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FISCAL SANCTIONS VS. CRIMINAL LIABILITY: RETHINKING ENFORCEMENT MECHANISMS UNDER THE COMPANIES ACT AND SEBI FRAMEWORK.

AUTHORED BY - ANKAN DAWN, IMAN ROY & SHANKARSHAN BANERJEE
Students of LLB (SEMESTER IV), Amity Law School, Amity University Kolkata

Abstract

India's legislative trajectory over the last decade has been marked by a concerted push towards decriminalisation of economic offences. The Companies (Amendment) Act, 2019, and the Finance Act, 2023, together with a series of Securities and Exchange Board of India (SEBI) regulatory amendments, have systematically replaced criminal imprisonment with monetary penalties for a significant category of corporate and securities law violations. This shift has been promoted under the banner of

This article critically examines the theoretical foundations and practical consequences of this legislative pivot. Drawing on statutory analysis of the Companies Act, 2013, the SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, and comparative jurisprudence from the United States, the United Kingdom, Singapore, and Australia, the article argues that the answer is nuanced and deeply contextual. While decriminalisation can improve regulatory efficiency and reduce the chilling effect on legitimate.

Keywords: Decriminalization, Companies Act 2013, SEBI Act 1992, Ease of Doing Business, Investor Protection, Corporate Criminal Liability, Monetary Penalties, Securities Enforcement.

I. Introduction

There is an old tension at the heart of corporate law between facilitating commerce and curbing corporate misconduct. Historically, the criminal law has served as the ultimate deterrent — a tool reserved for the most egregious violations of the public trust. The threat of imprisonment has been understood, at least in theory, to carry a qualitative stigma that monetary penalties cannot replicate: it is one thing for a corporation to

India has been no exception to this trend. The Ministry of Corporate Affairs (MCA) launched a systematic review of the Companies Act, 2013, identifying provisions where the criminal

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sanction was, in the view of the Expert Committee chaired by Company Law Committee, disproportionate to the gravity of the underlying violation. The resulting Companies (Amendment) Act, 2019, converted twenty-three compoundable offences into civil defaults adjudicated through a penalty mechanism administered by

The rationale offered by the government has been largely instrumental: India needed to climb the World Bank's Ease of Doing Business index, attract foreign direct investment, and create a business environment where inadvertent or technical defaults did not expose company officials to criminal prosecution. The argument is not without merit. A country that imprisons directors for filing annual returns two weeks late is unlikely to be seen as a hospitable place for entrepreneurial activity. But critics — including shareholder activists, institutional investors,

This article proceeds in the following order. Part II traces the historical evolution of criminal liability under the Companies Act and the SEBI Act. Part III analyses the specific amendments effected by the 2019 Act and subsequent SEBI regulatory changes. Part IV examines the theoretical literature on deterrence, civil versus criminal liability, and the "optimal penalty" models. Part V conducts a comparative analysis of decriminalization experiences in the United States, the United Kingdom, Singapore, and Australia. Part VI evaluates.

II. Historical Evolution of Criminal Liability in Indian Corporate and Securities Law

A. The Companies Act Framework

The story of corporate criminal liability in India begins, in many respects, with the Companies Act, 1956, which consolidated and amended the earlier Joint Stock Companies legislation. The 1956 Act carried forward a largely Victorian conception of corporate regulation: the company and its officers were subject to a dense lattice of procedural requirements enforced through criminal sanction. Default in filing, irregularities

The Companies Act, 2013, represented a modernisation effort, but one that paradoxically intensified criminal exposure in some areas while attempting rationalisation in others. The 2013 Act introduced new categories of serious offences — fraud under Section 447, which carries imprisonment of up to ten years and a fine not less than the amount involved — while retaining the old framework of imprisonment for procedural defaults across dozens of sections. Section 447 was

The practical consequence was a proliferation of criminal complaints against directors and officers for conduct ranging from the genuinely fraudulent to the merely negligent or inadvertent. District courts across India were inundated with complaints filed by Registrars of

ISSN: 2582-6433

Companies for technical defaults, while the more serious white-collar frauds — the frauds that devastated the savings of ordinary investors —

B. The SEBI Act and Securities Enforcement

SEBI was established in 1992 with a dual mandate: to protect the interests of investors in securities and to promote the development and regulate the securities market. The SEBI Act, 1992, vested SEBI with broad regulatory powers including the power to issue regulations, conduct investigations, suspend market participants, impose monetary penalties under Chapter VIA, and file

The enforcement paradigm that emerged over the following two decades was, however, criticised as inconsistent and unpredictable. SEBI's adjudication machinery — the Adjudicating Officer mechanism and the Securities Appellate Tribunal (SAT) — dealt with monetary penalties, while criminal prosecution was theoretically available under Section 24 but rarely invoked for securities violations outside of headline frauds. Academic commentary noted that the actual deterrent effect of SEBI's enforcement

III. The Anatomy of Decriminalisation: 2019 Amendments and SEBI Changes

A. Companies (Amendment) Act, 2019

The Companies (Amendment) Act, 2019, which received Presidential assent on 31 July 2019, was the most substantive decriminalisation exercise undertaken since the enactment of the 2013 Act. Acting on the recommendations of the Company Law Committee, the amendment converted twenty-three offences from the compoundable category — where composition before the Court was required — into civil defaults adjudicated by the Registrar of Companies (ROC) under a new

The offences so converted included defaults in filing annual returns under Section 92, failures to maintain a registered office under Section 12, defects in the process of issuing shares under Section 56, and procedural lapses in holding board meetings and maintaining statutory registers. The maximum monetary penalties prescribed for these defaults ranged from Rs. 1

The 2019 amendment also tightened the definition of minor technical and procedural offences and introduced seven new additional categories of compounding, clarified the procedure for adjudication, and reduced the number of offences triable by special courts. The net effect was a significant reduction in the criminal caseload involving corporate law violations,

B. SEBI's Regulatory Evolution

In the securities law domain, the decriminalisation impulse manifested primarily through two channels: the expansion of the consent and settlement mechanism under Section 15JB of the SEBI Act (as amended in 2014), and the progressive increase in monetary penalty caps under Chapter VIA. Prior to the 2014 amendment, SEBI's consent mechanism had been

By 2023, SEBI had further enhanced the flexibility of its enforcement toolkit through amendments to its Settlement Regulations, making available settlement in cases of insider trading, fraudulent and unfair trade practices, and front-running — categories that would previously have been treated as requiring criminal referral. The monetary penalty maxima under Sections 15A through

IV. Theoretical Foundations: Deterrence, Optimal Penalty, and the Civil-Criminal Divide

A. The Economic Theory of Deterrence

The theoretical case for decriminalisation rests, at its core, on Gary Becker's foundational model of crime and punishment, which posits that rational actors will refrain from illegal conduct when the expected cost of the sanction — the product of the probability of detection and the magnitude of the penalty — exceeds the expected gain from the conduct. Under this

Applied to corporate regulation, the Beckerian model suggests that if penalties are set at sufficiently high levels, monetary sanctions can achieve the same deterrent effect as criminal imprisonment without the collateral costs associated with prosecution — court delays, stigma for innocent defendants, and chilling effects on legitimate business activity. This argument is especially compelling for procedural defaults where there is no

B. The "Pricing In" Problem

The Beckerian model, however, has well-documented limitations in the corporate context. The most significant is the problem of organisational diffusion of responsibility: in a large corporation, the expected cost of a monetary penalty is diffused across shareholders and is ultimately borne by those who had no involvement in the violation. The individual managers responsible for the conduct — who are the ones whose behaviour must be deterred — may bear

This is what scholars have termed the "pricing in" phenomenon: corporations, particularly large ones, may simply treat monetary penalties as a cost of doing business, calculating in advance that the probability-adjusted expected penalty is less than the cost of compliance. There is substantial empirical evidence for this pattern from the United States, where large financial

ISSN: 2582-6433

institutions have paid billions of dollars in

The criminal law avoids this problem, at least in theory, by making individual officers personally liable for imprisonment. Imprisonment cannot be paid by the corporation on behalf of its officers; it cannot be indemnified or insured against; and it carries a social stigma that attaches to the individual rather than the legal entity. These features give criminal liability a qualitative

C. The Expressive Function of Criminal Law

Beyond deterrence, criminal law performs what scholars have termed an "expressive" or "communicative" function: it signals to society which forms of conduct are regarded as fundamentally incompatible with shared norms of honesty, trust, and fair dealing. The conviction of a corporate officer for securities fraud does not merely impose a cost — it publicly declares that the officer has acted wrongly in a way that the community will not tolerate. This expressive function has particular significance in

When the state decriminalises conduct that was previously criminal, it sends a corresponding message — not that the conduct is now permitted, but that it is no longer regarded as morally condemnable in the same way. Critics of India's decriminalisation programme have argued that this signal is particularly damaging in a market context where retail investor confidence

V. Comparative Analysis: Lessons from Abroad

A. The United States

The United States presents an instructive case study precisely because it has travelled in both directions on the decriminalisation spectrum at different historical moments. The Sarbanes-Oxley Act of 2002, enacted in the aftermath of the Enron and WorldCom frauds, significantly increased criminal penalties for securities fraud and accounting violations and created new criminal offences for obstruction of justice and retaliation against whistleblowers. The Act reflected Congressional judgment that the civil enforcement

Yet the post-2008 financial crisis period revealed the limits of even enhanced criminal provisions: despite the largest financial catastrophe in decades, no senior executive of a major financial institution was criminally prosecuted. The Department of Justice's approach of negotiating deferred prosecution agreements and monetary settlements with financial institutions — a form of institutional decriminalisation by prosecutorial discretion — attracted fierce criticism from scholars, judges, and Congressional investigators. Former Attorney General Eric Holder acknowledged that the

ISSN: 2582-6433

B. The United Kingdom

The United Kingdom has adopted a more explicitly tiered approach to corporate criminal liability. The Bribery Act 2010 created a novel "failure to prevent" corporate offence that operates as a strict liability crime absent a demonstration of "adequate procedures" — an approach that preserves the deterrent power of criminal liability while focusing it on systemic organisational failures rather than individual technical defaults. The Financial Conduct Authority (FCA) similarly maintains a spectrum of enforcement tools ranging from private warnings

The UK model is particularly relevant to India because it reflects a sophisticated attempt to solve precisely the problem this article identifies: how to spare honest managers from disproportionate criminal exposure while preserving the full force of criminal law for genuinely culpable conduct. The "failure to prevent" model has been extended to tax

C. Singapore and Australia

Singapore presents perhaps the most relevant comparator for India, given the shared common law heritage, the similar structure of the Monetary Authority of Singapore (MAS) as a financial regulator, and Singapore's own ongoing effort to position itself as a global financial centre. Singapore has maintained criminal sanctions for serious securities fraud and insider trading under the Securities and Futures Act while reforming its corporate registry compliance regime to rely principally on monetary penalties and administrative sanctions for procedural defaults. The Singaporean experience suggests that the two goals — reduced criminalization Australia's ASIC enforcement model has similarly evolved towards a "why not litigate" philosophy following a parliamentary inquiry that criticised ASIC's over-reliance on negotiated outcomes and insufficient use of criminal prosecution for serious misconduct. The Australian experience is a salutary reminder that decriminalisation trends can produce regulatory capture and enforcement timidity, and that periodic legislative reassertion of

VI. Impact on Investor Protection in India

A. Retail Investors and Information Asymmetry

The investor protection concerns raised by India's decriminalisation programme are particularly acute when considered against the demographic reality of Indian capital markets. The Securities and Exchange Board of India's own data indicates that the total number of registered investors at the National Stock Exchange crossed 9 crore unique investors by 2023, with a significant proportion comprising first-generation retail investors who entered the

ISSN: 2582-6433

market through the digital trading platforms and smartphone apps that proliferated during the COVID-19 lockdowns. These investors typically lack For these investors, the criminal law has served an important indirect protective function: the threat of imprisonment has historically incentivised directors, promoters, and market intermediaries to exercise greater care in their compliance with disclosure obligations, prohibitions on insider trading, and market conduct norms. The conversion of these obligations into civil defaults may marginally reduce their deterrent force, particularly in the case of large promoter-controlled companies where the promoter group has both the

B. Minority Shareholders and Related-Party Transactions

The minority shareholder problem is particularly acute in the Indian corporate governance context. India's corporate landscape is characterised by concentrated promoter ownership: in the BSE 500, promoter group shareholding typically ranges from 40 to 75 percent, meaning that minority shareholders are dependent on the vigilance of regulators and the deterrent force of legal sanction for protection against promoter misconduct. Related-party transactions — the most common mechanism through which promoter groups extract value

The decriminalisation of certain procedural aspects of related-party transaction approvals and disclosure obligations, while perhaps justified as a matter of reducing technical litigation, sends an ambiguous signal to promoter groups about the seriousness with which regulators view compliance in this area. The risk is not merely that specific procedural defaults become more likely — it is that the overall

C. Market Manipulation and Insider Trading

The most serious investor protection concerns arise in relation to market manipulation and insider trading — the two categories of securities violation most directly injurious to market integrity and retail investor interests. Here the picture is more reassuring, because both the Companies Act (Section 447) and the SEBI Act (Section 24 read with the Prohibition of Insider Trading Regulations) continue to provide for criminal imprisonment for intentional violations. SEBI has also been willing to Nevertheless, concerns persist about the adequacy of deterrence for mid-level market manipulation. The settlement mechanism, while efficient, allows violators to avoid both criminal prosecution and public finding of guilt in exchange for monetary payments that may be calibrated to achieve disgorgement rather than genuine deterrence. The opacity of many settlement terms — which are not always published with sufficient specificity — makes it

ISSN: 2582-6433

VII. Critique and Reform Proposals

A. The Categorisation Problem

The fundamental weakness of the current Indian decriminalisation framework is the absence of a rigorous, principled basis for distinguishing between offences that properly belong in the civil category and those that require criminal sanction. The existing classification rests primarily on a distinction between "compoundable" and "non-compoundable" offences that was developed under the 1956 Act for procedural reasons — essentially, whether the offence was the kind that

A more principled framework would distinguish along at least three dimensions: first, whether the violation involves unjust enrichment or harm to an identifiable victim (suggesting criminal liability is appropriate); second, whether the violation requires proof of intentional or reckless conduct as opposed to mere negligence or inadvertence (suggesting criminal liability is more appropriate for the former); and third, whether the violator is an individual officer or the

B. Penalty Calibration

Even within the civil penalty regime, there are serious concerns about the adequacy of current penalty levels as deterrents. The maximum penalties under the in-house adjudication mechanism — Rs. 10 lakhs for many defaults — are trivial in relation to the capitalisation or revenues of large listed companies. A listed company with revenues of several thousand crores faces no meaningful deterrence from a Rs. 10 lakh penalty. The penalty caps urgently require recalibration, ideally as a percentage of turnover or market capitalisation rather

SEBI's penalty framework is somewhat better calibrated, particularly following the 2014 and subsequent amendments, but suffers from its own rigidities. The "three times the profits" formula is appropriate for violations involving unjust enrichment but provides no guidance for violations — such as certain disclosure failures — where the harm to investors cannot easily be translated into a gain for the violator. A more flexible, harm-based penalty calculus, of the kind employed by the FCA in the

C. A Proposed Tiered Enforcement Model

This article proposes that India adopt a tiered enforcement model along the following lines. The first tier should consist of administrative penalties — civil monetary penalties imposed by the ROC or SEBI's Adjudicating Officers — for procedural and technical defaults that cause no direct harm to investors or the market. These penalties should be calibrated as

The second tier should consist of enhanced civil sanctions — including disgorgement,

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disqualification from directorship, and higher penalty multipliers — for violations that involve harm to market integrity or individual investors but where criminal intent cannot be established beyond reasonable doubt. The third tier should preserve and, where necessary, reinvigorate criminal liability — with imprisonment as the primary sanction — for violations involving intentional fraud, deliberate market manipulation, Critically, the third tier should be applied at the individual level rather than the entity level wherever possible, with the "failure to prevent" model providing corporate liability only where systemic organisational failure is established. This approach — already partially reflected in the interaction between Section 447 of the Companies Act (corporate fraud) and Section 34 of the SEBI Act (individual liability for aiding and abetting) — should be

D. Institutional Capacity

No enforcement framework can be better than the institutions charged with implementing it. The ROC offices across India have historically been under-resourced for the adjudicatory role thrust upon them by the 2019 amendments. There are legitimate concerns that the in-house adjudication mechanism, while efficient in disposing of cases, lacks the independence and expertise necessary to calibrate monetary penalties appropriately in complex cases.

SEBI is better placed institutionally, but faces its own capacity constraints in the face of rapidly growing market volumes, the proliferation of new financial products, and the increasing use of algorithmic and high-frequency trading strategies that can be deployed to manipulate markets in ways that are difficult to detect and prove. SEBI urgently requires enhanced data analytics capabilities, expanded forensic investigation capacity,

VIII. Conclusion

The decriminalisation of corporate and securities law violations in India is neither straightforwardly progressive nor straightforwardly regressive. It reflects a legitimate and overdue recognition that the 1956-era framework of blanket criminalisation of procedural defaults had become a source of compliance burden, litigation expense, and unjustified legal risk for honest businesspeople. The 2019 amendments and the evolution of SEBI's enforcement toolkit But the article has argued that the current framework is insufficiently principled and inadequately calibrated to preserve the deterrent function of legal sanction for genuinely harmful conduct. The categorisation of offences as civil or criminal does not consistently track the dimensions of harm, culpability, and proportionality that a sound enforcement framework demands. Penalty levels under the civil regime are too low to deter large, well-capitalised

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companies. The settlement Investor protection is ultimately a public good. The protection of retail investors who have trusted their savings to capital markets managed and regulated by the state cannot be reduced to a cost-benefit calculus about doing business rankings. It is a constitutional obligation — implicit in the guarantee of a right to livelihood, the right to property, and the aspiration to economic justice — and a precondition for the development of deep, liquid, and trustworthy capital markets that serve the long-term growth of the Indian economy. A framework that treats the violation of that trust as merely
The reform agenda this article has proposed — a principled tiered enforcement model, recalibrated penalty levels, a strengthened institutional apparatus, and the preservation of criminal sanction for intentional, high-harm offences — is not a reactionary demand for a return to the over-criminalised past. It is, rather, a demand for a framework that is as sophisticated as

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