

Principled Criminalization

Mains Syllabus: GS II - Structure, organization and functioning of the Executive and the Judiciary.

Why in the News?

The recent Supreme Court of India ruling, in *Imran Pratapgarhi vs State of Gujarat*, highlighted that principled criminalisation is contingent on the adherence of the police to India's criminal procedure law, the *Bharatiya Nagarik Suraksha Sanhita* (BNSS).

What is Criminalization?

- **Criminalization** - It is about the state's power to name a wrong/harm as 'crime' and impose 'punishment'.
- It is, equally, about the state's duty to address wrongdoing by holding individuals accountable publicly and administering appropriate penalties.
- **Criminal law** - In a constitutional democracy, Criminal law seeks to ensure that this enormous authority and responsibility is exercised properly.
- **Duty/Power of the State** - Legal philosopher Victor Tadros suggests that the state's duty/power to criminalise wrongful conduct is part of a larger complex duty/power to criminalise, prosecute, convict, publicly condemn and punish the conduct.
- **Social Institution** - Within the broader normative context, criminalisation exists as part of social institutions and practices that address wrongdoing, such as families and private law.
- **Effectiveness of Criminal System** - The full force of criminalisation depends on criminal law and the workings of the criminal justice system.
- **Principles of Criminalization** - Tatjana Hörnle makes a cogent case for three principles that conduct should be criminalised only if
 - It is incompatible with important collective interests.
 - It constitutes a violent attack against other persons.
 - It violates another person's right to non-intervention.
- These principles can be seen at the core of criminalisation under India's substantive criminal law, the *Bharatiya Nyaya Sanhita* (BNS).

What is the role of police in criminal justice system?

- **Performing functions** - Police spearhead the process of criminalisation by detecting, registering, investigating crime, and, most conspicuously, by arresting suspects.
- **Performance of the system** - The nature and the extent of criminalisation is largely shaped by the regulation and use of police.

- **Crime Prevention** - Police patrol areas to deter crime and maintain public order and they collect and analyze information to anticipate and prevent crime.
- **Investigation and Law Enforcement** - Police investigate crimes, collect evidence, identify suspects and arrest individuals suspected of committing crimes.
- **Maintenance of Law and Order** - Police manage crowds and ensure public safety during events and gatherings and traffic.

What are the problems with over criminalization?

- **Unjust and Excessive Punishments** - Overcriminalization often leads to punishments that are excessive or imposed for conduct that arguably should not be criminalized at all.
- **Overlapping and Duplicative Offenses** - Multiple statutes may criminalize the same conduct, leading to harsher sentences and confusion in the legal system.
- **Erosion of Civil Liberties and Rights** - The expansion of criminal law can restrict freedom of movement, take away civil and political rights, and even result in life-altering consequences for actions that may not warrant such severe responses.
- **Overburdened Justice System** - Overcriminalization contributes directly to prison overcrowding and strains the criminal justice system.
- **Resource Misallocation** - Significant government resources are diverted to policing and prosecuting minor offenses, such as gambling or drug use, rather than focusing on serious crimes.

What lies ahead?

- Principled criminalisation is central to the legitimacy of the state's power to criminalise.
- It is as crucial for substantive law to be defined by judicious principles as it is for procedural law to be able to control the actual effects of criminalisation.

Reference

[The Hindu | Principled criminalisation](#)