

Principled Criminalization

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Principled Criminalization: Balancing State Power and Individual Rights

Context (Why in News?)

The **Supreme Court ruling in *Imran Pratapgarhi vs State of Gujarat*** emphasized that principled criminalisation hinges on police adherence to criminal procedure laws, particularly under the **Bharatiya Nagarik Suraksha Sanhita (BNSS)**.

What is Criminalization?

- **Definition:** Criminalization refers to the **state's authority** to identify a wrongful act as a crime and impose penalties.
 - It reflects both the **power and duty** of the state to **publicly hold individuals accountable**.
 - Operates through **criminal law**, which in a **constitutional democracy**, must be exercised with **restraint and responsibility**.
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Theoretical Foundations

- **Victor Tadros:** Criminalization is part of a larger duty/power that includes **prosecuting, convicting, condemning, and punishing** wrongdoers.
- **Tatjana Hörnle's Three Principles of Criminalization:**
 1. Conduct must be incompatible with **important collective interests**.
 2. It should be a **violent attack** against persons.

3. It should **violate another's right** to non-intervention.

These principles underpin **India's Bharatiya Nyaya Sanhita (BNS)**, ensuring that criminal law focuses on **genuinely harmful acts**.

Role of Police in the Criminal Justice System

- **Frontline Role:** The police initiate the criminal justice process by **detecting, investigating, registering crimes, and making arrests**.
- **Crime Prevention:** Regular patrolling and intelligence gathering.
- **Law Enforcement:** Evidence collection, identifying and arresting suspects.
- **Public Order Maintenance:** Crowd management, safety during public events, and traffic control.

The **extent and nature of criminalisation** often reflect how **effectively and responsibly police function**.

Challenges of Over-Criminalization

1. Excessive and Unjust Punishments:

- Criminal penalties for minor or non-violent conduct.

2. Duplicative Legal Provisions:

- Multiple laws for the same offence causing legal confusion and harsher outcomes.

3. Erosion of Civil Liberties:

- Undue restrictions on freedom, movement, and expression.

4. Overburdened Criminal Justice System:

- **Prison overcrowding** and **delayed justice**.

5. Resource Misallocation:

- Diverts focus from **serious crimes** to minor infractions like gambling or personal drug use.

Way Forward

- **Principled Criminalisation** is essential to uphold the **legitimacy** of state power.
- Substantive law (e.g., BNS) must rest on **coherent, just principles**.
- Procedural law (e.g., BNSS) must **safeguard rights** and regulate the **application of criminal law**.
- Strengthening **police accountability** and **judicial oversight** is key to preventing misuse.
- Regular **law reviews and decriminalisation efforts** are necessary to maintain focus on serious harms.

Conclusion

In a constitutional democracy like India, **criminal law must serve justice, not power**. Principled criminalisation offers a **balanced framework** that aligns state authority with individual rights and collective welfare. Ensuring the police and judiciary act within these bounds is critical for a just and efficient criminal justice system.

