

**Government of India
Ministry of Finance
Department of Financial Services**

8th June, 2020

**Statement of Reason:
Decriminalisation of Minor Offences For Improving Business Sentiment And
Unclogging Court Processes**

Decriminalisation of minor offences is one of the thrust areas of the Government. The risk of imprisonment for actions or omissions that aren't necessarily fraudulent or the outcome of malafide intent is a big hurdle in attracting investments. The ensuing uncertainty in legal processes and the time taken for resolution in the courts hurts ease of doing business. Criminal penalties including imprisonment for minor offences act as deterrents, and this is perceived as one of the major reasons impacting business sentiment and hindering investments both from domestic and foreign investors. This becomes even more pertinent in the post COVID19 response strategy to help revive the economic growth and improve the justice system.

Given the nature of pendency in all tiers of the courts and the time taken for disputes to be resolved, legislative measures have been considered to help restore trust in doing business. In this pursuit, it is also important that a balance be found so that malafide intent is punished while other less serious offences are compounded. Accordingly, a framework is required such that a penalty levied is sufficient to act as a deterrent. Actions taken for decriminalisation of minor offences are expected to go a long way in improving ease of doing business and helping unclog the court system and prisons. It would also be a significant step in the Government of India's objective of achieving '*SabkaSaath, Sabka Vikas and Sabka Vishwas*'.

Criminalizing procedural lapses and minor non-compliances increases burden on businesses and it is essential that one should re-look at provisions which are merely procedural in nature and do not impact national security or public interest at large. The following principles should be kept in mind when deciding on reclassification of criminal offences to compoundable offences: (i) Decrease the burden on businesses and inspire confidence amongst investors; (ii) Focus on economic growth, public interest and national security should remain paramount; (iii) *Mens rea* (malafide/ criminal intent) plays an important role in imposition of criminal liability, therefore, it is critical to evaluate nature of non-compliance, i.e. fraud as compared to negligence or inadvertent omission; and (iv) The habitual nature of non-compliance.

Given the importance of this exercise as also its large-scale impact across society, Government of India is conducting a stakeholder consultation exercise. In order to develop consensus, the Department of Financial Services, which administers the Acts indicated at **ANNEX**, invites the comments of State Governments/ UT Administrations, Civil Society/ Non-Government Organisations, Academicians, Public and Private Sector Organisations, Multilateral Institutions and members of the public to submit their suggestions to the Department. The relevant Acts administered by the Department and their specific Sections containing criminal provisions are provided in **ANNEX**.

Stakeholders may kindly propose and submit their comments/ suggestions regarding decriminalisation of a particular Act or particular Sections of an Act, along with the rationale for the same. The comments/ suggestions may kindly be submitted to the Department at the email address bo2@nic.in within 15 days, i.e., by 23rd June, 2020.

Ministry / Department: Department of Financial Services (DFS)

Comments and Feedback:

- 1) Name of the Institution / Organization / Member of the Public:
- 2) Correspondence Address:
- 3) Category (Please indicate): State/ UT/ Civil Society/ NGO/ Academic/ Public Sector/ Private Sector/ Multilateral Institution/ Member of the public

SN	Statute	Provisions of the Relevant Sections and Current Punishment	Suggestions for Decriminalisation (if any) along with Rationale
1.	Insurance Act, 1938	<p>Section 12 (read with Section 147 of the Companies Act, 2013):</p> <p>The balance sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in respect of all insurance business transacted by him, shall, unless they are subject to audit under the Companies Act, 2013 (18 of 2013), be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 147 of the Companies Act, 2013.</p> <p>As per Section 147 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than INR 25,000/- (Indian Rupees twenty-five thousand only) but which may extend to INR5,00,000/- (Indian Rupees five lakh only) and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 (one) year or with fine which shall not be less than INR10,000 (Indian Rupees ten thousand rupees only) but which may extend to INR 1,00,000 (Indian Rupees one lakh rupees only), or with both.</p>	

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		<p>Section 103:</p> <p>If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a penalty not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.</p>	
2.	SARFAESI Act, 2002	<p>Section 29:</p> <p>If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to 1 (one) year, or with fine, or with both.</p>	
3.	PFRDA Act, 2013	<p>Section 16 (7):</p> <p>If any person fails without reasonable cause or refuses—</p> <p>(a) to produce to an Investigating Authority or any person authorised by him in this behalf any book, register, other document or record which it is his duty under subsection (2) or sub-section (3) to furnish; or</p> <p>(b) to furnish any information which it is his duty under subsection (3) to furnish; or</p> <p>(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or</p> <p>(d) to sign the notes of any examination referred to in sub-section (6),</p> <p>-he shall be punishable with imprisonment for a term which may extend to 1 (one) year, or with fine, which may extend to INR 25 Crores (Indian</p>	

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		<p>Rupee twenty-five crore only), or with both, and also with a further fine which may extend to INR, 10,00,000/- (Indian Rupees ten lakh only) for every day after the first day during which the failure or refusal continues.</p> <p>Section 32 (1):</p> <p>Without prejudice to any award of penalty by the member under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to 10 (ten) years, or with fine, which may extend to INR 25 Crores (Indian Rupees twenty-five crore only) or with both.</p>	
4.	RBI Act, 1934	<p>Section 58B (1):</p> <p>Whoever in any application, declaration, return, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act, or any order, regulation or direction made or given thereunder or in any prospectus or advertisement issued for or in connection with the invitation by any person, of deposits of money from the public willfully makes a statement which is false in any material particular knowing it to be false or willfully omits to make a material statement shall be punishable with imprisonment for a term which may extend to 3 (three) years and shall also be liable to fine.</p> <p>Section 58B (4A):</p> <p>If any person contravenes the provisions of sub-section (1) of section 45-IA (Requirement of registration and net owned fund), he shall be punishable with imprisonment for a term which shall not be less than one</p>	

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		<p>year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to INR25,00,000/- (Indian rupees twenty five lakh only).</p>	
		<p>Section 58B (5):</p> <p>If any person other than an auditor—</p> <p>(a) receives any deposit without being authorized so to do or in contravention of any direction given or order made under Chapter IIIB (provisions relating to non-banking institutions receiving deposits and financial Institutions); or</p> <p>(aa) fails to comply with any direction given or order made by the Bank under any of the provisions of Chapter IIIB; or</p> <p>(b) issues any prospectus or advertisement otherwise than in accordance with section 45J (Bank to regulate or prohibit issue of prospectus or advertisement soliciting deposits of money) or any order made under section 45 (Appointment of agents), as the case may be, -</p> <p>he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend, (i) in the case of a contravention falling under clause (a), to twice the amount of the deposit received; and (ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement.</p>	
		<p>Section 58B (5A):</p> <p>If any person contravenes any provision of section 45S (Deposits not to be accepted in certain cases), he shall be punishable with imprisonment for a term which may extend to 2 (two) years, or with fine which may</p>	

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		<p>extend to twice the amount of deposit received by such person in contravention of that section, or INR2,000/- (Indian Rupees two thousand only), whichever is more, or with both:</p> <p>Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than 1 (one) year and the fine shall not be less than INR1,000/- Indian Rupees one thousand only).</p>	
5.	Payment and Settlement Systems Act, 2007	<p>Section 26 (1):</p> <p>Imprisonment of a minimum of 1 month extendable to 10 years or fine up to INR 1 cr. or both Additional fine of INR 1 lakh per day once the contravention or failure to comply continues.</p> <p>Section 26 (4):</p> <p>Imprisonment of up to 6 months or fine which may extend to INR 5 lakh or an amount equal to twice the amount of damages incurred, which is higher or both (imprisonment and fine).</p>	
6.	NABARD Act, 1981	<p>Section 56 (1):</p> <p>Whoever in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes 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.</p>	

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7.	NHB Act, 1987	<p>Section 49:</p> <p>(1) Whoever in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes 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.</p> <p>(2) If any person fails to produce any book, account or other document, or to furnish any statement or information which, under the provisions of this Act, it is his duty to produce or furnish, he shall be punishable with fine which may extend to two thousand rupees in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to one hundred rupees for every day during which the failure continues after conviction for the first such failure.</p> <p>(2A) If any person contravenes the provisions of sub-section (1) of section 29A, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.</p> <p>(2B) If any auditor fails to comply with any direction given or order made by the National Housing Bank or the Reserve Bank under section 33, he shall be punishable with fine which may extend to five thousand rupees.</p> <p>(2C) Whoever fails to comply with any order made by the National Company Law Tribunal under sub-section (2) of section 36A, shall be punishable with imprisonment for a term which may extend to three years</p>	

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		<p>and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues;</p> <p>(3) If any person other than an auditor-</p> <p>(a) receives any deposit in contravention of any direction given or order made under Chapter V; or</p> <p>(aa) fails to comply with any direction given or order made by the National Housing Bank or the Reserve Bank under any of the provisions of Chapter V; or</p> <p>(b) issues any prospectus or advertisement otherwise than in accordance with section 35 or any order made under section 30, as the case may be; he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend,--</p> <p>(i) in the case of a contravention falling under clause (a), to twice the amount of the deposit received; and</p> <p>(ii) in the case of a contravention falling under clause (b), to twice the amount of the deposit called for by the prospectus or advertisement.</p> <p>(4) If any other provision of this Act is contravened or if any default is made in complying with any other requirement of this Act or of any order, regulation or direction made or given or condition imposed thereunder, any person guilty of such contravention or default shall be punishable with fine which may extend to two thousand rupees and where a contravention or default is a continuing one, with further fine which may extend to one hundred rupees for every day, after the first, during which the</p>	

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		contravention or default continues.	
8.	State Financial Corporations Act, 1951	<p>Section 42 (1): Whoever, in any bill of lading, warehouse receipt or other document given to the Financial Corporation, whereby security is given or is purported to be given to the Financial Corporation for any accommodation granted by it under this Act, wilfully makes any false statement or knowingly permits any false statement to be made shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.</p> <p>Section 42 (2): Whoever, without the consent in writing of the Financial Corporation, uses the name of the Financial Corporation in any prospectus or advertisement shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.</p>	
9.	Credit Information Companies (Regulation) Act, 2005	<p>Section 23 (1): Whoever, in any return or other document or in any information required or furnished by, or under, or for the purposes 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 one year and shall also be liable to fine.</p>	
10.	Factoring	Section 23:	

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	Regulation Act, 2011	If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules made thereunder, for which no specific penalty has been provided for, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.	
11.	Actuaries Act, 2006	<p>Section 37:</p> <p>Subject to the provisions of section 10, any person who,—</p> <p>(a) not being a member of the Institute,—</p> <p>(i) represents that he is a member of the Institute in any of the manners mentioned in section 7; or</p> <p>(ii) uses the designation "Actuary"; or</p> <p>(iii) uses the letters "AIAI" or "FIAI" after his name; or</p> <p>(iv) practises the profession of an Actuary; or</p> <p>(b) being a member of the Institute, but not having a certificate of practice, represents that he is in practice, or practises as an Actuary,</p> <p>shall be punishable on first conviction with fine which may extend to one lakh rupees, and on any subsequent conviction with imprisonment which may extend to one year, or with fine which may extend to two lakh rupees, or with both.</p>	
		<p>Section 38 (2):</p> <p>Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be</p>	

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		<p>punishable with fine, which may extend on first conviction to fifty thousand rupees and on any subsequent conviction with imprisonment which may extend to one year, or, with fine which may extend to one lakh rupees, or with both.</p>	
		<p>Section 40 (2):</p> <p>Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to fifty thousand rupees, and on any subsequent conviction with imprisonment which may extend to one year, or with fine which may extend to one lakh rupees, or with both.</p>	
12.	Banking Regulation Act, 1949	<p>Section 36 AD (2):</p> <p>Whoever contravenes any provision of sub-section (1) without any reasonable excuse shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.</p>	
		<p>Section 46:</p> <p>Whoever in any return, balance-sheet or other document 1 or in any information required or furnished by or under or for the purposes 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 2 or with fine, which may extend to one crore rupees or with both.</p>	

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13.	General Insurance Business (Nationalisation) Act, 1972	<p>Section 30:</p> <p>If any person wilfully withholds or fails to deliver to an Indian insurance company as required by section 29 any property or any books, documents or other papers which may be in his possession or unlawfully retains possession of any property of an existing insurer which has been transferred to and vested in an Indian insurance company under section 5 or wilfully applies any such property to purposes other than those expressed in or authorised by this Act, he shall, on the complaint of the Indian insurance company, be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.</p>	
14.	LIC Act, 1956	<p>Section 40:</p> <p>If any person wilfully withholds or fails to deliver to the Corporation as required by section 13, any property or any books, documents or other papers which may be in his possession or unlawfully retains possession of any property of an insurer which has been 1. The proviso ins. by Act 8 of 2012, s. 6 (w.e.f. 31-3-2012). 15 transferred to and vested in the Corporation under this Act or wilfully applies any such property to purposes other than those expressed in or authorised by this Act, he shall, on the complaint of the Corporation, be punishable with imprisonment which may extent to one year, or with fine which may extend to one thousand rupees, or with both.</p>	
15.	Banning of Unregulated Deposit	<p>Section 21 (1):</p> <p>Any deposit taker who solicits deposits in contravention of section 3 shall</p>	

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	Schemes Act, 2019	<p>be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees.</p> <p>Section 21 (2):</p> <p>Any deposit taker who accepts deposits in contravention of section 3 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than three lakh rupees but which may extend to ten lakh rupees.</p> <p>Section 21 (3):</p> <p>Any deposit taker who accepts deposits in contravention of section 3 and fraudulently defaults in repayment of such deposits or in rendering any specified service, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine which shall not be less than five lakh rupees but which may extend to twice the amount of aggregate funds collected from the subscribers, members or participants in the Unregulated Deposit Scheme.</p> <p>Section 22:</p> <p>Any deposit taker who contravenes the provisions of section 4 shall be punishable with imprisonment for a term which may extend to seven years, or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of the fraudulent default referred to in said section, whichever is higher, or with both.</p>	

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		<p>Section 23:</p> <p>Any person who contravenes the provisions of section 5 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which may extend to ten lakh rupees.</p> <p>Section 24:</p> <p>Whoever having been previously convicted of an offence punishable under this Chapter, except the offence under section 26, is subsequently convicted of an offence shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than ten lakh rupees but which may extend to fifty crore rupees.</p>	
16.	Chit Funds Act, 1982	<p>Section 76 (1):</p> <p>Whoever contravenes or abets the contravention of any of the provisions of sections 4, 5, 8, 9, 11, 12, 13, 14, 19, 20, 22, 24, 30, 31, sub-section (4) of section 33, sections 46, 47 or sub-section (5) of section 61 shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.</p> <p>Section 76 (3):</p> <p>Whoever wilfully makes a statement in any document required to be filed</p>	

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		<p>under this Act which is false in any material particular shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.</p> <p>Section 77:</p> <p>If any person convicted of an offence under sub-section (1) or sub-section (3) of section 76 is again convicted of an offence under any of the said sub-sections he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to two years and shall also be liable to fine.</p>	
17.	DICGC Act, 1961	<p>Section 47 (1):</p> <p>Whoever in any return, balance-sheet, or other document or in any information required or furnished by or under or for the purposes of any provision of this Act, willfully makes a statement which is false in any material particular, knowing it to be false, or willfully 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.</p>	
18.	Negotiable Instruments Act, 1881	<p>Section 138:</p> <p>Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be</p>	

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		<p>deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.</p> <p>Section 143 (1):</p> <p>Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:</p> <p>Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:</p> <p>Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.</p>	
19.	Prize Chits and Money Circulation	<p>Section 4:</p> <p>Whoever contravenes the provisions of section 3 shall be punishable with</p>	

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	<p>Schemes (Banning) Act, 1978</p>	<p>imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both:</p> <p>Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.</p> <hr/> <p>Section 5:</p> <p>Whoever, with a view to the promotion or conduct of any prize chit or money circulation scheme in contravention of the provisions of this Act or in connection with any chit or scheme promoted or conducted as aforesaid,—</p> <p>(a) prints or publishes any ticket, coupon or other document for use in the prize chit or money circulation scheme; or</p> <p>(b) sells or distributes or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution any ticket, coupon or other document for use in the prize chit or money circulation scheme; or</p> <p>(c) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution— (i) any advertisement of the prize chit or money circulation scheme; or (ii) any list, whether complete or not, of members in the prize chit or money circulation scheme; or (iii) any such matter descriptive of, or otherwise relating to the prize chit or money circulation scheme, as is calculated to act as an inducement to persons to participate in that prize chit or money circulation scheme or any other prize chit or money circulation scheme; or</p> <p>(d) brings, or invites any person to send, for the purpose of sale or distribution, any ticket, coupon or other document for use in a prize chit or</p>	

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		<p>money circulation scheme or any advertisement of such prize chit or money circulation scheme; or (e) uses any premises, or causes or knowingly permits any premises to be used, for purposes connected with the promotion or conduct of the prize chit or money circulation scheme; or (f) causes or procures or attempts to procure any person to do any of the above-mentioned acts,</p> <p>shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both:</p> <p>Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.</p> <hr/> <p>Section 12 (5):</p> <p>If any person fails to comply with the provisions of sub-section (4), he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both:</p> <p>Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than one year and the fine shall not be less than one thousand rupees.</p>	