

Relief for India Inc

Decriminalising some corporate offences is a wise move

The Union Ministry of Corporate Affairs, or MCA, has announced that a 10-member committee, headed by the ministry's secretary, is being established to examine whether the penal provisions in the Companies Act, 2013, need reviewing. The ministry has explicitly said this is in order to decriminalise some offences that hitherto have attracted criminal charges. In other words, these offences would no longer require a trial in a criminal court but could be settled with the payment of a fine. It is argued that this would permit trial courts to concentrate on offences of a "more serious nature". The committee, which includes persons of eminence from the private sector, has also been tasked to lay out the broad contours of an in-house adjudicatory mechanism where "penalty may be levied in a MCA21 system driven manner so that discretion is minimised".

All these are worthy aims, and the ministry is to be complimented on taking what may turn out to be a crucial step towards easing the weight of the Indian state on its businesses. As long as the committee sticks to the guiding principle of minimising discretion and creating transparent processes, there is every reason to suppose that the outcome of its deliberations will be a major improvement on existing law. Of course, it will then need to go through Parliament because it involves amending the Companies Act, 2013, but it is to be hoped that such obvious improvements will find bipartisan support and hopefully not be held hostage to disruption in the Houses.

Offences that are clearly of a civil nature are far too often criminalised in India. This tendency is born of various different impulses. First, an ingrained suspicion of the private sector leads drafters of law to suppose that other penalties would be insufficient. Second, India is in many ways a weak state. Law enforcement is lax and sporadic. This leads to a desire to compensate for poor enforcement by increasing the weight of the punishment. However, this replaces firm enforcement of an appropriate punishment with arbitrary enforcement of heavy punishment — which raises risk and has a negative effect on the ease of doing business. In addition, once an offence is criminalised, it seems to be very difficult politically to decriminalise it — consider, for example, that cheque bouncing is still a criminal offence under Section 138 of the Negotiable Instruments Act. According to the Supreme Court, more than 20 per cent of the matters clogging up the subordinate judiciary were cheque-bouncing cases.

It is to be hoped that this initiative of the MCA will be followed up in other spheres and by state governments as well. Several social matters also require decriminalisation — not just homosexuality, which is currently being examined by the Supreme Court, but also, for example, attempted suicide and begging. In addition, there exist good reasons for criminal defamation to be taken off the books — it is now nothing more than a form of harassment and can be easily replaced by civil procedures. The planned decriminalisation of some corporate offences is a fine first step, but it must be followed up with other similarly progressive moves.