

**Bill No. XXVIII of 2023**

THE PAYMENT AND SETTLEMENT SYSTEMS (AMENDMENT)  
BILL, 2023

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*further to amend the Payment and Settlement Systems Act, 2007.*

BE it enacted by the Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment and Settlement Systems (Amendment) Act, 2023. Short title and commencement.

5 (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

51 of 2007. 2. In section 26 of the Payment and Settlement Systems Act, 2007:—

Amendment of section 26.

"(i) for sub-section (1), the following shall be substituted, namely:—

10 "(1) Where a person contravenes the provisions of section 4 or fails to comply with the terms and conditions subject to which the authorisation has been issued under section 7, he shall be punishable with fine which may extend

to one crore rupees and with a further fine which may extend to one lakh rupees for every day, after the first during which the contravention or failure to comply continues.";

(ii) in sub-section (2), the words "imprisonment for a term which may extend to three years and shall also be liable to" shall be omitted; 5

(iii) for sub-section (4), the following shall be substituted, namely:—

"(4) If any person discloses any information, the disclosure of which is prohibited under section 22, he shall be punishable with fine which may extend to five lakh rupees or an amount equal to twice the amount of the damages incurred by the act of such disclosure."; and 10

(iv) for sub-section (5), the following shall be substituted, namely:—

"(5) Where a direction issued under this Act is not complied with within the period stipulated by the Reserve Bank or where no such period is stipulated, within a reasonable time or where the penalty imposed by the Reserve Bank under section 30 is not paid within a period of thirty days from the date of the order, the system provider or the system participant which has failed to comply with the direction or to pay the penalty shall be punishable with fine which may extend to one crore rupees and where the failure to comply with the direction continues, with a further fine which may extend to one lakh rupees for every day, after the first during which the contravention continues.". 15 20

## STATEMENT OF OBJECTS AND REASONS

The complexities in section 26 of the Payment and Settlement Systems Act, 2007 are manifold. In an effort to be stricter with the issue of non-compliances, misdirection and withholding of relevant statements or information, the aspect of imprisonment for the aforementioned offences was introduced.

2. As per the joint report of regulatory technology firms, the TeamLease RegTech and the Observer Research Foundation (ORF) in February, 2022, over 26,000 imprisonment clauses in Indian commercial laws have been deterring the spirit of entrepreneurship in India. Of the 1,536 laws that specifically govern the aspect of doing business in India, more than half carry imprisonment clauses. Of the 69,233 compliances that businesses have to follow, 37.8 per cent. (or almost two out of every five) carry imprisonment clauses. More than half the clauses requiring imprisonment carry a sentence of at least one year. In the light of the need to ease small and medium-scale businesses, as well as multinational corporates into the trading ecosystem of the country, it is imperative that such disproportionate burdens, in the form of imprisonment, be done away with.

3. Necessity and proportionality are essentially general principles of law and legislative drafting. In other words, these are principles that ought to be considered whenever a law, a rule or a regulation is being written. Since they do not have a universal definition, for the purpose of regulatory compliance criminality, we shall adopt a working definition of the two principles. One, for imprisonment to be justified in a law or regulation creating criminality, it must be fundamental to securing the ends of the regulation itself (necessity). And two, such punishment must be commensurate with the gravity of the harm caused or likely to be caused or it must offer justified restitution, first and foremost. Imprisonment must be seen as a last resort, to deal with the most severe of harms that strikes at the roots of a country's ethos. In the light of the same, reforms to clauses around imprisonment shall strengthen capital flows, facilitate a greater exchange of privileged end-to-end corporate information and instil a general sense of security for upcoming business enterprises.

4. The proposed amendment seeks to obliterate the element of criminality in the form of imprisonment and instead, opts for a reformatory system of penalties to protect, and promote the interests of business.

Hence, this Bill.

AMAR PATNAIK

ANNEXURE

EXTRACTS FROM THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007

(ACT No. 51 OF 2007)

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**26. (1)** Where a person contravenes the provisions of section 4 or fails to comply with the terms and conditions subject to which the authorisation has been issued under section 7, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine which may extend to one crore rupees or with both and with a further fine which may extend to one lakh rupees for every day, after the first during which the contravention or failure to comply continues. Penalties.

(2) Whoever in any application for authorisation or in any return or other document or on any information required to be furnished by or under, or for the purpose of, any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which shall not be less than ten lakh rupees and which may extend to fifty lakh rupees.

(3) \* \* \* \* \*

(4) If any person discloses any information, the disclosure of which is prohibited under section 22, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five lakh rupees or an amount equal to twice the amount of the damages incurred by the act of such disclosure, whichever is higher or with both.

(5) Where a direction issued under this Act is not complied with within the period stipulated by the Reserve Bank or where no such period is stipulated, within a reasonable time or where the penalty imposed by the Reserve Bank under section 30 is not paid within a period of thirty days from the date of the order, the system provider or the system participant which has failed to comply with the direction or to pay the penalty shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine which may extend to one crore rupees or with both and where the failure to comply with the direction continues, with a further fine which may extend to one lakh rupees for every day, after the first during which the contravention continues.

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RAJYA SABHA

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further to amend the Payment and Settlement Systems Act, 2007.

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*(Dr. Amar Patnaik, M.P.)*