



Decriminalising Certain Offences

What is the issue?

\n\n

\n

- 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.

\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.
- 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.

\n

- Nonetheless, classification disputes on whether an offence constitutes civil or criminal violation exists and some have been reclassified over time.

\n

\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, decriminalising 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 in-house 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

- 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.
- 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 statutes 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.

\n

\n\n

\n\n

Source: Business Standard

\n



IAS PARLIAMENT

Information is Empowering

A Shankar IAS Academy Initiative