTRODUCTION

Just a few days before the beginning of the New Year, the government introduced a new bill in the Parliament called the Jan Vishwas (Amendment of Provisions) Bill, 2022. The Bill has been introduced with the motive to amend the penal structure of certain acts. The purpose of the Bill is to do away with harsh punishments like imprisonment for offences that are not necessarily be regarded as a crime.

The term Jan Vishwas translates as “belief upon the individuals” which in simple language means that the government is willing to put trust in the citizens of the country believing that they shall refrain from taking undue benefit of the legislation. The Government hopes that the public shall not commit intentional wrongs to gain an advantage over the change in laws. The Bill was laid before the Parliament during its winter session, it is still at the stage of deliberation in both houses of Parliament. One of the major underlying motives behind the introduction of the Bill is to ensure the ease of doing business. The Bill seeks to eliminate the compliance burden by decriminalizing several acts in order to provide both businesses and entrepreneurs with an uncomplicated environment to conduct business.

### Understanding the Bill

The Jan Vishwas Bill is presented in the Parliament with an agenda to “decriminalize and rationalize minor offences”. In layman's language, it interprets that the bill eliminates the offences or misdeeds which are trivial in nature from the ambit of crime. Such petty offences shall liberate the offender from the shackles of rigorous punishment and might impose upon them a hefty amount of fine as a penalty for their mistakes.

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## CONCEPT OF DECRIMINALIZATION

Decriminalization means ceasing criminal sanction to an act or omission. It is a process whereby certain deeds which were considered to be a crime shall now be regarded as a civil wrong for which penalties of the fine may or may not be imposed. Such acts which are not harmful to society should be removed from criminal sanction to protect the public from exorbitant punishment for simple offences.

For instance, the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Act, 2016 penalizes the enrolling agency with imprisonment for up to one year in case he fails to comply with the request of furnishing information regarding the manner in which the sensitive biometric information shall be used<sup>1</sup>. But this Bill seeks to decriminalize this failure of compliance by imposing a penalty of fine which may extend up to one lakh rupees.

Likewise, the continuous offence of not using the standard weight or measure as specified by the Legal Metrology Act has been altered from imprisonment or fine or both to a large amount of fine only. This Bill of amendments seeks to decriminalize 183 offences across 42 legislations<sup>2</sup>. The ambition of the Government behind the decriminalization of several offences is to establish a platform wherein businesses can grow having lesser compliance and without the fear of imprisonment for minor offences.

## SCOPE OF MINOR OFFENCE

The endeavour of the government in decriminalizing minor offences is noteworthy. The overburdening cases in courts and the overcrowded condition of the prisons are not invisible anymore, therefore, striving to not opine certain actions or omissions as a crime shall be a benefit for all the organs of the State. However, a question still lingers – it is unclear as to what actions or omissions can be regarded as a minor offence and up to what extent.

The term “minor offence” has not been clearly defined under any statute of the country. As per the dictionary meaning, a minor offense is such where the element of social danger is negligible<sup>3</sup>. Thus, where the excessive punishment of imprisonment of up to six months for not

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<sup>1</sup> Section 41 of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

<sup>2</sup> Press Trust of India, Business Standard

<sup>3</sup> ‘Minor Offence’ - Definitions - US Legal

complying with the requirement of publishing the name and place of the publisher of the book under the [Press and Registration of Books Act, 1867](#)<sup>4</sup> has been substituted with a fine of not exceeding ten thousand rupees, it can be said that such a minor offense need not be criminalized.

However, repulsion of [Section 68 of the Copyright Act, 1957](#)<sup>5</sup> from the Bill which penalizes for making false statements with the intent to deceive any authority or officer in the execution of the provisions of the Act, should not be viewed as a minor offence without any criminal intention. Resultantly it leads us to believe if the Bill becomes an Act, that making fraudulent statements under any provision of the Copyright Act would neither be regarded as a simple mistake nor any amount of fine will be levied from any individual because of the omission of the concerned Section from the Act.

Similarly, till now wrongful use of the word “patent office” that leads the common people to believe that the place of business is officially connected with the Patent Office is a punishable offence with imprisonment for a term which may extend to six months, or with fine, or with both<sup>6</sup>. However, this may not be the case after the passing of the Bill. The above-mentioned provision of the Patent Act under [Section 121](#) might be omitted by the Bill making it legal to use the term “patent office” without any criminal intimidation.

The term minor offence, thus, includes in its horizon a simple mistake of trespassing a reserved forest as well as intentionally obstructing the inspector against inspection of the premises where drugs and medicines are compounded and dispensed with. The extent of the scope of minor offences has still remained ambiguous without any clarity.

## **THE RATIONALE BEHIND FAITH IN PUBLIC**

As the name suggests, having vishwas (faith) in public is the key theme of the Bill. It is more likely for a democracy to sustain where the government has faith in its nationals. To decriminalize an offence is not a freedom to do anything contrary to the law but to give the public an opportunity to present themselves in a way they like and that such presentation is not restricted as the law considers it as ‘inappropriate’.

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<sup>4</sup> Section 5 of the Press and Registration of Books Act, 1867

<sup>5</sup> Section 68 of the Copyrights Act, 1957

<sup>6</sup> Section 121 of the Patents Act, 1970

The aim of this Bill is to promote **bodily integrity and self-determination**<sup>7</sup>. However, there are offences like *polygamy* which do not cause harm to others but are still punishable acts under the laws of any country. This is because the concept of polygamy is considered a social evil and a practice that disrupts the gender ratio.

The ideology behind this concept has been to balance individual liberty and illegal actions. For example, homosexuality had for a long time been considered as a penal offence which was recently de-criminalized by the Supreme Court of India. Decriminalization helps to differentiate between social offences and lifestyle offences. Hence, decriminalization is not a short-term process but a complex and long-term process thereby requiring full faith in the public and their lifestyle choices. Similarly, Jan Vishwas Bill, if implemented, will bring a lot of advantages to the Judicial system.

## ADVANTAGES

*Individual Liberty:* The ideology of decriminalization as discussed earlier, is the promotion of individual liberty, the actions of whom does not affect societal standards in any way. Offences are planning to be decriminalized so that any individual, whether natural or artificial, gets to do what it thinks is fit for themselves.

A 2020 **DPIIT statement** held that the aim is to eliminate the constant fear of being prosecuted for trivial defaults while retaining strict penal statutes for offences which are prejudicial to the public interest<sup>8</sup>.

*Ease of Doing Business:* Another main focus behind such a Bill is the easiness of doing business in the country. The Companies (Amendment) Act, 2020, aimed to convert imprisonment of certain compoundable offences into civil wrongs with the objective of attracting foreign direct investments and ease of doing business in the country. The Bill has aimed to boost the economic cash inflow in the country by attracting foreign companies to the country allowing investments.

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<sup>7</sup> Uitermark, J, & Peter C (2005), *Decriminalization: A short description, and the social process behind it*, Encyclopedia of Law and Society. London, Sage Publications

<sup>8</sup> Ministry of Commerce and Industry, Government of India

According to a [source](#), India has jumped to the 63<sup>rd</sup> spot among 190 nations to the ease of doing business in 2020, while the position was 77<sup>th</sup> in the previous year <sup>9</sup>. This proves to us that a little leniency with the laws of the country can help in the ease of doing business.

*Ease of the Judiciary:* The new bill aimed at decriminalizing minor offences also reduces the already overburdened judiciary from involving itself in further trivial matters and thus saving time to look after more delicate matters. The Bill has a purpose not to provide criminal liabilities for offences that are not so important in nature and can be remedied by compensation or an injunction order.

*Less Crowding in Jails:* Another important advantage of the Bill, for which it was framed was to make the jails less crowded.

According to data from the [National Crime Record Bureau](#) in 2021, nearly 5.5 lakh people were imprisoned in India when the country had an overall capacity of 4.25 lakhs<sup>10</sup>. Removing imprisonments for minor offences will not just help in the freedom of individual liberty but will also help in the less crowding of jails, thereby giving the prisoners the basic human right they deserve.

## DISADVANTAGES

*Increased Political Influence and Corruption:* There is no disbelief in the fact that decriminalization lessens the burden on the judiciary by transferring matters to various government departments, which can lead to corruption by using political influence. To get a particular work done, any business can use its political influence and pressurize the authority to grant or remit any such situation which is advantageous to the corporation in question. This transfer of power from the courts to the agencies can be detrimental to the functioning of the business in the long run.

*Penalty not always an adequate measure:* The Bill aims to decriminalize certain compoundable offences under the company law by removing the criminal provisions and letting go with just a fine. This may help in the ease of doing business, but this will be a huge scope for the corporate giants to take such situations for their own advantage.

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<sup>9</sup> Statista, Ease of Doing Business India 2014-2019

<sup>10</sup> National Crime Records Bureau, Prison Statistics India, 2021

A company having a turnover in crores of rupees will not find it difficult to pay a penalty of an amount that is even in lakhs. This may be termed by them as the *cost of doing business*. The same situation is applicable also for individuals where offences have been decriminalized. The Government and the authorities need to find an alternative whereby offenders do not get relief just by paying a fine.

It can be seen from here that the Decriminalization Bill is made by having faith in the individuals and the corporates that they will respect the laws and abide by them, hence the name Jan Vishwas Bill. On one hand, the Bill promotes individual liberty and the ease of doing business while on the other it can promote corruption and ignorance. To keep such a situation in check, the framers of the Bill must see alternatives whereby the penalty is not the ultimate solution to a legal offence.

The Bill majorly focuses on the Companies Act, 2013 where it suggested the decriminalization of 16 offences out of the total 81 compoundable offences in the Companies Act, 2013. The intention behind such a move was again for the ease of doing business in the country and attracting foreign direct investments since the country's economy had been really affected by Covid-19. For this, the law review committee categorized these offences into eight groups.

These have been discussed as follows:

**Category 1** – Defaults arising from any non-compliance with any order or direction given by a superior authority.

**Category 2** – Failure to maintain records in the registered office of the company.

**Category 3** – Failure of non-disclosure of interest of persons to the company.

**Category 4**- Offences relating to defaults for certain corporate governance rules.

**Category 5**- Defaults by way of failure to file forms to the Registrar of the Company or sending notices to stakeholders of the company.

**Category 6**- Any kind of violation which may have a substantial consequence on the value of the company or any action which is against the public interest.

**Category 7**- Any defaults related to liquidation proceedings of the company

**Category 8** - Offences which are not specifically punishable, but are punishable in any other way.

These are the categories that were made for the decriminalization of offences. Some of the notable changes in the Companies (Amendment) Act, of 2020 have been discussed below.

### **CHANGES TO THE POLICY OF CORPORATE SOCIAL RESPONSIBILITY**

In the Companies Act, 2013 there was no penalty under [Section 135](#) of the Act that dealt with Corporate Social Responsibility<sup>11</sup>. However, with the 2020 Amendment, a fine has been imposed in cases where a company defaults concerning activities related to corporate social responsibility.

The amendment states that any company that does not comply with the guidelines mentioned under subsections (5) and (6) of section 135 of the Act will be liable to a penalty double the amount specified in that section.

#### **In-house adjudication mechanism:**

Another significant change brought by the decriminalization objective is the replacement of the process of conventional adjudication with in-house adjudication which has been expressly provided under [Section 454](#) of the Companies Act, 2013<sup>12</sup>. Under this mechanism, the adjudicating officer has the authority to settle offences by charging penalties from the defaulting companies or the concerned officers in default.

#### **Variation in shareholder's rights:**

Another significant change brought in by the Amendment Act of 2020 was the omission of [Section 48\(5\) of the Companies Act, 2013](#)<sup>13</sup>. The section in the 2013 Act read that any company which fails to comply with the provisions of this section shall be liable to a fine not below twenty-five thousand rupees extending upto five lakhs and the officers in relation to such default will be punishable with imprisonment extending up to six months or fine or both.

However, the amendment act has entirely scrapped this provision and mentioned that the decision of any action to be taken for the variations in shareholders' rights will be decided by

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<sup>11</sup> Section 135 of the Companies Act, 2013

<sup>12</sup> Section 454 of the Companies Act, 2013

<sup>13</sup> Section 48 of the Companies Act, 2013

the National Company Law Tribunal on case to case basis and such decision shall be binding on both the parties.

The Jan Vishwas Bill was introduced in the legislature mainly for the purpose of ease of doing business by foreign countries since India has a reputation for having stringent laws related to conducting business with foreign entities. Apart from this, there were several other acts, the provisions of which had been decriminalized. This article will further discuss in brief the other acts that are a part of this decriminalization objective.

Under the *Agricultural Produce (Grading and Marketing) Act, of 1937*, counterfeiting grade designation marks was a punishable offence with imprisonment of up to three years and a fine of up to five thousand rupees. However, the Bill replaces it with a penalty of eight lakh rupees.

Under the *Information Technology Act, 2000*, disclosing personal information in breach of a lawful contract is a punishable offence with imprisonment of up to three years or a fine of rupees five lakh rupees or both. However, the Bill replaces it with a penalty of Rs 25 lakhs.

Under the *Patents Act, 1970*, any person who falsely represented any article as patented in India shall be liable to a fine of Rs one lakh. However, the Bill aims to replace it with a penalty which may be up to Rs Ten Lakhs.

## CONCLUSION

The details about the Jan Vishwas Bill and the concept of Decriminalization make it clear that the legislature does not want people to be scared of going to jail for every minor offence they conduct.

Further, to lessen the burden of the courts and the prisons, the Bill has been made keeping in mind the already existing pressure in these departments. As the name of the Bill suggests, decriminalizing certain offences ensures that the Government trusts its people and that it has full faith that they will be law-abiding citizens hence protecting their freedom is a primary responsibility.

However, changes needed to be made in this Bill as there is an increased chance of corruption, undue influences, coercion, and monetary superiority. Corporations and individuals will naturally tend to pay a penalty and then again continue with their same acts.

But, decriminalizing regulatory offences will make a lot of flexibility in the Indian legal system which will automatically find ways to bring new provisions to keep the disadvantage in check.

To conclude, the Jan Vishwas Bill aims to decriminalize minor offences by imposing monetary penalties with the main objective of increasing the ease of doing business in India.



## References

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