

# Decriminalization of Companies Act

June 12, 2020

## Why is it in the news?

- The Finance Minister Nirmal Sitharaman in her 2020-21 Budget Speech said:
- “There has been a debate about building into statutes, criminal liability for acts that are civil in nature. Hence, for Companies Act, certain amendments are proposed to be made that will correct this.”

## Why to worry about this civil and criminal matter?

- A criminal offence can lead to imprisonment in the event of conviction, while a civil offence attracts a penalty.

## So what are these amendments?

- The Companies (Amendment) Bill, 2020: 23 of the 66 compoundable offences under the Companies Act would be dealt with through an in-house adjudication framework managed by the Ministry of Corporate Affairs and that seven such offences have been removed

## Changes to offences: The Bill makes three changes.

- it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default.
- 11 provisions will be amended to remove imprisonment as a punishment. For example, it removes the imprisonment of three years applicable to a company for buying back

its shares without complying with the Act.

- lower monetary penalties on six provisions. For example, it reduces the maximum fine for failure to file an annual return with the Registrar of Companies from five lakh rupees to two lakh rupees.

### **Amendments in 2019- Recategorization of certain offences:**

- The act contains 81 compoundable offences punishable with fine or fine or imprisonment both. These offences are heard by court.
- The amendment recategorized 16 of these offences as civil defaults, where adjudicating officers (appointed by central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and (ii) failure to file annual return.
- Corporate Social Responsibility
- Companies act, 2013- if companies which have to provide for CSR, do not fully spent the funds, they must disclose the reasons for non-spending in their annual report.
- Under the amendment, any unspent annual CSR funds must be transferred to one of the funds under Schedule 7 of the Act (e.g., PM Relief Fund) within six months of the financial year.
- Any violation may attract a fine between Rs 50,000 and Rs 25,00,000 and every defaulting officer may be punished with imprisonment of up to three years or fine between Rs 50,000 and Rs 25,00,000, or both.
- But, these violations of CSR norms are also among the offences that have been decriminalised in the 2020 amendment bill.
- The government had announced in August, 2019 that it would not operationalise provisions of the Companies Act that included prison terms of up to three years for violations of CSR norms after receiving representations from industry.

