

Strict Laws V. Better Implementation

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I would like to argue that in the specific context of India, better implementation of laws should be our primary consideration while drafting various codes and systems of legislation and not the extremity of punishment. Numerous theories exist that extrapolate empirical data on deterrence and converge on the view that, I assume, though nothing is uniformly true across subjects in social sciences and worsening the penalty can deter a few persons far in between, statistics show that it is largely ineffectual across societies. However, the critical examination of the evidence supporting such a contention that seemingly resolves this long-standing debate robs it of any credibility or compelling force. Crime in any society has two dimensions: the etiological factors (the extra-legal or societal conditions) and repressive factors (legal reactions) that attempt to deter it *post factum*.¹ In sociological inquiries, the variable (the varying or even contrasting socio-economic conditions in different societies) are not taken into account while tallying the crime rates with punitive modes of punishment (as opposed to rehabilitative or restorative methods) which leads to generalised conclusions. A more accurate analysis would be comparing the crime rates before and after abolishing a punitive legal reaction in the same or similar socio-cultural and economic context.² Statistical analysis of crime rates in countries with stricter laws are often inaccurate in this context and comparing European nations with Africa or the Middle East³ is scientifically futile (unless the variables are made constant). Since no such neutral exposition on the effect of punitive methods on crime rates exists presently, deterrence- which might otherwise be the central point of argumentation in this debate is irrelevant (as of now). To choose between either stricter laws or better implementation, the deterrence factor must be set aside and other often neglected factors given primacy.

Better implementation of existing laws ensures that the offenders won't escape the criminal justice system unscathed. Mandatory imposition of death penalty for certain crimes would not fundamentally change the justice system, which needs immediate and penetrative reform, as the delays at every step of the investigation, trial and

¹ Jack P. Gibbs, *Crime, Punishment and Deterrence*, 48 *The Southwestern Social Science Quarterly* 517-520 (2019), https://www.jstor.org/stable/pdf/42867909.pdf?casa_token=P8D95jGvCNAAAAAA:AlFxc0_edvdkHINFnnacrFWeDNQvFVpaBQOJ4quyURGI_0OPKZME6lykx1aXknPE_JEnoe-EwRdQK4E2vel__OUfH2Tgq_-ehoBDQ1ipq2GoKagR1SkimA (last visited Dec 18, 2019).

² *Ibid.*

³ *Murder Rate of Death Penalty States Compared to Non-Death Penalty States*, Death Penalty Information Center (2019), <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states> (last visited Dec 20, 2019).

execution of decree and the malpractice involved renders the objective of prosecution futile.⁴ While swift and speedy justice should also be viewed with caution as reasonable doubt needs to be accounted for and guilt of the accused firmly established, once such standard is met and the required evidence leads to the undeniable inference that the crime was committed by the accused, the sentence should be carried forward in actuality. Poor implementation of India's legal systems is due to numerous reasons- the sheer excess of criminal litigation and arrears, lack of judicial officers, delay in execution of decrees, delays caused due to frequent adjournments while our Civil and Criminal Procedural Codes limit the same to 3 times per trial⁵, low probability of getting apprehended, convicted and punished on commission of a crime⁶ are some of the reasons why the law enforcement in our country is in urgent need of reform.

Imposition of stricter penalties themselves can hamper law enforcement as when scarier punitive measures are undertaken, burden of proof on the prosecution to establish commission of every crime increases. While arguing against strict laws, I won't consider the humanitarian and ethical arguments against punitive methods largely as they are not relevant for the present exposition which is primarily aimed at the development of the best possible public policies for a fair and a quick dispensation of justice. Stricter laws in this case would be viewed in terms of their societal impact in a psycho-social, economic and partly moral context. Hostile litigation or false cases are no stranger to the legal system and if the standard of proof is diluted or the punishments made disproportionate to the crime committed, or if a confessional FIR is made admissible and taken at face value and rules of evidence are bent excessively in the favour of the prosecution, the justice system would not represent a respite from the dangers of society or a refuge for the injured, distressed or slandered but rather a danger to individual liberty and life, destroying the very ideal it wished to preserve. Individual life and liberty cannot be viewed as secondary to or contingent to one's existence and forms an integral part of it. Curtailing or restricting it should be backed by sufficient and reliable proof, obtained through systematic methods that account for other possibilities and give the accused the benefit of a 'reasonable doubt'. In this context, narrowing down the window of reasonable doubt or allowing for or legalising underhanded and unfair tactics for collecting and scrutinising evidence or increasing the amount of fine to be paid or extending the sentence or worsening penalty is just weakening the constitutional sanctity of the individual's right to life, liberty and equality. In economic terms, the disparity of means that exists among different classes of people can further aggravate the injustice stricter or overbearing laws will cause.

⁴ Doshi, Vidhi. "India's Long Wait for Justice: 27m Court Cases Trapped in Legal Logjam." *The Guardian, Guardian News and Media*, 5 May 2016, <https://www.theguardian.com/world/2016/may/05/indias-long-wait-for-justice-27-million-court-cases-trapped-in-a-legal-logjam>

⁵ *Analysis of Causes for Pendency in High Courts and ...* [http://doj.gov.in/sites/default/files/ASCI Final Report Page 641 to 822.pdf](http://doj.gov.in/sites/default/files/ASCI%20Final%20Report%20Page%20641%20to%20822.pdf).

⁶ Rajagopalan, Shruti. "Opinion: The Trouble with Legislation That's Difficult to Enforce." *Livemint*, August 5, 2019. <https://www.livemint.com/opinion/online-views/opinion-the-trouble-with-legislation-that-s-difficult-to-enforce-1565025977165.html>.

Vulnerable sections of society, whether it be racial, religious or sectarian minorities, lower castes or the economically weaker classes will be disproportionately affected under this new regime.

On the moral side, the initial turning-point in the medieval attitude of indiscriminate (and creative) executions came with the Enlightenment period and one of the major influencers that shaped the Enlightenment period and marked a shift in societal consciousness or perspective⁷ was Caesar Beccaria, the author of *On Crimes and Punishment*⁸. He advocated for the abolition of torture and executions all his life and deemed it to be ‘unnecessary or useless’ for the society. For him, intentional infliction of pain rendered confessions sans any truth and public executions by hanging desensitised and brutalised man. He also emphasised on the impossibility that execution of a man be a ‘right’⁹ and that it is a ‘war of the nation against a single individual’¹⁰. Is the Kafkaesque or sympathetic plight of the accused enough reason to abolish death penalty? It is beyond the scope of our current inquiry.

But if a choice had to be made to administer justice more effectively and increase public confidence, protect the rights of both the parties while rendering a just verdict which is duly enforced, mere alterations, superimpositions or enhancements (for better or worse) in legislation is not going to effect the practical inefficacy of the institutional frameworks that so ardently require reform. I would like to propose a permutation of the distinct categories of strict laws and better implementation to arrive at strict implementation of laws. Justice delayed is justice denied should be kept in mind and reforms introduced accordingly, to prevent frustration of justice and passing of liabilities and rights intergenerationally like heirlooms¹¹, as was characteristic of the feudal societies.

⁷ Cooley, Charles H. “Social Consciousness.” *American Journal of Sociology* 12, no. 5 (1907): 675–94. <https://doi.org/10.1086/211543>.

⁸ Cesara, Beccaria. *On Crime and Punishment*. Indiana: Bobbs-Merrill, 1963

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Ghosh, Yashomati. “Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency - Yashomati Ghosh, 2018.” *SAGE Journals*, <https://journals.sagepub.com/doi/full/10.1177/2322005817733566>