



# DECRIMINALISATION

## INDIA'S CONTINUED MARCH TOWARDS EASE OF DOING BUSINESS

The Jan Vishwas (Amendment of Provisions) Act, 2023 strives to strike a balance between the severity of the violation and the gravity of the prescribed punishment. Many offences, which are either minor or technical or procedural in nature and for which the punishment prescribed was disproportionate, have been decriminalised under the JV Act. The industry believes that the JV Act is only the beginning and that many more statutes are on the horizon that will provide additional comfort to the industry.

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**T**he journey to Atmanirbhar Bharat (Self-Reliant India) is linked to India taking bold and confident steps towards enhancing the Ease of Doing Business and Ease of Living. The Jan Vishwas (Amendment of Provisions) Act, 2023 ('JV Act') spearheaded by DPIIT, under the able leadership of Shri Piyush Goyal, Union Minister of Commerce and Industry,

Consumer Affairs, Food and Public Distribution, and Textiles, is one such important step as it rationalises criminal punishment for 183 minor offences across 42 Central Acts overseen by 19 ministries and departments. The key objective of the JV Act is to decriminalise and rationalise offences to enhance trust-based governance for ease of doing business and living. While doing so, it also helps to de-clog

the Indian judicial system so that it can focus on more burning matters.

Some of the important rationalised Acts with great implications for ease of doing business in the country include the Pharmacy Act of 1948, the Copyright Act of 1957, the Patents Act of 1970, the Environment (Protection) Act of 1986, the Motor Vehicles Act of 1988, the Trade Marks Act of 1999, the Information Technology Act of 2000, the Prevention of Money Laundering Act of 2002, the Food Safety and Standards Act of 2006, and the Legal Metrology Act of 2009.

The JV Act strives to strike a balance between the severity of the violation and the gravity of the prescribed punishment. Many offences, which are either minor or technical or procedural in nature and for which the punishment prescribed was disproportionate, have been decriminalised under the JV Act. It completely decriminalises several specific offences by reducing punishment from 'imprisonment' and/or 'fine', to only 'penalty', which is minor, technical or procedural in nature. Complete decriminalisation of many offences promises to save corporations from going through the rigours of a criminal trial before being convicted for an offence that is now punishable merely with a 'penalty', meaning that court prosecution is not required to administer punishments.

Decriminalisation of offences, like non-production of documents or information under various laws, makes sense since the regulatory authorities have other mechanisms at their

disposal (like search and seizure, obtaining information from other regulators or offices in view of increased synchronisation and synergies among various Government departments or authorities) to collect documents or information in case of non-cooperation. Similarly, decriminalisation of offences that were punishable under the residual category (for which no specific punishment was prescribed) is a move in the right direction.

CII (Confederation of Indian Industry), whose numerous suggestions were considered favorably in the JV Act, has always been a strong advocate of moving towards a system of self-governance where criminal provisions exist only as an exception for serious offences, whereas for minor violations, it recommended for the replacement of 'imprisonment' and/or 'fine' with 'penalty', which is an executive decision (rather of the court).

The JV Act has vastly worked on these aspects, encompassing a wide range of areas and offering huge potential to save businesses from the strenuous and time-consuming process of legal trials and the consequent build-up of case pendency with an already overburdened judiciary at the same time. For instance, the imprisonment term in the Legal Metrology Act for many of the repeat offences has now been replaced with increased fines, which used to contribute significantly to the pendency of cases year after year.

The industry believes that the JV Act is only the beginning and that many more statutes are on the

horizon that will provide additional comfort to the industry. The exercise should be expanded to include pending areas under Central ministries [like the Consumer Protection Act, 2019; Water (Prevention and Control of Pollution) Act, 1974; and other statutes] and state governments (like the Factories Act, 1948; Inter State Migrant Workmen Act, 1979; Maternity Benefit Act, 1961, etc.), just to



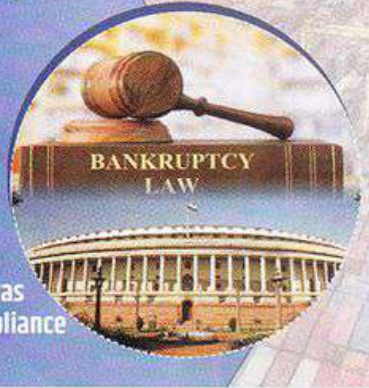
## EASE OF DOING BUSINESS

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mention a few. It is encouraging to note that the Government has already started working on identification of further areas and more provisions for rationalisation/decriminalisation of various business and commercial laws in consultation with key stakeholders, including CII.

As we look forward, this endeavour to free up judicial time and resources could be even better served if the benefit of the JV Act is extended to existing offences as well. In the past, the Hon'ble Supreme Court has also taken the view in *T. Barai v. Henry Ah Hoe* that the benefit of reduced punishment for an offence should be extended to past contraventions, as it helps mitigate the rigour of law. The Joint Committee on Jan Vishwas (Amendment of Provisions) Bill, 2022 ('JV Bill') in its report on the JV Bill has also recommended looking into the legalities, possibilities, and other consequences of giving retrospective effect. We believe that while extending the provision retrospectively, the accused could possibly be given an option to choose whether he or she elects to continue with the current proceedings (and face potential criminal sanctions) or to opt for the advantage of the decriminalised provisions. This would have enormous potential,

not only to further reduce the burden on businesses as well as the judiciary but also to increase the efficiency of government work as well as the focus on policymaking.

In sum, the decriminalisation journey, which started with amendments to the Companies Act, 2013, has gained momentum with the JV Act. It will be key to keep the momentum going, and for this, the principles contained in the JV Act can be used as a guiding light to rationalise offences in other statutes that are yet to be decriminalised. CII believes that laws should enable and encourage entrepreneurship rather than act as deterrents and should continue to be decriminalised unless they include an element of fraud or wrongdoing. Criminal provisions in business laws for non-serious offences raise concerns amongst directors, young entrepreneurs, and domestic and foreign investors, impacting business sentiments and ease of doing business.

However, a fine balance between ease of doing business and adequate deterrence for serious contraventions needs to be ensured so that responsible decriminalisation is achieved rather than blanket overhauls. It is encouraging to see that the Government has started another stride in the direction of responsible decriminalisation. CII is fully committed to continuing to support the government in its endeavour to bring out 'JV 2.0' for a sustained and accelerated improvement in the ease of doing business environment for the Country. □

### Jan Vishwas (Amendment of Provisions) Act, 2023 Indian Post Office Act, 1898



1

Minor violations like voluntary withdrawal from duty, making false entry in register, defiling or injuring post office letter boxes were punishable with imprisonment up to 1 month, 6 months and 1 year respectively along with fine.

Source: DPIIT

2



Sending an unpaid postal article used to attract imprisonment up to 2 years. These offences have been removed under the Jan Vishwas Act, 2023.

LETTER BOX

