

**A critical analysis of the Limited Liability Partnership (Amendment) Bill, 2021**  
**and**  
**The Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021**

*By: Daksha Kumari, Symbiosis Law School, Pune*

**INTRODUCTION**

On August 9, 2021, the Lok Sabha passed three bills: *The Limited Liability Partnership (Amendment) Bill, 2021*, *The Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021*, and *The Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021*. Furthermore, the Central Government decided on passing *The National Commission for Homoeopathy (Amendment) Bill, 2021*, and *The National Commission for Indian System of Medicine (Amendment) Bill, 2021*, despite the numerous objections made by the opposition. The opposition was unhappy with the passage of the bills in the Lok Sabha, given their intention of discussing the ongoing *Pegasus spyware controversy*.<sup>1</sup>

The act of passing the above-mentioned bills was heavily criticized by several eminent political leaders. In the words of Manish Tewari and Adhir Ranjan Chowdhury, the democracy of the country has been murdered with the ongoing passage of numerous bills. Furthermore, the latter held that the passage of bills and other provisions without paying any regard to the complaints of the opposition is a gross violation of the Constitution of India.

That being said, the citizens of the country have witnessed the passage of bills and acts such as *The Mines and Minerals (Development and Regulation) Amendment Bill, 2021*, *The Arbitration and Conciliation (Amendment), 2021*, *The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020* and so on, that have been passed amid the COVID-19 pandemic, and hence, analysis and future scope of the above- mentioned bills must be done appropriately to evaluate pros and cons for the citizens of the nation.

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<sup>1</sup>Parliament proceedings: Lok Sabha passes three Bills in 20 minutes, THE HINDU (Last visited on August 24, 2021, 5:30 PM), <https://www.thehindu.com/news/national/ls-passes-three-bills-in-20-minutes/article35825349.ece>

## SUMMARY OF THE BILLS

To provide critical analysis of the said bills, the contents and differences between the amended bills and the original bills must be stated.

### A. Limited Liability Partnership (Amendment) Bill, 2021

The *Limited Liability Partnership (Amendment) Bill, 2021* is an amendment to the *Limited Liability Partnership Act, 2008*. The amended act aims to regulate limited liability partnerships (LLP). It was essentially introduced by the Minister of State for Corporate Affairs, Rao Inderjit Singh.

Limited Liability Partnerships have been defined as a body that solely functions to create partnerships between parties as opposed to the traditional methodology of establishing partnerships.<sup>2</sup> Apart from a definite definition of LLP, the Limited Liability Partnership (Amendment) Bill, 2021 states that all offenses fall within the purview of *civil defaults*. Furthermore, several amendments were made to the punishments granted for all such offenses. Several changes made in the *Limited Liability Partnership (Amendment) Bill, 2021* include the inclusion of small limited liability partnerships, the appointment of adjudicating officers, and establishing several special courts. The following includes the key features of the said bill:

a. *Decriminalization of certain offenses:*

The *Limited Liability Partnership (Amendment) Bill, 2021* enlists and explains certain requirements that must be fulfilled with regards to the partnerships. Furthermore, upon the non-fulfillment of the said requirements, the partnerships may be punished with a fine which may range between *two thousand rupees* and *five lakh rupees*. Some of the requirements established by the *Limited Liability Partnership (Amendment) Bill, 2021* include the changes to the partnership i.e., the change in the arrangement between the partners of the partnership, the changes made in the partners, change in the location of the offices that have been registered for the operations of the partnership, the requirement of filing of the statements of account and last but not the least, information such as the annual return and solvency of the limited liability partnerships.

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<sup>2</sup> The Limited Liability Partnership (Amendment) Bill, 2021, PRS Legislative research.

The *Limited Liability Partnership (Amendment) Bill, 2021* decriminalizes 12 offenses that may take place in limited liability partnerships.<sup>3</sup> The *Limited Liability Partnership Bill, 2008*,<sup>4</sup> enlisted 24 different penal provisions within which 21 offenses were categorized as compoundable offenses and 3 offenses were categorized as non-compoundable offenses. Furthermore, it was concluded that all such decriminalized actions must be transferred to “*In-house Adjudication Mechanism*” (IAM) for the sole purpose of reducing the burden of solving the innumerable number of cases pending before the criminal courts.

b. *Punishment allotted for the offense of fraud:*

The *Limited Liability Partnership (Amendment) Bill, 2021* establishes a monetary punishment: a fine that may vary from the values of *Rs 50,000* and *five lakh rupees*. The fraudulent acts comprise all such acts that aim at defrauding the other partners, creditors, and all such parties that may be associated with the limited liability partnerships. Furthermore, the amended bill has held that the punishment for all such fraudulent acts may extend to imprisonment from the period of *two years* to that of *five years*, as and when the situation arises. The punishment allotted in the said bill is far more stringent than that of the *Limited Liability Partnership Act, 2008* which provides a minimum of *Rs 10,000* to a maximum of *Rs 5,00,000*.

c. *Compounding of offenses:*

*Section 441 of the Companies Act, 2013*<sup>5</sup> defines compounding of offenses as the activities performed by a compounding authority wherein a said party is suspected of committing an offense or the defaulter commits the crime by himself and is thereby, condoned of the same. The said defaulted party is required to pay a compounding fee.

The *Limited Liability Partnership (Amendment) Bill, 2021* states that the central government is granted the power to appoint Regional Directors that possess the authority to compound offenses, provided that the offenses are punishable with a monetary value; a fine. Furthermore, it has been held that to fill all such applications for the compounding of offenses, the *registrar* must be approached. The said application is then transferred to the

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<sup>3</sup>MONEY CONTROL, *Explained: The Limited Liability Partnership (Amendment) Bill*, <https://www.moneycontrol.com/news/business/explained-the-limited-liability-partnership-amendment-bill-2021-7297901.html> (Last visited on August 25, 2021, 8:30 PM)

<sup>4</sup> The Limited Liability Partnership Act, 2008, No. 6 of 2009, Acts of Parliament, 2009 (India).

<sup>5</sup> The Companies Act, 2013, No. 121-C of 2011, Act of the Parliament of India, 2013(India).

Regional Director. Any other officer may be approached provided that the position is not below Regional Director and is authorized by the Central Government.

d. *Establishment of special courts:*

One of the major developments observed in the *Limited Liability Partnership (Amendment) Bill, 2021* is the establishment of special courts. The presence of special courts provides several benefits such as the speedy trials of cases, an increase in the efficiency of dealing with the cases by the judges, and so on. The bill enlists certain requirements that ought to be fulfilled by every court. The requirements are as follows:

i. *Composition:* The sessions court must consist of a Sessions Judge and for when a situation arises, an Additional Sessions Judge. Furthermore, the requirement of additional sessions judge was only called upon in cases involving offenses that were punished with imprisonment of the period of three years or more.

ii. *In situations of appeals against the said judgments:* The bill states that in all such situations wherein the said parties file an appeal against the said judgments provided by the special courts, the respective high courts that hold the relevant jurisdiction may hear the trials.

e. *Introduction to the standards of accounting:*

The *Limited Liability Partnership (Amendment) Bill, 2021* emphasizes the established standards of accounting that every limited liability partnership must maintain. These standards are provided by the central government with consultation and approval from the *National Financial Reporting Authority*.

f. *Establishing Appellate Tribunals:*

The *Limited Liability Partnership (Amendment) Bill, 2021* states that the respective parties in the limited liability partnership do not possess the right to make appeals against all such judgments provided with the consent of the said parties.

g. *The concept of “small LLP”*

Akin to the terminology of “*small company*” under *the Companies Act, 2013*<sup>6</sup>, a small limited liability partnership has been introduced to categorize all such partnerships that require lesser *fees* and *compliances*. The same has been added in *Section 2 (1) (ta) of the Limited Liability Partnership (Amendment) Bill, 2021*.

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<sup>6</sup> Key highlights of the Limited Liability Partnership (Amendment) Bill, 2021, Taxmann.

h. Appointment of *adjudicating officers*:

The *Limited Liability Partnership (Amendment) Bill, 2021* states that the central government is granted the power and authority to appoint *adjudicating officers* to award penalties to wrong-doers. A requirement for the appointment of the said officers is the rank of the officers and it has been emphasized that the officers must be central government officers and mustn't hold a rank below that of a Registrar. The relevant section of the said bill may be compared to that of *Section 454 of the Companies Act, 2013*<sup>7</sup> that deals with the appointment of adjudicating officers and adjudication penalty.

### **B. The Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021**

The Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021 is also known as *The Deposit Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021*. The said bill is an amendment to the Deposit Insurance and Credit Guarantee Corporation Act, 1961<sup>8</sup>. It is one of the economic bills that were passed on August 9, 2021, by the Lok Sabha.

One of the primary amendments observed in the *Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021* is the increase in the amount of insurance from *Rs 1 lakh to Rs 5 lakh* provided for each depositor's bank deposit. It has been held that the said increase of the insured amount will result in a coverage of *98.3 percent* of all the deposit accounts along with a *50.9 percent* coverage of the deposit value. The Deposit Insurance and Credit Guarantee Corporation is granted the power and authority to allot insurance cover on bank deposits.

### **Evaluating Criteria for Analysis of The Bills**

The passing of the above-mentioned bills was critiqued by several political leaders and reliable news sites. Therefore, an analysis of the bills must be done by establishing several relevant criteria to understand the financial feasibility and necessity of the parties of the parliament to pass the said bills.

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<sup>7</sup> The Companies Act 2013, No. 121-C of 2011, Act of the Parliament of India, 2013.

<sup>8</sup>Parliament passes Deposit Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021, News On AIR

1. Cost-efficiency of the amended bills

The financial feasibility of passing new bills and the possible expenditure that must be incurred as a consequence of the bills. The *Limited Liability Partnership (Amendment) Bill, 2021* calls for several amendments that will cause an excessive amount of increase in the expenditure spent by the Central Government and other authorities. One of the key amendments made in the said bill is the proposed accounting standards that must be maintained by the limited liability partnerships according to the *Companies (Accounting Standards) Rules*. The accounting standards must be verified by the *National Financial Reporting Authority*. All such meetings and other specifications with the said authority will amount to an increase in the expenditure for the limited liability partnership along with the central government that finalizes all such standards. Furthermore, the increase in the number of special courts will amount to an *increase in the expense* in terms of commissions, maintenance costs of the courts, and salaries to be paid to various practicing parties along with the judges in the said court.

2. Legal validity of the passage of the said bills

The Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021 and the *Limited Liability Partnership (Amendment) Bill, 2021* were passed in the Rajya Sabha on August 04, 2021, and in the Lok Sabha on August 09, 2021, by maintaining the requirements mentioned in the *Constitution of India, 1950*.<sup>9</sup> Therefore, the said bills have been passed in both the houses of the parliament in a legal manner and are thereby, constitutionally valid.

3. The urgency of respective issues dealt with in the amended bills

Due to the country being hit by a deadly pandemic, the need of the hour is to undertake measures and implement all such schemes that will prove to be beneficial for containing the coronavirus. While the *Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021* and the *Limited Liability Partnership (Amendment) Bill, 2021* contain several changes and amendments that will result in positive impacts for the corporate field (example: limited liability partnerships and the citizens with their bank deposits), it must be noted that it was not the need of the hour for the Rajya Sabha and Lok Sabha to pass the said bills.

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<sup>9</sup> INDIA CONST, art 356.

## Critical Appraisal

While the Limited Liability Partnership (Amendment) Bill, 2021 and The Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021 were two constitutionally valid bills passed by both the houses of the parliament, it resulted in an uproar and heated debates amongst the members of the opposition amid the COVID-19 Pandemic.

Finance Minister, Nirmala Sitaraman strongly advocated the reasoning and amendments suggested in The *Limited Liability Partnership (Amendment) Bill, 2021*, and The *Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021*. Whilst discussing the pros of the former bill, three primary advantages, and possible positive impacts come to mind. Firstly, the primary argument in favor of *The Limited Liability Partnership (Amendment) Bill, 2021* is that the said bill promotes the “*ease of doing business*” amongst the limited liability partnerships. Secondly, with the rise of wrong-doers and defaulters in the corporate world, an introduction to an *increase of special courts, adjudicating officers, the addition to the decriminalized offenses, and the enforcement of stringent penalties for all such defaults against partners, stakeholders, and other concerned parties* can be viewed as nothing but short of a boon. Thirdly, The *Limited Liability Partnership (Amendment) Bill, 2021* is expected to provide more attention to small businesses or small limited liability partnerships. The bill aims to benefit a large number of banks i.e., all such depositors may avail of the services provided in the said bill provided that they are depositors of 23 cooperative banks, the list of which is provided in the said bill. One of the examples of the banks that will avail of the services and benefits provided in the bill is that of the *Punjab and Maharashtra Co-operative (PMC) Bank*. Furthermore, the depositors of banks such as the *YES Bank, PMC Bank, and Lakshmi Vilas Bank* are permitted to avail of the services as specified by Ms. Nirmala Sitaraman. An argument that can be voiced out against the said bill is that the Limited liability partnerships will not be granted complete autonomy and the power to make all such significant changes regarding accounting standards that the partnership deems to be important for its organization given that it must seek approval from the National Financial Reporting Authority for the same.

The primary concern in regards to the *Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021* is its financial feasibility; there will be an increase in the expense that must be incurred by the banks, finance ministry, and the common citizens, given the aim of the bill to increase the insurance cover from *Rs 1 lakh to Rs 5 lakh*. Furthermore, the

impact of the said bill on the concerned parties such as stakeholders of the *Deposit Insurance and Credit Corporation* must be thrown light upon. The Deposit Insurance and Credit Corporation will be held accountable to pay the *outstanding deposits* of depositors within 30 days. With a large number of depositors and a sum of Rs 5 lakh to pay to depositors, the workload is immense for the Deposit Insurance and Credit Corporation. Given a load of work and a limited number of days provided to the Deposit Insurance and Credit Corporation, there can be defaults in the transfer of money to the said accounts and the possibility of fraud and other civil offenses such as money laundering.

Another valid argument against the passage of the said bills is the lack of time utilized for the discussion of the validity and necessity of the said bills. It can rightfully be claimed that the bills would have received a wider set of acceptance had the bills been passed after several active discussions and after understanding the possible implications of the amended bills (given that the bills were passed after a mere 20 minutes discussion amongst the members of the parliament). The leader of the opposition party, Mr. Mallikarjun Kharge claimed that the government had passed 10 bills of national importance in a matter of 97 minutes; “*The PM is demeaning the democratic and parliamentary process.*”<sup>10</sup> Bills such as the *Essential Defence Services Bill, 2021* received a significant amount of acceptance given the ample amount of time utilized for discussing the pros, cons, and necessity of the said bill.

## CONCLUSION

The *Limited Liability Partnership (Amendment) Bill, 2021* along with the *Insurance and Credit Guarantee Corporation (Amendment) Bill, 2021* have brought in great insight into the corporate world and the possible changes that can be made to have a progressive outlook towards limited liability partnerships and the concept of insurance. That being said, the said bills require an adequate amount of attention and analysis given the inadequate amount of time spent on the discussion of the pros and cons of the said bills by the Rajya Sabha and the Lok Sabha. The said bills may not appear as financially feasible, however, they focus on creating a wider reach for the services prevalent in the subject matter of the sections.

To conclude, it is only a matter of time that the said bills’ productivity, efficiency, and reasonableness can be analyzed.

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<sup>10</sup> The News Indian Express, *20 bills passed in monsoon session without debate*, <https://www.newindianexpress.com/nation/2021/aug/05/20-bills-passed-in-monsoon-session-without-debate-2340403.html> (Last visited on August 24, 2021, 7:31 PM)