Decriminalising Sections of the Companies Act

Why in news?

The government is planning to decriminalise 65 Sections of the Companies Act where the offence is not of a serious nature.

What is the plan?

- The ministry will revive its committee on decriminalising offences under the Companies Act.
- The committee will work in two phases.
- In the first phase, it will look at the 65 sections where lapses are procedural or technical in nature.
- It will also look into the offences that are largely compoundable (where the complainant can enter into a compromise and agree to have the charges dropped against the accused).
- Such offences include -
    i. default with respect to Section 8 (11), which deals with the formation of firms with charitable objects
    ii. default with respect to Section 26 (9), which is regarding matters to be stated in the prospectus
- Punishment in these cases includes a fine as well as imprisonment for the company's directors or others involved.
- These are cases where default can be mitigated by paying fees, as a result of which one avoids penal provisions in connection with the default.
- In the second stage, the committee will study 35 sections that cover non-compoundable offences.
- These include impersonating an owner of shares or an interest in a company under Section 57.
- This is punishable with a fine of up to Rs. 5 lakh and imprisonment of 1-3 years.

How effective will the move be?

- The move comes as an effort to take forward the idea of reducing government interference and improving the ease of doing business.
- The move will improve the operating legal environment for firms as well as reduce litigation.

- It is important to keep reviewing outdated laws to address the problems.
- But the government should take a holistic approach in this context so that it does not end up having an effect opposite to what is intended.
- The Section regarding corporate social responsibility (CSR) in the Companies Act is a case in point.

What are the other points of contention?

- A high-level committee on CSR in its report released recently recommended that violations of CSR norms be made a civil offence.
- The recent amendments to the law introduced provisions that could send company executives to jail for not implementing CSR rules as mandated.
- The committee has made other recommendations that will complicate matters further.
- E.g. it has suggested that CSR expenditure should be made tax-deductible
- The idea is to incentivise companies; but, in reality, it will result in disputes and litigation.
- Further, the committee has recommended that companies spending above a certain level undertake impact assessment studies of their CSR programme.

What are the shortfalls?

- It is important to recognise that the idea of mandatory CSR is fundamentally flawed.
- The recent amendment has made it even more damaging.
- It is wrong to assume that companies not spending on CSR do not contribute to society.
- They produce goods and services, generate employment, and pay taxes.
- Spending on CSR should be voluntary and not mandated by law.
- Making it mandatory increases the burden on both the corporate sector and the government.
- Here, firms have to divert managerial resources and the state has to monitor every minute compliance detail, leading to possibilities of harassment.
- Further, in terms of impact, CSR spending is biased in favour of areas that are comparatively developed.
- This is more likely to add to regional disparities.

What is the way forward?

- Overall, it is heartening to see that the government is open to the idea of reviewing parts of the Companies Act.
- However, it would be better advised to take a more comprehensive view if it intends to improve the business environment and attract investment.

Source: Business Standard

