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CRIMINALISATION VS OVER-CRIMINALISATION: LEGISLATIVE TRENDS AND JUDICIAL PUSHBACK

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Abstract

This paper looks closely at how criminal law in India has been expanding, and whether this expansion is always justified. While criminalisation is important to control harmful behaviour and maintain public order, there is a growing concern that the law is being used too often. Today, even minor mistakes, technical violations, or issues that could be handled through civil remedies are increasingly being treated as criminal offences. This trend, known as over-criminalisation, raises serious questions about fairness and the proper role of criminal law.

The paper studies how laws have evolved over time, especially with the rise of offences under economic, regulatory, and special statutes. At the same time, it highlights how courts particularly the Supreme Court have tried to protect individual freedoms by stepping in against misuse of these laws. The constitutional framework, especially Articles 14, 19, and 21, plays a key role in ensuring that laws are not applied arbitrarily and that personal liberty is respected.

It also examines the real-world impact of over-criminalisation, showing how it often affects vulnerable and marginalized groups the most. By comparing India's approach with countries like the UK and the US, the paper provides a broader perspective on how criminal law can be balanced with individual rights.

Through case studies such as the misuse of sedition laws, criminalisation of cheque dishonour, and regulatory offences, the paper illustrates the growing tension between state control and personal liberty. In response, the judiciary has increasingly emphasized principles like proportionality, fairness, and restraint.

The paper concludes by suggesting that criminal law should be used carefully and only when truly necessary. It recommends reducing unnecessary offences, focusing on civil remedies where appropriate, and ensuring that punishment remains a last resort rather than the first response.

Table of Contents

1. Introduction
2. Executive summary
3. Conceptual Framework
 - 3.1 Meaning of Criminalisation
 - 3.2 Meaning of Over-Criminalisation
 - 3.3 Distinction Between the Two
4. Constitutional Framework
 - 4.1 Article 21 – Right to Life and Personal Liberty
 - 4.2 Article 14 – Equality Before Law
 - 4.3 Article 19 – Freedom of Speech and Expression
5. Legislative Trends in Criminalisation
 - 5.1 Expansion of Penal Laws
 - 5.2 Criminalisation in Economic and Regulatory Laws
 - 5.3 Criminalisation under Special Statutes
 - 5.4 Use of Criminal Law for Governance
6. Judicial Pushback Against Over-Criminalisation
 - 6.1 Doctrine of Proportionality
 - 6.2 Protection Against Arbitrary Arrest
 - 6.3 Decriminalisation through Judicial Interpretation
7. Landmark Cases
 - 7.1 Maneka Gandhi v. Union of India
 - 7.2 Shreya Singhal v. Union of India
 - 7.3 Arnesh Kumar v. State of Bihar
 - 7.4 Navtej Singh Johar v. Union of India
 - 7.5 Joseph Shine v. Union of India
8. Case Study
 - 8.1 Sedition Law (Section 124A IPC)
 - 8.2 Cheque Dishonour (Section 138 NI Act)
 - 8.3 Regulatory Offences
9. Socio-Economic Impact
10. Comparative Perspective
11. Reforms and Recommendations
12. Conclusion
13. Bibliography

Introduction

Criminal law is one of the most powerful instruments in the hands of the State. It does more than simply guide behavior it carries the authority to take away a person's liberty, reputation, and, in extreme cases, even life. Traditionally, societies have justified criminalisation as a necessary tool to prevent harm, protect public order, and ensure justice. At its core, criminal law is meant to act as a shield safeguarding individuals and maintaining balance in society.

However, in recent years, there has been a noticeable shift. The scope of criminal law seems to be expanding beyond its original purpose. Increasingly, it is being used to regulate areas that were once considered civil, technical, or administrative in nature. This phenomenon, often described as *over-criminalisation*, raises an important and uncomfortable question: Is criminal law still serving justice, or is it gradually becoming a mechanism of control?

The Indian legal system reflects this growing tension quite clearly. On one hand, the legislature continues to introduce new offences across diverse fields such as economic regulation, digital spaces, environmental protection, and public order. While many of these laws are introduced with legitimate intentions such as protecting consumers or ensuring accountability they often carry criminal penalties for acts that may not involve clear moral wrongdoing.

On the other hand, the judiciary has played a crucial role in maintaining balance. Courts in India have repeatedly stepped in to prevent the misuse of criminal provisions, emphasizing the need to protect personal liberty and prevent arbitrary arrests. Through various judgments, they have reminded the State that criminal law should not be used lightly, and that not every wrong deserves to be treated as a crime.

The issue becomes even more complex when criminal law begins to overlap with civil or administrative domains. Matters like breach of contract, cheque dishonour, or regulatory non-compliance were traditionally resolved through compensation or penalties. Today, they often attract criminal liability, exposing individuals to arrest and prosecution. This not only increases the burden on an already overworked judicial system but also creates fear and uncertainty in everyday economic and professional activities.

As a result, individuals may find themselves entangled in criminal proceedings for issues that lack any real criminal intent. The consequences are serious loss of time, resources, reputation,

and in some cases, personal freedom. This raises concerns about whether the expansion of criminal law is proportionate or excessive.

In this context, it becomes essential to critically examine whether India is witnessing *necessary criminalisation* where new offences are genuinely required to address evolving societal challenges—or *excessive penal expansion*, where the State relies too heavily on criminal law as a default regulatory tool.

This paper, therefore, seeks to explore this delicate balance. It analyzes the growing use of criminal law in India, the risks associated with over-criminalisation, and the role of the judiciary in safeguarding individual rights. Ultimately, it attempts to answer a fundamental question: Is criminal law in India still a tool of justice, or is it slowly transforming into an instrument of control?

Executive Summary

1. Expansion of Criminal Law in India

In recent years, criminal law in India has expanded significantly, reflecting the State's increasing reliance on penal measures to regulate various aspects of life. New offences are being introduced in areas such as economic regulation, corporate governance, environmental protection, and digital activities. This expansion is often justified on the grounds of maintaining order, ensuring accountability, and responding to the complexities of a rapidly developing society. However, it also raises concerns about whether criminal law is being used as a last resort or gradually becoming a primary tool for governance.

2. Understanding Over-Criminalisation

Over-criminalisation refers to the excessive use of criminal law to regulate conduct that may not require such strict punishment. Traditionally, criminal law was reserved for acts involving serious harm or moral wrongdoing. However, there is a growing tendency to criminalise minor or technical violations and to impose harsh penalties even where civil remedies would be sufficient. As a result, criminal law is no longer limited to addressing serious offences but is increasingly used as a routine regulatory mechanism, blurring the line between criminal and civil liability.

3. Consequences of Over-Criminalisation

The overuse of criminal law leads to several unintended consequences that affect both individuals and the justice system. Legal provisions may be misused as tools of harassment, particularly in disputes that are essentially civil in nature. Individuals may face unnecessary arrests and criminal proceedings even in non-serious cases, leading to loss of time, resources, and reputation. At the systemic level, courts become overburdened with cases that could have been resolved through alternative mechanisms, resulting in delays in justice. The overall effect is a weakening of the efficiency and credibility of the criminal justice system.

4. Role of Judiciary

The judiciary plays a crucial role in maintaining a balance between the powers of the State and the rights of individuals. Courts in India have consistently emphasized that criminal law must be applied cautiously and in a manner that respects fundamental rights. They have stressed the importance of fairness, proportionality, and due process while interpreting criminal statutes. In *Maneka Gandhi v. Union of India*, the Supreme Court held that any law affecting personal liberty must be fair, just, and reasonable. Similarly, in *Shreya Singhal v. Union of India*, the Court struck down vague and overbroad criminal provisions that restricted freedom of speech, reinforcing the need to prevent excessive criminalisation.

5. Impact on Marginalized Sections

The impact of over-criminalisation is not evenly distributed across society and is often more severe on marginalized and economically weaker sections. These groups typically have limited access to legal resources and are less aware of their rights, making them more vulnerable to arbitrary enforcement of laws. Even minor legal issues can escalate into serious criminal consequences, affecting their livelihood, dignity, and social standing. This unequal impact highlights how excessive criminalisation can deepen existing inequalities within the justice system.

6. Need for Reform

In light of these challenges, there is a clear need for reform in the approach to criminalisation in India. Decriminalisation of minor and technical offences is essential to reduce the unnecessary burden on individuals and the legal system. At the same time, existing laws must be reviewed and rationalised to ensure that only conduct involving genuine harm is treated as criminal. Strengthening procedural safeguards, particularly in relation to arrest and

investigation, is also necessary to protect individual liberty. Such reforms would help restore the balance between effective governance and the protection of fundamental rights.

7. Conclusion

While the expansion of criminal law may be necessary to address the complexities of modern society, its excessive use can undermine the very principles it seeks to uphold. Criminal law must remain a carefully applied instrument of justice, used only when truly required, rather than a broad mechanism of control. Ensuring this balance is essential for protecting individual liberty and maintaining public confidence in the legal system.

Conceptual Framework

Criminalisation refers to the process through which certain actions or behaviors are formally declared illegal by the State and made punishable under criminal law, reflecting society's collective judgment that such acts are harmful enough to deserve legal sanction in addition to moral disapproval. In its ideal form, it plays a crucial role in protecting individuals, maintaining public order, and upholding legal and moral standards, as seen in offences like theft, assault, and fraud that cause direct harm. However, this power must be exercised with caution because criminal law carries serious consequences such as arrest, prosecution, and imprisonment, and should therefore be reserved for conduct that is genuinely harmful and morally blameworthy. In contrast, over-criminalisation arises when the State exceeds these limits and begins to rely excessively on criminal law as a regulatory tool, turning it from a measure of last resort into a default response for a wide range of issues, including minor or technical violations. This is often reflected in the frequent creation of new offences without adequate justification, the imposition of harsh penalties for relatively trivial acts, and the replacement of civil or administrative remedies with criminal prosecution. Such expansion not only dilutes the seriousness of criminal law but also increases the risk of misuse, leading to unnecessary hardship and burdening the justice system. Thus, the key distinction between criminalisation and over-criminalisation lies in necessity and proportionality: while criminalisation is justified when it addresses serious harm and promotes justice, over-criminalisation occurs when criminal law is used excessively or unnecessarily, often resulting in unjust outcomes and transforming it from a tool of justice into a mechanism of control.

Constitutional Framework

The Indian Constitution provides a strong framework to ensure that the power of criminalisation is exercised within reasonable limits, with Fundamental Rights acting as safeguards against arbitrary and excessive use of criminal law by the State. These rights ensure that laws affecting individuals are not only legally valid but also fair, reasonable, and consistent with the principles of justice, thereby maintaining a balance between State authority and individual liberty. Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the Supreme Court in *Maneka Gandhi v. Union of India* to require that any law depriving a person of liberty must follow a procedure that is fair, just, and reasonable, thereby limiting arbitrary and harsh criminalisation and establishing due process as a core requirement. Similarly, Article 14 ensures equality before the law and protection against arbitrary state action, which becomes particularly relevant in cases of over-criminalisation where vague or overly broad laws may lead to discriminatory or selective enforcement, undermining the principle of equality. Article 19 further protects fundamental freedoms, including freedom of speech and expression, and requires that any criminal restriction on these freedoms must meet strict constitutional standards; this was clearly affirmed in *Shreya Singhal v. Union of India*, where the Supreme Court struck down a vague provision that had a chilling effect on free speech. Together, these constitutional provisions create a robust framework that ensures criminalisation remains fair, proportionate, and non-arbitrary, reinforcing the fundamental idea that criminal law must operate as a tool of justice rather than an instrument of control.

Legislative Trends

5.1 Expansion of Penal Laws

Over the years, India has witnessed a steady and noticeable expansion in the number of criminal offences across various statutes. New laws are frequently introduced, and existing laws are often amended to include additional penal provisions. While some of these changes are necessary to address emerging challenges in a modern society, many offences are created without a clear demonstration of need or harm. This growing tendency reflects a shift towards using criminal law more broadly, sometimes without adequately considering whether such strict measures are truly justified.

5.2 Economic and Regulatory Criminalisation

A significant aspect of this expansion can be seen in economic and regulatory laws, where criminal penalties are increasingly imposed for compliance failures. Statutes such as the Companies Act, GST laws, and environmental regulations often prescribe criminal liability even for technical or procedural violations. While the intention behind such provisions is to ensure accountability and deter misconduct, their application can sometimes be excessive, especially when there is no fraudulent intent or actual harm caused. This trend blurs the line between serious economic offences and minor regulatory lapses, bringing routine business activities within the scope of criminal prosecution.

5.3 Special Laws

In addition to general statutes, several special laws impose particularly stringent forms of criminal liability. Legislations such as the Unlawful Activities (Prevention) Act (UAPA), Prevention of Money Laundering Act (PMLA), and Narcotic Drugs and Psychotropic Substances Act (NDPS) are designed to address serious threats like terrorism, financial crimes, and drug trafficking. However, these laws often include strict provisions such as limited bail, reverse burden of proof, and severe penalties, which can have far-reaching consequences. While they serve important purposes, concerns have been raised about their potential for misuse and their impact on individual liberty, especially when applied broadly.

5.4 Criminal Law as a Tool of Governance

An emerging concern in legislative trends is the increasing use of criminal law as a tool of governance rather than as a mechanism to address serious wrongdoing. Instead of being reserved for acts that cause significant harm, criminal law is often used to enforce discipline, ensure compliance, or regulate behavior in various sectors. This shift risks transforming criminal law into a routine administrative tool, where the threat of punishment is used to secure obedience rather than to deliver justice. Such an approach can dilute the moral authority of criminal law and create a climate of fear rather than respect for the legal system.

Judicial Pushback

6.1 Doctrine of Proportionality

In response to the expanding scope of criminal law, the judiciary has actively sought to maintain balance by applying the doctrine of proportionality. This principle requires that the severity of punishment must be proportionate to the nature and seriousness of the offence.

Courts have emphasized that excessive or disproportionate penalties violate fundamental rights and undermine fairness. By applying this doctrine, the judiciary ensures that criminal law remains reasonable and does not impose undue hardship on individuals.

6.2 Protection Against Arbitrary Arrest

The courts have also taken significant steps to prevent the misuse of arrest powers by law enforcement authorities. In *Arnesh Kumar v. State of Bihar*, the Supreme Court laid down clear guidelines to restrict unnecessary arrests, particularly in cases involving offences punishable with less severe sentences. The Court recognized that arrests are often used mechanically, without proper justification, leading to unnecessary deprivation of liberty. By emphasizing that arrest should be an exception rather than the rule, the judiciary has reinforced the importance of personal freedom.

6.3 Decriminalisation through Interpretation

Apart from striking down laws, the judiciary has also contributed to decriminalisation through careful interpretation of statutes. Courts have read down vague or overly broad provisions and limited their application to prevent misuse. In some cases, they have effectively reduced the scope of criminal liability by ensuring that only conduct involving clear intent or harm is punished. This interpretative approach allows the judiciary to correct legislative excesses while still respecting the role of the legislature, thereby maintaining a balance between governance and individual rights.

Landmark Cases

| Case Name | Year | Key Issue | Judgment / Contribution |
|----------------------------------|------|--|--|
| Maneka Gandhi v. Union of India | 1978 | Scope of personal liberty under Article 21 | Expanded the meaning of “procedure established by law” to include fairness, reasonableness, and non-arbitrariness. Strengthened due process and limited arbitrary criminal laws. |
| Shreya Singhal v. Union of India | 2015 | Validity of Section 66A of IT Act | Struck down Section 66A for being vague and overbroad. Protected freedom of speech and prevented over-criminalisation of online expression. |

| | | | |
|--------------------------------------|------|---------------------------------------|---|
| Arnesh Kumar v. State of Bihar | 2014 | Misuse of arrest powers | Laid down guidelines to restrict unnecessary arrests. Emphasized that arrest should not be automatic and must be justified. |
| Navtej Singh Johar v. Union of India | 2018 | Criminalisation of same-sex relations | Decriminalised consensual same-sex relations. Upheld dignity, privacy, and equality, limiting moral-based criminalisation. |
| Joseph Shine v. Union of India | 2018 | Criminalisation of adultery | Struck down adultery law as unconstitutional. Held that personal moral issues should not be criminalised without societal harm. |

The judgment in *Maneka Gandhi v. Union of India* is often considered the foundation of modern constitutional interpretation in India. What makes this case particularly important is that it shifted the focus from mere legality to fairness and reasonableness in State action. Before this decision, as long as a law existed, it could justify deprivation of liberty. However, after this case, the Court made it clear that laws must also be just and non-arbitrary. This has had a lasting impact on criminal law, as it prevents the State from introducing or enforcing penal provisions that are excessive or unreasonable, thereby acting as a strong check on over-criminalisation.

In *Shreya Singhal v. Union of India*, the Supreme Court addressed the growing tension between technological regulation and fundamental rights. The case highlighted how loosely drafted criminal provisions can be misused to suppress dissent and legitimate expression. By striking down Section 66A, the Court not only protected free speech but also sent a broader message that criminal law must be precise and narrowly tailored. Vague laws, especially in the digital age, can easily become tools of control, and this judgment played a crucial role in preventing such misuse.

The decision in *Arnesh Kumar v. State of Bihar* brought attention to a very practical issue within the criminal justice system the misuse of arrest powers. The Court recognized that in many cases, arrest was being used routinely without proper justification, causing unnecessary hardship to individuals. By introducing guidelines and emphasizing accountability, the Court aimed to change this mindset. This case is significant because it reinforces that personal liberty cannot be compromised casually and that procedural safeguards are essential to prevent abuse of power.

The ruling in *Navtej Singh Johar v. Union of India* represents a progressive shift in the approach towards criminal law and individual autonomy. The Court acknowledged that laws rooted in outdated social morality cannot override constitutional values such as dignity, privacy, and equality. By decriminalising consensual same-sex relations, the judgment corrected a historical injustice and demonstrated that criminal law must evolve with changing societal norms. It also emphasized that the purpose of criminal law is not to enforce morality but to prevent harm.

Similarly, *Joseph Shine v. Union of India* reflects the judiciary's effort to limit the unnecessary reach of criminal law into personal lives. The Court recognized that criminalising adultery was not only discriminatory but also an inappropriate use of State power in regulating private relationships. By striking down the provision, the Court reinforced the idea that criminal law should not be used to enforce moral standards unless there is clear harm to society. This case further strengthens the argument that over-criminalisation can lead to unjust and intrusive legal frameworks.

Case Studies

8.1 Seditious Law

The offence of sedition under Section 124A of the Indian Penal Code has long been a subject of intense debate in India. Originally introduced during the colonial period, this provision was intended to suppress dissent against the government. In contemporary times, however, its continued use has raised serious concerns about its impact on democratic freedoms. Critics argue that the law is often invoked in situations where individuals merely express criticism of the government, rather than inciting violence or posing a real threat to public order. This broad and sometimes arbitrary application creates a chilling effect on free speech, discouraging citizens from expressing their opinions openly. As a result, the sedition law is frequently cited as an example of how criminal law can be used not just to maintain order, but also to control dissent, raising important questions about its necessity and relevance in a modern democracy.

8.2 Cheque Dishonour

Section 138 of the Negotiable Instruments Act, which criminalises cheque dishonour, is another important example of the expanding scope of criminal law into areas traditionally governed by civil remedies. The primary objective of this provision is to ensure trust and reliability in commercial transactions by penalising the failure to honour financial commitments. However, over time, it has led to an overwhelming number of cases being filed

in courts, many of which involve routine financial disputes rather than deliberate fraud. This has significantly burdened the judicial system and contributed to delays in resolving more serious criminal matters. Moreover, individuals facing such charges often experience stress, reputational damage, and prolonged litigation, even in cases where the default may have been unintentional. This raises concerns about whether criminal prosecution is always the most appropriate response to financial defaults.

8.3 Regulatory Offences

A growing area of concern in modern legal systems is the criminalisation of regulatory offences, where even minor compliance failures can attract criminal penalties. These offences are commonly found in areas such as corporate law, taxation, and environmental regulation, where individuals or businesses are required to follow detailed procedural rules. While the intention behind such laws is to ensure accountability and adherence to standards, the use of criminal sanctions for technical or non-serious violations can be excessive. In many cases, there is no intention to cause harm, yet individuals may still face prosecution, leading to unnecessary legal complications and fear of enforcement. This approach not only increases the burden on the criminal justice system but also creates an environment where compliance is driven by fear rather than responsibility. It highlights the need to carefully distinguish between serious wrongdoing and minor regulatory lapses, and to ensure that criminal law is applied only where it is truly justified.

Socio-Economic Impact

The impact of over-criminalisation is deeply unequal and often falls most heavily on those who are already socially and economically vulnerable. Poor individuals are far more likely to face arrest and detention, not necessarily because they commit more offences, but because they lack the resources to navigate the legal system effectively. For many, even a minor allegation can lead to immediate arrest, as they are unable to secure bail quickly or access competent legal representation. The situation is further aggravated by the lack of adequate legal aid, which means that individuals from disadvantaged backgrounds often remain unaware of their rights or the remedies available to them. As a result, they may spend long periods entangled in the criminal justice system for relatively minor issues.

Marginalized communities, including those facing social or economic disadvantages, are particularly vulnerable to the misuse of criminal law. Over-policing, selective enforcement,

and systemic biases can result in these groups being disproportionately targeted. This creates a cycle where criminal law not only fails to deliver justice but also reinforces existing inequalities. Instead of acting as a protective mechanism, it becomes a source of fear and hardship. In this way, over-criminalisation does not operate in isolation—it interacts with broader social realities and ultimately deepens inequality within society.

Comparative Perspective

A look at other legal systems provides useful insights into how the problem of over-criminalisation can be addressed. In the United Kingdom, there has been a conscious effort to reduce reliance on criminal penalties for minor offences and to emphasize proportionality in lawmaking. Many regulatory violations are dealt with through civil penalties, fines, or administrative measures rather than criminal prosecution. This approach helps in maintaining accountability while avoiding unnecessary burden on the criminal justice system.

In contrast, the United States has faced significant challenges related to over-criminalisation, particularly in the form of mass incarceration. Over time, the excessive use of criminal law, especially for non-violent offences, has led to overcrowded prisons and long-term social consequences for individuals and communities. This has sparked an ongoing debate about the need for criminal justice reform, including reducing reliance on imprisonment and addressing systemic inequalities.

Compared to these jurisdictions, India lacks a comprehensive or unified policy on criminalisation. Laws are often introduced in a fragmented manner, without a consistent framework to assess whether criminal penalties are truly necessary. This absence of a structured approach increases the risk of excessive and inconsistent use of criminal law.

Reforms and Recommendations

In light of the growing concerns around over-criminalisation, there is an urgent need for meaningful reforms to restore balance in the legal system. One of the most important steps is the decriminalisation of minor and technical offences, particularly those that do not involve serious harm or intent. Such matters can be more effectively addressed through civil penalties, fines, or administrative actions rather than imprisonment.

At the same time, the power of arrest must be exercised with greater restraint. Clear guidelines and stricter safeguards should be implemented to ensure that arrests are made only when absolutely necessary. Strengthening the legal aid system is equally important, as it would help ensure that individuals from all sections of society have access to fair representation and are able to defend their rights effectively.

Another significant reform would be the establishment of a Criminalisation Review Commission, which could systematically examine existing and proposed laws to assess whether criminal penalties are justified. Such a body would promote consistency and prevent unnecessary expansion of criminal law. Additionally, the principle of proportionality should be firmly embedded in the legislative process, ensuring that punishments are appropriate to the nature and seriousness of the offence.

Together, these reforms can help ensure that criminal law is used in a balanced and responsible manner protecting society while also safeguarding individual liberty and dignity.

Conclusion

The expanding reach of criminal law in India reflects a broader transformation in the way the State approaches governance. Increasingly, criminal sanctions are being used not only to punish serious wrongdoing but also to regulate a wide range of social, economic, and administrative activities. While this shift may be driven by legitimate concerns such as ensuring accountability, deterrence, and compliance in a rapidly changing society, it also signals a movement away from the traditional understanding of criminal law as a measure of last resort. When punishment becomes a routine regulatory tool, there is a real risk that the line between necessary criminalisation and excessive penal expansion begins to blur.

At its core, criminal law carries immense power it can deprive individuals of their liberty, damage reputations, and impose long-lasting social and economic consequences. For this reason, its use must always be guided by principles of necessity, proportionality, and fairness. Over-criminalisation, however, undermines these principles by extending criminal liability to conduct that may not involve serious harm or moral culpability. This not only weakens the moral authority of criminal law but also places an unnecessary burden on the justice system, leading to delays, inefficiency, and reduced focus on genuinely serious offences. The role of the judiciary in addressing this issue has been both significant and commendable. Through

landmark judgments such as *Maneka Gandhi v. Union of India*, *Shreya Singhal v. Union of India*, and *Armesh Kumar v. State of Bihar*, courts have consistently emphasized the need to protect personal liberty, ensure procedural fairness, and prevent arbitrary use of criminal law. These decisions have acted as crucial checks on legislative and executive excesses, reinforcing the idea that criminal law must operate within constitutional limits. However, judicial intervention alone cannot fully address the structural issues associated with over-criminalisation. What is required, therefore, is a more systematic and principled approach to criminalisation. Legislatures must carefully evaluate whether criminal penalties are truly necessary in each case, or whether alternative mechanisms such as civil sanctions, administrative penalties, or regulatory measures would be more appropriate. The principle of proportionality should be central to this process, ensuring that the severity of punishment corresponds to the gravity of the offence. At the same time, procedural safeguards particularly in relation to arrest, investigation, and trial must be strengthened to protect individuals from unnecessary hardship and misuse of power.

Equally important is the recognition of the socio-economic realities within which criminal law operates. Over-criminalisation disproportionately affects marginalized and economically weaker sections, who often lack the resources to defend themselves effectively. A fair and just legal system must take these inequalities into account and strive to ensure that the burden of criminal law does not fall unevenly on the most vulnerable members of society. In the final analysis, the legitimacy of criminal law depends not on how widely it is applied, but on how justly and carefully it is used. A truly effective legal system is one that is firm against serious wrongdoing, yet restrained in its use of coercive power. Striking this balance is essential not only for protecting individual liberty but also for maintaining public confidence in the rule of law. Ultimately, criminal law must remain what it was always intended to be: a carefully calibrated instrument of justice, not a broad mechanism of control.

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