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FROM PUNISHMENT TO PROPORTIONALITY: A CRITICAL ANALYSIS OF DECRIMINALISATION OF MINOR OFFENCES IN INDIA

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I. ABSTRACT

The criminal justice system of India has been struggling for years with the problem of an overly criminalised structure, which is a legacy of the colonial-era legal system and was further worsened over decades by the excessive inclusion of penal provisions in regulatory laws without much reflection. This article seeks to consider the decriminalisation of minor offenses in India not just as an option, but as a constitutional, humanitarian, and institutional need. In particular, the excessive criminalisation of minor offenses imposes a great deal of undue suffering on the marginalised segments of Indian society, which consist of young people, the poor, and religious minorities, along with communities from the Schedule Castes and Schedule Tribes of India. Based on data provided by the National Crime Records Bureau about prisons in India, recent changes introduced through the Jan Vishwas (Amendment of Provisions) Act 2023 and subsequent Acts of 2025 and 2026, innovative elements of the Bharatiya Nyaya Sanhita 2023, and major judgments such as those in Joseph Shine v. Union of India (2018) and Navtej Singh Johar v. Union of India (2018), this study analyses the various aspects of the decriminalisation controversy, its benefits, and its drawbacks. This is a critical examination of the argument that decriminalisation without adequate administrative infrastructure leads to deterrence vacuums. It argues that effective reform not only calls for stripping criminalisation statutes of incarceration provisions but also building adequate alternatives to fill this space. The article concludes with a framework for ethical decriminalisation.

II. KEYWORDS

Decriminalisation, Minor Offences, Undertrial Prisoners, Jan Vishwas Act, Reformative Justice.

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III. INTRODUCTION AND RESEARCH PROBLEM

A paradox lies in the very nature of India's legal state. A constitution that recognises individual freedom as a non-negotiable right stands side by side with a statutory system within which a businessman who does not submit a compliance form, a factory owner who leaves out a tag on his goods, and a retailer who ignores a procedural requirement could all, in theory, be tried in court along with murderers, cheats, and those who disrupt public peace. This paradox is not accidental but systemic, arising from the way in which India's penal code was developed and refined over a period of more than 160 years of legislation.[3]

Decriminalisation, the process by which criminal sanctions are either eliminated or attenuated from certain kinds of behaviour, is by no means an innovation. The topic has been discussed in Indian legal literature since the initial Law Commission reports in the years immediately following Indian independence. What sets today's context apart from previous eras is the simultaneous occurrence of several distinct yet complementary trends, including the legislative wave of reform initiated by the Jan Vishwas movement, the reclassification of criminal law pursuant to the Bharatiya Nyaya Sanhita, 2023, the judicial recognition of individual liberty that has incrementally eroded the scope for criminalising purely consensual actions, and a rising awareness among Indian society of the criminal justice system's role as an institution of oppression against some of the country's most oppressed citizens.

This article adopts a multidimensional approach to the topic of decriminalisation, analysing it as a legal, human rights, and institutional issue. This article does not suggest that criminal laws should be abolished; there should be consequences for crimes, and the State's interest in deterring crime is valid. Rather, it seeks to emphasize the need for proportionality, a principle long recognized in legal theory and one that has been a cornerstone of constitutional jurisprudence. When there is no correlation

[3] Vidhi Centre for Legal Policy, Mapping India's Criminal Laws: A Database of Central Offences (2021); Indian Penal Code, 1860, drafted under the chairmanship of Lord Macaulay pursuant to the Charter Act of 1833.

between the gravity of the penalty imposed by the state and the crime committed, reform is both desirable and necessary.

The research problem may therefore be described as twofold: first, whether the current legal system of India penalises harmless behaviour inordinately, and at the expense of citizens, disadvantaged groups, and the courts; and second, whether the efforts at reform have succeeded in striking an effective balance between the concepts of decriminalisation and deterrence.

A. Research Objectives

The objectives of the present research are:

1. To explore the parameters of 'minor offences' within the Indian legal regime in relation to whether or not criminalising them is justified.
2. To explore the history and the constitutional background behind the process of decriminalisation in India, especially in light of the legacy of colonialism and post-colonial legislation on the matter.
3. To critique the Jan Vishwas (Amendment of Provisions) Act, 2023 and other subsequent laws passed as part of the process of decriminalisation in India.
4. To explore the impact of judicial review by the Supreme Court of India on decriminalising legislation and constitutional protections of personal freedom, dignity and equality.
5. To highlight the human consequences of over-criminalisation, particularly those faced by individuals in India's undertrial jail population and other vulnerable groups.
6. To highlight problems associated with decriminalisation in India, such as inadequacies in administrative adjudication mechanisms, poor legislation, and uneven State compliance.
7. To develop a sustainable solution to the issue of decriminalisation that would preserve the deterrent effects of criminal law without violating the Constitution.

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B. Research Questions

The study addresses the following primary research questions:

1. What constitutes a "minor offence" according to the Indian laws, and what principles allow differentiating offences of this kind from offences to be prosecuted criminally?
2. Is the criminalisation of technical/regulatory/procedural infractions in India compliant with tests for the constitutionality under Articles 14, 19, and 21 regarding proportionality, non-arbitrary nature, and preservation of individual dignity?
3. To what degree did the Jan Vishwas (Amendment of Provisions) Act, 2023 as well as subsequent Bills in 2025 and 2026 relieve people, business organizations, and the legal system of the criminal burden?
4. How did the Supreme Court of India act as an institution de-criminalising infraction through constitutional interpretation, and how far did it go with its authority?
5. What social groups are the key victims of over-criminalisation in India, and is there an adequate reformist agenda developed to cover criminalisation of acts connected with poverty?
6. What institutional and procedural steps should be undertaken to achieve sustainable de-criminalization in India?

C. Research Hypotheses

The current study is conducted under the following hypotheses:

1. Indian laws unfairly criminalise lesser and regulative offences, breaching the principle of proportionality and non-arbitrariness.
2. Overcriminalisation has a more adverse effect on marginalised and poorer segments of society.
3. The Jan Vishwas Act, 2023 is only a partial reform as it does not touch on other fundamental aspects, particularly the criminalisation of poverty.
4. Judicial decriminalisation is essential but constrained by its inherently reactive nature.

5. True decriminalisation necessitates more holistic efforts from an institutional perspective.

D. Research Methodology

This study adopts a qualitative, doctrinal, and comparative methodology to examine the legal, social, and policy aspects of decriminalisation of minor offences in India. It involves a critical analysis of primary legal sources such as constitutional provisions, statutes, and judicial decisions, supplemented by policy reports and secondary legal scholarship. The research also draws on select comparative international practices to contextualise India's approach. The objective is to evaluate the existing legal framework and develop informed conclusions and recommendations.

Attention should be limited to other practices in terms of considering the policy of India. For instance, in the UK, regulatory offenses concerning corporate governance and environmental regulation are dealt with through civil sanctions or administrative penalties rather than criminal liability. Similar sentiments have been echoed in the US when the overcriminalisation problem, particularly in cases of white-collar offenses, is considered; hence, there have been calls for limiting criminal liability only to those offenses that require intent and cause great harm.

Many international bodies, such as the OECD, have been quite active in advocating for appropriate enforcement methods. The comparative discussion serves to further strengthen the argument that the process of decriminalization in India is part of the larger global trend.

E. Literature Review

Legal literature on decriminalisation in India is diverse, drawing on jurisprudence, constitutional doctrines, criminology, and regulatory economics, thereby indicating the true interdisciplinary nature of this discussion.

From the standpoint of jurisprudence, one must cite the book of H.L.A. Hart's Law, Liberty and Morality (1963) as the basis for theoretical development of this topic. The author formulates the "harm" principle based on John Stuart Mill's on Liberty (1859), defining the limits of coercion involved in the application of criminal law, which

consists of a difference between prevention of harm to others and social/moral policing as two areas where criminal law has no business. This distinction is important, because it undermines the very possibility of criminalising private behaviour as well as procedural conduct that may not be associated with any harm. Constitutional support of the discussed ideas comes from the case law of the Indian Supreme Court based on Articles 14, 19 and 21 of the Constitution and especially the chain of cases Maneka Gandhi (1978) Puttaswamy (2017).[4]

The Indian approach of Upendra Baxi in his book, The Future of Human Rights (2008), can be cited as a specific Indian theoretical approach, which posits that "the colonial legacy of criminal law in India needs to be critically reconsidered, and that the dependence of the State upon penal law for regulating social and regulatory behaviour constitutes the 'unshackled colonial mind' which democratic governance demands be undone". This theory can be considered especially pertinent to the issue of decriminalisation because of its emphasis on the necessity to transform the postcolonial Indian Constitution.[5]

The empirical aspects of the controversy are well-articulated in the annual releases of the National Crime Records Bureau and the academic studies on the problem of overcrowding prisons in India's undertrials. The Law Commission's papers, especially the 78th Report on prison overcrowding (1983), the 120th Report on judicial strength (1987), and the 213th Report on cheque bouncing cases (2008), are the institutional sources for the acknowledgment of the overcriminalization phenomenon as a chronic problem spanning many decades, with the ever-present mismatch between acknowledgment and reform.

The legislative mapping analysis conducted by the Vidhi Centre for Legal Policy of the Jan Vishwas Bills represents the most thorough attempt at such analysis today, pointing out both the scope of the decriminalisation project and the inconsistencies within it, namely the unequal treatment of analogous crimes across various legal acts, the lack of principled basis for selecting provisions that could be decriminalized, and

[4] H.L.A. Hart, Law, Liberty and Morality, Oxford University Press (1963); Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
[5] Upendra Baxi, The Future of Human Rights, 3rd ed., Oxford University Press (2008), pp. 178–195.

the neglect of criminal laws at the state level. Together, the above-listed works make it clear that in India, decriminalisation is both a recognized necessity and an incomplete reform process.

IV. RESEARCH AND ANALYSIS

A. Conceptual Foundations: What Is a "Minor Offence"?

Test for Identifying "Minor Offences": A "minor offence" may be identified using the following guiding criteria:

1. **Absence of me rea:** no deliberate intention to cause harm
2. **Minimal or no direct harm:** conduct does not significantly affect individuals, society, or the State
3. **Availability of civil remedies:** penalties or administrative actions can adequately address the violation
4. **Limited impact on vulnerable groups:** does not seriously endanger labour, consumers, or environment
5. **First-time or non-habitual nature:** isolated or technical infractions rather than repeated violations

There is no clear statutory definition of a "minor offence," despite the significant theoretical role it plays in the debates about reforming Indian criminal law. To make sense of the current debate, it is helpful to make distinctions among three categories. First, regulatory offences can be distinguished from other forms of criminal behaviour. These include violations of administrative procedure contained in statutes that regulate trade, industry, city administration, or licensing of professionals. Such offences do not include elements of deceit, violence, or any harm suffered by specific individuals or the state. Second, the category of socially motivated crimes can be identified. These crimes include adultery, sexual relations between consenting adults, and vagrancy. In such cases, criminalisation occurred because of the personal opinions of the colonial legislator. Third, there are minor crimes of property and disorder, including petty theft, public disorder, beggary, and loitering.

However, the differentiation between these types is not only philosophical. The former type warrants administrative sanctions, while the latter type must be declared unconstitutional as an attempt to use the criminal law for disciplining society. The third type necessitates a solution that would address the social policies leading to minor order problems. Thus, a policy framework based on decriminalisation can be both insufficient and overly harsh for sex workers.

B. The Human Cost: Who Does Over-Criminalisation Actually Hurt?

Any discussion on decriminalisation will need to start not with indices of business sentiment or rankings of ease of doing business but with those individuals who bear the brunt of overcriminalisation policies. The latest edition of the report on Prison Statistics India prepared by the National Crime Records Bureau, shows a picture of utter institutional failure that cannot be comprehended without unease. While India had 5.82 lakh people in its prisons against a sanctioned strength of only 4.25 lakh, which means an overall occupancy rate of about 121%, a total of 73.5% of these prison inmates were undertrial prisoners, people who did not commit any crime and were therefore not liable to be imprisoned in light of the constitutional presumption of innocence. About 49% of the undertrial prisoners were between 18 and 30 years old while nearly 31% came from Scheduled Caste and Scheduled Tribe categories, which is higher than their share in the overall population.

It is not the argument that criminal law in India is an equal tool of protecting the general public from any form of harm. On the contrary, what the above statistics reveal that the criminal justice system acts in such a way that it serves as a social control system, but the consequences of this system affect mostly the people who have no access to bail, good lawyers, institutions, and money. According to the report of the Indian Law Commission, 60 percent of the arrests made in India are unnecessary, and the poor lack the ability to bail themselves out.

Research conducted in Bihar revealed that young men arrested for committing petty crimes became radicals after being imprisoned with hardened criminals. This was because there was no difference in the treatment of petty crimes and serious crimes under the Indian criminal justice system.

C. Legislative History and the Colonial Inheritance

The Indian Penal Code, compiled by the chairman, Lord Macaulay, in the year 1834 and implemented in 1862, was well-suited for the needs of colonial administration, in that it helped preserve order in society, protecting the property, especially the commercial interests of the colonisers, and maintaining discipline within the colonised community. This model which was followed without much hesitation in the post-independent era when hundreds of enactments were passed, all carrying their share of penal provisions.

According to the findings of the Vidhi Centre for Legal Policy in its systemic analysis of the central legislation of India, of the total 882 central enactments analysed by the centre, 370 laws included provisions regarding crimes, encompassing as many as 7,305 different crimes. The majority of the 7,305 crimes come from regulations concerning shipping, taxation, food, and finance.

The first efforts towards rationalisation were through Law Commission reports, including the Law Commission of India, 78th Report on Congestion of Under Trial Prisoners in Jails (1979), which recommended non-custodial measures and systemic reforms to address prison overcrowding, and the 120th Report on Judicial Manpower (1987), pointing out that the high number of minor criminal cases is one of the main reasons for the judicial backlog. These proposals have remained dormant for several decades. It was not until June 2020, when the Minister of Finance, Nirmala Sitharaman, suggested decriminalisation of minor crimes committed by companies and businesses during her address regarding the economic revival program, pointing out that according to the Law Commission Report, the cheque bouncing offense under Section 138 of the Negotiable Instruments Act constitutes around 20 percent of the total criminal cases.

D. Judicial Decriminalisation: The Supreme Court as Reform Engine

While legislative reform has been fitful, the Supreme Court of India has progressively narrowed the constitutional space for criminalisation of conduct that falls outside the harm-prevention rationale of criminal law. Three decisions deserve particular attention in this regard.

1. **Joseph Shine v. Union of India (2018):** A five-judge bench of the Constitution Bench delivered a unanimous verdict declaring Section 497 of IPC unconstitutional after its operation for 158 years. The Constitution Bench in Joseph Shine v. Union of India unanimously held Section 497 IPC to be unconstitutional as violative of Articles 14, 15, and 21. However, the lead opinion authored by Chief Justice Dipak Misra (for himself and Justice Khanwilkar) primarily grounded the invalidation in Articles 14 and 21, while the equality dimension under Article 15 was more fully concurring opinions since it considered women merely as appendages to proprietary rights of their husbands and not as autonomous subjects under the constitution. The judgement of Justice D.Y. Chandrachud further elucidated that "As emphasised in the concurring opinion of Justice D.Y. Chandrachud in Joseph Shine v. Union of India, the criminal law cannot be used to regulate private, consensual relationships in the absence of harm to others, reflecting the constitutional commitment to individual autonomy and dignity."[6]
2. **Navtej Singh Johar v. Union of India (2018):** Another five-judge bench during this period also partially invalidated Section 377 of the IPC in declaring that consensual sexual activity between adults was no longer to be considered an offense. Constitutional morality was for the first time enshrined in Justice Chandrachud's judgment as being higher than social morality and that of the majority, thereby putting the rights of the minority beyond the reach of majoritarian displeasure.
3. **Arnesh Kumar v. State of Bihar (2014):** In this case, the directives issued by the Supreme Court required the conduct of an obligatory pre-arrest satisfaction test by the police for all cases of lesser punishment below seven years of imprisonment. It must be understood that the adverse impacts of criminalisation, including unjustified arrest and pre-trial incarceration,

[6] Joseph Shine v. Union of India, (2019) 3 SCC 39; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

constitute violations in themselves regardless of any attack on the penal statute itself.[7]

4. **Decriminalisation of Attempting Suicide:** Section 309 of the IPC has been effectively decriminalised under the provisions of the Mental Health Care Act, 2017, which provides for a legal presumption of the fact that the individual who has attempted to commit suicide is in great mental anguish and should not be tried or punished.

E. The Constitution framework: Articles 14, 19, and 21

1. Proportionality Framework in Criminalisation

The act of decriminalisation in India must be understood through the structured application of constitutional proportionality under Articles 14, 19, and 21. While Article 14 guards against manifest arbitrariness, Articles 19 and 21 collectively require that any restriction on personal liberty satisfy the test of proportionality as articulated by the Supreme Court.

The Supreme Court in Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353, and subsequently in K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, formalised a four-stage test of proportionality: (i) the measure must pursue a legitimate State aim; (ii) it must have a rational nexus with that aim; (iii) it must be necessary, in that no less restrictive but equally effective alternative exists; and (iv) it must maintain a balance between the importance of achieving the aim and the severity of the restriction imposed. Applied to the criminalisation of minor offences, this framework reveals structural infirmities. While regulatory compliance may constitute a legitimate aim, the imposition of criminal sanctions, particularly incarceration, often fails the necessity and balancing stages, as civil or administrative penalties provide less restrictive and equally effective alternatives. Moreover, the disproportionate impact of such criminalisation on marginalised populations undermines the requirement of fair balance under Article 21. Accordingly, the doctrine of proportionality provides not merely a justificatory framework but a constitutional limitation on the State's power to criminalise, reinforcing the argument

[7] Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

that penal sanctions for minor and technical infractions are frequently unconstitutional

2. The Jan Vishwas Framework: Legislative Decriminalisation at Scale

The Jan Vishwas (Amendment of Provisions) Act, 2023, which received Presidential assent on 11th August 2023, marks the most daring effort towards legislative decriminalisation undertaken in the history of independent India. Through the amendment of 183 provisions in 42 Central Laws managed by 19 Ministries, the Act enacts a simple yet radical concept that incarceration is not the penalty for infractions that are merely procedural or regulatory in nature, devoid of the inherent moral quality of an offence that warrants criminal sanctions.

However, the method used under the Act is very specific in its design, pinpointing the exact clauses that have a criminal punishment that is disproportionate and using a monetary fine, civil fine, or a warning system as an alternative. The Act is also designed with an enhancement system, which increases the minimum fine by 10 percent every three years to maintain deterrence without necessitating frequent legislative action.

For instance, the Legal Metrology Act of 2009 substituted imprisonment clauses associated with trivial breaches of business laws with civil sanctions based on the gravity of the offense. Likewise, under the Drugs and Cosmetics Act of 1940, minor infractions of procedures that earlier led to criminal action against manufacturers of drugs were changed into civil actions.

On this basis, the Jan Vishwas (Amendment of Provisions) Bill, 2025 amended laws regarding an additional 288 provisions in 16 Central Acts, whereas the Jan Vishwas (Amendment of Provisions) Bill, 2026, which was introduced in the Lok Sabha in April 2026, seeks to decriminalise 717 provisions spread across 79 Central Acts managed by 23 Ministries. According to the commerce minister, Piyush Goyal, about 5 crore small

cases pending in the system will be considered for disposal using this approach, and he mentioned that 12 states have already made laws akin to Jan Vishwas at their level.[8]

In relation to the state level, the case of Delhi can be a good example. In December 2025, the Delhi Cabinet passed an amendment bill named 'Delhi Jan Vishwas (Amendment of Provisions) Bill, 2026', which relates to seven laws in the State such as the Delhi Shops and Establishments Act, 1954 and the Delhi Industrial Development, Operation and Maintenance Act, 2010. The bill replaces the criminal provisions of these laws with civil provisions except for serious crimes involving health and safety.

3. The Bharatiya Nyaya Sanhita, 2023: Reformative Justice in Substantive Criminal Law

The Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force in place of the Indian Penal Code on 1 July 2024, made certain reforms in the substance of criminal law. The most important conceptual development in terms of reformative aspects is the introduction of community service as an officially recognised form of punishment under Section 4(f) of the Bharatiya Nyaya Sanhita, 2023, applicable to six specified petty offences across Sections 202, 209, 226, 303(2) provisos, 355, and 356. The concept of community service is further defined under Section 23 of the Bharatiya Nagarik Suraksha Sanhita, 2023, such as petty theft for below Rs 5,000 committed by a first-time offender, public nuisance, and defamation.

This introduction marks a departure from philosophy, which had been purely retributive in nature up until this time, recognizing the fact that where there are minor misbehaviour, rehabilitation and reintegrating into society is a better form of dealing with the situation than punishing it for punishment's sake. In line with such philosophy, the United Nations Standard Minimum Rules for Non-Custodial Sentences (The Tokyo Rules, 1990) have been suggesting non-custodial sentencing of first-time offenders and offenders who commit non-violent crimes.[9]

[8] Business Standard, "Govt May Review 5 Crore Minor Offence Cases After Jan Vishwas Bill: Goyal" (April 3, 2026); Jan Vishwas (Amendment of Provisions) Bill, 2026, Lok Sabha, April 2026.
[9] United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules), General Assembly Resolution 45/110 (1990).

Adultery was also officially abolished as a crime under the BNS. It lacked any form of Section 309 (an attempt to commit suicide) and had the total number of sections reduced from 511 to 358. Additionally, under the new code, the BNSS 2023 which replaces the CrPC, the problem of undertrial detention for minor offenses is addressed by making provision in Section 479 that all undertrial prisoners should be released after serving one-third of their maximum sentence.

4. Critical Examination: Advantages & Limitations of decriminalisation

ADVANTAGES:

A strong case for decriminalising minor offences in India can be made through several arguments.

- Firstly, the idea of proportionality entails that there must be a correlation between the seriousness of the act and the punishment for that act. It is a contradiction of terms to incarcerate a trader for committing an error while labelling and manufacturing company for committing an administrative default.
- Additionally, the move towards decriminalisation tackles the two major problems of judicial inefficiency and prison congestion. With the country's prisons being occupied by 75.8 percent of its 5.7 lakh inmates in prison for being undertrials and unable to post bail, decriminalisation reduces the load of minor offences on the system.
- Thirdly, decriminalization will foster economic development and improve regulation. The fear of incarceration in relation to small infractions made by businesses serves as a deterrent to investment, imposes unfair costs on micro, small, and medium businesses, and paves the way for arbitrary and corrupt actions. Penalty systems that are clear and fair provide predictability in regulation.
- Fourthly, decriminalisation ensures respect for human dignity. The repercussions of a criminal case job loss, social discrimination, family breakdown, and incarceration are wildly out of proportion to any damage caused by a trivial breach of regulations. Respect for human dignity, which is guaranteed by the Constitution's Article 21, requires

that the government not subject anyone to such repercussions without good reason.

- Finally, Economic efficiency - Decriminalisation reduces compliance costs for MSMEs, improves ease of doing business, and promotes predictable, cost-effective regulatory enforcement through civil penalties instead of criminal sanctions.

F. Limitations

However, the programme of decriminalisation faces some important drawbacks.

1. Firstly, this can be related to the issue of deterrence. The threat posed by the prospect of criminal proceedings especially the risk of imprisonment is more likely to be an effective deterrent compared to a fine under the civil procedure. If penalties imposed will be too low or applied selectively, decriminalisation could merely decrease the cost of defiance by wealthy firms at the expense of consumers or employees.
2. The other issue concerns consistency. As pointed out by PRS Legislative Research regarding the Jan Vishwas Bill, 2025, there were many inconsistencies with regard to the penalties levied for comparable offences under different acts as well as in the very same act. On at least one occasion, an earlier fine of two hundred rupees had been replaced by a possible sentence of six months' imprisonment, fine, or both, thus becoming more punitive compared to the current scenario. Thus, the process of decriminalisation appears to be rather arbitrary, without any underlying principle.
3. The third issue concerns the sufficiency of administrative adjudication. Transforming the criminal cases into civil cases in front of specified adjudicating officers solves the judicial congestion problem; however, it brings along major problems with procedural justice. The adjudicating officers are usually executive officers from the related ministry or regulatory agency, and their impartiality relative to the industry being regulated and relative to political influence is not assured. Lack of procedural protections

such as the right to remain silent, presumption of innocence, and burden of proof "beyond reasonable doubt" that would be available in the criminal court system might pose a danger in administrative courts as well.

4. A fourth issue, which has been highlighted especially regarding labour law, is that decriminalization may lead to a decrease in the protection that can be afforded to workers. This is because crimes such as non-payment of salary, denying workers their leave benefits, or breaking health and safety regulations may be transformed into civil disputes, meaning that they would be less likely to be enforced effectively against large companies without any recourse on the part of the workers.
5. A fifth important criticism is that the community service requirements of the BNS fail due to the fundamental lack of implementing mechanism. The BNS fails to indicate what types of activities qualify as community service, lacks an implementing agency, does not have any time limit regarding it, and provides no independent supervision over community service programs. As a result, community service may become either a stereotypical judicial requirement with no rehabilitative effect, or simply a meaningless requirement that the court has no ability to implement.

V. CASE ILLUSTRATIONS

1. **Discussion on Section 138 NI Act Decriminalisation:** It was observed that in India, around 20% of all the cases registered were under Section 138 of the Negotiable Instrument Act, 1881, which criminalises cheque bouncing. This was evidenced by the Law Commission's 213th report. As per practice, this section has been utilized by the rich to victimise poor people via criminal suits. As a result, the idea to decriminalise Section 138 has found support from those who believe that doing so would help unclog courts while receiving fierce opposition from others who contend that it would be impossible to enforce commercial recovery without the existence of such a deterrent in the form of criminal law. Indeed, this is the crux of the problem of decriminalisation. There

is no neutral formula for reform, as any such move will inevitably result in power redistribution between the powerful and the weak institutions.

2. **Prohibition on Begging in Delhi:** The judgment in Harsh Mander & Anr. v. Union of India, 2018 SCC Online Del 10427 (Delhi High Court, decided on 8 August 2018) was delivered by a Division Bench of the Delhi High Court holding unconstitutional a substantial portion of the Bombay Prevention of Begging Act, 1959 (as applicable in Delhi), including Sections 4 to 29 (with limited exceptions), which criminalised acts associated with begging and authorised the detention of individuals on grounds of poverty and put them into special institutions that were certified by the state government. The decision rested on the ground that criminalisation of begging, an act committed due to absolute penury, homelessness, and social isolation, and not due to criminality, is violative of Articles 14 and 21.

VI. SUGGESTIONS AND RECOMMENDATIONS

A. Legislative Reforms

1. The process of decriminalisation needs to follow a consistent legislative framework, wherein there are clearly laid down criteria that include lack of moral turpitude, availability of adequate civil remedy, and lack of impact on third party vulnerable individuals.
2. Labour laws, environmental laws, and laws protecting consumer interests need not be exempted from decriminalisation unless there is adequate mechanism available for civil enforcement.
3. It needs to be ensured that there is a full-fledged "Bail Reform Act" passed which provides that no person can be remanded into custody if the maximum sentence for such offences is less than the time spent in custody.

B. Administrative and Institutional Reforms

1. Officers appointed to hear cases under decriminalised laws need to have job security, procedural autonomy, and their decisions need to be subjected to judicial review.

2. It is important for the government to develop the capacity of adjudicators and appeals courts so that civil penalty cases can be disposed of expeditiously, effectively, and efficiently.
3. A national registry for civil penalties needs to be created so that repeat offenders can be identified from one regulatory agency to another.

C. Community Service Sentencing Reform Recommendations

1. First, the BNS must be augmented with more detailed guidelines specifying the nature of the work to be performed, the duration of the assignment, supervision of the activity, and standards for completion.
2. Second, district community service coordination committees, comprising individuals from local government, social welfare institutions, and the courts, must be established to monitor community service sentencing.
3. Third, the ambit of the community service sentencing policy should be extended beyond the six offenses mentioned above.

D. Other Related Reforms

1. There needs to be an incentive for state governments to conduct parallel decriminalisation processes in state jurisdictions, since most crimes against citizens are committed under state laws.
2. It is essential that there be statutory guidance on how retroactive decriminalisation can be achieved, which would allow withdrawal of criminal proceedings in court prior to the law's amendment.

E. Principle-Based Decriminalisation Framework

Apart from reforms within each particular sector, what is needed is a common legal framework with regard to decriminalisation, which will entail:

1. A proper delineation of criteria to determine what offenses can be decriminalised.
2. Consistency in central and state legislation.
3. Protection of vulnerable sections of society that suffer due to violations of the regulations.
4. Periodic review of criminal offenses.

VII. CONCLUSION

The issue of decriminalising minor offenses in India cannot simply be reduced to considerations of administrative efficiency but is also a constitutional requirement founded on the principles of dignity, proportionality, and the rule of law. Any legal framework which subjects people to imprisonment for acts that could best be described as mere technical violations and petty breaches of law is one which has forgotten the basic raison d'être of criminal law.

It is evident that the Jan Vishwas Act, 2023, along with the follow-up laws, in conjunction with the community service sections of the Bharatiya Nyaya Sanhita, 2023, can be regarded as a paradigm shift in India's approach to regulations. Through the use of civil and administrative, as opposed to criminal, punishments for violations of the law that do not constitute any sort of wrongdoing, India is moving forward toward a more balanced and rational justice system. This move has great potential for prison decongestion and the restoration of criminal law's communicative function.

However, the reform is far from being perfect. Without any guiding principle in deciding whether to decriminalise an offense, the vulnerability of workers and consumers to exploitation, weak administrative procedures, and the failure to establish guidelines for community service indicate that there are still tasks to be accomplished. The decriminalisation process, if used as a mere instrument of facilitating economic transactions instead of being seen as a quest for justice, will just replace arbitrariness with another form of arbitrariness.

This course must entail making decriminalisation the bedrock upon which the Constitution stands by ensuring personal freedom, proportionate punishment, and accountability for any harm that may have been caused. This entails not just the enactment of laws but also providing for the necessary infrastructure within the country's institutional apparatus to render such civil regulation enforceable, equitable, and accessible. Only then shall the vision of Jan Vishwas come true.

Constitutional morality, then, must guide any sensible attempt at decriminalisation, alongside efficiency considerations. The justification for the criminal law rests upon its capacity to differentiate between actions deserving of blame and those which are

merely deviant. Otherwise, the integrity of the legal process and the interests of the individual will suffer.

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