

BACKGROUND NOTE on The Jan Vishwas (Amendment of Provisions) Bill, 2022

In the context of the Department for Promotion of Industry and Internal Trade (DPIIT) recognizing the need for decriminalization of minor, technical, and procedural defaults, the Jan Vishwas (Amendment of Provisions) Bill, 2022, was introduced as a result of a draft cabinet note by the department. This Bill aims to amend 183 provisions across 42 Acts administered by 19 Ministries/Departments.

It is important to note that DPIIT is the nodal department for coordinating Ease of Doing Business activities, with a special emphasis on reducing the compliance burden. Moreover, the decriminalization of certain infractions is a crucial aspect of this effort.

The economic picture presented through this year's budget is clear: to pursue economic growth supported by public investment, along with more targeted supply-side policies such as increased skill levels, easier access to finance, and eased corporate regulations. The Jan Vishwas Bill being introduced this year aims to respond to this vision statement, laying the groundwork since the last fiscal year.

The idea behind the proposed Bill is to introduce adjudication and appeals mechanisms when the penalty amount is substantial.

This is a dynamic document, and the analysis of the provisions of the proposed Bill has been undertaken based on various sectors.

The Air (Prevention and Control of Pollution) Act, 1981

BACKGROUND

- The Jan Vishwas (Amendment of Provisions) Bill, 2022, with respect to the Air (Prevention and Control of Pollution) Act, 1981 is aimed at reforming and enhancing the existing drawbacks in the current legal framework. The key focus of the proposed amendments lies in decriminalizing minor offences, introducing higher penalties, fines,

and a streamlined adjudication mechanism.

- The objective of the Air (Prevention and Control of Pollution) Act, of 1981 is to ensure the prevention, control, and reduction of air pollution. It assigns the responsibility to the Central Pollution Control Board and State Pollution Control Boards for the implementation of the Act's provisions, empowering them with functional authority to carry out their duties.

WHAT IS IN THE BILL?

- **Section 21** of the principal act prohibits establishing or operating industrial plants in an air pollution control area without prior consent from the State Pollution Control Boards. Existing plants operating without consent before a specific 1987 amendment (section 9) can continue for three months from the amendment's commencement or until their consent application is disposed of, whichever comes earlier. The proposed amendment emphasizes the importance of obtaining prior consent from the State Boards for setting up or operating industrial plants in air pollution control areas. However, certain industrial plant categories may be exempted from this requirement through a notification issued by the Central Government in consultation with the Central Pollution Control Board, published in the Official Gazette.
- The proposed amendment has a provision of Insertion of **New Section 21A**, empowering the Central Government, in consultation with the Central Pollution Control Board, to issue guidelines through a notification in the Official Gazette. These guidelines pertain to matters related to the granting, refusal, or cancellation of consent by any State Board for establishing or operating industrial plants in an air pollution control area. The guidelines may also include the mechanism for time-bound disposal of applications made under section 21 and specify the validity period of such consent.
- **Section 37** of the principal act prescribes imprisonment and a fine for failure to comply with certain provisions. The proposed amendment suggests replacing imprisonment with penalties for noncompliance with Section 22 and directions issued under Section 31A. The penalty for each violation can range from ten thousand rupees to fifteen lakh rupees.
- The **Section 38 of the Air Act, of 1981**, outlines penalties for various offences, including damaging property belonging to the Board, obstructing officials, and failing to provide the required information. Notifying the State Board of excessive air pollutant emissions is mandatory, and false statements are subject to penalties. The proposed amendment

sets penalties ranging from ten thousand to fifteen lakh rupees for non-compliance, with an additional daily penalty for continuing contravention.

- **The proposed amendments introduced Section 39 A**, having provisions of penalties for violating the Act or related orders where no specific penalty is provided. The penalty ranges from ten thousand rupees to fifteen lakh rupees, and continuous contravention incurs an additional penalty of up to ten thousand rupees per day.
- Newly inserted **Section 39A** also introduces an adjudicating officer appointed by the Central Government to determine penalties for violations under Sections 37, 38, and 39. The officer holds inquiries, summons witnesses, and relevant documents. No penalty can be imposed without giving the concerned person an opportunity to be heard.
- The amendment proposed the insertion of **sections (39B, 39C, and 39D)** in the principal act to address penalties, appeals, and non-compliance. Section 39B allows appeals to the National Green Tribunal for orders passed by the adjudicating officer, subject to a deposit of ten per cent of the penalty. Section 39C directs penalties to be credited to the Environmental Protection Fund. Section 39D outlines penalties for non-compliance, including imprisonment and fines, with varying severity based on the offence and its duration and Individuals responsible for a company's conduct may also be held accountable.
- The amendment proposed to remove **Section 41** from the principal Act, which presently holds the Head of a Government Department responsible for any offense committed by that department. As per the current provision, the Head of the Department is presumed guilty and subject to punishment unless they can prove that the offense was committed without their knowledge or they took all necessary precautions to prevent it.
- The amendment proposes the insertion of a new clause of Section 43(1) (aa) after clause (a) and clause (h) after clause (g) in Section 53(1). These new clauses are intended to address the appointment of an adjudicating officer or any authorized officer for specific purposes. The amendment also outlines the manner in which inquiries will be conducted and penalties will be imposed by the adjudicating officer under subsection (1) of Section 39A.

SPECIAL EMPHASIS

- The primary focus of the amendment is to enhance the Act's effectiveness in promoting environmental accountability. It aims to hold individuals and entities accountable for any violations and non-compliance with the Act's guidelines. By doing so, the amendment seeks to deter potential offenders and encourage a culture of responsible environmental practices.
- Another significant aspect of the proposed amendment is its emphasis on proper fund utilization. By directing penalties to the Environmental Protection Fund, the amendment aims to ensure that resources are utilized for meaningful environmental initiatives and projects that contribute to pollution control and sustainable development.

ISSUES

- The concern with Section 21A is that the guidelines issued by the Central Government may not consider the diverse environmental challenges faced by different states. **A standardized approach by CPCB might lead to delays and inefficiencies in processing applications for industrial plants, hindering local development while neglecting environmental protection.** To address this, extensive consultations with State Pollution Control Boards and stakeholders are essential to tailor guidelines that align with each region's unique needs and ensure effective pollution control measures.
- Environmental violations often involve intricate scientific, ecological, and legal aspects that demand a thorough understanding of environmental laws, regulations, and the latest advancements in pollution control and mitigation measures. However, in the proposed amendments of Section 39B, the Adjudicating Officer is tasked with determining penalties for environmental offenses, and holds significant positions within the Executive branch. **This creates a concern that they may lack the specialized technical knowledge and judicial competence required to make well-informed and appropriate decisions when dealing with complex environmental matters.**
- The proposed bill routes penalties received in an **Environmental Protection Fund** aimed at supporting environmental education, awareness, and research initiatives. However, the rationale behind the intention remains unclear, as its objectives appear to overlap with the existing funds managed by both the Central and State Pollution Control Boards.

BENEFITS

- The proposed amendment aims to promote self-regulation, trust-based governance, and ease the burden on the criminal justice system by introducing Adjudicating officers to handle defaulters.
- It seeks to enhance compliance by increasing penalties, while eliminating the fear of imprisonment for minor lapses, encouraging better corporate management practices.
- The amendment is expected to boost foreign investments in India and create a conducive environment for economic growth and development

RECOMMENDATIONS

- To address the technical and judicial competence concerns of Adjudicating Officers, make sure to impart specialized training programs for Adjudicating Officers to equip them with technical expertise and a thorough understanding of environmental laws and regulations.
- The proposed Environmental Protection Fund requires a clear and transparent rationale for its establishment. It should be explicitly justified, demonstrating how it complements and enhances the existing funds managed by the Central and State Pollution Control Boards. A comprehensive plan should be presented to ensure that the fund's objectives do not duplicate or conflict with the ongoing initiatives of these Boards.

Environment (Protection) Act, 1986

BACKGROUND

- The Jan Vishwas (Amendment of Provisions) Bill, 2022, with respect to the Environmental (Protection) Act, 1986 is aimed at reforming and enhancing the existing drawbacks in the current legal framework. The key focus of the proposed amendments lies in decriminalizing minor offenses, introducing higher penalties, fines, and a streamlined adjudication mechanism.
- The Environmental (Protection) Act, 1986 sets the groundwork for examining, strategizing, and executing long-term environmental safety measures. It also establishes a system for promptly and adequately addressing situations that pose a threat to the environment. This comprehensive legislation serves as a framework for coordinating the efforts of both Central and State authorities in environmental protection.

WHAT IS IN THE BILL?

- The proposed amendment in **Section 10** of the Environmental (Protection) Act, 1986 addresses Powers of Entry and Inspection. It mandates assistance to authorized individuals handling hazardous substances. Failure to comply without reasonable cause may lead to a penalty under Section 14B. Willful obstruction of authorized personnel also incurs penalties under Section 14B. The Code of Criminal Procedure, 1973, applies to search or seizures under this section, like a warrant-issued search or seizure under Section 94 of that Code.
- The amendment proposes new **Section 14A** in the principal act to introduce penalties for contravention of Section 7 or Section 8. It specifies that any person violating these sections or the orders/directions issued under them will be subject to a penalty ranging from one lakh rupees to fifteen lakh rupees for each contravention or non-compliance. Additionally, if the contravention persists, an additional penalty of fifty thousand rupees per day will be imposed. This amendment aims to enforce stricter penalties to deter non-compliance with environmental regulations.
- Moreover, the amendment also proposes the insertion of **Section 14B** in the principal act that introduces penalties for contravention or non-compliance with Sections 9, 10, and 11 or orders issued under those sections. The penalty for each violation ranges from ten thousand to five lakh rupees. Additionally, if the contravention persists, an additional penalty of ten thousand rupees per day is applicable.
- The amendment proposes the insertion of **Section 15A** of the principal act. it introduces the penalties for contraventions by companies and Government Departments, respectively. Companies will face penalties ranging from one to fifteen lakh rupees for each violation, with an additional penalty of one lakh rupees per day for continued contravention.
- The amendment proposes adding **Section 15B** to the principal act. According to this section, the Head of a Government Department will be liable for a penalty equivalent to one month of their basic salary for contraventions. They will not be held accountable if they can prove the contravention occurred without their knowledge or demonstrate due diligence to prevent it. Similarly, other officers will face penalties equal to one month of their basic salary for contraventions but will be exempt if they can show exercising due diligence to avoid the contravention

- The proposed insertion of **Section 15C** introduces the role of an Adjudicating Officer to determine penalties under the Environmental (Protection) Act, 1986. The officer, appointed by the Central Government, will hold inquiries, call upon relevant individuals, and impose penalties after considering various factors. The penalty amount will be in addition to any liability for relief or compensation under the National Green Tribunal Act, 2010. While the proposed insertion of **Section 15D** allows individuals to appeal the adjudicating officer's order under the Act to the National Green Tribunal.
- The proposed inserted "CHAPTER III A - FUND, ACCOUNTS, AND AUDIT" introduces the **Environmental Protection Fund**, funded by penalties under the Air (Prevention and Control of Pollution) Act, 1981, and the Environmental (Protection) Act, 1986. The fund aims to promote environmental awareness, education, research, and pollution control efforts. The Central Government will appoint an administrator, maintain separate accounts, undergo annual audits, and prepare an annual report to present before each House of Parliament.

SPECIAL EMPHASIS

- The bill emphasizes on **introducing stricter penalties and enforcement measures for contraventions and non-compliance with environmental regulations**. The proposed amendments in Sections 10, 14A, 14B, 15A, and 15B of the Environmental (Protection) Act, 1986 aim to impose substantial penalties for violations by individuals, companies, and Government Departments.
- Moreover, **the introduction of an Adjudicating Officer** in Section 15C ensures a fair determination of penalties and appeals process.
- Additionally, the **establishment of the Environmental Protection Fund** emphasizes promoting environmental awareness, education, research, and pollution control efforts through the effective utilization of penalties collected under the Act.

ISSUES

- The concern with Section 21A is that the guidelines issued by the Central Government may not consider the diverse environmental challenges faced by different states. **A standardized approach might lead to delays and inefficiencies in processing applications for industrial plants, hindering local development while neglecting environmental protection**. To address this, extensive consultations with State Pollution Control Boards and stakeholders are essential to tailor guidelines that align with each region's unique needs and ensure effective pollution control measures.

- Environmental violations often involve intricate scientific, ecological, and legal aspects that demand a thorough understanding of environmental laws, regulations, and the latest advancements in pollution control and mitigation measures. However, in the proposed amendments of Section 39B, the Adjudicating Officer is tasked with determining penalties for environmental offences, and holds significant positions within the Executive branch. **This creates a concern that they may lack the specialized technical knowledge and judicial competence required to make well-informed and appropriate decisions when dealing with complex environmental matters.**
- The proposed bill route penalties received in an **Environmental Protection Fund** aimed at supporting environmental education, awareness, and research initiatives. However, the rationale behind the intention remains unclear, as its objectives appear to overlap with the existing funds managed by both the Central and State Pollution Control Boards.

BENEFITS

- The proposed amendment aims to foster self-regulation and build a foundation of trust in governance.
- The introduction of Adjudicating officers will alleviate pressure on the criminal justice system.
- Higher penalties will deter compliant entrepreneurs, ensuring better adherence to laws and improved corporate management practices.
- Minor lapses will no longer lead to imprisonment, demonstrating the government's dedication to ease of doing business and living. Such efforts are expected to attract foreign investments in India.

RECOMMENDATIONS

- To address the technical and judicial competence concerns of Adjudicating Officers, make sure to impart specialized training programs for Adjudicating Officers to equip them with technical expertise and a thorough understanding of environmental laws and regulations.
- The proposed Environmental Protection Fund requires a clear and transparent rationale for its establishment. It should be explicitly justified, demonstrating how it complements and enhances the existing funds managed by the Central and State Pollution Control

Boards. A comprehensive plan should be presented to ensure that the fund's objectives do not duplicate or conflict with the ongoing initiatives of these Boards.

The Indian Forest Act, 1927

BACKGROUND

- The primary objective of the Indian Forest Act, of 1927 was to control the transportation and taxation of forest produce. Additionally, it outlines the process for designating an area as Reserved Forest, Protected Forest, or Village Forest. The Act comprehensively defines unauthorized activities in the reserved forests as offenses and specifies the activities prohibited within Reserved Forests, along with the penalties imposed for breaching its provisions.

WHAT IS IN THE BILL?

- **Section 26 of the principal act**, prescribes imprisonment for up to six months, or a fine of up to five hundred rupees, or both, along with court-directed compensation for forest damage, for actions within a forest area and corresponding offenses like trespassing or permitting cattle to graze, causing damage during tree felling or timber handling, has now been omitted. Instead, a new subsection (1A) has been inserted after subsection (1) in Section 26, which mandates fines of up to five hundred rupees only, in addition to court-directed compensation for forest damage.
- **Section 33 of the principal act**, which previously provided for imprisonment or a fine for certain offences, has been omitted. The **new subsection (1A) inserted after subsection (1) in Section 33** now specifies that anyone committing the offenses listed under (a) leaves burning any fire near reserved trees, (b) felling or dragging trees that damage reserved trees, or (c) permitting cattle to damage such trees, will be liable to pay a fine of up to five hundred rupees. The provision for imprisonment has been removed, and only the fine remains as a penalty for these offences.

SPECIAL EMPHASIS

- The proposed amendments to the Act are aimed at streamlining the regulation of forest produce and levying duties. Notably, provisions under **Sections 26 and 33** are being amended to convert imprisonment and/or fines into penalties. This shift intends to address minor offenses such as trespassing of cattle, causing damage to trees due to negligence, and permitting cattle to damage trees.

- Moreover, one provision under **Section 33** is suggested to be omitted, suggesting a focus on refining and simplifying the enforcement framework for these specific offenses within forest areas. These amendments signal the government's commitment to striking a balance between protecting forest resources and ensuring fair penalties for minor transgressions, fostering greater environmental conservation and sustainable management of our forests.

ISSUES

- The proposed amendments introduce the term "penalty" instead of "fine" in certain sections, but **it does not clearly define the nature and magnitude of penalties for specific offenses**. While it specifies the maximum penalty as Rs. 500, it does not provide clear guidelines on how penalties will be determined for different violations. This lack of clarity may lead to inconsistent application of penalties and raise concerns about fairness and transparency in the enforcement of the Act.
- One major issue with the proposed amendment is the reduction of penalties for certain forest offenses. Section 26, which previously prescribed penalties of imprisonment or a fine of up to Rs. 500, along with court-directed compensation for forest damage, has been replaced with a new subsection (1A) that mandates fines of up to Rs. 500 only. This **reduction in penalties may weaken the deterrence against illegal activities within forest areas and may not adequately address the severity of certain offenses**.

BENEFITS

- The Government aims to communicate a strong and unambiguous message to law-abiding citizens, reaffirming its dedication to eradicating harassment. This objective serves to **establish an environment of governance built on trust and transparency**.
- Additionally, it seeks to alleviate the fear of imprisonment for minor lapses among tribal and forest-dwelling communities. By doing so, the Government hopes to foster a sense of security and cooperation within these communities and **promote a harmonious relationship with the authorities**.
- Moreover, these efforts are geared towards minimizing litigation related to the prosecution of minor offenses, thus enabling a more efficient and focused allocation of resources towards more significant issues. Overall, these initiatives reflect the Government's commitment to **ensuring a fair and just system that encourages compliance, cooperation, and social harmony**.

RECOMMENDATIONS

- Instead of using the term "fine," it is recommended to replace it with "penalty." This change will ensure clarity and precision in the language used within the section.
- For the violation of Section 26 (1) (d) of the Act, a penalty of up to Rs. 500 may be imposed. This penalty amount is appropriate for addressing minor offenses related to actions like trespassing or pasturing cattle, providing a fair and proportionate response to such violations.
- To streamline the process and expedite resolution, Sections 26 (1) (d) and (e) of the original Act should be made compoundable. This means that individuals charged with these offenses can settle the matter by paying a predetermined penalty, as determined by an adjudicating officer. This approach would facilitate quicker resolution and reduce the burden on the legal system.
- It is advisable to increase the penalty for violations of Section 26 (1) (e) of the Act from Rs. 500 to Rs. 5000. This higher penalty amount is justified by the seriousness of offenses such as causing damage to trees due to negligence, which may have a more significant impact on forest conservation and ecological balance.

The Patent Act, 1970

BACKGROUND¹

- The Patents Act 1970, along with the Patents Rules 1972, came into force on 20th April 1972, replacing the Indian Patents and Designs Act 1911. The Act oversees inventions, scientific research and new technology. The Act provides for the definition of the invention, which is now compliant with the provisions of TRIPS.
- The Jan Vishwas Bill, 2022 in the context of the Patents Act aims at decriminalizing minor offences by converting imprisonment and/or fine with penalty. The Bill aims to bring amendments to the said Principal Act to eliminate the provisions which pose an unnecessary burden on the adjudicating system as well as impose imprisonment and fines in simple offences.
- These amendments to the Principal Act are being brought out keeping in view of the increased number of patents being filed in India and the increased burden of work being

¹ Jan Vishwas (Amendment of Provisions) Bill, 2022-
http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/299_2022_LS_ENG1222202244325PM.pdf

imposed on the existing patent authorities. The number of patents filed in India rose to 66,440 in the financial year 2021-22 as against 42,763 patents filed in 2014-15, posting an increase of over 50 per cent in a span of seven years. Grant of patents in 2021-22 surged to 30,074, which is nearly five times increase when compared with 2014-15 when the total number of patents granted was 5,978. This multifold increase in filing of patent applications and grant of patents in India is being related to some of the key initiatives taken by the Government over the years which include fee concessions like 10 per cent rebate on online filing, 80 per cent fee concession for Start-ups, Small Entities and educational institutions, and provisions on expedited examination for Startups and MSMEs along with other categories.²

- Hence, in continuation of the policy initiatives of the Government to make the patent system in India more inventor friendly, the law is being amended through the Jan Vishwas Bill, 2021 to address these minor offences in the Patents Act and bring more feasibility to the smooth implementation of the Act.

WHAT'S IN THE BILL?³

- **Enhancement of penalties for false claim of right over a patent:** The existing provision of Section 120 of the Principal Act provides for a fine to the extent of one lakh rupees, which can be imposed on any person who falsely represents his/her claim over a patent. In the Bill, this fine has been enhanced and the new terminology being used is penalty. The proposed amendment now provides for an imposition of penalty which may extend to ten lakh rupees, and in case of the continuing claim, a further penalty of one thousand rupees for every day from the day the claim continues.
- **Omission of a minor offence:** In the existing Principal Act, if any person uses the words "patent office" on his place of business or any document issued by him or otherwise or creates a false assumption of his/her association with the patent office, then the punishment provided is imprisonment for a term which may extend to six months, or with fine, or with both. In the Bill, this offence has now been omitted as being a minor offence.
- **Lowering the penalty and omission of imprisonment in case of information not being supplied/false information supplied to the Central Government for an invention used**

² Patent filing in India rose by almost 50 percent in the last 7 years- <https://economictimes.indiatimes.com/small-biz/sme-sector/patent-filing-in-india-increases-by-more-than-50-per-cent-in-7-years/articleshow/90812038.cms?from=mdr>

³ Jan Vishwas (Amendment of Provisions) Bill, 2021-
http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/299_2022_LS_ENG1222202244325PM.pdf

by or with the authority of the Central government for the purposes of the Government: Amendments have been proposed to Section 122 of the principal Act wherein any person refuses or fails to supply information connected with an invention which was used for the purposes of the government. **The amended provision decreases the penalty in cases of refusal or failure to supply information from the earlier amount of ten lakh rupees to one lakh rupees, and in case of the continuing refusal, a further penalty of one thousand rupees for every day from the day such refusal continues.** In case of supplying false information, the punishment of imprisonment has been omitted and **a penalty of twenty-five lakh rupees has been introduced.**

- **Increase in penalty for practicing as a patent agent without registration:** In case of any person falsely practicing as a patent agent either alone or in partnership without registration will be liable to penalty under the principal Act. The proposed amendment in the Bill enhances this penalty from the earlier amount of one lakh rupees in the case of a first offence and five lakh rupees in the case of a second or subsequent offence, **to the amended amount of five lakh rupees, and in case of the continuing default, a further penalty of one thousand rupees.**
- **Adjudication of penalties:** This is a new provision being inserted as Section 124A which gives the power to the Controller to impose penalties and the way the adjudication of these penalties will be heard. The principles of natural justice have been upheld by giving an opportunity to be heard to the entities upon whom the penalties have been imposed. In case of non-compliance with the imposition of penalty and default of payment, the Controller will have the power to impose imprisonment for a term which may extend to one year, or with a fine which shall not be less than twenty-five thousand rupees, but which may extend to five lakh rupees, or with both.
- The Central Government also proposes an amendment to keep the rule-making power under the Principal Act for imposition of penalties.

SPECIAL EMPHASIS

- The Bill decriminalizes the Patent Act and provides for enhanced penalties. It focuses on the promotion of new technology and the protection of the rights of inventors.
- The Bill also clearly defines the role of Controller in terms of imposing penalties and adopts the due process of adjudication over such orders.

- Even though the emphasis has been laid on decriminalizing certain offences, it is to be seen that such offences are being decriminalized by replacing it with imposition of penalties. So, the essence of the provisions in punishing the defaulters is not completely lost.

ISSUES⁴

- The Bill decriminalizes the offence of making an unauthorized claim over a patent and proposes to impose a heavy penalty of ten lakhs on the person doing so. There is again an apprehension over such an amendment of decriminalizing a serious offence like Section 120. This is because the basis of patent law or grant of patents is to protect the rights of the inventor and regulate use of the invention. The patented invention brings monetary gain and business for the inventor, so decriminalizing the very offence which is contrary to the spirit of the patent law is also left to be seen. For any person/company/entity making a false claim over a patent and furthering its business through the said patent can be assumed to pay such a penalty. It also does not give clarity as to the compensation that the aggrieved will be entitled to, whether the amount of compensation can be decided by the Controller and will the compensation amount be paid from the penalty amount. There is a lack of clarity about the utilization of the patent money. Therefore, there will be a need to ensure careful implementation of this provision and only when such a penalty is imposed in numerous cases, the intended deterrent effect intended by this provision and the way in which penalty amount is utilized can be expected to be seen.
- The provisions being introduced through this Bill for amending the Principal Act have been brought about keeping in view the monopoly enjoyed by the big pharma companies in the patent space. However, it must be noted that MSMEs and new startups companies are also indulging in the research and development space and that imposing such heavy penalties on the companies would rather discourage new inventions and technology in the space.
- There is again the apprehension of the usage of an investigation by the Government for its own purpose. The investments pumped in for a certain technology are usually enormous and the investors are on the lookout for a return on such investments. While

⁴ Jan Vishwas: Rights step in decriminalizing offences- <https://community.nasscom.in/communities/public-policy/jan-vishwas-bill-right-step-towards-decriminalisation-minor-offences>

Bringing jan vishwas to Jan Vishwas Bill- <https://theleaflet.in/bringing-jan-vishwas-to-the-jan-vishwas-bill/>

Jan Vishwas (Amendment of Provisions) Bill, 2022 -

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decriminalizing the provisions of the Principal Act, it also must be taken care that they do not overlook the interests of the inventor.

- There are many times when people are bound to falsely represent their association with government departments or officials to seek wrongful gains from the public. The omission of the offence of false representation of association with the patent office can leave room for the person to show false representation on behalf of the patent office. It has been left to the best knowledge of the inventor to conduct his/her due diligence before dealing with any person in the patent space. The omission of such an offence can provide an avenue for offences like cheating and misrepresentation to occur against any person/company/entity.
- Even though provision has been introduced to empower the controller to determine and impose penalties and to recover the same, there is no mechanism provided for an appeal to the orders of the controller. The office of the controller under the Act enjoys quasi-judicial powers and can have the authority to decide quantum and pass orders for penalties, however, by not codifying a mechanism for appeal, there is ambiguity left for the person aggrieved by the said order, which again would constrain the aggrieved to institute litigation process before the Courts. An absolute power to the controller also leaves room for corruption activities without any checks and balances.

BENEFITS⁵

- **Eliminates unnecessary and frivolous litigations-** The proposed amendment to Section 120 eases the burden on courts by giving powers of adjudication of the offence to the Controller. This would also ensure timely action in such offences and recovery of penalties from the offender. The chances of a deterrent effect being caused by imposition of heavy penalties and timely disposal of cases are highly likely.
- **Empowers the Central Government to penalize companies providing false information:** For patents which might be beneficial to the public, false information supplied by the patent holder can have fatal consequences. The amendments give power to the Central Government to impose a heavy penalty as much as up to twenty-five lakhs on the defaulting patent holder. This would help the government in ensuring its control

⁵ What is overcriminalisation and how does the Jan Vishwas Bill 2022 deal with it? - file:///Users/harshagarg/Downloads/What-is-%E2%80%98Overcriminalisation-and-How-does-the-Jan-Vishwas-Amendment-of-Provisions-Bill-2022-deal-with-it.pdf
Jan Vishwas (Amendment of Provisions) Bill, 2022-
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over patented inventions which were government authorized as well as were invented for the purpose of use by the government.

- **Penalizes misrepresentation by persons as patent agents-** The imposition of heavy penalty on people who misrepresent themselves as patent agents means that there will be a fear in people to practice as patent agents without license for it. It would encourage people wanting to practice as patent agents to register themselves and not be liable to pay heavy amounts of penalties.

RECOMMENDATIONS BY THE JOINT PARLIAMENTARY COMMITTEE⁶

- The Ministry had submitted before the Committee that the entire process of filing and registration of patents has been digitized and there has been a five-fold increase in the grant of patents since 2014.
- One of the concerns raised by the Committee has been the imposition of heavy fines and penalties of micro small and medium companies in cases of failure to supply information under Section 122. To this, the department had submitted that this provision was amended to target the big pharmaceutical companies who are involved in coming out with new combinations of medicines. Justification was given to impose such a provision to act as a deterrence.
- The department cited examples like covid vaccine or cancer medicine where if a company provides false information, the implications of the same will be suffered by the public at large.
- The Committee disagreed with the submission that patents are being filed by big companies only. Further, the Committee raised concern that the expression “not be less than 25 lakh rupees” in the proposed amendment to Section 122 gives unfettered power to the authority and, therefore, there must be an upper limit for the penalty proposed in the amendment.
- The Committee also directed the Department to investigate the provisions of the Indian Penal Code, 1960 if the offence of furnishing false information is also covered under the Code.

⁶ Report of the Joint Parliamentary Committee on the Jan Vishwas (Amendment of Provisions) Bill, 2022, Lok Sabha, Available at: [https://loksabhadocs.nic.in/lsccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20\(Amendment%20of%20Provisions\)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_\(Amendment_of_Provisions\)_Bill_2022_1.pdf](https://loksabhadocs.nic.in/lsccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20(Amendment%20of%20Provisions)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_(Amendment_of_Provisions)_Bill_2022_1.pdf).

- The Committee made a general observation that the power of adjudication is not available in some Acts. The said power of adjudication needs to be provided in all such Acts where a fine has been converted into a penalty. The competent authority who will impose the penalty is required to be prescribed in all such Acts.
- It further suggested that there needs to be an appellate authority to file appeals to the decisions of the controller.

Information Technology Act, 2000

BACKGROUND

- The purpose of the Information Technology Act, 2000 (IT Act 2000 or parent Act) is to grant legal acknowledgment to transactions conducted through electronic data interchange and other electronic communication methods, commonly known as "electronic commerce." These methods replace traditional paper-based communication and storage of information, aiming to simplify the process of electronically filing documents with Government agencies.⁷
- The key goals of the proposed amendments under the Jan Vishwas (Amendment of Provisions) Bill, 2022 relating to the IT Act 2000 include easing the business environment by reducing imprisonment clauses, standardizing penalties for similar offenses, and allowing administrative officers to decide penalties instead of burdening the courts with litigation. For more serious violations, criminal offenses have been retained as punishable, but for companies and other corporate bodies, imprisonment has been eliminated, and financial penalties which can be imposed by administrative officers have been proposed.

WHAT IS IN THE BILL?⁸

- **Alternating the definition of "appropriate Government" in the parent Act:** The Amendment tends to change the definition of appropriate government under Section 2. In the parent Act, the Appropriate Government means the State Government for items

⁷ Preamble of the Information Technology Act, 2000.

⁸ Jan Vishwas (Amendment of Provisions) Bill, 2022.

in List II and for State law-related items in List III of Schedule VII⁹; and the Central Government in any other case.

- **After the amendment, Appropriate Government will mean:** the State Government, and if relating to the relevant provision, or a computer resource, which is controlled by the respective Ministry or Departments of the Central Government, such Ministry or Department; and in all other cases, the Central Government.
- **Omission of Section 66A:** The principal Act penalized the activity of sending offensive messages through communication services, etc. The amendment seeks to omit this provision.
- **Decriminalization of certain offences and/ or rise in monetary penalties:** In the proposed amendment, several changes have been suggested to simplify penalties and reduce criminalization for certain offences. A few instances are provided below:
 - The failure by the Certifying Authority (which means a person/entity who is licensed to issue an electronic signature Certificate to surrender its suspended or revoked license has been decriminalized. Instead, a penalty of up to 5 Lakh rupees has been proposed to be imposed under Section 33 of the Act.
 - Additionally, the amendment aims to increase penalty amounts under Section 45 for contravening rules or regulations under the Act, based on the type of entity involved. For intermediaries, companies, or body corporates, the maximum penalty will be one lakh rupees, along with compensation not exceeding 10 lakh rupees for the affected person. For other individuals, the maximum penalty will be 1 lakh rupees and the compensation for the affected person will not exceed 1 lakh rupees.
 - The amendment further decriminalizes several offences. For instance, Section 67C dealing with an intermediary's failure to preserve information proposes to change the penalty to a fine not exceeding 25 Lakh rupees.
 - For failure to provide information by any service provider, intermediaries, data centers, body corporate or person, the imprisonment has been proposed to extend to 1 year and/ or with a fine which may extend to 1 Crore rupees under Section 70(B)(7).

⁹ Schedule VII of Constitution of India.

- The Amendment seeks to decriminalize the Breach of confidentiality and privacy which was punishable under Section 72 and provides for a fine extendable up to 5 Lakh rupees instead.
- Decriminalization of offence for disclosing personal information in breach of a lawful contract has been suggested while imposing a fine of up to 25 Lakh rupees under Section 72A.
- **Enlarging the domain of the Adjudicating Officer under the Act:** Section 46 of the Act provides for the appointment of an adjudicating officer by the Central Government to adjudicate over the matters under Chapter IX. The said chapter encompasses the penalties that may be imposed for contravention of the provisions of the Principal Act. The punishments for offences were provided under Chapter XI of the principal Act for which the Courts had jurisdiction. The Bill suggests that instead of only exercising power to inquire and impose penalties under Chapter IX, the adjudicating officer appointed by the Central Government may now have the power to adjudicate all matters under the principal Act. This is a consequential amendment for the decriminalization of offences under the Principal Act.

SPECIAL EMPHASIS

- The proposed amendment mainly aims at **decriminalizing certain offences** and **increasing the monetary penalty**.
- The proposed Amendment also **extends the powers of the adjudicating officer** who will have the jurisdiction over the entire Act and will have the powers to adjudicate over the issues of this Act.
- Another major proposed amendment is the **omission of Section 66A** in the parent Act which provides for the Punishment for sending offensive messages through communication service, etc.

ISSUES

- **Amendments proposed outside the legislative intent of the Bill:** The legislative intent of the Jan Vishwas (Amendment of Provisions) Bill, 2022 is to decriminalize various offenses in certain Acts. However, the Bill seeks to redefine "appropriate authority" as mentioned above. The proposed change has raised concerns regarding its alignment with the Bill's decriminalization goals. The amendment could potentially impact the authority of state and Union governments in executing actions under the IT Act,

particularly concerning take-down orders, with the ambiguity surrounding the powers of the respective Governments and Departments.¹⁰

- **Impact of decriminalization:** Under the Bill, several offences with an imprisonment term in the IT Act have been decriminalized by imposing only a monetary penalty. Decriminalization might encourage the influential stakeholders including the intermediaries and other authorities to engage in non-compliance with the provisions of the Act, as major contraventions have been proposed to be decriminalized. This may largely benefit the influential intermediaries/ stakeholders for whom paying hefty amounts is not worrisome. Only those intermediaries who come from lower-income backgrounds will face trouble.
- **Change in the powers of the Adjudicating Officer under the Act:** A major amendment is proposed under Section 46 to empower the adjudicating officer appointed by the Central Government to adjudicate all contraventions under the principal Act and impose financial penalties as discussed above.¹¹ The aim is to reduce the burden on the courts. However, the complete jurisdiction of the principal Act in the hands of an administrative officer who is going to be appointed by the Central Government might hamper the proper and impartial functioning.

BENEFITS

- **Uniformity in the law:** To maintain consistency in penalties for similar offences, amendments have been suggested for various sections, including Section 69(B), Section 70(B), Section 44(a), Section 44(b), Section 44(c), and Section 68. These changes are aimed to ensure uniformity in the imposition of penalties, cutting down the number of litigations and bringing deterrence through heavy monetary implications.
- **Lowering the burden on the Courts:** Certain amendments are proposed to remove imprisonment for contraventions by companies and corporate bodies. Instead, administrative officers would be empowered to impose higher financial penalties in place of punishment and/ or fines which were before imposed by the court. Consequential amendments are also recommended to enable adjudicating officers to handle

¹⁰ Srijan Rai and Shashank Pandey, "Bringing jan vishwas to the Jan Vishwas Bill", Leaflet, March 2023. Available at: <https://theleaflet.in/bringing-jan-vishwas-to-the-jan-vishwas-bill/>.

¹¹ Report of the Joint Parliamentary Committee on the Jan Vishwas (Amendment of Provisions) Bill, 2022, Lok Sabha, Page 201-202, Available at: [https://loksabhadocs.nic.in/lsccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20\(Amendment%20of%20Provisions\)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_\(Amendment_of_Provisions\)_Bill_2022_1.pdf](https://loksabhadocs.nic.in/lsccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20(Amendment%20of%20Provisions)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_(Amendment_of_Provisions)_Bill_2022_1.pdf).

contraventions and impose financial penalties.¹² This will decrease the burden on the courts and lower the number of litigations.

- **Aligning with the orders of Hon'ble Supreme Court:** Additionally, Section 66A is proposed to be omitted as it had been struck down by the Supreme Court in the case of *Shreya Singhal vs. Union of India*¹³, and this is a welcoming step to align with the order of the Apex Court.
- **Defining equal agency within the Government:** A change to the definition of 'appropriate Government' in Section 2(1)(e) was suggested to empower various administrative Ministries/ Departments to exercise powers under the IT Act for matters allotted to them under the Government of India (Allocation of Business) Rules, 1961.¹⁴ This will enable different Ministries to take agency for the matters allocated to them and reduce the burden of the Ministry of Electronics and Information Technology.

RECOMMENDATIONS BY THE JOINT PARLIAMENTARY COMMITTEE

- **Some of the major recommendations made by the Committee for the proposed Amendment Bill¹⁵ are as follows:**
 - Section 2(1)(e): The amendment proposes to have an alteration to the definition of "appropriate government" under Section 2 as mentioned above. The Committee suggested that the **proposed language of the amendment may be re-drafted** so that there is more clarity.¹⁶
 - Section 72: The Committee suggested that the **punishment for breach of privacy and confidentiality in terms of imprisonment and/ or fine** as provided under Section 72 of the parent Act **may be retained**. It may be **aligned with the provisions in the Digital Personal Data Protection Bill** which is in the pipeline.

The Merchant Shipping Act, 1958

¹² *Ibid.*

¹³ AIR 2015 SC 1523.

¹⁴ Report of the Joint Parliamentary Committee on the Jan Vishwas (Amendment of Provisions) Bill, 2022, Lok Sabha, Page 201-202, Available at:

[https://loksabhadocs.nic.in/lssccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20\(Amendment%20of%20Provisions\)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_\(Amendment_of_Provisions\)_Bill_2022_1.pdf](https://loksabhadocs.nic.in/lssccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20(Amendment%20of%20Provisions)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_(Amendment_of_Provisions)_Bill_2022_1.pdf).

¹⁵ *Ibid.*

¹⁶ Report of the Joint Parliamentary Committee on the Jan Vishwas (Amendment of Provisions) Bill, 2022, Lok Sabha, Page 333, Available at: [https://loksabhadocs.nic.in/lssccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20\(Amendment%20of%20Provisions\)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_\(Amendment_of_Provisions\)_Bill_2022_1.pdf](https://loksabhadocs.nic.in/lssccommittee/Joint%20Committee%20on%20the%20Jan%20Vishwas%20(Amendment%20of%20Provisions)%20Bill,%202022/17_Joint_Committee_on_the_Jan_Vishwas_(Amendment_of_Provisions)_Bill_2022_1.pdf).

BACKGROUND

- The Merchant Shipping Act, 1958, (MS Act) aims to foster the development and maintenance of an Indian mercantile marine in a manner best suited to serve national interests. For this purpose, the Act provides for the registration, certification, safety and security of Indian ships, training, certification, labor conditions and welfare of seafarers and matters concerning prevention of pollution from ships.¹⁷
- The Bill aims at decriminalizing 22 compliances under the parent Act. These include clauses for forging documents or fraudulently working as a seaman; desertion; and fraudulent alteration or destruction of log books, *et al.*¹⁸

WHAT IS IN THE BILL?

- The amendments are proposed under Section 436(2) of the parent Act which provides penalties for various offenses under the Act. The principle regarding decriminalization of offenses has been adopted while proposing to increase the financial penalties.
- Some of the major changes as proposed in the Bill are as follows*:
 - For any owner, master or agent who **willfully disobeys any order of Central Government regarding prohibition of engagement of persons as seamen** under Section 115, the punishment has been changed from Imprisonment extendable to 3 months and/ or 1 thousand rupees fine to fine extendable to 2 Lakhs.
 - **Punishment for forgery and fraudulent use of certificate of discharge** or a certificate as to the work of a seaman has been changed from Imprisonment extendable to 6 months and/ or 500 Rupees fine to fine extendable to 2 Lakhs.
 - **For a seaman or an owner who contravenes the conditions of service, etc.** to remain unchanged during pendency of proceeding before tribunal, the punishment has been changed from Imprisonment extendable to 6 months and/ or 1 thousand rupees fine to fine extendable to 50 thousand rupees.
 - For **desertion and absence without leave of seamen**, the punishment included forfeiture along with a fine and imprisonment extendable to 3 months. The Bill

¹⁷ Merchant Shipping Act, 1958.

¹⁸ Jan Vishwas (Amendment of Provisions) Bill, 2022.

* The list does not contain all the offenses which have been covered under the Bill, but only those which are relevant.

proposes to remove the provision for imprisonment, retaining the forfeiture and fine.

- If any **Master of the ship fails to report the desertions and absence without leave of the Seamen**, the punishment for such failure has been changed from Imprisonment extendable to 1 month and/ or 1 hundred rupees fine to a fine extendable to 1 Lakh.
- The **punishment for Masters for leaving behind in India a seaman or apprentice engaged abroad** has been changed from Imprisonment extendable to 3 months and/ or 1 thousand rupees fine to a fine extendable to 50 thousand rupees.
- For fraudulent alteration or destruction of log books, imprisonment has been changed to fine extendable up to 2 Lakhs.
- **SI. No. 108E(a) and (b):** If the **Master of the Ship fails to give notice of nuclear ships meeting any accident, entering the territorial water of a foreign State, or is likely to lead to environmental hazards**, the punishment has been changed from Imprisonment extendable to 1 year and/ or 10 thousand rupees fine to fine extendable to 5 Lakh rupees and optional retaining of the ship.
- The Bill proposes to **introduce Section 436(3), (4), (5) and (6)**. The proposition designates the Principal Officer of the Mercantile Marine Department to impose penalties for contravening its provisions, ensuring that penalties are imposed only after providing a fair opportunity for the parties to be heard. If any person is dissatisfied with the Principal Officer's decision, they can appeal to the Director-General within thirty days of receiving the order, adhering to the Central Government's prescribed format. The Director-General, after giving a hearing to the concerned parties, will issue an appropriate order within thirty days of receiving the appeal. Additionally, for the first contravention, if a penalty has been prescribed, the Principal Officer or another Officer notified by the Central Government may allow compounding of the offense, provided that the compounded sum does not exceed the maximum penalty applicable for the specific contravention.
- The Bill proposes that in the Act, **a new Section 436A** is introduced laying down power of the Central Government to make rules prescribing form and manner of appeal against the order of the Principal Officer of the Mercantile Marine Department under Section 436(4).

ISSUES

- The replacement of decriminalization with heavy penalties will increase the burden on seamen coming from lower-income backgrounds.
- The amendments proposed for introducing new Sections 436(3), (4), (5) and (6) and Section 436(A) are against the legislative intent of the Bill which is aimed at decriminalization of certain offences. This amendment needs separate deliberation as it introduces provisions such as appeal and gives power in the hands of the Central Government to lay down form and manner for the same.

BENEFITS

- The decriminalization aspect will benefit the seamen and masters of the Ships, saving them from imprisonment and speeding up proceedings.
- By requiring that penalties can only be imposed after providing the parties with a reasonable opportunity to be heard, the introduction of new provision Section 436(3) ensures fairness and due process. This allows individuals or entities accused of contravening the Act to present their side of the story and provide any relevant evidence or justifications before a penalty is imposed.
- The introduction of Section 436(4) provides for an appeal to the Director-General from the order of the Principal Officer. Moreover, Section 436(5) ensures the former will issue an appropriate order within thirty days of receiving the appeal. This will enable the stakeholders to get a chance to appeal and expedite the process as the duration for deciding the appellate matter has been given under the proposed amendment.

RECOMMENDATIONS BY THE JOINT PARLIAMENTARY COMMITTEE

- Following thorough deliberations, the Committee reached a preliminary consensus on the proposed changes to the Merchant Shipping Act, of 1898. However, due to the potentially severe repercussions in the event of non-compliance with sections 108E(a) and (b), the Committee suggested the following changes:
 - Section 108E(a) and (b): The options under consideration are to either maintain the existing provisions or raise the penalty to 10 Lakhs under both.

The Agricultural Produce (Grading and Marking) Act,1937

BACKGROUND

The Agricultural Produce (Grading and Marking) Act,1937 Act provides for the grading and marking of agricultural and other produce, to indicate the quality of the same.

WHAT'S IN THE BILL?

The Jan Vishwas Bill seeks to decriminalize various offences under the Act, and increase financial penalties, as follows:

- The unauthorized marking with grade designation mark (section 4), will now incur a penalty of five lakh rupees.
- Counterfeiting a grade designation mark (section 5) will incur a penalty of eight lakh rupees.
- Selling migrated articles (section 5A) will incur a penalty of 3 Lakh Rupees
- Selling/distributing any scheduled article or class of articles without the grade designation mark (section 5B) will incur a penalty of 5 Lakh Rupees.

BENEFITS

- The beneficiaries of this Bill would largely be manufacturers/packers/Food business operators, who grade and mark the raw or processed commodity in the packaged form under AGMARK. The proposed decriminalization amendments in the aforesaid Act would facilitate the development of a supportive ecosystem for food and agribusiness.
- This would also increase the ease of doing business and would encourage manufacturers and packers to grade and mark more quantities of agricultural produce, creating thereby demand in the market and indirectly benefiting the farming community in terms of better price realization.

ISSUES

The decriminalization of such provisions might lead to an increase in spurious/tampered/counterfeit products, therefore harming consumers.

The Industries (Development and Regulation) Act, 1951

BACKGROUND

The Industries (Development and Regulation) Act, 1951 provides the conceptual and legal framework for industrial development and regulation in India.

WHAT'S IN THE BILL?

Section 24A is proposed for the omission in the Jan Vishwas Bill. The Bill also decriminalizes the following provisions of the Act, and increases the financial penalties to 25 Lakhs for the same:

- Non-registration of industrial undertakings (section 10)¹⁹
- Establishment of a new industrial undertaking without a license (section 11, section 11A, section 13)
- Any directions issued under section 16, and 18B
- Any order made under section 18G
- Any rule under this Act, the contravention of which is made punishable

BENEFITS

- This amendment is purported to lead to an improvement in Ease of Doing Business, through the simplification of the process, and a reduction in compliance burden.
- About the omission of Section 24A of the Act, this was to further facilitate Ease of Doing Business and Ease of Living for all citizens. According to the Ministry of Commerce and Industries, the perception of punishment by potential investors and businesses leads to insecurity, therefore hampering investment decisions.

DRAWBACKS

- In situations where the penalty amount proposed for industries is high, the non-provision for adjudication and appellate mechanisms may propose issues.
- The decriminalization of non-registration of industries such as those producing defense equipment, industrial explosives, and hazardous chemicals may lead to these operating illegally, which may then pose challenges to public safety.

¹⁹ As per a Notification from 2019, only four industries are covered under compulsory licensing: tobacco products, electronics, aerospace and defence equipment, industrial explosives, hazardous chemicals.

The Warehousing Corporations Act, 1962

BACKGROUND

The Warehousing Corporations Act, 1962 provides for the incorporation and regulation of corporations for the purpose of warehousing of agricultural produce and certain other commodities and for matters connected therewith.

WHAT'S IN THE BILL?

The Jan Vishwas Bill seeks to omit, and decriminalize offences as mentioned in section 38 of the Warehousing Corporations Act, which addresses the following:

- Using the name of Corporations in any advertisement/prospectus, without the consent of the Warehousing Corporation.

BENEFITS

- Section 38 of the Act provides for imprisonment extending up to six months for a relatively minor violation of using the name of any of the Corporations without their written consent in any prospectus or advertisement.
- Additionally, the said provision could be considered redundant as it has never been invoked by a consumer welfare court to date.

The Trade Marks Act, 1999

BACKGROUND

The Trade Marks Act, 1999 amended and consolidated the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks.

WHAT'S IN THE BILL?

The Jan Vishwas Bill seeks to make the following amendments to the Trade Marks Act of 1999:

- Omission of section 106, which previously imposed penalties for removing or selling piece goods or cotton yarn or cotton thread which is not marked as required by that section.

- Decriminalizes the act of falsely representing a trade mark as registered (section 107), and increases the fine for the same up to one lakh rupees.
- Omission of section 108, which imposes a penalty for improperly describing a place of business as connected with the Trade Marks office.
- Omission of section 109, which imposes a penalty for falsification of entries in the trade marks register.
- Insertion of a new section 112A, which provides for the adjudication of penalties by the registrar, and criminalizes non-compliance with the orders of the latter.
- Increases the penalty for non-compliance with the requirement of providing information of imported goods bearing false trademarks to ₹10,000.
- Insertion of a new clause (clause xxxiia) in section 157 (2), dealing with the manner of recovering penalties imposed under the sub-section (1) of the newly added section 112A.

BENEFITS

- The Jan Vishwas bill streamlines the issues with the existing Trade Marks Act, and removes redundancies. For example, the removal of existing Sections 106, 108 and 109 of the Trade Marks Act is helpful, since these are covered under the Indian Penal Code, 1860.
- Additionally, the decriminalization of certain provisions under the trade marks act, may improve ease of doing business. This is significant as India currently ranks fifth in Trade Mark filing, as the complete process has been digitized; there has been a four-fold increase in the registration of Trade Mark in the last nine years, as per the Department for Promotion of Industry and Internal Trade.

DRAWBACKS

- Decriminalizing the act of falsely representing a trademark as registered (section 7) may lead to an increase in false trademarks. In this regard, the Joint Committee of Parliament had also recommended increasing the penalty for such false representation to 5 Lakh rupees/one half percent of the total sales/turnover/gross receipts (whichever is less).
- As regards the adjudication provision (112A), the lack of an appellate authority above the adjudicating authority may lead to grievances being unaddressed. This would force the

aggrieved party to directly approach the courts, increasing the burden of the Indian judiciary.

The Geographical Indications of Goods (Registration and Protection) Act, 1999

The **Geographical Indications of Goods (Registration and Protection) Act, 1999** provides for the registration and better protection of geographical indications relating to goods.

WHAT'S IN THE BILL

The Jan Vishwas Bill seeks to make the following amendments to the Geographical Indications of Goods (Registration and Protection) Act, 1999:

- Addition of a new section 37A, which provides for the adjudication of penalty by the registrar, and criminalizes non-compliance with the orders of the latter.
- Decriminalizes the penalty for falsely representing a geographical indication as registered (section 42), and increases the fine for the same up to One Lakh Rupees.
- Omission of section 43, which imposes a penalty for improperly describing a place of business as connected with the Geographical Indications Registry.
- Omission of section 44, which imposes a penalty for falsification of entries in the G.I. register.
- Insertion of a new clause (clause oa) in section 87 (2) dealing with the manner of recovering penalties imposed under the sub-section (1) of the newly added section 37A.

BENEFITS

- The Jan Vishwas bill streamlines the issues with the existing geographical indications act and removes redundancies.
- Additionally, the decriminalization of certain provisions under the geographical indications act, may improve the ease of doing business.

DRAWBACKS

- Decriminalizing the act of falsely representing a geographical indication as registered (section 42) may lead to an increase in the commission of this activity. In this regard, the Joint Committee of Parliament had also recommended increasing the penalty for such false representation to 5 Lakh rupees/one-half per cent of the total sales/turnover/gross receipts (whichever is less).
- As regards the adjudication provision (37A), the lack of an appellate authority above the adjudicating authority may lead to grievances being unaddressed. This would force the aggrieved party to directly approach the courts, increasing the burden of the Indian judiciary.

The Cable Television Networks (Regulation) Act, 1995

BACKGROUND

The Cable Television Networks (Regulation) Act, 1995 (CTN Act) is one among the 42 Acts included in the Schedule of Jan Vishwas (Amendment of Provisions) Bill, 2022, proposed to be amended. The CTN Act, of 1995 was enacted to provide a framework for the regulation of cable networks in India. The Act mandates a compulsory registration for cable operators and establishes rules to regulate the content that cable companies broadcast. It safeguards the subscriber's interests and prevents the transmission of any broadcast that could be contrary to the national interest.

WHAT IS IN THE BILL? ²⁰

- **Section 16** prescribes the punishment in case of contravention under the provisions of this Principal Act. The existing provision states imprisonment of individuals which may extend up to 2 years with a fine of up to a thousand rupees, in case of the first instance and 5 years for every subsequent offence along with the fine of five thousand rupees. The proposed amendment seeks to replace the "punishment for contravention" with "penalty for contravention" under this section. It replaces the term of imprisonment with "advisory or censure or warning or penalty up to Rs 20,000" for the first instance and "issuance of advisory or censure or warning along with the penalty that may extend up to one lakh rupees" for the second instance.

²⁰ Jan Vishwas (Amendment of Provisions) Bill, 2022- Accessed at : http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/299_2022_LS_ENG1222202244325PM.pdf

- Further, if the violation persists, then the registration of the individual might be cancelled by the **designated officer** as he/she may deem necessary.
- **The proposed Section 16 also defines the way the designated officer may impose a penalty, cancel the registration or both, depending upon the nature of violation.** Moreover, a person also has been given the opportunity to appeal to the Secretary to the Government of India within thirty days of penalty imposition.
- The existing provision under **Section 17 of the CTN Act, 1995** prescribes the **punishment for offences committed by the company**²¹ or the person in charge of the company. Both the company and everyone else who oversee and accountable to the corporation at the time of the violation is deemed guilty of the violation and subject to legal action and punishment in accordance with the law. **Section 17 of the Act casts** accountability on the key persons holding responsible positions in case of offences committed by a company, firm, or association of Individuals. **The amendment seeks to omit the existing section 17.**
- **Section 18** of the Act stated that the court shall not take cognizance of any offence as punishable without first receiving a written complaint from the authorized officer. **The amendment seeks to omit the provision under section 18 of the CTN Act.**

SPECIAL EMPHASIS

The Ministry of Information and Broadcasting has proposed amending **Section 16** of the Cable Television Networks (Regulations) Act in order to make it consistent with the ease of doing business and by imposing heavy penalties wants to preserve the deterrent effect caused by this provision. **Sections 17 and 18 of the Principal Act** have become redundant as a result of the proposed amendments to Section 16 where heavy penalties are being imposed by the designated officer. The officer will also be responsible to give an opportunity to be heard to the offender before imposing the penalties which means that the court's role in such cases is negated to the extent of imposition of penalties. Therefore, Sections 17 and 18 of the Principal Act are proposed to be omitted.

ISSUES

- **Sections 17 and 18** of the Principal Act are consequential in nature because of the offences committed by the company. The aforesaid sections put the liability on the key person/s of the company, in case of any offense committed. However, the omission of

²¹ Explanation- For the purpose of this section, - "company" means anybody corporate and includes a firm or other association of individuals

the sections does not require the responsibility to be fixed on key persons of the company.

- **According to Section 18 of the Act** no court shall take cognizance of any offence punishable under this Act except upon a written complaint made by any authorized officers. There seems to be ambiguity in the definition of the 'designated officer'. The designation of the officer is not clearly mentioned in the amendment. The designated person could be a deputy officer, district magistrate, sub-divisional magistrate, or any nodal officer.
- Another issue that arises with the omission of **Section 18** is the room for the number of frivolous litigations that can be filed before the Courts by an aggrieved person. The verification and authorization by the designated officer could mean having a check and balance before proceeding with litigation before the courts, however, it is unclear as to whether the aggrieved can now file their complaints directly before the Courts or there will be another grievance redressal authority for the complaints under the Act.

BENEFITS

- The proposed amendments aim **at making the Act more business-friendly and boosting investor confidence in the sector by the** decriminalization of offences and penalties under the **Cable Television Networks (Regulations) Act, 1995**.
- The penalties prescribed under **Section 16 of the Act** included 86 imprisonment provisions that were harsh for the offenses which are mostly technical violations in nature. Moreover, sections of serious offences like violation of copyright and actions prejudicial to the sovereignty or integrity of India, security of India, etc. were already covered in Copyright Act, and other criminal laws.²²
- The proposed reduction of criminal penalties from imprisonment to monetary penalties will reduce inhibitions for economic actors. The bill also increases monetary penalties and the amounts of fines significantly; as a result, it aims to both **rationalize and decriminalize many criminal statutes**.

RECOMMENDATIONS BY THE COMMITTEE²³

Through careful deliberations, the Joint Committee proposed the following recommendations;

²² [Joint Committee Report on Jan Vishwas \(Amendment of Provisions\) Bill, 2022](#)

²³ [Joint Committee Report on Jan Vishwas \(Amendment of Provisions\) Bill, 2022](#)

- The committee suggested that there is a need to specify the period for repeat contravention in detail.
- Due to the new insertion as a consequential change due to changes in Sections 16(1) & (2), there is a need to redefine the words “after thirty days of receipt of such order” to substitute “after thirty days of such order”.
- Provision to “cancel the registration” by the authorized person is to be rephrased and placed in the Bill at a more suitable place.

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