

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

**LOK SABHA
UNSTARRED QUESTION NO. 2956
ANSWERED ON FRIDAY, THE 3rd AUGUST, 2018/
SHRAVANA 12, 1940 (SAKA)**

REVIEW OF COMPANIES ACT, 2013

QUESTION

**2956. SHRI S. RAJENDRAN:
SHRI ASHOK SHANKARRAO CHAVAN:
ADV. NARENDRA KESHAV SAWAIKAR:
SHRI CH. MALLA REDDY:
SHRI T. RADHAKRISHNAN:
SHRI BIDYUT BARAN MAHATO:
SHRI S.R. VIJAYAKUMAR:
KUNWAR HARIBANSH SINGH:
SHRI GAJANAN KIRTIKAR:
SHRI SUDHEER GUPTA:**

Will the Minister of CORPORATE AFFAIRS

कारपोरेट कार्य मंत्री

be pleased to state:

- (a) whether the Government has constituted a 10 Member Committee to review the penal provisions in the Companies Act, 2013, if so, the details thereof along with the aims and objectives thereto;**
- (b) the terms of reference of the Committee and the time by which the Committee is likely to submit its report to the Government;**
- (c) whether the move will reduce the burden of trial courts in the country and rather allow them to concentrate on more serious offences and if so, the details thereof;**
- (d) whether the Government has evolved an mechanism to check the malpractices of listed companies in stock exchange and if so, the details thereof; and**
- (e) the steps taken/being taken by the Government to ensure strict compliance of corporate governance of listed companies so that to protect the minority stakeholders?**

ANSWER

MINISTER OF STATE FOR LAW AND JUSTICE (SHRI P. P. CHAUDHARY)

AND CORPORATE AFFAIRS

(श्री पी. पी. चौधरी)

विधि और न्याय एवं कारपोरेट कार्य मंत्रालय में राज्य मंत्री

(a) to (c):- The Ministry of Corporate Affairs regularly reviews the provisions of the Companies Act, 2013 (the Act) in order to effectively administer and monitor the implementation of various provisions of the Act. Accordingly, the Ministry has constituted a 10 member committee to review some of the Penal provisions under the Act vide its order dated 13.07.2018. The objectives as well as the terms of reference of the said Committee are as follows:-

- (i) To examine the nature of all 'acts' categorized as compoundable offences viz. offences punishable with fine only or punishable with fine or imprisonment or both under the Act and recommend if any of such 'acts' may be re-categorized as 'acts' which attract civil liabilities wherein the company and its 'officers in default' are liable for penalty;**
- (ii) To review the provisions relating to non-compoundable offences and recommend whether any such provisions need to be re-categorized as compoundable offence;**
- (iii) To examine the existing mechanism of levy of penalty under the Companies Act, 2013 and suggest any improvements thereon;**
- (iv) To lay down the broad contours of an in-house adjudicatory mechanism where penalty may be levied in a MCA21 system driven manner so that discretion is minimized;**
- (v) To take necessary steps in formulation of draft changes in the law;**
- (vi) Any other matter which may be relevant in this regard.**

The move is likely to lessen the burden on Special courts in the country, so that serious offences are more effectively pursued to finality.

(d) and (e):- Securities and Exchange Board of India (SEBI) under the Department of Economic Affairs in the Ministry of Finance has stated that:-

(1). SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations"), inter alia, provide for monitoring of listed entities, including compliance with the corporate governance provisions contained therein and penalty for contravention as under:

- (i) Regulation 97 (1) and (2) requires the exchanges to monitor compliance and adequacy/ accuracy of the disclosures made by a listed entity with respect to provisions of the same. Regulation 97 (3) and (4) requires the exchanges to put in place an appropriate framework including adequate manpower and such infrastructure as may be required to monitor compliance of all provisions for all listed entities.**
- (ii) Regulation 98(1) specifies that a listed entity or any other person thereof who contravenes any of the provisions of the regulations, shall, in addition to liability for action in terms of the securities laws, be liable for**

action by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by SEBI. Such action includes: Imposition of fines, suspension of trading, freezing of promoter/promoter group shareholding of designated securities, as may be applicable, in coordination with depositories and any other action as may be specified by the Board.

(2). Monitoring of compliance by listed entities is a four-stage approach:

- (i) Monitoring of compliance at the board level of the companies,**
- (ii) External supervisory review such as certifications from practicing company secretaries,**
- (iii) Monitoring of compliance by stock exchanges, and,**
- (iv) Regulatory oversight by SEBI.**

(3). SEBI vide circulars, the latest being dated May 03, 2018, has also prescribed the Standard Operating Procedure for Stock Exchanges that prescribes a uniform fine structure for non-compliance with regard to certain provisions of SEBI (LODR) Regulations, 2015 specified in Annexure-I of the circular and Standard Operating Procedure (SOP) for suspension and revocation of suspension of trading of specified securities.

(4). Stock Exchanges have been authorized to impose fines on the entities that are non-compliant with the requirements of the aforesaid circular and in case the non-compliance persists, Stock Exchanges may freeze the promoter and promoter group shareholding and suspend trading of the securities of the concerned listed entity after due intimation to the non-complaint listed entity. The Stock Exchanges review compliance status of the listed entities at regular intervals.
