

When law enforcers operate outside the discipline of law

Criminal law is increasingly becoming a source of state coercion with the expansion of maximum criminal law, rather than a principled commitment to minimalist criminalisation

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Pre-trial and pre-conviction processes are increasingly being deployed as modes of punishment. | Photo Credit: Getty Images

The so-called success stories of bulldozer justice and leg-shooting operations, popularly described as “Operation Langda”, present a new rationalisation and public approval of state violence. This recalls David Garland’s idea of the modern “culture of control”, where insecurity, fear, and public anger reshape crime-control policies and make punitive

measures appear politically attractive. The disturbing fact is that people, by and large, appear to endorse these practices, though they essentially operate outside the discipline of law. There is a visible shift in public attitude: violence that would otherwise be condemned as street lawlessness begins to acquire legitimacy when sponsored by the state in the name of enforcing the rule of law.

When practices such as bulldozer justice and leg-shooting acquire the status of success, they indicate that people have lost faith in the due process of law. Tom R. Tyler's work on procedural justice reminds us that people obey law not merely out of fear but also because they perceive legal institutions as fair, legitimate, and worthy of trust. When that trust declines, coercive shortcuts begin to look like justice. In frustration, people begin to endorse what is contrary to law merely because it is done by the State. Those inspired by the apparent success of such practices often forget the long-term damage that this newly acquired legitimacy can cause. Similar manifestations are visible in other walks of life, where people, driven by the same considerations, take law into their own hands, vandalise property, indulge in violence, or commit grave offences for short-term gains.

Wider anxieties of governance

It is in this sense that we need to decode the public frustration arising from pendency, delay, failure, and dissatisfaction with criminal justice. Jonathan Simon's idea of "governing through crime" is useful here: crime control often becomes a language through which states respond to wider anxieties of governance. The loss of legitimacy of the criminal justice system is, therefore, a serious tragedy in India.

A compassion deficit in criminal justice is equally critical. Pre-trial and pre-conviction processes are increasingly being deployed as modes of punishment. Arrest, custody, raids, coercive measures, and public humiliation often become manifestations of a deeper apprehension that the formal criminal justice system may remain inconclusive, delayed, or ineffective.

The culture of violence now envelopes almost all stakeholders in the criminal process. The police, prosecution, and courts have sufficient scope to exercise compassion through non-criminal, non-custodial, and non-coercive measures, liberal grant of bail, avoidance of unnecessary custody, legally aided services, and other positive interventions. However,

they often hesitate to exercise these compassionate options in an ecosystem filled with distrust and a lack of legitimacy.

Criminal law is increasingly becoming a source of state coercion. Ideally, criminal law should be invoked only when there is a compelling reason to do so. What we are witnessing instead is the expansion of maximum criminal law, rather than a principled commitment to minimalist criminalisation. Loïc Wacquant's work on the penal state is relevant here: punishment often becomes a way of managing social insecurity rather than addressing its deeper causes.

The current crisis is also about the idea of justice itself. Justice does not always heal the harm done. Parties often return empty-handed even after cases are decided. A decided case does not necessarily produce a sense of fulfilment among the parties. Case disposal does not automatically mean justice. Nor does a decided case necessarily alter the conditions that led to its institution. Nils Christie's idea of "conflicts as property" becomes important here. He argued that modern criminal justice often takes conflicts away from victims, offenders, and communities, handing them over to professionals and institutions. As a result, those most affected by harm may remain least heard in the process. We still do not know empirically how often court orders are actually implemented in a manner that mitigates the suffering of people.

Failure of criminal justice system

Sending too many people to jail for petty offences continues to be our default way of working. Sporadic failures in the process, combined with public frustration, compel the State to innovate in dangerous ways and resort to measures such as bulldozer justice and leg-shooting. This question is directly linked to the larger failure of the criminal justice system.

Let us look at the crime rate in India. It comes roughly to around 445 per 1,00,000 people. Going by this rate alone, India would appear to be among the most peaceful countries in the world, which is clearly not the case. The data does not fully convince. Justice data also confirms that a large number of people in India do not access courts for various reasons, even when they have legal needs requiring institutional intervention. This is the justice gap. Marc Galanter's classic insight in *Why the Haves Come Out Ahead* helps explain this structural imbalance: those with resources, repeat access, and institutional familiarity are

better placed to use law, while ordinary people remain disadvantaged. Accessing justice in India remains a matter of privilege, and quality legal advice is often too costly for ordinary people to bear. For such people, justice remains elusive.

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