Decriminalising Certain Offences

What is the issue?

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

What are civil and criminal offences?

- Depending on the severity of the offence, the Indian Penal Code (IPC) classifies all offences into two categories namely - civil and criminal.
- Usually, offences of a milder tone, in which the damage can be undone, are classified as civil and others are classified as criminal.
- Acts like loans defaults or violation of contract terms constitute civil offences.
- 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.
- Nonetheless, classification disputes on whether an offence constitutes civil or criminal violation exists and some have been reclassified over time.
Why does India need to decriminalise certain offences?

- 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.
- Also, excessive criminalisation of offences (implying stricter punishment) can be seen as India’s response to “compensate for sloppy law enforcement”.
- Consequently, this replaces firm enforcement of an appropriate punishment with arbitrary enforcement of heavy punishment.
- Such arbitrariness is serious consequences overall and also negatively affects investor sentiments and thereby the overall business climate.
- Nonetheless, decimalising offences that have been wrongly classified as civil is politically challenging, considering the risk of attracting public anger.
- 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.
- Significantly, according to a Supreme Court report, more than 20% of the matters clogging up the subordinate judiciary were cheque-bouncing cases.

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

- Ministry of Corporate Affairs (MCA) has announced that a committee is being established to examine the penal provisions in the Companies Act, 2013.
- The ministry has stated that this is to review if some offences that hitherto
attracted criminal charges needs to be reclassified as civil offences.

- 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.

- Such reclassification would enable criminal courts to concentrate on offences of a “more serious nature” and leave the civil ones to other courts.

- Notably, the constituted committee has also been tasked to propose an in-house adjudicatory mechanism for offences that are reclassified.

- This mechanism is being envisioned as a forum for the consideration of cases and levying penalties against acts that constitute the reclassified offences.

What is the likely impact of MCA’s initiative?

- 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.

- For this, the committee needs to stick to the guiding principle of minimising discretion and creating transparent processes.

- Further, any recommendation by the committee will need parliamentary approval, as it would involve amending the “Companies Act, 2013”.

- Nonetheless, it is hoped that these seemingly obvious improvements will find bipartisan support and sail through smoothly.

How does the future look?

- 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.
- 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.

- The Supreme Court is already examining to decriminalise homosexuality.

- But several other aspects like “attempted suicide and begging” also require decriminalisation, and needs to be considered.

- More significantly, criminal defamation needs to be removed from the statues as it is presently nothing more than a form of harassment.

- Notably, replacing criminal prosecution with civil procedures is highly likely to better serve the purpose of addressing these problems.

Source: Business Standard