



# YOJANA

JANUARY 2024

A DEVELOPMENT MONTHLY

## Ease of Doing Business

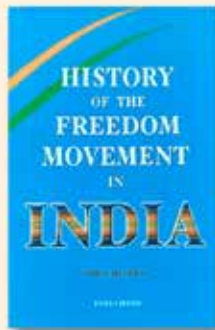




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**SUBSCRIPTION-RELATED DETAILS : Page 47**

## IN THIS ISSUE



**7 THE JAN VISHWAS ACT 2023  
CONCEPTION AND DEVELOPMENT**  
An Interview with  
Anurag Jain

**13 TRUSTING CITIZENS  
DECriminalISATION WAY**  
KR Saji Kumar

**17 PASSING OF THE LANDMARK  
LEGISLATION : THE JAN VISHWAS  
ACT, 2023 AND THE ROAD AHEAD**  
An Interview with  
Rajesh Kumar Singh

**22 GOVERNMENT E-MARKETPLACE (GeM)  
LEADING THE DIGITAL WAVE**  
Prashant Kumar Singh

**28 EASE OF FILMING IN INDIA**  
Neerja Sekhar



**37 GST AND EASE OF DOING BUSINESS**  
Raghavendra Pal Singh

**43 DECriminalISATION  
INDIA'S CONTINUED MARCH  
TOWARDS EASE OF DOING BUSINESS**  
Ajay Shriram, Ajay Bahl

**49 DELICATE BALANCE  
REGULATORY ENFORCEMENT  
& FAVOURABLE BUSINESS  
ENVIRONMENT**  
Sandip Somany

**55 INDO-AFRICAN RELATIONSHIP  
AMIDST SOUTH-SOUTH COOPERATION**  
Rishya Dharmani



Number of pages: 64

Details of the Sales Outlets of the Publications Division on Page 52

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## Inbox



### UPSC-oriented Issue

The November issue of Yojana provides information and perspective on G20 with a focus on UPSC-oriented exams. It had in-depth analysis, and coverage of all approaches by eminent authors. It is easy to understand and has verbal-to-non-verbal approach diagrams that are really helpful in understanding theoretical points. We look forward to upcoming issues on COP28.

– **Nikhil Latpate**  
IIT Bombay

### Reliable Source

As a law student in Mumbai, this Yojana magazine is so helpful for competition as well as official information, awareness, and sources that are authentic. I have been a subscriber to this magazine for the last 3 years. Hats off to the Yojana Team. It's very good as well as useful to me. The GSM Paper quality used in printing is particularly good. Thank You!

– **Pushkar Vinayak Mahajan**  
Maharashtra

### Enriching Experience

Yojana Magazine's December 2023 edition stands as a commendable exploration of India's dynamic progress. Sudhir Kumar's insightful piece on 'India's Moonshot' reflects a forward-thinking approach to innovation. Sujan Chinoy's analysis of 'India Growing Stature' provides a nuanced view of India's global influence. The coverage of historic sporting wins and articles on mobility transformation and transport script showcase the nation's adaptability. Dr Jagdeep Saxena's industry insights and the exclusive interview with R Madhavan contribute to the content's depth. This edition, a testament to editorial excellence, is a valuable resource for understanding India's socio-economic evolution. Kudos to the authors and the editorial team.

– **Twinkle Nayak**  
Bihar

### An Issue on Developed India Roadmap

The 'Year-end Special' was one of the best in terms of quality content, and it provides a one-stop solution for referring to the major events of the year from an Indian perspective. As always, 'Yojana' never disappoints and stands out among its peers. Request to bring an issue on 'Roadmap For Developed India Ahead'.

– **Nitesh Kumar Manjhi**  
Jharkhand

## JAN VISHWAS

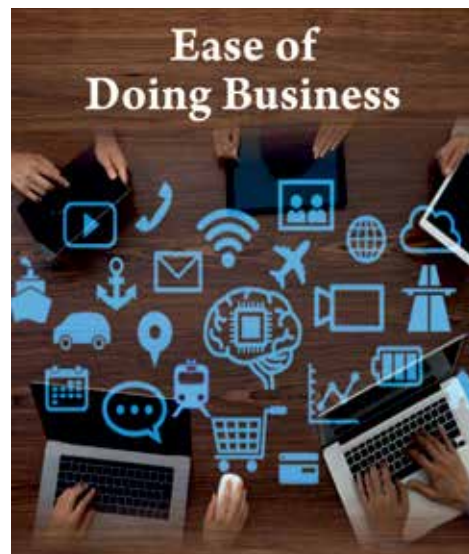
**E**ase of Doing Business is a basic necessity for the smooth functioning of businesses and the growth of economy, in general. With a policy focus on the rationalisation, simplification, and digitisation of regulatory compliances, India has remained firm on the path of Ease of Doing Business reforms. The Jan Vishwas Amendment of Provisions Act has marked a significant step towards creating a more business-friendly environment and laid the foundation for improvements in the Ease of Doing Business. This legislative effort, which aims to simplify and streamline a number of regulations, shows a dedication to fostering an environment that is favourable to economic growth and entrepreneurship.

The Jan Vishwas Amendment brings forth a comprehensive set of regulatory reforms aimed at minimising bureaucratic hurdles. Its guiding principles place a high priority on a fair legal system that substitutes administrative proceedings or civil penalties for less serious crimes instead of minor criminal penalties. It aims to achieve a delicate balance between regulatory enforcement and fostering a conducive business environment by decriminalising 183 provisions in 42 Acts in a variety of industries, including publishing, journalism, agriculture, and the environment. This revolutionary step is about to change how easy it is to do business in India. The Act envisions rationalising monetary penalties in addition to decriminalising minor offences.

Significant changes to penalties are among the most notable features of the Jan Vishwas Act. It deviates from the traditional method by substituting a system of increased fines and penalties for different infractions instead of jail. With this tactical change, infractions should be more strongly discouraged, guaranteeing a more robust enforcement system without interfering with business operations.

Some of the important rationalised Acts with great implications for the Ease of Doing Business include the Pharmacy Act of 1948, the Copyright Act of 1957, the Patents Act of 1970, the Environment (Protection) Act of 1986, the Motor Vehicles Act of 1988, the Trade Marks Act of 1999, the Information Technology Act of 2000, the Prevention of Money Laundering Act of 2002, the Food Safety and Standards Act of 2006, the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Cinematograph Act, 1952, and the Legal Metrology Act of 2009. The Government's goals in enacting this legislation are to improve public welfare generally, encourage investment, and lessen the burden of compliance for enterprises. The Act lightens the regulatory frameworks and lessens the burden on companies, particularly Micro, Small, and Medium Enterprises, which frequently encounter difficulties in carrying out their daily activities. These improvements would primarily benefit them by giving them a more level playing field in comparison to their global counterparts.

Yojana, in this collectible issue, chronicles the prominence of the Jan Vishwas Amendment of Provisions Act in reducing the compliance burden on businesses, attracting more investment, and fostering trust-based governance. Through the aforementioned legislative endeavour, the conditions are made for a more dynamic and competitive economic environment by addressing regulatory difficulties, fostering transparency, and stimulating digital transformation. We hope the insights from subject experts and stakeholders will broaden the understanding of our readers about this ground-breaking move titled 'Jan Vishwas', which is poised to reshape the landscape of the Ease of Doing Business and the nation's entrepreneurial spirit. □





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# THE JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023

## CONCEPTION AND DEVELOPMENT

An Interview with **Anurag Jain**,  
Secretary, Ministry of Road Transport & Highways (MoRTH)

by **Supriya Devasthali**, Director, EoDB, DPIIT

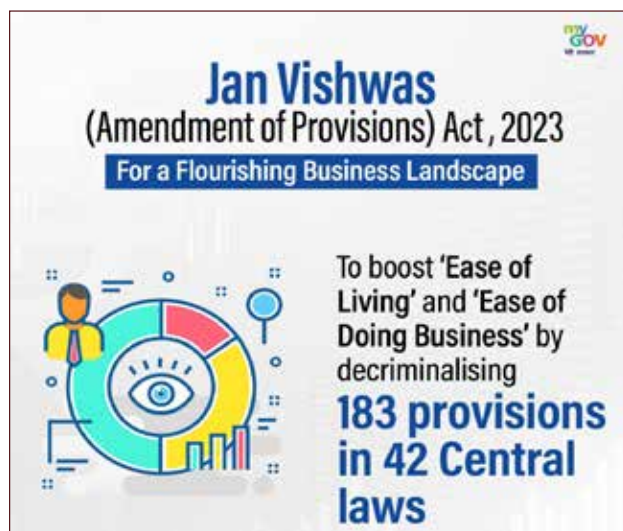
**“The main objective of the Act is to decriminalise minor offences that do not involve any harm to the public interest or national security and replace them with civil penalties or administrative actions. Minor, technical, and procedural defaults no longer attract severe criminal consequences, reducing the burden on the justice system and putting adjudication of serious offences on the priority. Implementation of the Jan Vishwas Act essentially means that majority cases originating from 183 provisions across 42 Acts would no longer be adjudged by the courts.”**

### **What factors or circumstances led to the initiation of the Jan Vishwas Act, and what served as the foundational principles that guided the formulation of this legislation?**

A systematic exercise across Central Ministries and States/UTs has been ongoing to reduce the compliance burden on businesses and citizens. Decriminalisation of minor offences is one of the crucial pillars to reducing compliance burden on businesses.

The impetus for this legislative endeavour came during discussions at the Committee of Secretaries (CoS) meeting held on 29 June 2022, where the idea of streamlining the decriminalisation process across various ministries was considered. The Hon'ble PM suggested and highlighted the potential for a common amendment bill that could unify the decriminalisation efforts across diverse sectors and save time for the judiciary and the legislative department. The Government had earlier repealed some archaic laws in their entirety; however, this was a novel common amendment bill to simultaneously amend multiple acts in lieu of decriminalisation.

Upon consultation with the Cabinet Secretary and the Legislative Department, it became evident that introducing such a bill was a viable and strategic approach. This marked the inception of the Jan Vishwas Act, aligning with the overarching goal of simplifying legal processes, reducing compliance burden, and fostering a more business-friendly environment. Its foundational principles prioritised a balanced legal framework that replaces



minor criminal punishments with civil penalties or administrative actions for non-harmful offences.

**Involvement of 19 Union Ministries for the Jan Vishwas Act, 2023, must have required regular and seamless inter-ministerial coordination. What were the challenges faced in such coordination and what strategies were employed to manage such extensive collaboration?**

Seamless collaboration across ministries was achieved through meticulous planning and clear communication channels. Regular consultations, inter-ministerial meetings, and a unified vision were key to effective coordination. Strategies included extensive briefings, resolving diverse perspectives, and aligning objectives. Advanced planning of the draft cabinet note, absolute clarity of directions and principles, and a shared commitment to regulatory reforms were key elements ensuring success.

For example, specific concerns of certain ministries, such as the Ministry of Information and Broadcasting, Agriculture, and others, were addressed through informal modes of communication when time was short to skip bureaucratic routes. This proactive approach ensured swift resolution of concerns, maintaining the overall momentum of the collaborative effort. The use of telephonic communication proved instrumental in promptly addressing issues raised by individual ministries, fostering a collaborative spirit across the stakeholders.

**The Jan Vishwas Bill had direct implications on ease of doing business and industries. Could you elaborate on the strategies implemented to ensure effective communication and engagement with stakeholders during the formulation of the Jan Vishwas Act, 2023?**

Stakeholder engagement was a meticulous process, with each ministry conducting consultations at its level to gather insights and concerns. Additionally, after the initial drafting of the Jan Vishwas Bill, comprehensive engagement efforts were undertaken with industry associations and relevant stakeholders. This inclusive approach ensured that diverse perspectives were considered and valuable suggestions were solicited.

Regular communication channels were established, fostering a continuous dialogue to understand the specific challenges faced by

different industries. The overarching goal was to craft legislation that not only addressed regulatory complexities but also reflected the practical needs and challenges encountered by businesses on the ground. By actively involving stakeholders at various stages of the formulation process, the Jan Vishwas Act, 2023, achieved a balanced and comprehensive approach that shows the commitment of the Government towards improving the Ease of Doing Business and the Ease of Living.

**Coordinating the decriminalisation exercise involves diverse perspectives and novel challenges. What were the major challenges faced in aligning the interests and objectives of different Ministries during the development of the Jan Vishwas Act, and how were these challenges overcome?**

Aligning diverse approaches proved challenging during the development of the Jan Vishwas Act. The process faced hurdles that necessitated innovative solutions and persistent efforts. One of the significant challenges was reconciling varying perspectives and priorities across different ministries.

The guidance of the Hon'ble PM and the Cabinet Secretary provided a common aim and vision ultimately aligning respective amendments of different ministries.

Further, a committee was also formed, consisting of CEO NITI Aayog, the Department of Legal Affairs (DoLA), the Department for Promotion of Industry and Internal Trade (DPIIT), and the respective ministries and departments. This committee played a crucial role in establishing principles that guided the decriminalisation process. Regular meetings were conducted with each ministry to ensure consistency in amendments and encourage peer learning.

The successful overcoming of these challenges highlights the commitment to a unified regulatory framework and the agility to adapt to the dynamic requirements of diverse ministries.

**The Jan Vishwas Act, 2023, addresses a wide range of provisions across 42 Acts administered by 19 ministries. How were the complexities of managing such a comprehensive legislative overhaul navigated, and what mechanisms were in place to ensure consistency across amendments?**



Effectively navigating the complexities of the comprehensive legislative overhaul undertaken by the Jan Vishwas Act, 2023, involved a strategic and coordinated approach.

To manage the intricacies, common directions were issued to all respective Ministries, setting the groundwork for a unified and cohesive approach. This overarching guidance played a crucial role in streamlining the diverse amendments across Acts. Additionally, a committee, comprising representatives from CEONITIAayog, the Department of Legal Affairs, and the Department for Promotion of Industry and Internal Trade, played a pivotal role in setting common principles. These principles served as a guiding framework, ensuring a consistent trajectory throughout the decriminalisation process.

For instance, general criminal provisions, i.e., provisions prescribing punishments for any contraventions applicable across the Act, were specifically targeted. The strategy involved identifying serious contraventions for separate criminalisation, while minor provisions were earmarked for decriminalisation. This nuanced approach aimed to maintain deterrence for significant offences while streamlining and simplifying minor provisions. For instance, the general provision under the Environment Protection Act (Section 15) prescribed punishment for all contraventions under the Act with imprisonment up to five years. It has been amended under the Jan Vishwas Act, 2023 to be replaced with specified ranges of penalty according to the gravity of offences.

Extensive legal vetting further solidified the amendments' adherence to overarching legal principles.

Inter-ministerial consultations also played a vital role in the process, fostering communication and collaboration among the 19 ministries and various departments involved. These sessions provided a platform for addressing specific challenges, ensuring that the amendments aligned seamlessly with the objectives of each ministry.

In essence, the success of managing such a comprehensive legislative overhaul lay in the careful navigation of complexities, the adherence to common principles, and a steadfast commitment to consistency across the amendments.

## **Does the Jan Vishwas Act address the issue of overburdened judicial system, and what impact does it have on case pendency and delays?**

The main objective of the Act is to decriminalise minor offences that do not involve any harm to the public interest or national security and replace them with civil penalties or administrative actions. Minor, technical, and procedural defaults no longer attract severe criminal consequences, reducing the burden on the justice system and putting adjudication of serious offences on the priority. Implementation of the Jan Vishwas Act essentially means that majority cases originating from 183 provisions across 42 Acts would no longer be adjudged by the courts.

Suitable adjudication mechanisms were also introduced in some of the legislatures, wherever applicable and feasible, for dealing with minor offences. An adjudication mechanism is one whereby an administrative or quasi-judicial authority impose a monetary penalty. Further, an appellate mechanism is also introduced to provide a forum for any person to get their grievances addressed if they are not satisfied with the decision of the adjudicating officer related to the penalty. By introducing administrative adjudication mechanisms along with appellate mechanisms, the Act reduces pressure on the justice system, helps in reducing case pendency, and facilitates a more efficient and effective justice dispensation.

The enactment of this legislation is a landmark in the journey of rationalising laws, eliminating barriers, and bolstering growth of businesses. This legislation would serve as a guiding principle for future amendments in various laws. Consolidated amendments in various laws with a common objective will save time and cost for both industry and judicial system alike.

## **The Jan Vishwas Act underwent a thorough review by the Joint Parliamentary Committee. Could you elaborate on the challenges and considerations involved in presenting the bill to the committee, and how were the recommendations from the committee effectively accommodated?**

Presenting the Jan Vishwas Act to the Joint Parliamentary Committee (JPC) was a meticulous process that involved addressing their considerations and challenges. A thorough briefing by DPIIT, detailed presentations by

respective ministries, and clause by clause reading of provisions was the key for a transparent and collaborative exchange of ideas.

The Committee made seven general recommendations, out of which six were accepted by all the ministries. These included (1) continuation of similar exercise in the future by reviewing acts; (2) issuing advisory to States for undertaking similar exercise; (3) issuing advisory to States to review legislations that are in their exclusive domain; (4) appointment of a group to examine other acts and carry out exercise similar to the Jan Vishwas (Amendment of Provisions) Bill, 2023; (5) The Ministry of Law to look into aspects of incorporating an adjudication mechanism along with appellate authority for adjudication of penalty; and (6) wherever feasible, removal of imprisonment may be accompanied by levying of penalty instead of fine to avoid increase in litigation.

One notable challenge centered around the JPC's recommendation on giving retrospective effect to the decriminalised provisions. The Department of Legal Affairs and the Legislative Department actively participated in every JPC meeting, examining this matter extensively. The discussions during these meetings involved clause-by-clause readings and a comprehensive examination of the feasibility of providing retrospective effects.

After an extensive examination, it was concluded that giving retrospective effect to the decriminalised provisions was not feasible. This decision was reached through in-depth discussions, where the implications and effects of provisions were thoroughly discussed.

Addressing the JPC's recommendations required a collaborative approach. The challenges were met by ensuring alignment with the committee's views, incorporating valuable insights, and amending the bill accordingly. The process involved a high level of responsiveness to the committee's concerns, fostering a collaborative atmosphere that aimed at creating legislation with Committee support.

In essence, all the recommendation of the JPC was considered except retrospective effect of provisions. The success of this endeavour rested on transparent communication, detailed examination, and a commitment to incorporating valuable feedback into the legislative framework.

The resulting legislation reflected a collaborative effort to accommodate the JPC's recommendations effectively.

### **What principles and learnings from the Jan Vishwas Act, 2023 can be incorporated in the Jan Vishwas 2.0?**

Suggestions and principles were consolidated from multiple sources in development of the Jan Vishwas Act. These can serve as guidance for all future decriminalisation efforts, including the Jan Vishwas 2.0.

- 1. Directions and principles from higher authorities:** The Hon'ble Prime Minister and Cabinet Secretariat gave insightful directions on the Jan Vishwas Act, 2023, which can also be beneficial for the future decriminalisation. These included directions of consistency to be brought in amendments, concentrating on operational acts, examining the perspective of the users & regulators, consideration of risk factors with penalty system having much administrative discretion, study of international best practices and indexing the quantum of fine & penalty to avoid repeated amendments in the acts.
- 2. Recommendations of the Joint Parliamentary Committee (JPC):** Joint Parliamentary Committee gave general recommendations regarding approach to decriminalisation. These include appointment of a group to examine other acts and carry out exercise similar to the Act, looking into aspects of incorporating an adjudication mechanism along with appellate authority for adjudication of penalty, and wherever feasible, removal of imprisonment may be accompanied by levying of penalty instead of fine to avoid increase in litigation. These recommendations are helpful and provide a base for the Jan Vishwas 2.0.
- 3. Manner of Decriminalisation:** The Jan Vishwas Act, 2023 adopts a multifaceted approach to decriminalisation, ensuring a more equitable legal system by removing imprisonment and/or fines in various provisions, replacing imprisonment and/or fine with penalties, introduction of compounding options, etc. Similar patterns allow easier identification and drafting of amendments for future decriminalisation bills. □

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# TRUSTING CITIZENS DECRIMINALISATION WAY

**The objective of the new law is to convert imprisonment for minor offences to a monetary penalty wherever possible and to rationalise the penalties depending on the gravity of the offences. It is to avoid dragging people to court premises for smaller, or petty contraventions, or unintended violations; instead, the bill provides for monetary penalties and adjudication by authorities other than formal criminal courts.**

**KR SAJI KUMAR**

The author is Judicial Member, National Company Law Tribunal (NCLT) and Former Additional Secretary, Legislative Department, Ministry of Law & Justice, Govt.

## Experience of Drafting Jan Vishwas Bill

Being the drafting office of India for the Legislative Department, drafting and finalising the Jan Vishwas (Amendment of Provisions) Bill, 2023 (Jan Vishwas Bill) was a unique experience, and for me in particular. I happened to lead the drafting team of the bill in the Legislative Department and also got the privilege to authenticate and forward it to the Parliament for introduction. My fortune was not limited to the initial drafting of the bill but extended to monitoring the bill at various stages of readings and later sharing of responsibility with the Department for Promotion of Industry and Internal Trade (DPIIT) and other

Ministries/Departments in defending the amendments before the Joint Parliamentary Committee (JPC). The drafting of the Jan Vishwas Bill was challenging and has left everlasting institutional memories for the Legislative Department and also an unmatched professional experience for me as a Legislative Counsel.

## Jan Vishwas – Trusting the People

As the short title of the bill suggests, the bill is part of the Prime Minister's vision to implement various measures to trust the people, rather than the Government just securing people's trust. The bill was one of the series of programmes intended to ease the living and doing business in the

country, namely encouraging self-attestation of documents, the creation of a national judicial data grid, the senior citizen's welfare fund, the central registry of securitisation asset reconstruction and security interest, and other electronic portals, and so on and so forth. New laws governing goods and services tax, insolvency, and bankruptcy, as well as amendments to the company law, were also in place. A number of colonial enactments were either repealed or amended to achieve the Ease of Living and the Ease of Doing Business for citizens. The Jan Vishwas law is part of the endeavour to do away with criminal punishments and convert them to monetary penalties. This is the first time ever laws are amended in bulk to remove jail sentences and convert to monetary penalties as part of trust-based governance. The Government needs to trust its own people and institutions in democratic governance. This consolidated amendment exercise aims at removing trust deficits between the government and the governed. The conversion of imprisonment to a monetary penalty eases the burden on both the litigants and criminal courts, enabling parties to settle minor violations and contraventions through administrative, adjudicatory, and appellate mechanisms.

### Drafting Challenges

Legislative drafting involves creativity; the drafting of a law involves giving flesh, blood, brain, soul, and spirit for it to live for a long time. Even as a team of reasonably experienced legislative counsel, we had to embark on certain different terrain and a bit of innovation too in finalising the draft in a short time. Firstly, we did not have exact legislative precedents. Secondly, it was an untravelled drafting journey involving multiple subjects ranging from agriculture to transportation, finance, economics, intellectual property, environment, defence, and so on. Initially, the proposal was to amend provisions of around 30 enactments, but we ended up amending 42 Central Acts, comprising 182 provisions, including pre- and post-independence Acts ranging 1867 to 2016. For the Legislative Department, it was like interacting with 19 administrative ministries, vetting 42 draft notes for the Cabinet, and separately drafting equal number of Amendment Bills. In any case, we had to study, comprehend, and conduct research on 42 different enactments, plus other acts having

bearing on the provisions of these enactments. Our initial challenge was whether to draft separate amendment bills or combine all the amendments into a single legislative instrument. Luckily, the 'Ease of Living' and the 'Ease of Doing Business' were already on the Government's policy agenda, and many proposals were pending at various stages of drafting and consultation. As the proposal originated from the Prime Minister's vision to lessen the compliance burden on individuals and entities, many administrative ministries had already initiated action by circulating individual draft notes for the Cabinet, which helped us prepare a preliminary draft.

### Shaping up the Draft

Our team understood the urgency and timeliness of the task from our initial interactions with DPIIT. We knew that the Cabinet was soon considering the proposal and that we had to swing into quick action. We sensed that the burden of the Legislative Department was heavier than usual. Considering the limited time for finalising the proposal, we decided to have a single bill covering amendments to all the acts, administered by different ministries, rather than going for individual bills. This lessened the burden of circulating separate draft notes for the Cabinet and obtaining comments of other ministries. In the Legislative Department, we always work under unusual pressure. Once the administrative ministries formally submit their proposals to the department, we share the remaining burden. Initially, we thought that our interaction would be restricted to DPIIT, which was the coordinating department, and that we would not be engaging with any other ministry for drafting and finalising the amendments. Hence, we advised DPIIT to complete discussions with line ministries and provide us with a collated proposal. However, soon we realised that it would consume more time as even after finalisation of proposals with line ministries by DPIIT, our indulgence would be necessitated. In order to avoid duplication, we scheduled discussions with administrative ministries by assigning separate dates and timings for each of them. This worked well and we directly followed up with them and finalised individual drafts for combining to one bill. The team of officers in DPIIT was responsive, swift, and pragmatic in their approach.

## Right Formatting

Once we were clear that we would draft only a single bill covering all the enactments and amendments, the next task was to decide on an appropriate format for the introductory and preliminary parts of the bill, and then arranging the substantial portion of amendments. We made an initial mental framework for designing the bill and suggested that all the amendments would be grouped under a common schedule in a tabular form, containing the details regarding the short titles of the Acts, Act numbers, and amendments sought to be made, under different columns for easy comprehension. This method was accepted by DPIIT and was appreciated by many.

## Periodical Revision of Fines and Penalties

The objective of the new law is to convert imprisonment for minor offences to a monetary penalty wherever possible and to rationalise the penalties depending on the gravity of the offences. It is to avoid dragging people to court premises for smaller or petty contraventions or unintended violations; instead, the bill provides for monetary penalties and adjudication by authorities other than formal criminal courts. Rationalisation of penalties also contemplates heavy monetary penalties for certain major offences, depending on the nature and gravity of contraventions. The novel idea was to incorporate provisions for increasing ten per cent of the minimum fines and penalties every five years once the Act becomes operational. This avoids amending the act again and again, facilitating a small increase in fines and penalties to match inflation and the devaluation of money. This also ensures fairness in awarding punishment depending on the gravity of the offence, based on the principle of proportionality. Removing imprisonment as a punishment for less serious offences would ease the burden on criminal courts.

## Drafting Saving Clause

Our next task was to incorporate a suitable saving clause. Since the new Act repeals a number of provisions contained in various other acts, it was necessary to save the actions already taken under the provisions being repealed. The provisions being repealed must have been applied in certain other acts too, which again needs saving. The saving clause provides that Jan Vishwas law would not affect the validity, invalidity, effect, or consequence

of any right or liability already established under other laws.

## Long and Short Titles

The long title of a Bill is the long statement that appears at the beginning of the legislative text. It depicts the very objectives and purposes of the Bill in order to facilitate the reader getting a glimpse of the proposed law. In legislative drafting, although the long title is drafted at the beginning itself, it undergoes revisions throughout the drafting exercise. By the time the draft is finalised, the drafter and the administrative ministry will have come up with many new ideas, leading to revisions from the initial thoughts. Similar is the case with a short title. It is nothing but the formal naming of the new law by which it is known and cited. As the name suggests, the short title is shorter than the descriptive long title, although it captures the basic elements of the long title. As we wanted to reflect the initiative of the Government to promote the Ease of Doing Business and rationalise fines and penalties under various Acts, we zeroed in on a final long title capturing the Prime Minister's vision of 'decriminalising' and 'rationalising' offences and enhancing 'trust-based governance' for 'Ease of Doing Business.' The long title of the Bill thus reflects the strong faith of the Government in the citizens, ensuring inclusiveness and public participation in governance. We also attempted to match the short title with the long title by coining an expression giving more 'Indian touch' and sounding *Devanagari*; thus, the first part of the short title begins with the expression 'Jan Vishwas'.

## Jan Vishwas Law – To Last For Ever

Although the Jan Vishwas Act is an amending legislation, it cannot be repealed under any routine repealing and amending law for removing it from the statute book. It permanently converts certain imprisonments into monetary penalties, rationalises certain penal provisions, and provides for alternative resolution of contraventions. Hence, it has a permanent place in the statute book and is a standalone law. Even after the respective amendments take shelter on the bodies of parent Acts, this Act is going to stay until the parent Act exists on the statute book, as the penalties and fines are to be revised every five years in terms of Section 3 of the Act. Probably, there could be more Jan Vishwas Acts in the future. □

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# **PASSING OF THE LANDMARK LEGISLATION THE JAN VISHWAS ACT, 2023 AND THE ROAD AHEAD**

An Interview with **Rajesh Kumar Singh**, Secretary, DPIIT

by **Supriya Devasthali**

**“In this day and age, the media and common citizens of India have become more aware and actively follow and take an interest in the introduction of new laws, particularly those brought in favour of Ease of Doing Business and Ease of Living. This makes it even more imperative for the Government to ensure outreach and awareness of such actions to ensure that the true intended motives of such Acts do not get distorted due to legal complexity and confusion. It is also important to create awareness of such developments so the intended stakeholders can avail themselves of the benefits and be aware of positive developments undertaken.”**

**What was the media and public reaction to the enactment of the Jan Vishwas Act? In the current scenario, how important is proper outreach and awareness of new Acts?**

The immediate public and media reaction to the novel exercise was overwhelmingly positive. The main objective of the Act is to decriminalise minor offences that do not involve any harm to the public interest or national security and replace them with civil penalties or administrative actions. Minor, technical, and procedural defaults no longer

attract severe criminal consequences, reducing the burden on the justice system and putting adjudication of serious offences on the priority list. Consolidated amendments in various laws with a common objective save time and cost for both the executive and legislature. The Jan Vishwas Act is a first-of-its-kind consolidated amendment.

The general public appreciates the conscious efforts taken by the Indian Government to identify offences of minor nature and decriminalise them with monetary penalties. It was realised that it

will inevitably not only help boost the economy, which consists of micro, small, and medium-sized enterprises but also reduce the judicial burden. The amendments under the Act to decriminalise minor offences have been made based on the following principles: (i) offences where *mens rea* (malafide or criminal intent) is absent; and (ii) offences where the larger public interest is not adversely affected.

For example, there was an imprisonment clause for pasturing cattle on forest land in the Indian Forest Act. The imprisonment and fine are now replaced with penalties. This amendment will benefit tribals and villagers who may unknowingly enter forest land while pasturing cattle. Since the violation is not serious in nature and may not be intentional, the imprisonment provisions were not justified. However, deterrence is still proposed to be achieved by levying a penalty of Rs 500.

In this day and age, the media and common citizens of India have become more aware and actively follow and take an interest in the introduction of new laws, particularly those brought in favour of Ease of Doing Business and Ease of Living. This makes it even more imperative for the Government to ensure outreach and awareness of such actions to ensure that the true intended


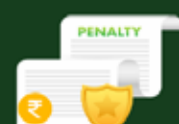


motives of such Acts do not get distorted due to legal complexity and confusion. It is also important to create awareness of such developments so the intended stakeholders can avail themselves of the benefits and be aware of positive developments undertaken.

### **There were apprehensions and questions regarding compromising public health and safety in the process of decriminalising criminal provisions. How was this concern addressed in the Jan Vishwas Act?**

For any amendment to take place, it goes through various rounds of discussions and deliberations before taking the shape of a Bill. Similarly, for the Jan Vishwas Act, every provision has gone through multiple rounds of review.

Redundant and burdensome minor criminal offences were first identified by the respective Union Ministry for deliberation on decriminalisation. This provision would then go through a round(s) of stakeholder consultations. Such provisions were compiled into a common amendment bill. Additionally, after the initial drafting of the Jan Vishwas Bill, comprehensive engagement efforts were undertaken with all industry associations and relevant stakeholders. The Bill was referred to

## Jan Vishwas (Amendment of Provisions) Act, 2023 Indian Forest Act, 1927

1	2	3	4
<p>Pasturing cattle in forest land used to attract imprisonment for a term which may extend up to 6 months and fine.</p> 	<p>The imprisonment and fine have been replaced with penalty under the Jan Vishwas Act, 2023.</p> 	<p>This amendment will benefit tribals and villagers who may unknowingly enter forest land while pasturing cattle.</p> 	<p>Since the violation is not serious in nature and may not be intentional, imprisonment provisions were not justified. However, deterrence is proposed to be achieved by levying penalty of Rs. 500.</p> 

Source: DPIIT

the Joint Parliamentary Committee, which further conducted a clause-by-clause examination of the Bill through a series of nine sittings. Provisions with a potential negative impact on public health and safety were retained by the Committee and respective Ministries at different rounds of deliberation.

The intent behind the Bill was to ensure no compromise on public health and safety. The intention was that the nature of the penal consequence of an offence committed should be commensurate with the seriousness of the offence. This Bill establishes a balance between the severity of the offence or violation committed and the gravity of the prescribed punishment. The proposed amendments ensure adherence to the law by businesses and citizens without losing the rigour of the law.

Hence, offences with serious implications for the safety of health and life were kept outside the purview of the Act. Lastly, a significant rise in the amount of the fines being imposed for violations and non-compliance ensures that the key stakeholders duly comply with the provisions of the Act, keeping the deterrence effect intact.

### **The Jan Vishwas Act was a novel and successful attempt at furthering trust-based governance by rationalising criminal provisions. Does the Government propose to carry forward this exercise in the future as well?**

Yes, the Department for Promotion of Industry and Internal Trade (DPIIT) is already in the process of further identifying minor criminal provisions to be compiled for another common amendment bill, i.e., Jan Vishwas 2.0. The Hon'ble Minister of Commerce and Industry has also stated on various forums that "This Ease of Doing Business will be a continuous effort." Decriminalisation is a major part of the continuous process of rationalising compliance undertaken by the Government of India. Given the success of the consolidated amendment and the plethora of overlapping and burdensome legislation, similar exercises will be successful in rationalising compliance efforts.

The Joint Parliamentary Committee formed for the Jan Vishwas Bill also recommended that such exercise should be continued in the future by reviewing other Acts and bringing similar legislation before Parliament.

The Jan Vishwas 2.0 exercise will further build upon the Jan Vishwas Act, 2023, inculcating the learnings from its novel predecessor exercise. The scope of compliances identified for decriminalisation shall have three primary sources for the identification of burdensome and minor criminal provisions:

- 1. Targeted approach:** Jan Vishwas 2.0 may inculcate a targeted approach for selected Central Ministries that have direct and significant implications for the ease of doing business. The Ministry of Commerce and Industry; the Ministry of Consumer Affairs, Food and Public Distribution, and the Ministry of Textiles administer 42 Acts with direct implications and impacts on the ease of doing business which are being considered priority.
- 2. Working Group Recommendations:** The Joint Parliamentary Committee on Jan Vishwas (Amendment of Provisions) Act, 2023, recommended the appointment of a group to examine other Acts and carry out an exercise similar to the Jan Vishwas Act. The Working Group on decriminalisation is conducting regular meetings to discuss and identify specific provisions for decriminalisation.
- 3. Central Acts with an overriding effect on burdensome State legislation.**

Given the mammoth universe of archaic and redundant legislatures in India, the decriminalisation effort needs to be a continuous exercise. As stated by Shri Piyush Goyal, Minister of Commerce and Industry, "With our best intentions, the Jan Vishwas 2.0 bill will take us one step forward, but we will possibly need Jan Vishwas 3.0".

### **How is sectoral expertise ensured in the assessment of the potential decriminalisation of provisions? How does Jan Vishwas 2.0 propose to involve industry associations in the identification and analysis of provisions for decriminalisation?**

DPIIT initiated the drive to identify and decriminalise minor offences to further the Ease of Doing Business and the Ease of Living in 2021. Various stakeholder consultations have been undertaken since to receive suggestions on burdensome and redundant criminal provisions

applied to businesses. The recommendations have been received from NITI Aayog, Industry Associations [(Confederation of Indian Industry (CII), Weighing Equipment Manufacturers Association (WEMA), Manufacturers` Association for Information Technology (MAIT)], and Independent Reports like 'Jailed for Doing Business' Report by TeamLease). The suggestions received from sectoral associations are duly considered and taken up in the decriminalisation drive.

Further, the Joint Parliamentary Committee on Jan Vishwas (Amendment of Provisions) Act, 2023, recommended the appointment of a Working Group to examine various existing laws from the perspective of decriminalisation. Subsequently, six Regulator-wise/Sectoral Sub-Working Groups for the examination of respective laws have been created. The Sectoral Sub-Working Group consists of respective ministries, industry associations, and sectoral experts. The working group conducts monthly meetings, facilitating a common platform for debates by all concerned stakeholders in a specific sector.

### **The Jan Vishwas Act decriminalises provisions in 42 Central Acts. States legislatures like Central legislature are riddled with redundant minor criminal provisions. How can the decriminalisation drive be extended to States and UTs?**

The parliamentary panel had suggested the Centre to encourage States and UTs to undertake the exercise of decriminalising minor offences on the lines of the Jan Vishwas Bill.

In the decriminalisation drive in State Legislatures, it has been consistently highlighted that due to the existence of overriding Central Legislations, State Governments are unable to decriminalise minor criminal provisions. A targeted approach to the examination of such identified Central Acts will have profound effect through the subsequent decriminalisation of all State Legislations. Certain Acts have already been identified through State interactions in other initiatives of DPIIT. DPIIT has conducted meetings with selected States and has invited submissions for such contingent Central Acts for consideration under Jan Vishwas 2.0.

States and UTs have also been self-identifying provisions for decriminalisation on the Reducing

Compliance Portal (RC Portal) of DPIIT. Under the State decriminalisation drive more than 3000 provisions have already been identified and reduced. However, given the number of Acts and subordinate legislation of the State, efforts need to be redoubled and pushed.

### **What learnings from this novel drive for decriminalisation can be applied to overall regulatory developments of India?**

The Jan Vishwas Act was a novel exercise that amended 42 Acts governed under 19 Union Ministries. Cross-learning regarding clear channels of communication and inter-ministerial coordination can be taken to replicate similar major initiatives of the Government.

Decriminalisation is part of the overall rationalisation of compliance. Regulatory compliance is crucial to ensuring that regulation and related public policies achieve their intended public outcomes— that is, safeguarding key elements of public welfare in a given country while supporting economic and social development. However, it is important to have a complete stock of existing regulations and their corresponding rationales to ensure such regulations work in favour of the recipients and do not unnecessarily burden them.

Minimising compliance leads to efficient policymaking, builds an overall ecosystem conducive to economic growth, encourages MSMEs to generate jobs, supports the startup ecosystem, and boosts investor confidence through transparency. Rationalised regulations are the goal, as they enhance not only the Ease of Doing Business but also the Ease of Living.

Decriminalisation is a step towards creating a universe of voluntary compliance and ensuring continuous review of regulations. This would eventually help create an ecosystem, which will assist the Government in facilitating 'Regulatory Impact Assessment' (RIA) as well. RIA is a systemic approach to critically assessing the positive and negative effects of proposed and existing regulations. The implementation of regulatory impact assessment would enable data-intelligent policymaking, a move towards flexible 'outcome-oriented' regulation, and justifiable implementation of regulations through cost-benefit analysis. □

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# GOVERNMENT E-MARKETPLACE LEADING THE DIGITAL WAVE



**PRASHANT KUMAR SINGH**

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**In India, public procurement amounts to nearly 20-25% of GDP. This means that a significant amount of taxpayers' money is directed towards making purchases of public goods and services that constitute the lifeblood of government programmes and services. Given this context, the importance of efficient public procurement cannot be overstated.**

**To inculcate the Hon'ble Prime Minister Narendra Modi's vision of inclusive development, corruption-free governance, and ease of doing business, Government e-Marketplace (GeM) was conceptualised as a Special Purpose Vehicle under Section 8 of the Companies Act, within the ambit of the Department of Commerce. Since its inception, GeM has enabled more than INR 60,000 crore of public savings. The portal's vast achievements have propelled it to ascend as one of the foremost public procurement platforms globally, surpassing even the most advanced counterparts such as South Korea's KONEPS and Singapore's GeBIZ across diverse metrics, all achieved in an astonishingly short period.**



Set up in August 2016, Government e-Marketplace is a world-class, robust digital portal that facilitates end-to-end procurement of goods and services by various Central and State Government departments, organisations, and allied public sector undertakings (PSUs). It provides a paperless, cashless, and contactless ecosystem for government buyers to directly purchase products and services from pan-India sellers and service providers through a unified online infrastructure. GeM covers the entire gamut of the procurement process, right from vendor registration and item selection by buyers to receipt of goods and facilitation of timely payments. By extending the right capabilities, capacities, and functionalities, the portal has brought about a paradigm shift in India's public procurement landscape.

### Need for a Digital Solution for Public Procurement

Government procurement used to be opaque, time-consuming, cumbersome, and prone to corruption and cartelisation. Buyers were forced to purchase substandard goods at high, non-negotiable rates from unscrupulous suppliers. Potential sellers had to run from pillar to post, completely at the mercy of the facilitating agency, to get empaneled and then to get timely payments.

There was a pressing need for a complete metamorphosis from the Directorate General of Supplies and Disposals to a digital e-commerce portal that could facilitate the Ease of Doing Business without any barriers to entry and establish a competitive marketplace to enable the procurement of quality goods and services at reasonable rates. The new system was envisioned to replace age-old manual processes that were riddled with inefficiencies and corruption.

### Genesis of GeM

Government e-Marketplace was set up with a vision to transform the public procurement ecosystem of the country with a technologically advanced, robust, and digital-only platform.

Through digitalisation of processes, GeM has led to higher process efficiencies, information sharing, improved transparency, reduced process cycle times, and a higher level of trust among bidders. This, in turn, has resulted in greater

competition and higher savings. These innovations in GeM have also brought down waiting times and prices for buyers significantly, and ensured timely payments to sellers. Its inclusive approach has created an open and diverse public procurement marketplace that provides a level playing field to startups, MSMEs, women entrepreneurs, artisans, and craftsmen, allowing them to participate in government tenders without any barriers, thus ensuring the Ease of Doing Business with the government.

### Growth Trajectory

Given the sheer scale and complexities involved in realigning the procurement processes of the entire spectrum of Central and State Government departments and PSUs, the switchover to GeM has likely been one of the largest digital transformation exercises undertaken by any government globally. Despite the challenges, the portal has witnessed significant year-on-year growth in terms of the numbers of sellers registered, total procurement made, and cumulative order value transacted through the platform.

In the first year, GeM recorded a total Gross Merchandise Value (GMV) of ~INR 420 crore. In the following years, transactions conducted through GeM (in terms of order value) grew from around INR 38,000 crore in FY 20-21 to INR 1 lakh crore in FY 21-22. In FY 22-23, GeM registered an 88% growth, surpassing a historic milestone of INR 2 lakh crore worth of GMV. In the current FY 23-24, GeM is aspiring to breach the 3 lakh crore GMV mark.

While the platform initially developed a wide range of product categories, GeM rapidly expanded its portfolio to include a vast array of service offerings as well. The order value in services has been the brightest chapter in GeM's growth story, with exponential growth over the last 3 years. From FY 21-22 (INR 24,607) to FY 22-23 (INR 66,128), services on GeM have witnessed unprecedented 168% growth, with the number of orders also showing a massive jump. Cumulatively, since inception, government buyers have placed over 4.8 lakh service orders valued at more than INR 2 lakh crore.

GeM is a category-driven e-marketplace that has a robust listing of more than 11,600 product categories and 300+ service categories. The portal

showcases all common goods and services required by government bodies and departments at all levels of administration.

### GeM – Promoting Ease of Doing Business

- **GeM as a Facilitator:** The GeM portal connects buyers, sellers, and service providers on a unified platform to facilitate procurement of public goods and services.
- **Transformation through Cost Reduction and Efficiency:** GeM has revolutionised public procurement in India by reducing costs, enhancing efficiency, and fostering transparency. The platform empowers buyers and sellers nationwide to engage in hassle-free digital transactions.
- **Inclusive empowerment of sellers:** GeM empowers sellers of diverse backgrounds, including Women Entrepreneurs, Artisans, Self-Help Groups, Cooperatives, MSEs, and Startups, offering a one-stop-shop in a contactless, cashless, and paperless ecosystem with timely online payments.
- **Seamless registration process** – GeM's registration process prioritises ease, convenience, and minimal data entry. It is validated through online integration with the Aadhaar database, serving as the primary user identification proof.
- **Dynamic Goods and Services Platform:** GeM continuously updates its platform by adding new categories of goods and services based on the feedback received from various stakeholders.
- **Diverse buying modes:** GeM facilitates procurement through various modes, including direct purchase, L1 procurement, bidding, reverse auction, forward auction, single packet bidding, and push-button procurement.
- **Contract Management:** Keeping in line with the principles of speed, efficiency, and minimal manual interference, GeM auto-generates a contract between buyers and sellers on the basis of specified technical parameters and the details chosen by the buyer, such as delivery period and delivery terms. GeM also provides the functionality of updating the contract, along with version control and an audit trail.
- **Cashless payments and timely transactions:** The platform supports 100% online payments, providing a truly cashless environment. It includes a payment gateway that supports Internet banking and allows integration with different payment systems, with enforced timelines for timely payments.
- **Information Visibility:** GeM ensures visibility for MSEs, local sellers, and startups, allowing sellers to indicate the percentage of domestic content of the goods uploaded on the portal, aligning with the 'Make in India' initiative.
- **Trust-based Rating System:** In a trust-based system like GeM, ratings become a key component of the overall system. GeM provides a rating system that continuously evaluates performance based on weighted and defined parameters. GeM has the provision of rating both the buyers and the sellers, enabling informed decision-making.
- **Demand Forecasting:** GeM displays historical procurement data on the platform based on the inputs provided by buyers as part of their annual procurement plan. This helps sellers plan better and ensure the availability of goods and services at lowered rates.
- **Establishing Price Reasonability:** GeM provides buyers with multiple tools to help them ascertain price reasonability. This includes the comparison of prices across other e-commerce sites (wherever available), discounts over MRP, the last purchase price on GeM and the prices at which transactions have been conducted on GeM for similar items in the recent past.
- **Training:** To ensure that GeM users do not have to face any challenges in using the platform effectively, GeM provides adequate training materials and support to help users navigate the platform. It has designed e-procurement certifications and training modules to certify professionals specialised in procuring via the portal.
- **Communication and Support:** GeM provides a standardised and single channel for communication with stakeholders. It sends out communication to keep all stakeholders updated with all relevant changes, notices, etc. related to GeM and informs users in case of an



update of product or service categories, end-of-life information, a change in the technical parameters of goods or services, a new bid creation or modification, etc. An escalation matrix with well-defined SLAs has been implemented to ensure users receive expert help.

- **Responsive Contact Centre:** GeM's well-equipped contact centre, accessible in multiple languages, addresses user queries across various communication channels. The integrated chatbot, Ask GeMmy, route user concerns to the appropriate team.
- **Dispute resolution features:** GeM introduced the Vivad se Vishwas-II (Contractual Dispute) functionality, a valuable feature for resolving disputes between buyers and sellers.
- **AI-ML-Based Decision Support:** GeM is in the process of implementing AI/ML-based advanced analytics on GeM, which will help GeM reduce anomalies and frauds. These AI-based models will provide real-time or near-real-time feedback on various transactions happening on GeM, and will help a buyer make informed decisions as well as prevent anomalous transactions.
- **GeM Sahay:** In a bid to address credit access challenges faced by MSMEs and startups, GeM has rolled out GeM Sahay, a mobile application that provides frictionless financing for MSEs and startups, allowing them to obtain a loan at the point of order acceptance on the GeM platform. The platform allows all lenders, duly regulated by the Reserve Bank of India, to participate and provide loans to GeM sellers.
- **Next-Gen GeM Platform:** GeM has successfully onboarded a new Managed Service Provider, viz. Tata Consultancy Services, for designing and developing the Next-Gen GeM platform with extensive use of cutting-edge technologies for ease of its users and for bringing in more efficiency and transparency.

## Roadmap for the Future

As the platform continues to evolve and bring in significant reforms, it ushers in the next wave of growth, transforming procurement across states. GeM's strategic focus is on expanding its reach by integrating government buyers across all tiers into its robust e-procurement infrastructure.

With more and more states showing growing interest in procuring through GeM, the platform is committed to maximising its regional footprint.

To combat the architectural challenges of scaling up and to meet the evolving demands of buyers and sellers, the platform has partnered with a leading IT firm to revamp, re-design, and build a new modern solution leveraging new technologies while maintaining the current platform. The adaptable design will ease the onboarding of new sellers, driving greater participation from a more diverse vendor base, greater inclusivity, and more democratised access to the public sector market.

The upgraded platform intends to use advanced Artificial Intelligence and Machine Learning technologies to identify potential frauds, provide improved data analytics to forecast more accurate projections, and improve supply chain management. To be more future-ready, GeM is also looking at utilising the augmented and virtual reality to enable its buyers to have a more immersive procurement experience. GeM is committed to guiding the buyer's decision by enabling data- and insights-driven procurement. GeM is also expanding its catalogue of 'Green' products and services to help the country achieve its net zero carbon emissions commitment. Services such as hiring of an agency for achieving climate action targets, help buyers understand, quantify, monitor, and realise carbon-neutral targets. The platform is focused on prioritising the listing and availability of environmentally sustainable products and services by targeting the largest-selling products and services on the portal.

In a short span, GeM's buyer-seller ecosystem and its operations are twice as large as Amazon India and Flipkart combined. GeM has successfully established an infrastructure that not only captures data and facilitates end-to-end activities of public procurement processes but also allows government buyers to source from multiple vendors at competitive rates. With improved functionalities, the platform is committed to adapting new-age technologies to transform public procurement with an aim to further enhance user experience, improve transparency, and induce greater inclusivity in public procurement process. □

## JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 THE FOOD CORPORATIONS ACT, 1964

Using the name of Food Corporation without Corporation's consent used to attract imprisonment up to 6 months. This provision has been removed.



Source: DPIIT



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# EASE OF FILMING IN INDIA

**The Ease of Filming framework is best implemented by bringing all State/UT governments on board. Since inception, the FFO has been working closely with the State governments and Union Territory administrations for introducing policies and procedures that would enable and facilitate the filmmakers, both domestic and international to produce films in the States.**



**NEERJA SEKHAR**

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**T**he Ease of Filming in India is an exercise to provide a supportive and friendly ecosystem to filmmakers to shoot and complete their projects. It allows them to explore a vast eco-sphere of film making resources at global competitive prices. India offers cultural richness and diversity, talented production resources, and various filming hubs with a range of production and post-production facilities pan India. India's geography allows a foreign filmmaker to explore deserts, rivers, mountains, beaches, rural, and urban landscapes within the same country. India also brings along a ready audience that loves cinema and loves watching their locations in international films. All these factors make India in ideal film destination for foreign filmmakers.

To promote and facilitate film shootings by foreign filmmakers in India, the Ministry of Information and Broadcasting (I&B) set up a Film Facilitation Office (FFO) in 2015, under the aegis of the National Film Development Corporation (NFDC), a Public Sector Undertaking in the Ministry. The FFO acts as a single facilitation point for film producers through its web portal [www.ffo.gov.in](http://www.ffo.gov.in) and assists them in obtaining requisite permissions from various government and public agencies, disseminating information on shooting locales as well as the facilities available with the Indian film

industry for production/post-production. It works closely with State Governments and assists them to set up similar facilities. Since 2019, the FFO has been facilitating domestic filmmakers also for obtaining the requisite permissions.

Since January 2023, the FFO has been working within Invest India, the National Investment Promotion Agency of India. This has helped the FFO leverage the national and international network of Invest India in promoting India as a preferred filmmaking destination and to drive more investments into the sector, acting as a facilitator for filmmakers in their journey from script to screen. In addition to the facilitation provided by the FFO, direct facilitation is also done by the State Governments, many of whom have their own independent portals and they entertain applications directly. Efforts are being made to integrate the portals of all States with the National Single Window System in the revamped portal of FFO for further Ease of Doing Business.

The Ease of Filming regime in the country works through the following measures:

- a. Issuance of Film (F) Visa to foreign filmmakers for film shooting and recce
- b. Appointment of Nodal Officers in Indian Missions abroad



- c. Appointment of Nodal Officers in State/UT governments and Central Government Departments/agencies
- d. Integration with the National Single Window System for facilitating permissions for film shooting
- e. Facilitating entry of film equipment by foreign filmmakers into India
- f. Providing financial incentives to
  - i. Foreign filmmakers shooting in India
  - ii. Filmmakers officially co-producing films with an Indian partner
- g. FDI through automatic route

A National Ranking system of the most film-friendly States in the country is brought out annually by the Ministry on basis of the ease of filming parameters in the States.

Some of the statistics regarding film facilitation by FFO are:

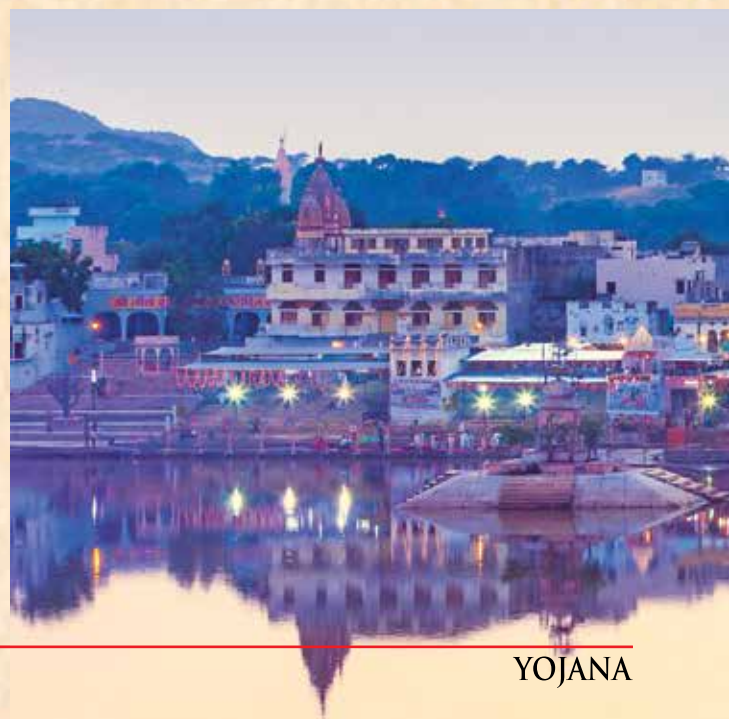
- 197 international projects from 39 countries
- 20 official co-productions from 10 of the 16 countries that have Audio Visual Co-production Agreements
- 129 domestic project facilitations since 2019
- More than 1500 film visa facilitations

Direct facilitation of film shooting projects is also done by many States through their own web portals, which is in addition to these figures.

However, declaration and facilitation of official co-production works under the Co-production Agreements of the Government and visa facilitation is done solely by the FFO. The following aspects make for the ease of filming in India:

### Issuance of Film Visa

The Union Government introduced a special category of visa called the Film (F) visa in 2016 for the cast and crew of foreign productions that are accorded filming permission by the Ministry of Information and Broadcasting. This visa can be granted for a one year multiple entry that would enable the project to be undertaken in multiple schedules without having to worry about visa



applications for every visit. Nodal officers in 158 Indian Missions abroad facilitate the issuance of Film (F) visa on the recommendation of the FFO. *Tenet, Extraction, London Has Fallen, The Bourne Supremacy, Vanguard, And Tomorrow We Will Be Dead* are some of the international projects facilitated by FFO. Many other films such as *The Curious Case Of Benjamin Button, Eat Pray Love, The Dark Knight Rises, Viceroy's House, Million Dollar Arm, Lion* were also shot in India.

Film Visa is also available to filmmakers who intend to visit the suitable locations for a recce. Foreign nationals coming to India to shoot/ film ad films/AV commercials/ documentary films are given 'J' visa, on prior approval of the Ministry of External Affairs.

FFO also facilitates the entry of film equipment into India by foreign filmmakers by issuance of a Customs Exemption Letter.

### Permission Process

**For film shooting:** A detailed step by step guide of the permission process for foreign shoots and grant of official co-production status under the Audio-Visual Co-production Agreements is given on the FFO web portal [www.ffa.gov.in](http://www.ffa.gov.in). The application is accepted online. An application fee of US \$225 (equivalent Indian Rupees) is required to be paid



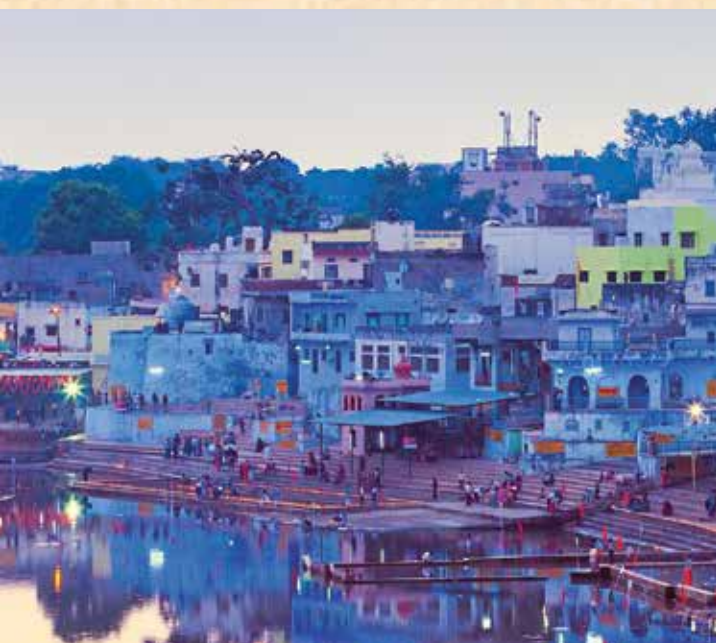
online while applying for the National permission from the Ministry of Information & Broadcasting. Location specific permission fee, if any, has to be made to the respective State authority online. The permission to shoot normally does not take more than 3 weeks to process for non-restricted areas. The applicants should apply 30 days in advance.

**For recce:** For permission for recce, the application should clearly declare the activities precisely and be sent as an email to [ffo@nfdcindia.com](mailto:ffo@nfdcindia.com). The Indian Mission/ Posts may issue a Film visa for the appropriate duration for a location-based recce on the recommendation of the Ministry of I&B.

**For equipment:** While applying for permission for filming, the applicants may furnish details of the equipment that they may like to carry in the format provided along with an Undertaking/Bond mentioning that the equipment would be re-exported. The Ministry of I&B accordingly issues a Customs Exemption Letter on the provision of the Equipment List and the Undertaking/Bond. A minimum of 7 working days are required for processing and issuance of the Customs Exemption Letter. This letter has to be shown to the officials of the Customs Department upon arrival in the country.

### FFO Web Portal

FFO has set up a web portal [www.ffa.gov.in](http://www.ffa.gov.in) to promote Ease of Doing Business in filmmaking, which acts as a single window mechanism for





facilitating permissions related to film shooting in India as well as for disseminating information regarding filmmaking facilities in India. The web portal is integrated with the filming permission mechanisms of various Central Government Departments and entities such as the Archaeological Survey of India (ASI), Indian Railways, Airports Authority of India (AAI), Animal Welfare Board of India (AWBI), Indian Coast Guard, etc., and most of the State Governments. It has also been integrated with the National Single Window System of the Department for Promotion of Industry and Internal Trade for a seamless experience to the user. The FFO web portal is being comprehensively revamped to keep it abreast with the latest technology and processes including the recently announced financial incentives.

FFO has compiled information of Producers who have done Co-Productions in the recent past on its Co-Producers page on the web portal. There is also an online searchable Locations Database as well as a list of Line Producers who have executed two or more international productions in India since 2016. This enables the foreign filmmakers to seek Indian partners for working in India, benefitting local talents and local economies.

### **Promoting Federalism and Working with State Governments**

With films made in more than 40 languages and the major film production centres

spread out in cities like Mumbai, Bengaluru, Chennai, Delhi, Guwahati, Hyderabad, Kolkata, Thiruvananthapuram and so on, the ease of filming framework is best implemented by bringing all State/UT governments on board. Since inception, the FFO has been working closely with the State governments and Union Territory administrations for introducing policies and procedures that would enable and facilitate the filmmakers, both domestic and international to produce films in the States. Nodal officers have been appointed in all the State and Union Territories of the country, who are responsible for filming permissions and there is constant interaction between the FFO and the nodal officers. States are also encouraged to have official policies for film shoots and productions, including incentive schemes to attract filming projects.

States participate in various international film festivals in India and abroad to promote their film locations and film policies. India's participation in the Cannes International Film Festival, France in 2022 as the Country of Honour in Marche du Film was leveraged to promote Indian filming locations. International Film Festivals in Berlin, Venice, Toronto and others platforms are also used to promote India as a filming destination. Film Bazaar, the film market component of the International Film Festival of India, Goa held during November 20-24 every year, is another opportunity for States to showcase their facilities,



infrastructure, film locations, and incentive policies to the filmmakers.

The Ministry has introduced the Most Film Friendly State (MFFS) listing to encourage the States to have filmmaker-friendly policies. This ranking is done on the basis of measures taken by the States for ease of filming. Madhya Pradesh, Gujarat, Uttarakhand, Uttar Pradesh and Sikkim are some of the States that have won the MFFS award over the past years.

### **Film Incentives**

The audio visual sector in India has been listed under the 'Champion Services Sector', an umbrella scheme of the Government to support sectoral initiatives. Under this scheme, the Ministry has announced an incentive scheme for foreign filmmakers who wish to produce their films in India. The scheme announced in May 2022 has been further revised in November 2023 and was announced by the Hon'ble Minister for Information and Broadcasting in the opening ceremony of the 54<sup>th</sup> International Film Festival of India at Goa on 20<sup>th</sup> November 2023. As per the revised scheme, foreign productions, be it live shoots, official co-productions or post-production, animation and visual effects services undertaken in India, would be eligible for reimbursement of up

to 40% of the qualifying production expenditure incurred in India subject to a limit of Rs 30 crore. There has been a tremendous interest amongst the filmmakers in availing the benefits under the revised guidelines of the scheme. By December 2023, 13 projects have applied for the incentives.

### **Promotion of Animation, Visual Effects, Gaming and Comics (AVGC) sector**

With a special focus on the AVGC sector in India, the Government of India set up a Promotion Task Force under the chairmanship of Secretary, Ministry of Information and Broadcasting in April 2022 to suggest ways to promote the AVGC sector. Basis on the recommendations of the Task Force, the incentives' scheme has been liberalized for animation, visual effects, and post-production services undertaken in India by foreign productions. An additional bonus of 5% of cost incurred in India would be provided for projects having Significant Indian Content (SIC), as reimbursement. This is to promote and encourage use of Indian IP and Indian content. The Indian post-production studios have catered to the animation and VFX segment of numerous prestigious international projects such as *Money Heist*, *John Wick 3*, *The Nun*, *Jurassic World*, *Fast & Furious*, *Spiderman – Far From Home*, *Captain*





*Marvel, Deadpool 2, Wonder Woman, End Game, Captain Marvel, Spiderman – Far From Home, Blade Runner 2049, The Witcher, Gravity, Beauty and the Beast, Transformer, Star Wars – Episode I, II and III, Harry Potter and the Deathly Hallows, Transformers: Dark of the Moon, Thor: The Dark World, Pinocchio, Life of Pi, and many more. Indian companies have also fully serviced domestic films including RRR, Bahubali, Dilwale, Ra.One, Krishh 3, Raees, etc.*

### FDI through Automatic Route

Foreign Direct Investment (FDI) up to 100% has been enabled in the film and television projects through the automatic route.

Film shooting has a multiplier effect on the economy. As per an industry study, a medium-large budget movie (total production budget of INR 55–60 cr, excluding payment for lead actors) with box office collections of INR 80 cr could spur an 80% additional revenue from tourism, and generate tourism related employment of 37 times the size of the production crew. This assumes that the movie would increase tourist footfalls by ~30 per cent. The ease of filming through a series of incentives and facilitation thus brings in more foreign projects into the country, leading to benefits such as boost to the economy in increased spending on goods and services such as hospitality and tourism;

creation of local jobs of various skill-sets involved in film making; promotion of tourism indirectly through featuring of tourist locations; cultural promotion of local stories, talents; promotion of Indian post-production services such as visual effects, sound designing, virtual reality, and furthering of soft power of the country. □

### Sources

1. <https://ffo.gov.in>
2. <https://ffo.gov.in/en/co-productions/international-treaties>
3. <https://www.arenach.com/top-vfx-studios-in-india-you-never-heard-about/>
4. <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/about-deloitte/in-about-deloitte-economic-impact-of-the-film-television-and-osv-industry-noexp.pdf>

### Incentive Schemes for Foreign Filmmakers

- **Film Shooting in India**
- **Official Co-production with India**

#### Quantum of Incentives

- **Incentives up to Rs 30 cr per project (\$3.6m)**
- **Plus State Incentives up to \$4m, varies from State to State**
- **Up to 40% of Qualified Production Expenditure**
- **5% bonus on works having significant Indian content**
- **Budget for FY 2023–24 & 2024–25: Rs 150 cr (\$180m)**



# CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995 DECRIMINALISED

**T**he Ministry of Information and Broadcasting has notified amendments to the Cable Television Networks Rules, 1994, thereby providing the operational mechanism for the implementation of the decriminalised provisions of the Cable Television Networks (Regulation) Act, 1995.

Section 16 of the Cable Television Networks (Regulation) Act, 1995, dealt with the punishment for contraventions under any of its provisions. This section had provisions for imprisonment, which might extend up to 2 years in the case of the first instance and 5 years for every subsequent offence.

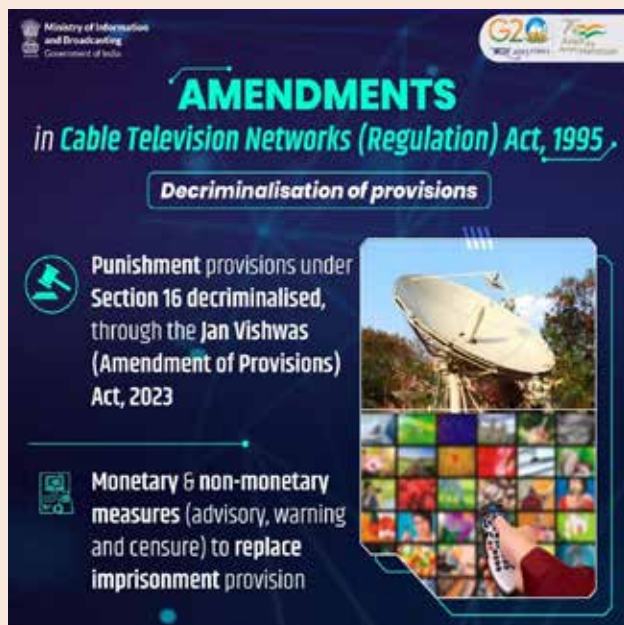
With an aim to make the Cable Television Networks (Regulation) Act, 1995, more business-friendly and to boost investor confidence in the sector, punishments specified under Section 16 were re-examined and decriminalised through the Jan Vishwas (Amendment of Provision) Act, 2023. The imprisonment provisions have now been replaced with a monetary penalty and other non-monetary measures like advisory, warning, and censure. Moreover, Section 16 now introduces an appeal mechanism against the order made by the designated officer. Sections 17 and 18 were omitted for being redundant.

Some of the benefits of decriminalisation are:

- i. The amendments are likely to encourage compliance with the Act without resorting to harsh punishments and are sensitive to minor or unintended contraventions. The inclusion of advisory, censure, and warnings in the range of penalties suggests the focus is on educating and encouraging compliance rather than solely punishing contraventions.
- ii. The amended provision allows for the use of a range of penalties, which provides flexibility in addressing different types of contraventions. It allows for a more proportional response to the nature, specificity, and severity of the contravention.
- iii. The amendment in the rules defines a 'designated officer' for imposing penalties. This streamlines the enforcement process and makes it simple, in addition to unburdening the criminal justice system.
- iv. The amended provision explicitly addresses subsequent contraventions, and in addition to the provision for higher penalties, it includes provisions for suspension or cancellation of registration. This promotes consistency and discourages habitual or repeated contraventions.
- v. The inclusion of an appeal mechanism provides individuals or entities with the opportunity to challenge penalties or decisions. This ensures a fair and transparent process and safeguards against potential abuse of power.
- vi. The definition of common terms in the cable industry, like 'platform services' and 'local cable operator', has been defined in the rules for the first time to bring about uniformity in their usages.

Currently, there are over 1400 multi-system operators registered with the Ministry of Information and Broadcasting. Decriminalisation of contraventions of provisions of the Cable Television Networks (Regulation) Act, 1995, and replacement with civil penalties shall boost stakeholders' confidence and promote the ease of doing business. □

(Source: PIB)



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# GST AND EASE OF DOING BUSINESS

**“We mark 5 years of GST, a major tax reform that furthered ‘Ease of Doing Business’ and fulfilled the vision of ‘One Nation, One Tax.’”**

**– Hon’ble Prime Minister of India  
on the eve of 5<sup>th</sup> Anniversary of GST**

**RAGHAVENDRA PAL SINGH**

The author is an IRS(C&T) and the Director/Additional Commissioner at GST Policy Wing, North Block, Ministry of Finance, New Delhi.  
Email: raghavendra.singh@gov.in

**T**he Goods and Services Tax (GST) is the biggest indirect tax reform since independence to promote ‘One Nation, One Tax, One Market’. The GST has subsumed numerous Central and State levies such as Central Excise duty, Service tax, VAT, Purchase tax, Entry tax, Central Sales tax, Local body tax, Luxury tax, Octroi, etc. It has brought down the economic barriers and paved the way for an integrated economy at the national level. By mitigating the cascading effect of taxes, GST has improved the overall business environment and competitiveness in the markets with ease of doing business.

As a result, in the last six and a half years, the GST tax base has almost doubled from 67.8 lakh to around 1.4 crore and witnessed the highest GST revenue collection of Rs 1,87,035 crore in April 2023. The revenue collection for the month of November 2023 is Rs 1,67,929 crore, which shows the highest growth rate of 15% YoY.

GST focuses on reducing compliance, ensuring the free flow of goods across states, harmonising

laws, procedures, rates of tax, common definitions, and interfaces through the Goods and Service Tax Network (GSTN), resulting in efficiencies and synergies across the board. It has helped reduce compliance costs and alleviate the need for multiple records for different tax authorities, leading to a lesser deployment of resources and manpower by the tax payer.

The stupendous success of GST could be, inter-alia, attributed to automation and standardisation. All processes in GST for a business cycle, starting from application for registration, filing of returns, refund application, replying to notices, appeal filing, etc. are completely online, which eliminate the physical interface with the tax officers. These are essential ingredients of ‘ease of doing business’.

**Registration:** GST registration is PAN-based and state-specific. Any business beyond a threshold of all India aggregates annual turnover of Rs 40 lakh in the case of supply of goods (Rs 20 lakh for specified States) and Rs 20 lakh in case of supply of services (Rs 10 lakh for specified States)

**GOODS AND SERVICES TAX (GST)**  
The crucial piece in India's development strategy

- Creating one Economic India
- Fillip to 'Make in India' initiative
- Unfettered flow of goods & services
- Increased economic activity to boost employment

**NATION TAX MARKET**

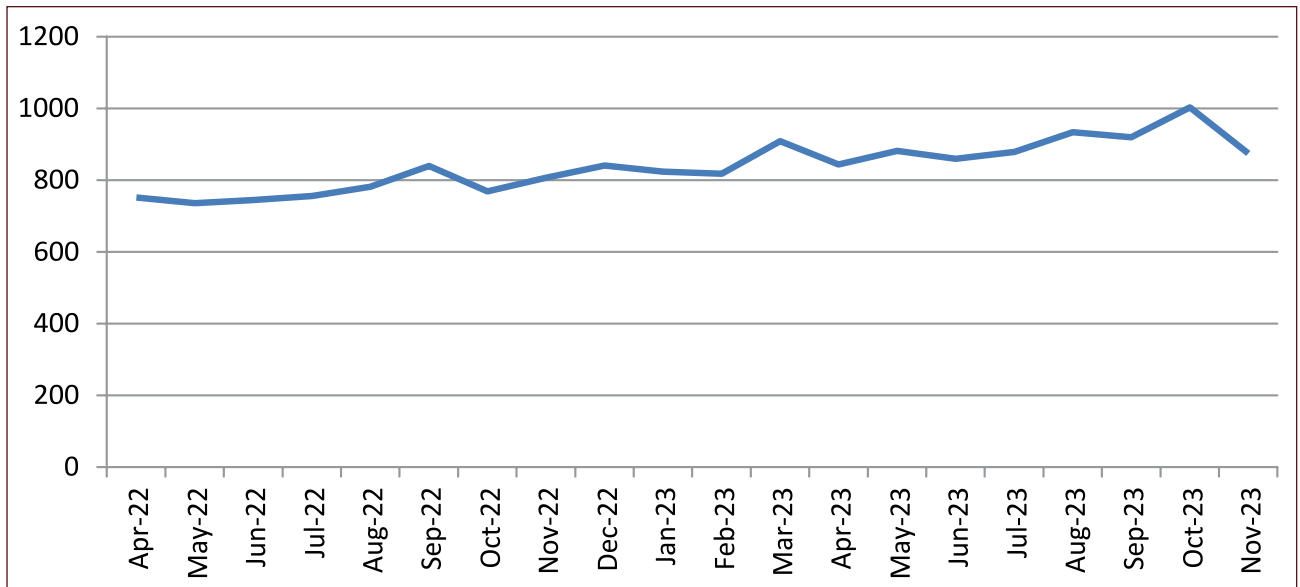


Figure 1 : Monthwise E-way bill (In Lakhs)

needs to take GST registration. Within seven days of application, the tax administration mandatorily needs to issue a GST registration certificate, subject to risk-based conditions where more time can be taken for Aadhaar-based authentication or physical verification. Special provisions for registration are made for casual taxable persons/ non-resident taxable persons, and foreign diplomatic missions that are not liable to taxes in the Indian territory. In case of suspension of registration due to continuous non-filing of returns, the facility for automatic revocation of suspension of registration, on filing of all pending returns, is in place to save time and efforts of tax payers.

**Return Filing:** In GST, taxpayers need to file various returns every month, e.g., GSTR-1 for outward supply, GSTR-2A/2B for inward supply, which is auto-populated, GSTR-3B for tax payment, and GSTR-9 is the annual return. All these returns are interlinked, e.g., once a taxpayer files his GSTR-1, some of the fields in his GSTR-3B, with editing facility, would be auto populated from the entries made in GSTR-1. Similarly, the inward return (GSTR-2A) is auto-populated from the GSTR-1 filed by his respective suppliers. It has eased the process of return filing by taxpayers.

Besides, the calculation of late fees and interest for delayed filing of returns is being done by the system itself. The system-based intimation to the taxpayer in respect of the difference in tax liability shown in GSTR-1 vis-a-vis GSTR-3B, above a certain

threshold is provided. It facilitates quick voluntary remedial action by the taxpayer in respect of such a difference.

Other than above, a facility of system-based intimation to the taxpayers in respect of the excess availment of ITC in GSTR-3B vis-a-vis that is made available in GSTR-2B above a certain threshold is being provided for quick voluntary remedial action by taxpayers in respect of such a difference. For Ease of Doing Business, the requirement of furnishing an annual return in 'FORM GSTR-9' has been waived off for taxpayers with annual turnover up to Rs 2 crore, and the requirement of furnishing a reconciliation statement in 'FORM GSTR-9C' has been waived off for taxpayers with annual turnover up to Rs 5 crore.

**E-Way Bill:** It is a document required for the movement of goods, having details such as the name of the consignor, consignee, transporter, point of origin of the movement of goods, and its destination. It is a standardised and uniform compliance mechanism across the country wherein, by way of a digital interface, the person causing the movement of goods (except specified goods) uploads the relevant information prior to the commencement of the movement of goods and generates an E-Way bill on the GST portal. It facilitates faster movement of goods, improves the turnaround time of trucks, increases the average distance travelled, and reduces the cost. It resulted in the elimination of state boundary check posts prevailing in the erstwhile tax regime. It has

unified all Indian supply chain mechanisms. Figure-1 explains the trend of the generation of E-Way bills over the period.

**E-invoice:** E-invoicing is mandatory for registered persons whose aggregate annual turnover in any preceding financial year is more than Rs 5 crore. GST invoices are reported to the 'invoice registration portal (IRP)'. On reporting, IRP returns the digitally signed E-invoice with a unique 'Invoice Reference Number (IRN)' with QR code. Such invoice can be issued to the receiver along with QR code. E-invoice has several advantages for Tax payers, e.g. auto-reporting of invoices into GSTR-1, auto-generation of E-Way bill if required. E-invoice facilitates standardisation and interoperability leading to a reduction of disputes among transacting parties, improving payment cycles, reducing processing costs, and thereby improving overall business efficiency. E-invoices are, in fact, reducing the usage of paper and, in turn, decreasing the carbon footprint of businesses. Figure-2 shows the trend of E-invoicing over the period.

**Refund:** Timely sanction of refunds is essential for the availability of working capital for expansion and modernisation of existing plants and machinery. The process of refund in GST has been envisaged as standardised, simplified, time-

### JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 PHARMACY ACT, 1948

Under **Section 41** dispensing drugs by unregistered persons and dispensing of medicine by unregistered person were punishable by fine and imprisonment up to 6 months on subsequent conviction. Given that these are serious issues which impact larger public, the imprisonment clauses for these offences are reduced and retained from up to **six months** to up to **three months** ensuring effective deterrence is still in place.

Source: DPIIT

bound, and technology-driven with minimal human interaction between the taxpayer and tax authorities. Refund of IGST paid for export of goods is totally automated based on the shipping bill filed by the exporter with customs and the filing of GSTR-1 and GSTR-3B on the portal, without any need for filing any separate application for refund. Exporters are facilitated by the grant of a provisional refund of 90% of their claims within seven days of their application.

Government has been sensitive to the challenges faced by trade and industry, especially small and medium taxpayers. The following trade friendly initiatives, inter alia, have been taken to further ease compliance in GST.

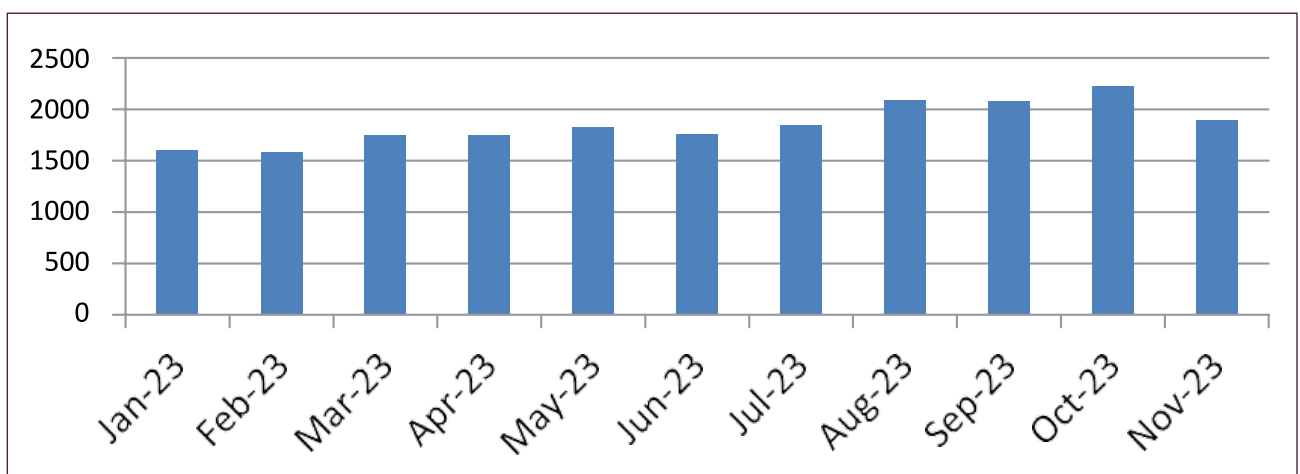


Figure-2: No. of E-invoices (Nos. in Lakhs)

## JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 COLLECTION OF STATISTICS ACT, 2009

The Act had imprisonment clauses up to 6 months for minor procedural offences like making any false or misleading statement or information and destroying, defacing, removing, or mutilating any information. Violations of provisions of this Act are not severe in nature and do not cause any damage.

These **criminal provisions have now been removed** from the Act.



Source: DPIIT

In certain circumstances, even unregistered persons can take temporary registration and apply for a refund.

### Measures for Small Taxpayers for Supply through Electronic Commerce Operator (ECO):

To facilitate small taxpayers in making supply of goods through ECOs, and to provide parity among intra-state offline and online supply of goods, a waiver of the requirement of mandatory registration up to threshold turnover with effect from 1 October 2023 has been made. Composition taxpayers would also be allowed to make intra-state supply through ECOs,

subject to certain conditions. This would open up a huge e-commerce market for small taxpayers to sell their goods without taking GST registration.

**Measure for enhanced cash flow:** Provision has been made to provide for the transfer of unutilised balances from the electronic cash ledger of a registered person to the electronic cash ledger of CGST and IGST of a distinct person having the same PAN. This would improve the liquidity and cash flows of such taxpayers.

**Facilitation to Exporters:** The requirement of reversal of ITC for exempt supply of duty credit scrip by the exporters has been done away with. Further, to facilitate exporters of electricity, amendments have been made to provide for refunds of unutilised ITC on account of the export of electricity.

UPI and IMPS have been provided as additional modes for payment of GST to facilitate taxpayers and further encourage digital payment by amending Rule 87(3) of CGST Rules. This will provide them flexibility and ease in making tax payments.

A concept of a sunset clause for tax dispute-related demands is in place, which necessitates the issuance of an adjudication order within 3 years and 5 years from the due date of filing the annual return under sections 73 and 74 of the CGST Act respectively.

Measures such as filing of Nil returns through SMS, introduction of the Quarterly Returns and Monthly Payment (QRMP) scheme for taxpayers with annual aggregate turnover below Rs 5 crore, leading to reduction of total returns to be filed from 24 to 8, etc., are in place to decrease compliance burden. About 89% of the taxpayers are eligible for this scheme, and approximately 43 lakh taxpayers are already availing of the benefits of this scheme. Besides, an optional composition scheme is also available for small businessmen supplying goods or services under a specified aggregate annual turnover with a reduced rate of tax.

**Interest-related measure:** Section 50 of the Central Goods and Services Act, 2017 (CGST Act) has been amended with effect from 1 July 2017 to provide that interest is required to be paid on the wrongly availed Input Tax Credit (ITC) only when the same has been availed, as well as utilised. In addition to this, the rate of interest on wrongly availed and utilised ITC has also been reduced to 18% from 24%, with a retrospective effect from 1 July 2017.

**Refund-related measure:** Amendment has been made to the formula prescribed under Rule 89(5) of the CGST Rules for the calculation of refunds for unutilised ITC on account of the inverted rated structure. This would result in a higher amount of refunds on account of the inverted rated structure.



Option for withdrawal of an application of appeal up to a certain specified stage; provision for automatic restoration of provisionally attached property after one year; decriminalisation of certain sections of GST, etc. are additional measures that were undertaken for ease of doing business.

Measures like mechanism for reversal and re-availment of ITC in case of non-payment of tax by the supplier; conditional amnesty schemes for capping of late fees; deemed withdrawal of best judgement assessment order issued under Section 62 of the CGST Act; allowing appeals against demand orders where appeal could not be filed within the prescribed time, etc.; and clarifications on TCS liability; ITC in respect of warranty replacement of parts and repair services during warranty period; taxability of share capital held in subsidiary company by the parent company; and clarification on input service distributor (ISD); etc. have been taken to induce ease of doing business.

Multiple grievance redressal forums are available for tax payers in every State and UTs consisting of members from both the Center and the corresponding State.

The taxation system of a country is one of the key criteria used to assess countries in the World Bank's Ease of Doing Business Index. Due to myriad economic and tax reforms, India steadily climbed up this index ladder from 142 in 2014 to 77 in 2018 and further to the 63<sup>rd</sup> position in 2019.

The consulting firm Deloitte's recent survey shows the incrementally positive response of 70% business leaders to GST. It, inter-alia, indicates a positive impact on businesses of all sizes with Micro, Small and Medium Enterprises (MSMEs) being the biggest beneficiaries of GST. About 88 per cent of MSME respondents have acknowledged the reduced cost of goods and services, attributing it to the improved uniformity of the GST regime.

## JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 FOOD SAFETY AND STANDARDS ACT, 2006

To ensure deterrence in major offences, imprisonment/fine in provisions with serious threat to safety of life were either retained or reduced. For example:

Manufacturing and distributing unsafe food attracted imprisonment under **Section 59** of the **Food Safety and Standards Act, 2006**. Given the immediate threat to the health and safety of general public, this section was retained.



Source: DPIIT

The Department for promotion of industry and internal trade (DPIIT)'s Business Reform Action Plan, 2020 also indicates a significant enhancement in the ease of doing business across the country.

Despite initial hiccups while adopting the new tax structure, GST is widely regarded as a paradigm shift and an enabler for ease of doing business and improved supply-chain efficiency. Reducing the compliance burden on taxpayers is a continuous effort to leapfrog to the next level of excellence in governance. There is no chasm between the intent of indirect tax reform, its implementation, and the intended effect on tax payers. There is no doubt that the GST regime has its own shortcomings, but the positives outweigh the negatives, and this, coupled with the sincere efforts of the GST Council to make it more equitable and effective, has made this reform a roaring success. □

*The views expressed in the article are personal.*

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# DECRIMINALISATION

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

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

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

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

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

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

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

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

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

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

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

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

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





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

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

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

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

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





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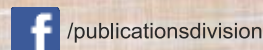
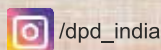
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# DELICATE BALANCE REGULATORY ENFORCEMENT & FAVOURABLE BUSINESS ENVIRONMENT

**One of the most noteworthy aspects of the Act is its substantial modification of penalties. In a bold departure from the conventional approach, the Act replaces imprisonment with a system of higher fines/penalties for various offences. This strategic shift aims to create a more effective deterrent against violations, ensuring a stronger enforcement mechanism without disrupting businesses.**

**SANDIP SOMANY**

The author is Past President, FICCI, Chairman, FICCI Taskforce on Ease of Doing Business; CMD, Somany Impresa Group.

**T**he Jan Vishwas (Amendment of Provisions) Act, 2023, marks a significant milestone in India's regulatory landscape. By decriminalising 183 provisions across 42 Acts administered by 19 ministries/departments, the Act strives to strike a delicate balance between regulatory enforcement and creating a favourable business environment. This ground-breaking move is poised to reshape the Ease of Doing Business in India.

Indian industry has long suggested the need for decriminalising various laws as it hampers the investment environment. Minor offences related to operations at the workplace had led to the filing of criminal cases against the directors of the companies, and in some cases, even against the independent directors too. This had vitiated the business environment and restrained many from harnessing their true potential. The recent decriminalisation drive by the Indian government aims to streamline regulatory compliance by addressing minor procedural lapses.

The Act is in the spirit of our Hon'ble Prime Minister's beliefs and thoughts, which he shared

way back in 2016: ***"..It was important to trust the citizens of India"***. It is important that any regulation be trust-based, and there are heavy penalties for breaking that trust.

The Act simplifies the regulatory frameworks and reduces the burden on businesses, especially Micro, Small and Medium Enterprises (MSMEs), which often face constraints in running day-to-day operations. They would be the primary beneficiaries of such changes, which would provide them with a more level playing field vis-à-vis their global counterparts.

One of the most noteworthy aspects of the Act is its substantial modification of penalties. In a bold departure from the conventional approach, the Act replaces imprisonment with a system of higher fines/penalties for various offences. This strategic shift aims to create a more effective deterrent against violations, ensuring a stronger enforcement mechanism without disrupting businesses. By emphasising financial consequences over custodial sentences, the Act aligns with contemporary global trends in regulatory frameworks, emphasising the economic impact of non-compliance. This

## JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 MOTOR VEHICLES ACT, 1988



Some **minor offences have been made compoundable** under the Jan Vishwas Act, 2023.

Contraventions related to driving regulations, obstructing free flow of traffic, and producing false registration document under the Act earlier attracted fines and imprisonment ranging from **6 months to 1 year** were made compoundable under Jan Vishwas Act, 2023.



Source: DPIIT

alignment with global trends is essential for India's integration into the global business landscape, demonstrating the nation's commitment to international standards and facilitating smoother trade relations.

Also, in most of these changes, while imprisonment has been removed, the fine has been retained. The distinction between a fine and a penalty is that a fine is determined by a court and a penalty is levied by an executive authority. Hence, it was always argued that retention of the fine would not reduce the compliance burden and lessen the litigation, which would nullify the objective sought to be achieved through the Act. Therefore, wherever feasible, the removal of imprisonment may be accompanied by the levying of a penalty instead of a fine to avoid an increase in litigation. FICCI is happy to see that, in many cases, fines were replaced with penalties on the recommendation of the Joint Parliamentary Committee.

FICCI has formulated some basic general principles of decriminalisation while submitting suggestions and these are as follows:

- Directors (or at least independent directors) not to be held liable for operational non-compliances.
- No criminal liability for technical errors/lapses only financial penalties
- No criminal liability for first-time offences under

the majority of laws

- Graded penalty system as a deterrent for subsequent non-compliances
- Establishing *mens rea* for offences committed

I am happy to note that DPIIT is in the process of identifying and assessing minor criminal provisions for decriminalisation under the next phase of the exercise, i.e., Jan Vishwas 2.0. The Jan Vishwas 2.0 exercise will further build upon the Jan Vishwas Act, 2023 inculcating the learnings from its novel predecessor exercise. FICCI would like to add a few suggestions and

recommendations for the same as below.

Directors are still held responsible even for operational or procedural lapses under various laws, e.g., under the Factories Act, Section 92, general penalties are prescribed for offences for the violation of provisions related to health & safety, working hours, welfare, compensation, and non-maintenance of records, returns, and registers. Here also, it is suggested that:

- For technical lapses/errors such as maintenance of records, filing of returns, etc., only monetary penalties are to be there, which could be graded for subsequent lapses.
- First-time offences should only have monetary penalties, which could be enhanced further to create a deterrent effect.
- Provision for compounding an offence where otherwise there is compliance with the law.
- Criminal prosecution for minor offences leads to disruption in business operations as the focus shifts to defending prosecution. As per the provisions of Section 252 of the Code of Criminal Procedure, 1973 (CPC), if an accused pleads guilty (even for minor offences), the Magistrate may convict the accused, at his discretion, with imprisonment or with a fine. As the occurrence of violations, resulting in minor offences, is inevitable while carrying out operations in factories, instances of pleading guilty by the accused persons/company under

Section 252 of the CPC, could be considered a habitual offender. Moreover, criminal prosecution for such minor offences acts as a deterrent to Ease of Doing Business and as such, the provisions of Section 92 of Factories Act, 1948 for violations resulting in non-serious or minor bodily injury (minor offences), require decriminalisation and rationalisation of minor offences in line with the Jan Vishwas Act.

- Point to be noted here is that corresponding provisions under the Occupational Safety, Health, and Working Conditions Code – Sections 94, 96 and 97 – have been completely decriminalised with enhanced monetary penalties.

**Legal Metrology Act, 2009-** While the Jan Vishwas Act addresses many provisions, Section 36 related to the penalty for selling nonstandard packages was not included in the decriminalisation. There is a need to remove imprisonment provisions and have only graded fines and monetary penalties for this provision as well.

**Rationale:** Currently, packaging regulation provides opportunities for legal metrology inspectors to issue notices on frivolous grounds of minor/technical non-compliance. For example, even a difference in font size makes a package nonstandard, even though it is readable.

**Labour Codes-** Some of the new codes enacted have retained the provisions of criminalisation. For instance, the Occupational Health, Safety, and Working Conditions Code 2019 under Sections 102 and 103 prescribes enhanced penalties involving both imprisonment and fines. Similarly, the Code on Wages 2019 provides, under Section 54(1)(d), a penalty for subsequent conviction (within 5 years from the first such conviction) for contravening any other provision of the 'Code-Imprisonment' up to 1 month, or a fine, or both. While we understand that these provisions relate to serious injury and accidents and inadequate payment of dues, and industry remains committed to the safety

and welfare of employees, our suggestion is that at least the independent directors should not be held responsible, and monetary value of the fine can be increased, and an additional penalty per day can be considered for subsequent offences in cases where no harm or loss has been caused to the employees as a result of the non-compliance. The provision should be made compoundable. However, the fine should be paid by the company and not by the independent director. Further, the said provision punishes a subsequent violation of such provisions of the Code for which no specific penalty is prescribed. The element of *mens rea* is usually absent in such cases that need to be established.

**Section 182 Companies Act 2013-** Prohibitions and restrictions regarding Political contributions state that a company (except newly established or government companies) can contribute funds directly or indirectly to a political party. The company must pass a resolution at a board meeting authorising this contribution. The total contributions made during the financial year must be disclosed in the company's profit and loss account. Contributions must be made through specified financial instruments. This section has criminal provisions. This requirement of law being procedural in nature, where there might be any lapse in adherence to prescribed statutory procedures. Hence, the provision of punishment for imprisonment would be unjustified. It may

**JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023  
LEGAL METROLOGY ACT, 2009**

Procedural defaults such as giving false information to legal metrology officer, controller, or director under the Act were punishable with fine and by imprisonment up to **6 months** in subsequent offences have now been made compoundable.

Compounding is a settlement mechanism, by which, the offender is given an option to pay money instead of prosecution, thereby **avoiding a long and lengthy litigation.**

Source: DPIIT

be restricted only to a monetary penalty, and the provision may be suitably modified as follows:

*If a company contravenes, the company shall be punishable with a fine that may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with fine which may extend to five times the amount so contributed.*

**Water (Prevention and Control of Pollution) Act, 1974, Section 41 read with Section 20(2)/(3)-**

It provides for a penalty for failure to comply with orders to obtain information by the State Board. It prescribes imprisonment up to 3 months with a fine, which may extend up to INR 10,000 or both; an additional fine of INR 5,000 for every day the failure continues after conviction. This provision relates to failure to comply with the directions of the State Board seeking information relating to discharge, construction, etc. We suggest that a heavier fine would be a more appropriate penalty than imprisonment, as the contravention is on account of failure to furnish information and not the act of causing pollution itself.

**Electricity Act 2003- Section 146-** This provision states that anyone who fails to comply with an order or direction issued under this Act, violates its provisions, or aids in such violations can face penalties. The punishment may include imprisonment for up to three months, a fine of up to one lakh rupees, or both for each offense. If the failure to comply continues after the first conviction, an additional fine of up to five thousand rupees can be imposed for each day during which the

failure persists. Here also, this is all encompassing for violation of any provision of this Act. Instead of imprisonment, civil penalties or fines can be more effective in achieving compliance, especially for non-compliance that does not involve malicious intent. Decriminalising this provision aligns with modern regulatory practices, emphasising education and cooperation over punitive measures, and promoting a more conducive business environment.

**Way Forward**

There are many such examples, as listed above, that will require decriminalisation. The Jan Vishwas (Amendment of Provisions) Act, 2023, is a transformative step towards creating a more business-friendly environment in India. Going forward, it is important to address the issues of decriminalisation at the State level. Due to the existence of overriding Central Legislations, State Governments are unable to decriminalise minor criminal provisions. We need a targeted approach for the examination of such identified Central Acts that will have profound effect through the subsequent decriminalisation of all subordinate State Legislations. As an initial step, select major states could be looked at. Recently, as reported in the media, the Haryana Government has already begun an exercise to decriminalise certain laws in a bid to improve the Ease of Doing Business and the Ease of Living for citizens by reducing some burdensome compliances prescribed in the acts/rules. I am sure other States are also working on it. □

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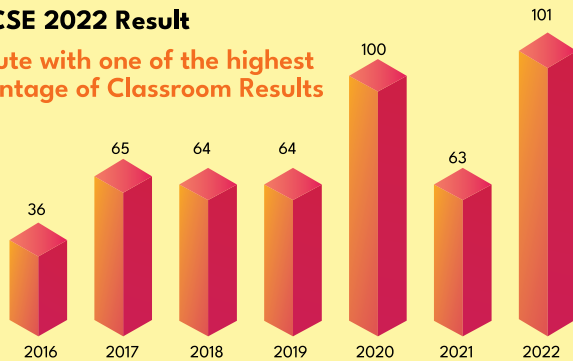


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General criminal provisions i.e., provisions prescribing punishments for any contraventions applicable across Act were specifically pursued under Jan Vishwas Act, 2023. The strategy involved identifying serious contraventions for separate penal provisions, while minor provisions were earmarked for decriminalization. This nuanced approach aimed to **maintain deterrence** for serious offences while **removing penal consequences** for minor defaults.



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# INDO-AFRICAN RELATIONSHIP AMIDST SOUTH-SOUTH COOPERATION

**RISHYA DHARMANI**

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**T**he Global South has progressively claimed space in international multilateralism as a unique voice. As a term, it signifies the self-identification of developing countries to aspire for power status and recognition of their special concerns. Issues ranging from adverse global terms of trade, a lack of investment and financing opportunities, the possibility of sovereign debt defaults, political instability, and the exploitation of mineral reserves have compounded centuries of exploitative structures. Off late, the 4 Cs of Climate, Covid, Conflict, and Cost of living crisis have further intensified stresses and pressures on their political economies.

India has positioned itself as a legitimate voice of the Global South as the founding father of NAM and an active participant in G77 deliberations. For decades, it has utilised its rising reputational capital to score critical wins in global rule-making.

## Ties as old as time

Trade between the Indus Valley and contemporary African civilisations have been documented. Later Greek accounts mention maritime interactions between ancient Egypt and Indian rulers through the Indian Ocean, which became a durable route for economic and cross-cultural exchanges. There was the creation of a 'monsoon culture' through trade culture, and multiracial ties through the Indian Ocean brought ivory, gold, etc. Later in medieval period, several Africans, like Abyssinians, served in regional Indian kingdoms. The colonial phase saw the forceful migration of indentured labourers, or *girmityas*, to British colonies in Africa; more cultural ties developed.

It is worthwhile to remember that Gandhiji had his moral and political epiphany in South Africa. His stature as a moral leader began to solidify then, with African leaders of stature like Kwame Nkrumah, Albert Luthuli, Nelson Mandela, and Kenneth

Kaunda having expressed their debt towards Gandhian ethics, especially civil disobedience. These historic and ideological ties found new currency in a decolonised world as Indian and African leaders pledged opposition to neo-colonialism. India has been at the forefront of UN activism by taking a keen interest in the stability and well-being of newly independent African states. It is a foremost troop contributor in peacekeeping missions, including the very first mission of the UN on African soil (ONUC) in the Congo between 1960 and 1964.

The Bandung Conference has been a "milestone in the formation of SSC (South South Cooperation) as a global political movement. SSC as a movement intended to challenge the Northern-dominated political and economic system and, from the 1950s to the present, has been through a series of starts and stops, surges and retreats."<sup>1</sup> There is a discernible geopolitical and geoeconomic shift to the global south as the world braces for new challenges and opportunities.

Reglobalisation and reorientation of global governance norms in the 21<sup>st</sup> century have produced many strong institutional and developmental responses, like AFGC, B3W, Blue Dot Network, ADB. Newer avenues for cooperation, conflict, and competition began to be envisaged. Indo-African cooperation has reached new heights with proactive bilateral and plurilateral engagements. The broad focal points have been UNSC reforms and India's support for the Ezulwini consensus, demand for global health equity and climate justice, and securing energy security (access to oil, gas, mineral ores, and critical minerals). Apart from the UN mechanism, engagement has been stepped up in regional organisations like ECOWAS, African Continental Free Trade Agreement, BRICS, OIC, ADB, NDB, IBSA Facility for Poverty and Hunger Alleviation Dialogue, SCO, and the Alliance of Small Island States (AOSIS). "The establishment of both the ISA and CDRI

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**Updates**

Tele-Law 2.0 (Integration of Tele-Law and Nyaya Bandhu (Pro Bono) Legal Services programme) event was launched on 25th August 2023 at the Siri Fort Auditorium in New Delhi. The event also commemorated the achievement of 50 Lakh Legal advices.

Source: PIB

is an example of India's progressive and cooperative climate engagement to shape and strengthen bilateral ties with other countries. Supporting and partnering with African governments through these organisations presents avenues for New Delhi to exercise its soft power towards influencing international and national agendas."<sup>2</sup>

Synergies on issues like curbing piracy, ensuring maritime security, humanitarian and disaster relief (HADR), multilateral development aid, investments in the social sector, and growing people-to-people ties through ICCR initiatives amidst Indian businesses' significant investments in Africa's growth story have been observed.

A consistent developmental approach has been steered by EXIM Bank's Focus Africa Programme and India-Africa Partnership Project, 17 India-Africa conclaves till 2022, India-Africa Forums, and the Confederation of Indian Industry Comprehensive Economic Cooperation and Partnership Agreement with Mauritius in 2021. Other initiatives like the India and Southern African Customs Union preferential Trade Agreement, Joint Trade Committee meetings with Ghana and Senegal, and the 17<sup>th</sup> CII-EXIM Bank Digital Conclave have encouraged the development of private investment from India in African countries.

Trade volume has recorded a fourteen-fold increase between 2001 and 2013 with African exports to India growing at a rate of 23% annually. India is one of the top 5 investors by pivoting on a hybrid nature of engagement. While the G2G interactions include extensions of LOCs and duty-free tariff preference for LDCs, Indian PSUs like ONGC have invested in North and Western Africa. Reliance Ltd. has procured oil exploration blocks in Nigeria and Madagascar. Several Indian companies have made major investments in South Africa, Egypt, Sudan, Mozambique; the natural resources of Ghana, and Nigeria. The sectoral mix includes agribusiness, pharmaceuticals, IT, and energy. Overall trade between India and Africa touched \$100 billion in 2022-23.<sup>3</sup> The IMF estimated that 22.5% of Indian foreign direct investments' outward flow is towards Africa, with the current stock of Indian investments in Africa being \$32 billion.

There have been reciprocal investments by Mauritius, South Africa, and Morocco ranging in millions of dollars. Africa's FDI stock in India is \$73 billion. Both partners have simultaneously secured their own interests while benefiting the other. For example, during the 2009 India-Africa Hydrocarbons Conference, India focused on five main areas of cooperation: securing energy security by diversifying crude oil and natural gas



supply from Africa; investing more in upstream and greenfield bilateral opportunities; making available India's skills (now especially in digital public goods and healthcare equity); talent and technology in cost-effective ways.

"Exit the Washington Consensus! Enter the Southern Consensus."<sup>4</sup> "A country is defined as North or South not by location but depending on certain economic factors and the quality of life of its population."<sup>5</sup> The consensus among LDCs and EMDCs about becoming equal partners in agenda setting has positioned the Global South as a rule-maker instead of a rule-follower. Numerous frameworks like Triangular Cooperation have been proposed where two actors from the South and one from the North (which could also include an international organisation) collaborate to provide technical or financial assistance. It produces a win-win situation as southern partners' capacity and technical know-how are enhanced within a sense of ownership of shared goals. For instance, G7+ is a cross-continental group of 20 states from Africa, Asia, Oceania, and the Caribbean. "Peer learning has been a central pillar of F2F (fragile- to-fragile) cooperation and a modality of South-South cooperation since the inception of the G7+. It is based on the recognition of the value of the G7+ countries' knowledge and experience of challenges related to the transition to resilience"<sup>6</sup>

The landmark Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries (BAPA) was endorsed by 138 UN member states in 1978. It had sought to institutionalise cooperation among LDCs. The Buenos Aires Programme of Action (BAPA+40) defines South-South cooperation as "a manifestation of solidarity among peoples and countries of the South that contributes to their national well-being, their national and collective self-reliance, and the attainment of internationally agreed development goals, including Sustainable Development Goals, according to national priorities and plans" (paragraph 8). The United Nations Office

for South-South Cooperation, 2<sup>nd</sup> High-Level UN Conference on South-South Cooperation, or BAPA+40 assimilates South-South relationship webs.

Bogotá High-Level Event on South-South Cooperation and Capacity Development in 2010 furthered debate about Southern-led tools for equitable development partnerships and capacity development. Busan High Level Forum on Aid Effectiveness 2011 focused attention on SSC. The Doha Programme of Action for the Least Developed Countries 2022-23 is mobilising resources for a newer set of partnerships to recoup from the pandemic. Similarly, the LDC5 is a UN-led initiative to catalyse the power of South-South Cooperation. "The India-UN Development Partnership Fund, a \$150 million financing mechanism established in 2017 has supported 24 projects in 18 LDCs, while also prioritising projects in 29 SIDS and 10 LLDCs. The India, Brazil, South Africa Facility for Poverty and Hunger Alleviation (IBSA Fund), established in 2004, has supported 22 projects in 20 LDCs –accounting for more than 62% of its total resources."<sup>7</sup> The India-UN Development Partnership Fund is a dedicated facility within the United Nations Fund for South-South Cooperation established in 2017. It is supported and led by India and managed by UNOSSC. The fund places an emphasis on partnering with Small Island developing States, LDCs, landlocked developing countries, and countries affected by disaster. In 2020, 40% of countries that participated in projects were LDCs.<sup>8</sup>

The Doha programme of action built on its Istanbul format "for the Least Developed Countries

for the Decade 2011-2020, which is a 10-year policy agenda agreed by the international community to address the challenges faced by the least developed countries (LDCs), mitigate risks, and leverage new opportunities. Its aims are to overcome structural difficulties faced by the LDCs in order to eradicate poverty, achieve the international development goals, and enable LDC graduation."<sup>9</sup> Newer and more complex forms of Global South cooperation have transitioned from mere

**Future initiatives for South-South Cooperation should be result driven and proactive in securing alignment with national systems. Partners must develop deep collaboration networks to achieve global targets like SDGs and MDGs.**



ideological posturing to realistic attempts at demanding a seat at the table. LDCs claim equality in global negotiations while laying emphasis on strategic autonomy and foreign policy flexibility as a matter of routine now. "Paragraph 132 of Istanbul emphasises solidarity and several of the original principles of South-South cooperation first articulated in the NAM, such as national sovereignty, national ownership and independence, equality, non-conditionality, non-interference in domestic affairs, and mutual benefit".<sup>10</sup>

### Prescriptions to Enhance South-South Cooperation

There is a need to focus on building productive capacities for agriculture, food security, and rural development. LDCs must build resilience through trade and economic integration. Many African countries are dependent on a single basket of export commodities; fluctuations and volatility in global demand can make them vulnerable to economic crisis. A total of 85% LDCs are classified as commodity-dependent. They must seek to strengthen governance standards and improve human and social development performance through aid and investments. An example is debt-for-nature swap agreements that free nations from the clutches of debilitating interest payments and also conserve the environment.

"Despite the impressive growth in trade, the composition of trade differs considerably between the two sides. Africa's exports to India remain essentially concentrated in crude oil and primary commodities, while India's exports to Africa are more diversified and include manufactured and technological-content products."<sup>11</sup> Trade issues due to frequent political instability, logistics costs, a poor business environment, and the rampant securitisation of African resources pose a serious challenge. The bulk of investments remain in

brownfield projects, with 70% in Mauritius alone.<sup>12</sup> India needs to enter into Comprehensive Economic Partnership Agreements with African nations, develop stronger people-to-people partnerships (IIT in Addis Ababa, Indian Technical and Economic Cooperation-derived projects like the Pan African eNetwork), focus on industrial collaborations and knowledge sharing (Cotton Technical Assistance Programme to strengthen the value chain in Africa), and strengthen tourism links (doubled from India to Africa between 2002-10, potential of medical tourism).

South-South Cooperation can be insulated from familiar traps by emulating Latin America's concept of "Active Non-Alignment," where governments build strong regional mechanisms to coordinate regional, foreign, and economic governance. The European Union and ASEAN's limited success in creating a basic framework of cooperation among member states is worth remembering. One foresees growing South-South collaboration in the future on climate (disaster risk reduction), tech transfer, global governance regimes (e.g. failed TRIPS waiver), the success of graduating and graduated LDCs, higher investments for structural transformation, promoting Southern remittances, and diaspora investments, resources, and minerals as bargaining points for ODA (value addition in exports). The developmental landscapes have changed as countries from Asia, the Pacific, and Africa have become partners in global development. "Today, the 2030 Agenda reflects these changes: the challenges posed to development, from poverty and climate change to conflict and crime, are multidimensional and interconnected, requiring multi-stakeholder approaches that are also capable of relating the diverse global goals in more holistic ways."<sup>13</sup>

There is a need to develop deeper strategic partnerships that are context-agnostic and

demand-driven. Not focus on financing alone but human resources, knowledge, technology, and sustainability. "Rather than simply transfer technology, the idea is that donors participate in learning and co-creation as actors entering from outside, and can contribute to capacity development by fulfilling the role of catalysts as 'facilitators', so to speak."<sup>14</sup>

Future initiatives for South-South Cooperation should be result-driven and proactive in securing alignment with national systems. Partners must develop deep collaboration networks to achieve global targets like SDGs and MDGs. The UNOSSC draft report on SSC focuses on 'intergovernmental processes facilitation and reporting, capacity development, knowledge management and sharing, South-South and triangular cooperation solution lab, and Trust Fund management.'<sup>15</sup> In a similar vein, an OECD report on SSC recommends strengthening capacities, quality of information, and knowledge sharing to avoid fragmentation. There have been numerous instances of overlapping organisational mandates that have culminated in cost increases and disparate cooperation projects. Low level of interrelatedness in aid puts the burden on the recipient country to derive full benefits from aid. □

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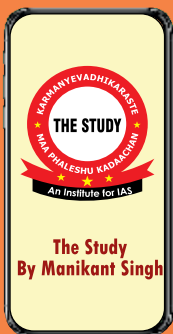


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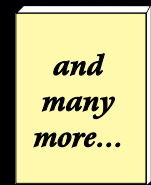
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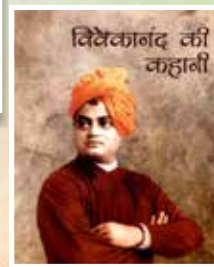
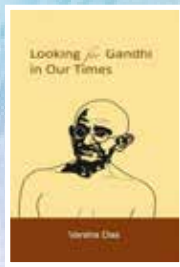
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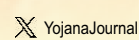
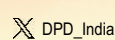
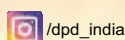
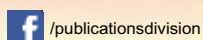
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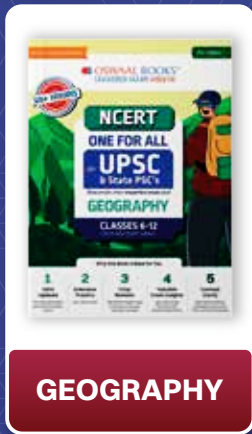
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