



COMPLICATIONS WITH RELATION TO PROCEDURE OF SFIO AND THE PROSECUTION AND CRITICAL ANALYSIS OF BAIL PROVISIONS UNDER THE COMPANIES ACT, 2013

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Introduction

The Companies Act, 1956 had certain provisions criminalizing fraud. However, such offences were mainly compoundable. Under the garb of the corporate veil, public fraud was being committed at a large scale, for example, the Satyam scam and the Saradha scam. With the increasing cases of fraud, there was a need of criminalization under The Companies Act. Thereby, fraud was severely criminalized under The Companies Act, 2013 (hereinafter as the Act). Serious Fraud Investigation Office (hereinafter as SFIO) though introduced in The Companies Act, 1956, in 2003, was ineffective as there were no provisions which gave it any powers. Subsequently, the role of SFIO was increased and was given immense power under the Act.

The effect of introducing fraud and vigorous criminalization under the Act has fed terror into the minds of businessmen. It not only affects the criminals involved in fraud but also terrorizes the innocent businessmen who are legally carrying out their business. For example, a person who is being investigated by SFIO can be arrested at any time and go without bail for the entire course of the trial by virtue of Section 212(6) of the Act. Even if he or she is acquitted, his Right to life and liberty is affected immensely during the course of the trial. Living under such fear is

also a violation of the Right to life and dignity guaranteed under Article 21 of the Constitution. This, in turn, has affected the economy of the country as the businessmen are fearful of involving themselves in any kind of business. While corporate frauds need to be dealt with stringently, there is also a need to protect the interest of those who may have been wrongly accused.

This study deals with the complications in procedures pertaining to SFIO and the prosecution of the Special Courts under the Act. It further deals with the critical analysis of the constitutionality of Section 212(6) of the Act.

Research Methodology

The study is doctrinal in nature. The relevant material is collected from primary and secondary sources like various statutes and other sources like published works, law journals, national journals and websites on relevant topics.

History of Fraud and SFIO under the Act

The Companies Act was introduced in India in 1956 to consolidate and amend the law with regards to various companies and similar associations. There were many changes in the economic environment, due to the increasing globalization, competition and public frauds, which led to the introduction of the 2013 Act. The Expert Committee, headed by Justice J.J. Irani was incorporated in 2005 to send recommendations to the Parliament for the changes to be made under The



Companies Act, 2013.¹ One of the main objectives of this act was to introduce and incorporate stringent punishment for serious fraud.² Another Committee, headed by Shri Vepa Kamesan, was incorporated in relation to SFIO in 2009. Corporate fraud was defined for the first time under the Act under Section 447. This was incorporated from The Fraud Act, 2006 in the United Kingdom, which lays down clear definitions for Fraud and proper liability for the offences contained therein.³ Although, only parts of this act were incorporated in the Act, thereby making some provisions ambiguous and discriminatory.

Furthermore, SFIO was given immense powers under The Companies Amendment Act, 2015, under Section 212, including making the crimes investigated by SFIO to be cognizable and non-bailable.

The Companies Law Committee, headed by Shri Tapan Ray, submitted its report on February 1, 2016. One of the main purpose of this committee was to promote the ease of doing business in India and to overcome the issues in the implementation of The Companies Act, 2013.⁴

Further, a Committee headed by Shri Injeti Srinivas was incorporated vide an order

dated July 13, 2018 by the Ministry of Corporate Affairs. The main objective of the Committee was to give recommendations for the decriminalization of certain provisions under the Act. It did the same by “re-categorizing certain ‘acts’ punishable as compoundable offences to ‘acts’ which have civil liabilities.”⁵ This led to re-categorization of 16 offences out of 81 as civil wrongs through The Companies (Amendment) Act, 2019. The MCA, vide an order dated September 18, 2019, has constituted a committee to further promote “ease of doing business to law abiding corporates”⁶, and “also to address emerging issues having impact on the working of corporates in the country”⁷.

Need for decriminalization under the Act

The Companies Act was formed to regulate and ease the carrying out of business in India. However, with various amendments, severe criminalization has been incorporated in the Act. While the same is necessary to tackle the cases of serious fraud, but practically, it is creating fear in the minds of businessmen, employees and people who carry out business with various companies.

¹ Report of the Expert Committee on Company Law 2005, MINISTRY OF CORPORATE AFFAIRS, (May 31, 2005), <http://reports.mca.gov.in/Reports/23-Irani%20committee%20report%20of%20the%20expert%20committee%20on%20Company%20law,2005.pdf>

² *Id.* at 130.

³ Report of the Committee for Reforming the Regulatory Environment for Doing Business in India, MINISTRY OF CORPORATE AFFAIRS, (September 2, 2013), http://www.mca.gov.in/Ministry/annual_reports/DamodaranCommitteeReport.pdf.

⁴ Report of The Companies Law Committee, MINISTRY OF CORPORATE AFFAIRS, (Feb. 1, 2016), https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf

⁵ Report of the Committee to Review Offences Under The Companies Act, 2013, MINISTRY OF CORPORATE AFFAIRS, (Aug. 14, 2018), http://www.mca.gov.in/Ministry/pdf/ReportCommittee_28082018.pdf.

⁶ Order F. No. 2/1/2018-CL-V 1–3, MINISTRY OF CORPORATE AFFAIRS, (Sept. 18, 2019), http://mca.gov.in/Ministry/pdf/ConstitutionCLC_18092019.pdf.

⁷ *Id.* at 1.



Moreover, with the increase in criminalization under the Act, the burden on National Company Law Tribunal (hereinafter as NCLT) and the Special Courts incorporated under the Act has increased considerably.

Another point of consideration is the global practice, where white collar crimes are mainly compoundable, in contrast to Indian laws, where there is a high degree of criminalization.⁸

As per the World Bank, India ranks 63rd among 190 countries on the indicator of 'doing business', previously 'ease of doing business'.⁹ Being the fifth largest economy in the world,¹⁰ the ranking of the country's on the ease of doing business indicator is comparatively quite low. By improving this rank of the ease of doing business, India can cope with the slowing economy.

The Parliament has also discussed this topic. As quoted by Mr. Arun Jaitley, "With some of these provisions, doing business in India would become extremely difficult."¹¹ He further stated, "So, if somebody is arrested and he belongs to a company, a terrorist can get bail but he should never get bail."¹² This means that a businessman is being kept in the

same category as a terrorist by virtue of Section 212(6) of the Act. This is because there were similar provisions of bail under Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter as TADA) which have now been repealed. The entire act of Prevention of Terrorism Act, 2002 (hereinafter as POTA) and TADA were struck down because they were being exceedingly misused by the State. The Law Commission in its report stated "However, mere classification of an act as an act of terrorism should not result in the automatic denial of bail or reversal of the burden of proof. Denial of bail should not be used as a potential tool of manipulation to legitimizing actions of the State."¹³ While this legislation was repealed in TADA which deals with severely serious offences, the Act is merely a civil law. Inversion of guilt under Section 212(6) should not be allowed. Therefore, there is the need for various amendments in the Act.

Issues in procedure of investigation and prosecution under special courts of the Act
In *SFIO vs Bhushan Steel Ltd.*¹⁴, a joint case for 287 accused was filed by SFIO. This not only included the main alleged culprits

⁸ Deepshikha Sikarwar, *Caught in the (Companies) Act? Don't fret*, THE ECONOMIC TIMES, (Aug. 16, 2019),

<https://economictimes.indiatimes.com/news/company/corporate-trends/caught-in-the-companies-act-dont-fret/articleshow/70694514.cms?from=mdr>.

⁹ *Doing Business 2020*, WORLD BANK, 4 (2020), <http://documents.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

¹⁰ Akriti Anand, *India becomes world's 5th largest economy, overtakes UK, France: Report*, INDIA TODAY, (Feb. 18, 2020), <https://www.indiatoday.in/business/story/india-becomes-world-fifth-largest-economy-overtakes-uk-france-report-1647446-2020-02-18>.

¹¹ Further discussion on the motion for consideration of the Companies (Amendment) Bill, 2014 moved by Shri Arun Jaitly on the 17th December, 2014. Parliament of India, LOK SABHA HOUSE OF THE PEOPLE, (Dec. 17, 2014), <https://indiankanoon.org/doc/125273440/>

¹² *Id.*

¹³ Report No. 268- Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, LAW COMMISSION OF INDIA, (May 23, 2017), <http://lawcommissionofindia.nic.in/reports/Report268.pdf>.

¹⁴ *SFIO v Bhushan Steel Ltd.*, CC No.720/2019, E-COURT SERVICES, Special Judge (Companies Act), Dwarka District Court, New Delhi (Order Dt. Aug. 16, 2019).



involved in the case, i.e. the management of the company, but various employees and Chartered Accountants. It also involved persons who were not even connected with the company through any contract as well by virtue of Section 120B of Indian Penal Code, 1860 (hereinafter as IPC). This leads to various problems. The first problem is that the trial shall not start unless all accused have appeared in person in the court or through their counsel. This may take years, given the high number of accused persons involved in the case. In such cases, the purpose of justice is defeated as there is a considerable delay in the completion of the trial. The second problem arises in case a person is arrested after the summoning order, due to the applicability of Section 212(6) of the Act, he shall remain in judicial custody during the course of the trial, which may extend to many years. If a person who is a mere employee of the company, unaware of the fraudulent acts of the management, is arrested, may not be granted bail under the Act. This is a gross violation of the fundamental rights guaranteed under Article 21 of the Constitution of India. This similar situation can be seen in SFIO v Adarsh Buildestate Ltd. & others¹⁵, where there were 187 parties involved. Even the employees have been arrested, whose involvement in the fraud may or may not be of significant importance. The result of such cases is that the employees become fearful of working in companies. This was taken even further in SFIO v Mohd.

Iqbal and others¹⁶, where people who are not even part of the company, or have any contract with the company, have been accused of Fraud under Section 447 of the Act read with Section 120B of IPC. The stringent twin conditions for bail under Section 212(6) of the Act are being applied on such persons as well.

Furthermore, the twin conditions under Section 212(6) should only apply if the accused is arrested during the course of the investigation, under Section 212(8) and 212(9). This section does not apply in cases where the charge-sheet was filed without arrest. The same was upheld by the Supreme Court in Arun Sharma vs. Union of India and Ors.¹⁷ where similar provisions under Section 15 of PMLA are applicable. The Court held that under PMLA, if a person was not arrested during investigation, nor produced in custody under Section 170 of the Criminal Procedure Code, if such person appears to the court voluntarily after issuance of summons or warrant in a PMLA Complaint, such person should not be arrested.¹⁸ It further held that Section 45(1)(ii) of PMLA has no application wherein the person was not arrested under Section 19 of PMLA.¹⁹

However, in case of Special Courts under the Act, the conditions under Section 212(6) are being applied even in cases where the charge-sheet had been filed without arrest.²⁰

¹⁵ SFIO v Adarsh Build Estate Ltd. & others, CC No. 3 of 18.05.2019, E-COURT SERVICES, Special Judge (Companies Act), Gurgaon (Order Dt. June 3, 2019).

¹⁶ SFIO v Mohd. Iqbal & Others, CC No. 720/17, E-COURT SERVICES, Special Judge (Companies Act), Dwarka District Court, New Delhi (Order Dt. Jan. 24, 2019).

¹⁷ Arun Sharma v. Union of India and Ors., (2016) SCC OnLine P&H 5954.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ SFIO v Mohd. Iqbal & Others, CC No. 720/17, E-COURT SERVICES, Special Judge (Companies Act), Dwarka District Court, New Delhi (Order Dt. Jan. 24, 2019).



The validity of Section 212 is presently challenged in the Supreme Court in many cases as well.²¹ Companies act is a civil law and not a criminal law. Therefore, before a person is accused of a crime under this law, he or she should be issued a notice and given a chance of personal hearing before the SFIO. If a charge-sheet is filed against a person without such compliances by SFIO, the accused in most cases, is not aware as to why such charges have been filed against him. Even his business and reputation is greatly affected. The Right to Reputation is an integral part of Right to Life under Article 21 of the Constitution. This has also been reiterated in by CJI Deepak Misra in *S. Nambi Narayanan's case*.²² Such non-compliance affects the Right to Life and dignity of a person. Presently, charge-sheets are being filed against persons, without issuing any notice or taking any statements from such persons. In case of *SFIO vs Mohd. Iqbal and others*²³, charge-sheet has been filed against dead persons as well. If notice and personal hearing had been made mandatory, such an error would not have been committed.

The enquiry report submitted by SFIO under Section 212 of the Act is sanctioned by the Central Government in a mechanical manner. In *N. Sampath Ganesh vs. Union of India*²⁴, the petitioner submitted that the report was submitted on 28th May 2019 and on 29th May, 2019 sanction order was issued. The next day, prosecution was lodged under Section

447 of the Act. The report which ran into 32,000 pages was approved in just one day. This shows the non-application of mind in issuing sanction of the report. In *State of Bihar v. P.P.Sharma*²⁵, it was held that-

“The order of sanction is only an administrative act and not a quasi-judicial one nor is a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof. But the basic facts that constitute the offence must be apparent on the impugned order and the record must give the reasons in that regard.”

It leads to discrepancies in the SFIO report being approved. Therefore, there is a need to constitute a Judicial Committee which oversees the report before sanctioning it. The Committee should pass a speaking order for each accused, which shows application of mind. In other cases²⁶ as well, even reports exceeding 70,000 pages is approved in a mechanical way without any application of mind. Thereby, a clarification should be made under Section 212(14) where legal advice should be taken from a Judicial Committee incorporated for the same.

In the present situation, there is no time bar as to how further in the past can SFIO conduct its investigation. There is a need to implement a reasonable time bar in Section 212 of the Act regarding the same. It was held

²¹ *Vijay Shukla v. Union of India and Anr.*, (2019), Writ Petition (Criminal) 239/2019, Order Dt. 19.09.2019.

²² *S. Nambi Narayanan v. Siby Mathews*, (2018) 10 SCC 804.

²³ *SFIO vs Mohd. Iqbal & Others*, Reg. No. CC/720/2017, E-COURT SERVICES, Special Judge(Companies Act), Dwarka District Court, New Delhi (Order Dt. June 4, 2019).

²⁴ *N. Sampath Ganesh v. Union of India*, (2019) SCC Online Bom 1887.

²⁵ *State of Bihar v. P.P.Sharma*, A.I.R 1991 S.C. 1260 (India).

²⁶ *SFIO v Mohd. Iqbal & Others*, CC No. 720/17, E-COURT SERVICES, Special Judge (Companies Act), Dwarka District Court, New Delhi (Order Dt. Jan. 24, 2019).



in State of Punjab and Ors. vs. Bhatinda District Coop. Milk P. Union Ltd., that,

“It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.”²⁷

Section 447 has been inserted in the Schedule of PMLA by act 13 of 2018 (w.e.f 19-04-2018). As per Section 5 of the PMLA, an order of attachment can be made in relation to scheduled offences. The same power is with SFIO as well under Section 212(14A). The Companies (Amendment) Act, 2019 has included Section 212 (14A) which gives power of disgorgement of property acquired through unfair means to the SFIO. In such case, double jeopardy is being imposed on the accused. He or she is being harassed by both SFIO and Directorate of Enforcement (hereinafter as ED). Therefore, there should be a provision that if a person’s property is being attached by SFIO or ED, the same should not be allowed to do so by the other authority.

Comparative analysis of Section 212(6) of the Act and Section 45 of PMLA

Section 212 of the Act empowers the SFIO to investigate into fraud matters involving the companies. Section 212(6) of the Act imposes twin conditions on bail, i.e. bail shall only be granted wherein the following two conditions are met- “(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where

the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.” This creates stringent conditions on grant of bail wherein an offence is being investigated by the SFIO.

There is a stark similarity between Section 212(6) of the Act and Section 45 of PMLA. Section 45 of PMLA also imposes stringent conditions for the grant of bail. These twin conditions were struck down by in Nimesh Tarachand Shah vs Union of India and Ors.²⁸

The main issue in this case was whether Section 45 of PMLA is violative of Article 14 and 21 of the Constitution.

The judgement reads as follows-

“We must not forget that Section 45 is a drastic provision which turns on its head the presumption of innocence which is fundamental to a person accused of any offence. Before application of a section which makes drastic inroads into the fundamental right of personal liberty guaranteed by Article 21 of the Constitution of India, we must be doubly sure that such provision furthers a compelling State interest for tackling serious crime. Absent any such compelling State interest, the indiscriminate application of the provisions of Section 45 will certainly violate Article 21 of the Constitution.”

In case of Section 447 of the Act, it creates a distinction between Fraud committed on a large scale and Fraud committed at a smaller scale. However, Section 212(6) is applicable regardless of the severity of the alleged fraud

²⁷ State of Punjab and Ors. v. Bhatinda District Coop. Milk P. Union Ltd., (2007) 11 S.C.C 363.

²⁸ Nimesh Tarachand Shah v. Union of India, (2018) 11 S.C.C 1.



committed. Thereby, a person whose involvement in the allegedly committed fraud is a lot smaller is treated as the same as those who are the main culprits involved in the case. Furthermore, an offence under PMLA is much more serious as compared to the Act. PMLA is criminal in nature whereas Company Law is civil in nature. Therefore, having such provisions may be justified to some extent under PMLA, but it is not justified under the Act.

Reasons for unconstitutionality of Section 212(6) of the Act

1. Section 212(6) of the Act is violative of Article 14 of the constitution.

It is necessary for any legislation to pass the test of reasonable classification, in order for that legislation to be valid. There can be three ways Section 212(6) can be interpreted. In Ankush Kumar's²⁹ case, where the court had to grant a bail order under Section 37 of the NDPS Act, which is similarly worded as Section 212(6) of the Act, the court held the following three tests-

- a. "Prima facie satisfaction" - The court only needs to prima facie satisfy itself that the accused is not guilty of the crime.
- b. "More than prima facie satisfaction but satisfaction less than the satisfaction required for recording of not guilty.
- c. Full satisfaction as to the existence of reasonable grounds to believe that the accused is not guilty"³¹, i.e. the literal interpretation of the Act.

This creates a discriminatory application of Section 212(6), since the court can satisfy

itself in any one of the above mentioned ways. For e.g. if a court prima facie satisfies itself, it might lead to the bail application being granted. On the other hand, if the court applies the second test, a mere prima-facie satisfaction is not sufficient. This is creating a distinction between two accused persons who have allegedly committed similar crimes to be tried in a different manner. Thereby, creating a discrimination between the two without any reasonable classification.

2. Section 212(6) of the Act is violative of Article 21 of the constitution.

As per the landmark judgement of Maneka Gandhi vs Union of India, if a law regulates the life and liberty of a person which is guaranteed under Article 21 of the Constitution, it has to be just and reasonable both procedurally and substantially.³² Further, the full bench in R.C. Cooper Vs. Union of India held that,

"it is not the object of the authority making the law impairing the right of a citizen, nor the form of action that determines the protection he can claim; it is the effect of the law and of the action upon the right which attract the jurisdiction of the Court to grant relief. If this be the true view, and we think it is, in determining the impact of State action upon constitutional guarantees which are fundamental, it follows that the extent of protection against impairment of a fundamental right is determined not by the object of the Legislature nor by the form of the action, but by its direct operation upon the individual's right."³³

While the object of Section 212(6) may be to meet the ends of justice and not have anyone

²⁹Ankush Kumar v. State of Punjab, (2018) S.C.C OnLine P&H 1259.

³⁰ *Id.*

³¹ *Id.*

³² Maneka Gandhi v. Union of India, (1978) A.I.R 597.

³³ R.C. Cooper v. Union of India, (1970) A.I.R 564.



interfere with the investigations, the effect of the same is depriving persons allegedly accused as criminals their Right to Life under Article 21 of the Indian Constitution. In *Shayara Bano Vs. Union of India*, manifest arbitrariness was defined as “something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary.”³⁴

Every person has the right to be presumed as innocent until proven guilty under the criminal jurisprudence.³⁵ The second condition under Section 212(6) inverts this presumption of innocence. In the scenario where the bail application is opposed by the Public Prosecutor, the court can only grant bail if it believes that the accused is prima facie not guilty and won't commit any crimes when on bail. If the court is satisfied that the accused is not guilty, then the court will have to discharge the accused. The decision of guilt of accused can only be established at the completion of the trial. It is excessive for the court to be able to judge whether a person would not commit any crimes when on bail. Furthermore, to judge a person as guilty or innocent before completion of the trial is manifestly arbitrary in nature.

3. Anticipatory bail can be granted, but normal bail is confined by the restrictions under Section 212(6) of the Act.

One of the peculiarity conferred by Section 212(6) of the Act is that these provisions only apply with regards to normal bail. If a person files an application for anticipatory bail, the

same can be granted under Section 438 of CrPC without applying the extreme conditions of bail as per the Act. This is because the Act does not restrict the grant of anticipatory bail under any of its provisions. This creates an anomalous situation. For example, there are two persons accused of Fraud under Section 447 of the Act, whose investigation has been undertaken by SFIO. One of the accused was arrested during the investigation as some incriminating documents were found at his residence. Since the twin conditions imposed under Section 212(6) of the Act would apply, the accused would be unable to secure bail. On the other hand, the co-accused filed for an anticipatory bail. The court will most likely grant him anticipatory bail as the normal bail conditions would apply in his case. Taking this example further, similar incriminating documents were found at the residence of the co-accused. In this case, this co-accused could still continue to be on bail and the former could still be in jail. This discrimination between two accused who have committed similar offences renders it manifestly arbitrary.

Way Forward

The following recommendations are suggested in response to the above stated problems-

1. Section 212(6) should be amended or removed. If applicability is considered necessary, then only to those who have directly committed fraud against the public at large or in cases of bank fraud.
2. If Section 212(6) is not removed, it should only be applicable to bail applications where the arrest was made during the investigation

³⁴ *Shayara Bano v. Union of India*, (2017) 9 S.C.C 1.

³⁵ *Sunil Kumar Sandhudayal Gupta v. State of Maharashtra*, (2010) 13 SCC 657.



by SFIO. It should not be made applicable to cases where the charge-sheet was filed without arrest, but the accused was arrested during the trial.

3. The issuance of notice and personal hearing should be made mandatory before issuing a charge-sheet against any person.
4. A Judicial Committee should be constituted by the Central Government to verify the contents of the enquiry report submitted by SFIO, under Section 212(14) of the Act. Application of judicial mind should be made mandatory during the verification and prior approval of the prosecution by the Committee.
5. There should be a limit on the number of persons or companies who can be tried jointly, to ensure speedy justice and compliance with principles of natural justice.
6. The filing of complaint by the Director of SFIO under Section 447 should be made mandatory.
7. There should be a limitation on the time as to how far in the past can the SFIO implement its investigation.
8. Where the basis of charge-sheet is conspiracy under Section 120-B of IPC read with Section 447 of the Act, the bail under such offence should be dealt under Section 437 of Criminal Procedure Code, and not under Section 212(6) of the Act. Further, conclusive proof must be made mandatory before applying Section 447 r/w Section 120B of IPC. Otherwise, Section 420 of IPC should be applied rather than Section 447 of the Act.
9. Since SFIO, under Section 212(14A) has been granted the power of disgorgement of property which has been acquired through fraud, the same should not be permitted by PMLA on the basis of the report of SFIO.
10. Only such persons should be made accused under Section 447 of the Act, against whom

exists a concrete proof of fraud. The entire personnel of the company should not be charged merely because they are a part of the company.

Conclusion

Therefore, the Act, though accommodating of present circumstances, still has several lacunas relating to certain procedures which need to be filled adequately. The power given to SFIO needs to be controlled and not be arbitrary or unbridled. There is a further need to re-categorise certain low-grade offences as compoundable as they are white collar crimes. However, given the serious nature of economic offences like fraud, those who are convicted of such crimes need to be dealt with harshly. This is not to say that those who are merely accused of offences under the Act need to be treated as harshly.

The government needs to be mindful of the impact of the legislation on the businessmen while incorporating new provisions or amendments to the existing provisions. There is a need for careful consideration to be made by the administrative authorities while accusing people of offences under the Act. There are some provisions under the Act that are in violation of the principles of natural justice. Provisions like Section 212(6) should be amended or struck down as being violative of Part III of the Constitution. A huge impact on the economy of the country can be created by proper implementation of the Act and the various provisions pertaining to company law.

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24. State of Punjab and Ors. v. Bhatinda District Coop. Milk P. Union Ltd., (2007) 11 S.C.C 363.
25. Sunil Kumar Sandhudayal Gupta v. State of Maharashtra, (2010) 13 SCC 657.
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