

Overdue correction: on revisiting the Companies Act

The Centre has announced the constitution of a committee to revisit several provisions of the [Companies Act, 2013](#) that impose stiff penalties and, in some cases, prison terms as well, for directors and key management personnel. The 2013 law entailed the first massive overhaul of India's legal regime to govern businesses that had been in place since 1956 and was borne of a long-drawn consultative process. Now, this 10-member committee appointed by the Corporate Affairs Ministry has been tasked with checking if certain offences can be 'de-criminalised'. The panel, which includes top banker Uday Kotak, has been given 30 days to work out whether some of the violations that can attract imprisonment (such as a clerical failure by directors to make adequate disclosures about their interests) may instead be punished with monetary fines. It will also examine if offences punishable with a fine or imprisonment may be re-categorised as 'acts' that attract civil liabilities. Importantly, the committee has also been asked to suggest the broad contours for an adjudicatory mechanism that allows penalties to be levied for minor violations, perhaps in an automated manner, with minimal discretion available to officials. In fact, some of the provisions in the law are so tough that even a spelling mistake or typographical error could be construed as a fraud and lead to harsh strictures.

Parliament passes Companies Amendment Bill by voice vote

The government hopes such changes in the regulatory regime would allow trial courts to devote greater attention to serious offences rather than get overloaded with cases as zealous officials blindly pursue prosecutions for even minor violations. The decision to build in harsh penalties and prison terms for corporate misdemeanours in the 2013 law was, no doubt, influenced by the high-pitched anti-corruption discourse that prevailed in the country at that moment in time. Apart from several cases of crony capitalism that had come to light during the second UPA government, massive corporate frauds reported at once-revered firms such as the erstwhile Satyam Computer Services had spooked investors and other stakeholders about the credibility of corporate India's books and governance standards. When the NDA came to power in May 2014, a comprehensive review of the Companies Act was at the top of industry's wish list as a means to revive the economy. Industry captains had red-flagged the impact of such provisions on the ease of doing business, and investor sentiment in general. A trust deficit between industry and government owing to stray incidents of corporate malfeasance should not inhibit normal business operations, they had argued. Four years down the line, the government is finally moving purposefully on this, a rethink perhaps triggered by the fact that private sector investment is yet to pick up steam and capital still seeks foreign shores to avoid regulatory risks. One hopes this is followed up on swiftly, before the ruling party slips into election mode.

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