



ALL INDIA BANK EMPLOYEES' ASSOCIATION

Central Office: Chennai

ANNEXURE TO AIBEA LETTER GS/2020/112 DATED 14-6-2020

Decriminalisation of Offences – Submissions and suggestions

Acts covered:

1. Insurance Act, 1938
2. SARFAESI Act, 2002
3. PFRDA Act, 2013
4. RBI Act, 1934
5. NABARD Act, 1981
6. NHB Act, 1987
7. State Financial Corporations Act, 1951
8. Credit Information Companies (Regulation) Act, 2005
9. Acturaries Act, 2006
10. Banking Regulation Act, 1949
11. General Insurance Business (Nationalisation) Act, 1972
12. LIC Act, 1956
13. Banning of unregulated Deposit Schemes Act, 2019
14. Chit Funds Act, 1982
15. DICGC Act 1961
16. Negotiable Instruments Act, 1881
17. Prize Chits and Money Circulation Schemes (Banning) Act, 1978

	Statute	Provisions of the relevant sections and current punishment	Suggestions for decriminalization (if any) along with rationale
1.	Insurance Act 1938	Section 12 (read with Section 147 of the Companies Act, 2013)	THIS PROVISION SHOULD NOT BE DECRIMINALIZED. As late as in 2013, the provisions have been revisited and in the light of the fact that non-audit of insurer, in respect of the insurance business transacted by him, if this provision is decriminalized, this will be taken as one of the excuses for non-audit of the balance sheets of the insurers with malafide intent.
		Sec. 103	Before the Life Insurance Corporation was founded, there were lots of private insurance companies that have collected huge premia from the general public and vanished in thin air. Hence, carrying on insurance business without proper license should be treated as a criminal offence and punishable as such. Hence, this provision NEED NOT BE DECRIMINALIZED.
2.	SARFAESI Act, 2002	Section 29	SARFAESI Act has been brought to confiscate the properties of the willful bank loan defaulters. The provisions of the SARFAESI Act have already been diluted due to some legislations. Hence, this provision NEED NOT BE DECRIMINALIZED and instead the provision should be made more stringent.

3.	PFRDA Act, 2013	Section 16(7) Section 32(1)	<p>The Act was enacted to protect the interest of the Pension Fund contributors. This is the fund of the general public, workers, who depend on their contributions for their returns on their retirement. Hence, decriminalization of any provisions of PFRDA Act would not only lead to mismanagement of funds but also refusal by the authorities to produce books, registers and other documents/records for investigation. Further, any contravention to the provisions of the PFRDA Act shall have to be punished under criminal law.</p> <p>The PFRDA Act has come into effect only in 2013 and was enacted with an intention to protect the public funds. Hence, THE PROVISIONS UNDER SEC. 16(7) AND SEC. 32(1) NEED NOT BE DECRIMINALISED.</p>
4.	RBI Act, 1934	Section 58B (1) Section 58B (4A) Section 58B (5) Section 58B (5A)	<p>Section 58B(1) provides for punishment under criminal law for willfully making a statement, which is false in any material particularly knowing it to be false or willfully omits to make a material statement in any application, declaration, return statement, information or particulars made regarding the deposits of money from the public. This provisions contains offence involving <i>mens rea</i> and hence</p> <p>THIS PROVISION UNDER SECTION 58B(1) NEED NOT BE DECRIMINALISED.</p>

			<p>The provisions under Section 58B(4A) involve contravention of requirement of registration and net-owned funds. This provision also should not be decriminalized.</p> <p>Acceptance of deposits without being authorized so to do in relation to Non-Banking institutions for receiving deposits and issues prospectus or advertisement in contravention to Sec. 45J or Sec. 45, is nothing but a criminal offence.</p> <p>Already millions of depositors have lost money for lure of higher rate of interest by finance companies. Hence, this provision should be more strengthened with stringent punishment under criminal law.</p> <p>This provision under Sec. 58B(5) should not be decriminalized.</p> <p>Similarly, Sec. 58B(5A) punishes any person, who has violated Section 45S, which states that deposits should not be accepted in certain cases, the violation of which shall lead to offence. Hence, this provisions need not be decriminalized.</p>
5.	NABARD Act, 1981	Section 56(1)	<p>The provisions under Section 56(1) of the NABARD Act, 1981, if diluted, it will lead to willfully making statements, which are false and would justify such acts including falsification of balance sheets. Hence, these provisions should not be decriminalised.</p>

6.	NHB Act, 1987	Section 49	<p>The dilution of Section 49 of the NHB Act, 1987, would lead to falsification of financial statements with malafide intent, would also lead to denial of production of books, accounts, statement for inspection/verification, refusal of the auditor to comply with the directions given by the National Housing Bank or Reserve Bank of India, non-compliance with the order made by the National Company Law Tribunal under Sec. 36A(2), acceptance of deposits by any person or company through falsified advertisements and prospectus etc. Hence, the criminal provisions under the NHB Act, 1987, should be made more stringent with severe punishments.</p> <p>Hence, this section should not be decriminalised.</p>
7.	State Financial Corporations Act, 1951	Section 42(1) Section 42(2)	<p>Section 42(1) stipulates punishment for <i>mens rea</i> with malafide intent for willfully making any false statement in any bill of lading, warehouse receipt or other document given to the State Financial Corporations.</p> <p>Similarly, without the written consent of the State Financial Corporations, if their names are used in any advertisement or prospectus, it would lead to misuse of the State Financial Corporations' names with ulterior motives.</p> <p>Therefore, Section 42(1) and Section 42(2) need not be decriminalised.</p>

8.	<p align="center">Credit Information Companies (Regulation) Act, 2005</p>	Section 23(1)	<p>A Credit Information Company (CIC) is an organization which collects and analyses credit and loan related data about individuals and companies and generates its products and services on the basis of this data.</p> <p>In such a company, if in any return or other document or in any information required or furnished by such a company, false statement is given or a material statement is willfully omitted, it would cast aspersions on the individuals or the companies concerned. Hence, such an act is nothing but criminal act of defaming an individual or a company. So, this Section 23(1) need not be decriminalised.</p>
9.	<p align="center">Acturaries Act,2006</p>	<p>Section 37 Section 38(2) Section 40(2)</p>	<p>Actuaries are experts in risk management. Their work involves calculations for various insurance, pension and other related funds. Hence, any person, who uses the name of actuary without having been a member or certificate of practice, jeopardises the funds of the common man and general public. Even though they may not be directly involved in fraudulent activities, their reports would lead to losses suffered by common man and general public and they should be made accountable.</p> <p>Hence, the provisions under Section 37, Section 38 (2) and Section 40(2) should not be decriminalised.</p>

10.	Banking Regulation Act, 1949	Section 36-AD (2) Section 46	The entire Section 36-AD shall be repealed and deleted. Section 46 : Making willfully false statement or willfully omitting to state the facts in any return, balance or any other document under the provisions of Banking Regulations Act, 1949, involve serious offence. Since the banks are custodians of public funds, this provision under Section 46 need not be decriminalised.
11.	General Insurance Business (Nationalisation) Act, 1972	Section 30	The provision need not be decriminalised as the contents of the Section 30 involve criminal intent and <i>mens rea</i> .
12.	LIC Act, 1956	Section 40	The provision under Section 40 need not be decriminalised. The content of the omissions or commissions involve criminal act and shall have to be punished.
13.	Banning of unregulated Deposit Schemes Act, 2019	Section 21(1) Section 21(2)	The enactment was just a year old. This Act was passed by the Parliament owing to large scale embezzlement of public funds through unregulated deposit schemes.

		<p>Section 21(3)</p> <p>Section 22</p> <p>Section 23</p> <p>Section 24</p>	<p>Decriminalisation or dilution of these provisions would encourage such unregulated deposit schemes luring general public to invest their funds, which shall be swindled.</p> <p>Hence, Section 21(1), Section 21(2), Section 21(3), Section 22, Section 23 and Section 24 of the Banning of Unregulated Deposit Schemes Act, 2019, should not be decriminalized.</p>
14.	Chit Funds Act, 1982	<p>Section 76(1)</p> <p>Section 76(3)</p> <p>Section 77</p>	<p>The Chit Funds Act, 1982, was introduced after large-scale cheating by the unregistered and unregulated chit companies by swindling the public money. All the provisions of the Chit Funds Act, 1982, should be more stringent and</p> <p>there should not be any decriminalization of Section 76(1), Section 76(3) and Section 77 of the Chit Funds Act, 1982.</p>
15.	DICGC Act 1961	<p>Section 47(1)</p>	<p>The dilution of the provision would lead to falsification of the account books, making material statement in financial statements including balance sheets to the Deposit Insurance and Credit Guarantee Corporation. This will lead to wrong claims from the DICGC.</p> <p>Hence, Section 47(1) should not be decriminalised.</p>

16.	<p align="center">Negotiable Instruments Act, 1881</p>	<p>Section 138</p> <p>Section 143(1)</p>	<p>The Negotiable Instruments Act, 1881, was amended to make the return of cheques without sufficient balance in the accounts as a criminal offence as many of the offenders have been escaping scot-free and cheating the public, companies, banks etc. Hence, Section 138 and Sec 143(1) were introduced to make them accountable, responsible and punishable under criminal law. Hence, dilution of these sections would only facilitate increase in such acts with criminal and motivated intentions.</p> <p>However, for individuals and companies, the limit for which it would attract criminal prosecution shall be fixed.</p> <p>For individuals, if the returned cheque amount is Rs. 1 lakh or more shall be fixed. In case of companies, if the returned cheque is more than Rs. 10 lakhs, it shall be tried under criminal procedure code.</p> <p>Therefore, Section 138 and Section 143 (1) of the Negotiable Instruments Act, 1881, shall be modified to the above extent.</p>
17.	<p align="center">Prize Chits and Money Circulation Schemes (Banning) Act, 1978</p>	<p>Section 4</p> <p>Section 5</p> <p>Section 12(5)</p>	<p>All these provisions have been introduced to stop fraudsters and embezzlers from swindling public money through this enactment. Decriminalization of the provisions under Section 4, Section 5 and Section 12(5) would lead to promotion and conduct of chits and money circulation schemes that would jeopardise public money.</p> <p>Hence, Section 4, Section 5 and Section 12(5) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, should not be decriminalized.</p>