Decriminalising Certain Offences

What is the issue?

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

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- Depending on the severity of the offence, the Indian Penal Code (IPC) classifies all offences into two categories namely - civil and criminal.
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- Usually, offences of a milder tone, in which the damage can be undone, are classified as civil and others are classified as criminal.
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- Acts like loans defaults or violation of contract terms constitute civil offences.
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- Contrastingly, violence or death due to negligence, violation of the freedom of others, harassment and threatening others etc, are classified as criminal.
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- Punishments for civil offences are usually in monetary terms and seldom involve arrest or other forms of penal actions.
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- Contrarily, criminal offenses have a wide range of varying punishments depending on the extent of criminality involved.
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- Nonetheless, classification disputes on whether an offence constitutes civil or criminal violation exists and some have been reclassified over time.
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Why does India need to decriminalise certain offences?

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

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- Ministry of Corporate Affairs (MCA) has announced that a committee is being established to examine the penal provisions in the Companies Act, 2013.
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- The ministry has stated that this is to review if some offences that hitherto attracted criminal charges needs to be reclassified as civil offences.
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- 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.
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- Such reclassification would enable criminal courts to concentrate on offences of a "more serious nature" and leave the civil ones to other courts.
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- Notably, the constituted committee has also been tasked to propose an in-house adjudicatory mechanism for offences that are reclassified.
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- This mechanism is being envisioned as a forum for the consideration of cases and levying penalties against acts that constitute the reclassified offences.
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What is the likely impact of MCA's initiative?

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- 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.
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- For this, the committee needs to stick to the guiding principle of minimising discretion and creating transparent processes.
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- Further, any recommendation by the committee will need parliamentary approval, as it would involve amending the "Companies Act, 2013".
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- Nonetheless, it is hoped that these seemingly obvious improvements will find bipartisan support and sail through smoothly.
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How does the future look?

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

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