THE COMPANIES AMENDMENT ACT, 2020 A COMPARATIVE STUDY OF DECRIMINALIZATION OF MINOR OFFENCES WITH SPECIAL FOCUS ON EASE OF DOING BUSINESS.

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ABSTRACT:
The success of modern business is apparent and to make this success consistent a number of amendments made in Companies act 2013. Ease of doing business have been developed in recent times when Nirmala Sitharaman (finance minister) in 2021-2022 budget speech focused on EODB for reviving global economy. The theme of this research paper is to explain how the criminal penalties for minor offences are not beneficial for company’s growth and affect the investors and how decriminalization unclogged the court burden.

KEYWORDS: Ease of doing business (EODB), Minor offences, Decriminalization

HYPOTHESIS
The following are the hypotheses that would be examined in this research paper:

1. Role of Decriminalisation of minor offences in growing economy, invites investors to invest in business of India, provide easy access to businesses for operating in India.
2. Legislature shifts on “De Minimis Principal” from Criminalisation of minor offences.
3. Criminalization of minor offence has a deterrent effect on business sentiments and also affects the investors from investing in India
4. SPICE e-form Simplify the process for incorporating the company

RESEARCH METHODOLOGY
For the purposes of the research, doctrinal method of research has been adopted. The doctrinal research methodology has been used to study the impact of Ease of Doing Business, how Decriminalisation of minor offences through Companies amendment 2020 Unclog the court burden, how criminal penalties in minor offences affects the growth of business and investors. This has been done with the help of reports of the various committees, journals, research papers and articles written by various scholars. Various other interviews and books have been scanned in order to gain insight of the issues

RESEARCH OBJECTIVES
This research has been conducted to achieve the following objectives:

1. To study the effect of 2020 amendment in company law.
2. To study about the development of Ease of Doing Business.
3. To study in detail the features of SPICE and other related amendments for ease the business
4. To critically examine and analyse the idea of "De Minimis Principle"
5. To bring out the positive impact of EODB.
6. To find out whether 2020 company law amendment reduce the burden of court
INTRODUCTION

There are number of changes made in Companies (Amendment) Act 2020, but this research paper attempt to explain the impact of “Decriminalization of minor offences” in business. The effect of criminal penalties on business is very huge, it not only affects the business sentiments but also provide huge impact on investments both from foreign or domestic investors. Criminal Penalties like imprisonment and fines for minor offences gave a deterrent effect. To curb this effect on business and increase the growth of economy, Finance Minister Nirmala Sitharaman focused on EODB and in consonance of same, amendment were made to make easier for businesses to start operating in the country.

A Comparative study of Decriminalization of Minor offences

Minor offence has not been defined anywhere in law, but general meaning of minor offences is something that is less important, serious, or significant than other things in a group or situation. But as per this research paper the minor offences is categorized where the punishment ranges from 1 year to 10 years and fine is in crores.

There is a “de minimis” principle which means minimum criminalisation. This principle considered that there are other sanctions apart from criminalization. Those other sanctions include civil courts, damages, account for profits. Having criminal remedies in place is seen as “last resort”, when all the other means – civil litigation administrative reform, etc have failed.

Criminalization of minor offences as a deterrent policy

Criminal penalties like imprisonment and fines for minor offences act as a deterrent punishment, the effect of criminal penalties on business is very huge it affects not only business sentiments but also affect the investments both from domestic and foreign investors. Imprisonment for those actions or omissions which are not fraudulently is a big hurdle in attracting investments. To restore trust in business it is important that a balance be found between more serious offences and less serious offences, where former should be imprisoned and latter should be compounded.


For Example

- Decriminalized Section 58B of Reserve Bank of India act 1934, which states that whoever gave any false statement in any material particular knowing it to be false or willfully omits to make a material statement in respect of any application, declaration, return, statement etc shall be punishable with imprisonment for a term which may be extend to 3 years and shall also be liable to fine.

- Decriminalized of Section 29 of SARFAESI ACT, 2002 which states that if any person contravenes or attempts to contravene any provision of the act, he shall be punishable with imprisonment for a term which may extend to 1 year or fine.
Decriminalized *Section 12 of insurance act 1938*, which provides that auditor audit the balance sheet, profit and loss account, revenue account of every insurer and while doing auditing he shall have all the powers provided to the auditors of company u/s 145 of companies act, 2013, before 2020 auditor liable for every contravention made in respect of auditing, a penalty not exceeding 25 crores and with imprisonment upto 10 years were imposed.

**Perspective of Government of India for decriminalisation of minor offences**

Minor offences which are the outcome of “Malafide intent” is a big hurdle in attracting investments. The ensuring uncertainty in legal processes and the time taken for resolution in the court hurts ease of doing business. The need of amendment become more pertinent in the post COVID19 response strategy to help revive the economic growth and improve the justice system. Actions taken for decriminalisation of minor offences are expected to go a long way in improving ease of doing business and helping unclog the court system and prisons. It would also be a significant step in the Government of India’s objective of achieving ‘Sabka Saath, Sabka Vikas and Sabka Vishwas’.

Decriminalisation of minor offences leads to:

- Economic growth
- Improve ease of doing business
- Decrease the burden of court
- Increase the confidence of investors
- Unclog the court process
- Encourage investors to start business in India

**EASE OF DOING BUSINESS**

- Ease of doing business means every government from different nations provide such rules and regulations which are easy to comply and encourage businesses to start their place of management in their country
- Economy of any country grown only when they provide good markets to Enterpreneur which is only possible by providing better, simpler, regulation for businesses and stronger protection of property rights.
- Ease of doing business (EoDB) Index is ranking system established by world bank group, the ranking calculated on the 11 indicators from the areas of business regulation such as:

Starting a Business, Dealing with Construction Permits, Getting Electricity, Registering Property, Getting Credit, Protecting Minority Investors, Paying Taxes, Trading across Borders, Enforcing Contracts, and Resolving Insolvency.

- Acc to EODB report 2020, India was placed at 63rd position out of 190 countries. The essential feature of India's good performance of this year are:

  India's ranking improved basically on 4 parameters:

  1. **Starting a Business**- India take many steps to simplify the process of incorporating the company in India by introducing SPICE+ form

    which integrating multiple application form into a one general incorporating form ie. E-FORM INC 32.

  2. **Dealing with construction permits** - earlier if any company wants to build a warehouse it will cost a 5.7% of warehouse...
value and now it reduced from 4% of the warehouse value.

3. **Trading across Borders** - Government take many steps to improve the trading across borders by introducing single electronic platform for submission of documents and upgrades to port infrastructure, import and export becomes easier.

4. **Resolving insolvency** - Recovery rate under resolving insolvency has improved significantly from 26.5% to 71.6%. Also, the time taken for resolving insolvency has also come down significantly from 4.3 years to 1.6 years.

**Initiatives taken by the Ministry towards Ease of Doing Business (Prior to Year 2020)**

- Ministry of corporate affairs through companies (Amendment) Act, 2015 exempted the requirement of minimum paid up share capital of 100,000 and 500,000 Rs. from private and public company respectively.
- MCA under Section 396 of Companies Act, 2013 introduced the new concept of Central Registration Centre (CRC). It is a initiative of government Process Re-Engineering (GPR) for providing speedy incorporation related services in line with global best practises.
- CRC was established with one clear objective ie. Application for the name reservation and incorporation of the company. MCA through Companies (Amendment) Act, 2017 change the time of reservation of name in case of proposed company from 15 days to 20 days. As per Section 4 Read with Companies incorporation rules, 2014, provides that a person may make an application through RUN (Reserve Unique Name). The application shall be made in INC-1 for changing the names of proposed and existing company. Registrar on the basis of the information reserve name for the period of 20 days (in case of proposed company) from date of application and 60 days (in case of existing company) from date of approval.

The Ministry of Corporate Affairs launched the **Simplified Performa for Incorporating Company Electronically (SPICE)**. New rule 38 has been inserted by Company (Incorporation) Fourth Amendment Rules, 2016 on 2/10/16. After this amendment on January 2017 onwards, companies are formed according to the procedure of SPICE.

SPICE introduced new E-Form INC-32 for incorporating a company in simplify manner. After SPICE no need to file separate form for incorporating a company, application for DIN number, application for availability of name etc.

**Some features of SPICE are:**

- MOA (Memorandum of association) and AOA (Article of association) can be filed electronically in E-FORM INC-33 and E-FORM INC-34 respectively.
- Maximum details of 7 Subscribers can be filled in single E-FORM INC-32. If more than 7 subscribers then follow the normal procedure by filling FORM NO. INC-7
- Maximum details of directors are 20 can be filled in SPICE. And if more than 20 directors then E FORM DIR-12 has been filled by the company.
- Under SPICE, maximum 3 Directors are allowed of filling application for allotment of DIN (Director Identification Number) while incorporating a company.
- Further, the Ministry also integrated the MCA21 system with the CBDT (Centre Board of Direct Taxes) for issue of PAN.
(Permanent account number) And TAN (Tax Deduction Account Number) to a company incorporated using SPICE. Stakeholders submit application for PAN and TAN at the time of submitting application for incorporation through SPICE. The PAN/TAN allotted by the Income Tax department are being affixed on the Certificate of Incorporation of the company.

- Availability of Name also applied in INC 32 and no need to file a separate form of INC-1.
- INC-32 has a feature of Professional Certification and no need to attach the INC-8 certificate for statutory declaration.
- Total 3 chances available to submit the form whereas in old method of incorporating only 1 chance were there.
- If company not incorporated then fees for applying the incorporation will be refunded to the respective company, where no such refund was available in old method of incorporating
- MCA launched a new and simplified Web based Service RUN (Reserve Unique Name) for reserving a name in place of INC - 1. This has also removed the requirement to use a Digital Signature Certificate (DSC) during name reservation. It was another addition to Ease of Doing Business

All these features of SPICE, has resulted in reduction in the number of processes and time for starting a business in the country.

- MCA in 2019 has amended the Rule 38(2) of the Companies (Incorporation) Rules, 2014. After this amendment, zero fees is to be charged by MCA for all the incorporations with authorised capital Up to INR 15,00,000.

- Further, MCA in 2019 has amended the Companies (Incorporation) Rules, 2014 and Inserted Rule 38A to facilitate integration of MCA21 system with registration of EPFO (Employees Provident Fund), ESIC (Employees State Insurance), GST (Goods and Service tax) at the time of incorporating of companies in SPICE form.

- MCA through Companies (Incorporation) Fifth Amendments Rules, 2019, Simplified the Availability of Name Rules. After amendment there are ample illustrations to avoid ambiguity in name reservation. Due to this change, name rejection rate has fallen and the time taken for approval has been reduced. This has resulted in speed, greater transparency, uniformity in the process

- MCA has amended the incorporation rules for section 8 companies, As per the amendment the application for license and incorporation of the said companies are to be submitted in a single form i.e. SPICE. Earlier such license was obtained through e-form INC-12 from respective ROCs/RDs which is now merged with SPICE and is made centralized. This simplified process has reduced the time line for incorporation of section 8 Companies.

- MCA in collaboration with Labour Department, Delhi has reformed the procedure of applying for Company Incorporation via SPICE+ so that Shop and Establishment Registration Number for Labour Department, Delhi can also be issued through SPICE+ form only.

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