

Decriminalising Certain Offences

What is the issue?

\n\n

∖n

- Ministry of Corporate Affairs (MCA) is considering decriminalising certain offences under the companies act. $$\n$
- This is a wise move and needs to be adopted across domains. $\space{\space{1.5}n}$

\n\n

What are civil and criminal offences?

\n\n

∖n

- Depending on the severity of the offence, the Indian Penal Code (IPC) classifies all offences into two categories namely civil and criminal. \n
- Usually, offences of a milder tone, in which the damage can be undone, are classified as civil and others are classified as criminal. \n
- Acts like loans defaults or violation of contract terms constitute civil offences.

\n

- Contrastingly, violence or death due to negligence, violation of the freedom of others, harassment and threatening others etc, are classified as criminal.
- Punishments for civil offences are usually in monetary terms and seldom involve arrest or other forms of penal actions.
- Contrarily, criminal offenses have a wide range of varying punishments depending on the extent of criminality involved. \ln
- Nonetheless, classification disputes on whether an offence constitutes civil or criminal violation exists and some have been reclassified over time.

\n\n

Why does India need to decriminalise certain offences?

\n\n

\n

• Offences that are clearly of a civil nature often criminalised in India, which is probably due to the wrong belief that stricter penalties will reduce violations.

\n

• Also, excessive criminalisation of offences (implying stricter punishment) can be seen as India's response to "compensate for sloppy law enforcement".

∖n

- Consequently, this replaces firm enforcement of an appropriate punishment with arbitrary enforcement of heavy punishment. \n
- Such arbitrariness is serious consequences overall and also negatively affects investor sentiments and thereby the overall business climate. \n
- Nonetheless, decimalising offences that have been wrongly classified as civil is politically challenging, considering the risk of attracting public anger.

\n

- Notably, bouncing of cheque (due to lack of funds), which is clearly a civil violation, is still classified as a criminal offence, which sans logic. \n
- Significantly, according to a Supreme Court report, more than 20% of the matters clogging up the subordinate judiciary were cheque-bouncing cases.

\n

\n\n

What does the "Ministry of Corporate Affairs" (MCA) intend to do?

\n\n

∖n

• Ministry of Corporate Affairs (MCA) has announced that a committee is being established to examine the penal provisions in the Companies Act, 2013.

∖n

• The ministry has stated that this is to review if some offences that hitherto

attracted criminal charges needs to be reclassified as civil offences. \n

- In other words, these offences would no longer require a trial in a criminal court, and can be settled with fines through other judicial mechanisms. \n
- Such reclassification would enable criminal courts to concentrate on offences of a "more serious nature" and leave the civil ones to other courts.
 - \n
- Notably, the constituted committee has also been tasked to propose an inhouse adjudicatory mechanism for offences that are reclassified. \n
- This mechanism is being envisioned as a forum for the consideration of cases and levying penalties against acts that constitute the reclassified offences.

\n

\n\n

What is the likely impact of MCA's initiative?

\n\n

∖n

- This bold move of MCA might turn out to be a crucial step towards easing the weight of the Indian courts and on its businesses. \n
- \bullet For this, the committee needs to stick to the guiding principle of minimising discretion and creating transparent processes. \n
- Further, any recommendation by the committee will need parliamentary approval, as it would involve amending the "Companies Act, 2013". \n
- Nonetheless, it is hoped that these seemingly obvious improvements will find bipartisan support and sail through smoothly. \n

\n\n

How does the future look?

\n\n

∖n

- While the planned decriminalisation of some corporate offences is a fine first step, it must be followed up with similar moves in other domains too. \n

• Notably, penal codes fall under the concurrent list and both central and state governments have a role in ushering in a more prudent justice system.

\n

- The Supreme Court is already examining to decriminalise homosexuality. $\ensuremath{\sc n}$
- But several other aspects like "attempted suicide and begging" also require decriminalisation, and needs to be considered. \n
- More significantly, criminal defamation needs to be removed from the statues as it is presently nothing more than a form of harassment. \n
- Notably, replacing criminal prosecution with civil procedures is highly likely to better serve the purpose of addressing these problems. \n

\n\n

\n\n

Source: Business Standard

