The Companies (Amendment) Bill, 2020

Why in News?

The Companies (Amendment) Bill, 2020 was introduced in the Lok Sabha in March 2020.

Why this Bill was introduced?

- The Ministry of Corporate Affairs (MCA) wanted to facilitate ease of doing business in India.
- It also wanted to decriminalise the Companies Act, 2013.
- Therefore, it introduced the Companies (Amendment) Act, 2019, and the Companies (Amendment) Bill, 2020.

What did the Companies Act, 2019 do?

- It decriminalised 16 sections of Companies Act, 2013 to civil violations.
- It eliminates the criminality of these violations by levying monetary penalties instead of criminal fines.
- Levying these penalties has been shifted from courts to in-house adjudication mechanisms (IAM) under Section 454 of the Act.
- The adjudicating officers who are to be appointed by the Central Government determine the offences.
- These officers also enable companies to promptly communicate, represent, and resolve defaults.

Why was the CLC, 2019 constituted?

- The Company Law Committee (CLC) was constituted to further decriminalise the 2013 Act.
- It decriminalises the technical and minor non-compliance.
- But, it retains the strict criminal enforcement for serious, fraudulent offences that jeopardise and prejudice public interest.
- This decriminalisation will instil confidence in both domestic and global players and boosts foreign investments.

What did the Companies (Amendment) Bill, 2020 propose?

- Based on the recommendations of the report, the Bill proposes to

decriminalise the Act under the following frameworks.

- **Re-categorization of 23 compoundable offences to the IAM** -
- Offences that do not involve objective determination and that are easily determined by the MCA21 system may be treated as civil wrongs.
- The IAM framework will determine these offences.
- **Omission of 7 compoundable offences** - These offences proposed to be omitted are those that may be dealt with through other laws.
- **Limiting 11 compoundable offences to criminal fine only** - These are offences that are substantial enough to warrant criminal liability, but don't warrant punishment by incarceration upon conviction.
- **Alternate framework for 5 offences** - This proposal could better achieve the intended aim of certain penal provisions in the Act with the company liquidator.
- For this, the corresponding provisions of the Insolvency and Bankruptcy Code (IBC) may be inserted.

What is the significance?

- **Lesser penalties for certain offences**: For this, the Section 446B is amended.
- Non-compliance by certain type of companies or by any of its default officer are only liable to one-half the penalty specified in the respective provisions.
- **Benefit to IDs**: The amendments are vital for Independent Directors (IDs) to dissociate them from personal liabilities of the operational lapses and violations.
- The Ministry's notification directs that unless there is sufficient evidence, civil or criminal proceedings should not be initiated against the IDs.
- It added that if the proceedings were already initiated, they must be reviewed.
- These recommendations seek to accelerate the processes of rectifying defaults by paying penalties, instead of fighting a criminal trial.

What goals do these amendments seeks to achieve?

- These amendments are admirable steps towards the 3-pronged goal of:
    1. Reducing the burden on company courts,
    2. Ensuring investor interests, and
    3. Facilitating the ease of doing business while collaterally incentivizing senior management to remain invested.
- This could well be the step towards showing intent to incentivize domestic and global investments, especially post COVID-19.

Source: The Indian Express

