Subject: Criminology

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BASIS OF CRIMINALIZATION

1. Introduction

With its increasingly interesting coverage as savage for one while saviour for another, criminalization with special reference to its basis constitutes an engaging discourse toward understanding criminal law in its given social- and albeit political-apparatus underlying in a(ny) system of governance. In forthcoming paragraphs, jurisprudence of criminalization- including the absence of such jurisprudence therein- underwent minute introspection from interdisciplinary approach and thereby offered the readership conceptual clarity over hitherto fuzzy areas of study to the best extent plausible. Thus, theoretical nitty-gritty of criminalization, including politics, economics and the law involved therein, were dealt with toward better understanding on crime, criminal law and criminal justice as integral parts of much larger project named power arrangement for the time being in force. Also, interestingly enough, decriminalization constitutes another threshold while erstwhile
taboo becomes diluted to set a particular behaviour free from the label of criminality since the same is no longer in conflict with dominant normative order for the time being in vogue. Criminalization is relative in its essence. Something criminalized somewhere for some time may lack omnipresence of the same degree of proscription elsewhere and always; and vice versa.

2. Theorizing criminalization

In the domain of jurisprudence, criminalization has had its basis in a presupposition of normative behavioural order; along with conviction that such defiance ought to get defeated for maintenance of the given public order in the form of normative order and one in defiance of the same deserves retribution of the state on behalf of its citizenry. Also, implicit value judgment prevails over in public sphere to ascertain that defiance ought to get labelled as crime. As mentioned earlier, crime appears elastic construction rather than abstraction of something evil in its essence and quite often than not played in the hands of dominant cult operative for furtherance of the given power arrangement:

“The simplest way of defining crime is that it is an act that contravenes the criminal law. This is nevertheless a problematic definition, for many people break the criminal law but are not considered to be ‘criminals’. In English law, for example, some offences such as murder, thefts, or serious assaults are described as mala in se or wrong in themselves. These are often seen as ‘real’ crimes in contrast to acts that are mala prohibita, prohibited not because they are morally wrong but for the protection of the public. Thus, the criminal law is used to enforce regulations concerning public health or pollution not because they are morally wrong but because
it is considered to be the most effective way of ensuring that regulations are enforced.” (Burke: 2014)

No wonder that, since time immemorial, crime went culture specific across the world. Even in the age of globalization, while the world stands fictionalized to get reduced to a village vis-à-vis means and methods of connectivity, criminal law is still governed by the rule of *lex loci* (law of the land) and thereby isolates its judicial proceedings from the trendy web of globalization worldwide. Hue and cry over the criminal law apart, at bottom, criminalization is but a public policy initiative determined by the state determined by cultural orientation of the society in terms of its given time and space. In its essence, therefore, criminalization is embedded in the process of multiculturalism:

“Legal definitions also change over time and vary across culture. Thus, for example in some countries, the sale and consumption of alcohol is a crime, while, in others, the sale and consumption of opium, heroin or cannabis is perfectly legal. … On the other hand, there has been a demand for other activities to be criminalized, and in recent years these have included ‘stalking’, racially motivated crime and knowingly passing on the aids virus. The way that crime is defined is therefore a social construction and part of the political processes.” (Burke: 2014)

Besides presence of public policy in the realm of criminal law, by courtesy Holmes, another factors plays critical role toward criminalization. Quite contrary to the realism of Holmes, therefore, the life of law ought to be logic- besides experience- if the same needs to pass the test of time in time ahead. Thus, to plead for objective value judgment as basis of criminalization, the Kantian argument of categorical imperative is advanced to counter otherwise omniscient Holmes though hardly taken by draftsmen in practice:
“Utilitarian arguments raise broader questions of moral philosophy and, therefore, they resist refutation by laying bare their premises. There is nothing hidden in Holmes’ argument. “Public policy”, he tells us, “sacrifices the individual to the common good”. An assault on this explicit and coherent premise requires far more than the feeble claim that it is unjust to sacrifice the individual to the common good. Unjust it may be, but one needs to ground the imperative to do justice in a set of values at least as compelling as the value of furthering the social good. The most compelling argument offered to date is the Kantian thesis that the categorical imperative requires us to respect persons as ends in themselves, and we violate this imperative when we punish a person solely to further interests of other persons.” (Fletcher: 2000)

So far as consequence of the applied criminology is concerned, jurisprudence apart, social audit of the same appears deterrent enough not to overreach hitherto remnants of peace and tranquillity whatever minimal the same may be. Also, political economy of the existing administration of criminal justice appears too inimical to cost efficiency in terms of its assessment vis-à-vis comparative advantage to reap marginal benefits out of captive isolation for these so called wrongdoers from mainstream public sphere:

“I have in mind the costs of criminalization. A proposed criminal statute might directly advance a substantial state interest and be no more extensive than necessary to achieve such purpose, and yet its costs might still overweigh its benefits. Certainly the enactment of over-inclusive legislation, and the consequent effect of chilling socially beneficial, or at least socially neutral, conduct counts as costs of criminalization. But there are other costs as well, les explicitly acknowledged. All forms of criminalization entail costs in terms of investigation, prosecution, adjudication, and punishment. Sometimes these costs are direct, such as paying salaries to police, prosecutors, public defenders, judges, prison guards, and probation officers. Other times they are indirect, such as when
family members suffer because a parent or spouse is in prison, or when an offender has difficulty finding a job after release from prison.” (Green: 2009)

The basis of criminalization, therefore, deserves review to get rid of all these lacunae; both in terms of its ontology and deontology as such. Rather than outreach of crime as social- and albeit political- construction, an imperative for abstraction on the basis of universalism attracts attention of the community. Indeed, abstraction is construction in a way or other, the bottom-line statement lies in minimizing cultural interpolation in crime and thereby leaving subjectivity apart to the best extent plausible. The concept of crime ought to shrink to its bare minimal corpus and thereby allow all stakeholders of the community move ahead without phobia of mens rea syndrome.

3. Politicizing criminalization

In the theory of criminology, crime is theorized from diverse ideological perspectives. First, traditional (read consensus) approach perceives the concept of law as instrument of broad-based agreement among members of the society about normative order meant to create a corpus of behavioural discipline to be followed by members in public sphere. Consequently, failure to comply with the order created on the basis of public consensus constitutes ‘crime’ to get inserted into concerned statute as part of criminal law. Thus, an underlying object of the consensus theory may be traced back into control mechanism the society thereby exerts upon others with difference in their characterization on crime:
“Crime” is often viewed as an evil and criminal law as ‘good’ and we rarely bother to even think about the other viewpoint. Such a belief about ‘wrongness’ of crime and ‘rightness’ of all measures against crime, be it the criminal code, the police, the prosecutor, the criminal courts, the prisons and even crime stereotyping is accepted as gospel truth by the society, by and large. The reasons for such unanimity, apart from our traditional acceptance of ‘consensus’, may lie in the ‘harm’ potential of the conduct or the imagined need for social solidarity that criminalization provides. However, there always exists in every society a handful of nonconformists for whom crime and criminal law are nothing more than a set of power resource that the dominant classes use for their benefit. … Crime, according to labelling theorists, has no inherent attributes; it acquires meaning when it is labelled as a crime. Therefore, for every crime you would have two opposite perspectives of labeller and that of the labelled. The trend of a-moralization of crime does challenge the traditional thinking about crime and criminal law, but its value for critical understanding of crime and criminal law system remains enormous, particularly for systems that are in the mode of change and reform.”  
(Pande: 2007)

A contrary approach, initially advanced by the Marxist schools of thought in particular, perceived the conflict between and among competing interests out of class rivalry as a thumb rule toward formulation of the criminal law. Accordingly, crime is a product of conflict out of class struggle in a way or other and the law is meant to carry forward interests of the dominant classes to the detriment of those of others under the disguise of criminal law. Thus, to Marx, concept of crime is ridden with the politics of its own:

“Like right, so crime, i.e., the struggle of the isolated individual against the predominant relations, is not the result of pure arbitrariness. On the contrary, it depends on the same conditions as that domination. The same visionaries who see in right and law the domination of some independently
existing general will can see in crime the mere violation of right and law. Hence the state does not exist owing to the dominant will, but the state, which arises from the material mode of life of individuals, has also the form of a dominant will.” (Delaney and Schwartz: 1968)

As pro-establishment approach, consensus theory has put emphasis on integrative input while, as anti-establishment one, conflict theory has put its focus on coercive character of the law as a political (read politicized) instrument played in the hands of those who run the state apparatus behind the musk of consensus. Both contributes to the project of deciphering the basis of criminalization in context. While there is a broad consensus in the gentry, the same hardly happens for subaltern strata.

Taken into consideration the realpolitik of crime, by courtesy postmodernism, Foucault grapples with the discursive nexus among diverse factors in its nitty-gritty to expose the underlying power arrangement, e.g. criminality as social construction of knowledge, prison as political institution, and professionals engaged in course of administration of criminal justice; the way together these three craft the neat texture for state apparatus. To him, rather than offshoot of exclusion, criminality is inbuilt within the system itself:

“The delinquent is an institutional product. It is no use being surprised, therefore, that in a considerable proportion of cases the biography of convicts passes through all these mechanisms and establishments, whose purpose, it is widely believed, is to lead away from prison. ... Conversely, the lyricism of marginality may find inspiration in the image of the ‘outlaw’, the great social nomad, who prowls on the confines of a docile, frightened order. But it is not on the fringes of the society and through successive exiles that criminality is born, but by means of ever more closely placed insertions, under ever more insistent surveillance, by an accumulation of disciplinary coercion.” (Foucault: 1977)
The craftsmanship of criminalization as product is subjected to manufacturing process through media coverage of relevant fiction that may be far away from fact (read truth). Even if departure from truth is not intentional, mere incidental departure out of typical systemic reasoning seems enough for subversion of justice through criminalization without cause and thereby victimization of otherwise innocent soul on diverse grounds out of mediated projection of the surreal truth while, at bottom, the real lies otherwise:

“The mediated criminalization of popular culture exists, of course, as but one of many media processes that construct the meanings of crime and crime control. … Cultural criminology incorporates a wealth of research on mediated characterizations of crime and crime control, ranging across historical and contemporary texts and investigating images generated in newspaper reporting, popular film, television news and entertainment programming, popular music, comic books, and the cyberspaces of the internet. … Working within organizational imperatives of efficiency and routinization, media institutions regularly rely on data selectively provided by policing and court agencies. In doing so, they highlight for the public issues chosen by criminal justice institutions and framed by criminal justice imperatives, and they in turn contribute to the political agendas of the criminal justice system and to the generation of public support for these agendas.” (Ferrell: 1999)

Back to original argument of social harm as one- if not only- basis of criminalization, the state may and does decriminalize such an offence if the same stands in consonance of its policy even though inflicts harm to the society at large. There are illustrations where lawmakers compromise with their self-proclaimed theory of social harm while state finds the same beneficial either for prospect of its exchequer or otherwise. Thus, evil practices with far-reaching adverse impact on social progress get decriminalized:
“While, historically, the criminalization of gambling may well have been aligned with the interests of organized religion and the newly industrialized state in a disciplined workforce, contemporary forms of decriminalization and regulation protect the fiscal interests of the state. In other words, the choice to categorize forms of gambling as non-criminal protects the financial interests of the state. In this case, the real work being done by the criminal law is that of consolidating a provincial monopoly over expanding gambling revenues rather than controlling social harm. Indeed, the decriminalization of gambling may have caused greater harm since gambling addicts feed their addiction through theft, embezzlement and fraud and leave their dependants to fend for themselves. … The state’s interest in profit by no means exhausts- indeed barely begins.” (Mosher and Brockman: 2010)

A popular perception to get confused between society and state thereby stands diluted to provide opportunity for a counterargument to underscore such vacuum, if not void, between these institutions with occasional overlap between them *inter se*, yet they stand apart with agenda of their own, even if the same inimical to another. A social wrong is marked by lack of morality (read legitimacy) in popular perception. On the contrary, a legal wrong is marked by lack of fidelity (read legality) to the system of governance and in perception of those in power. Nowadays, in the wake of increasingly widening face-off between society and state, hitherto gap between legality and legitimacy appears on its rise to generate newer paradox of criminalization.

4. **Criminalization and the law**

On other side of the coin, despite several social phenomena deserve decriminalization, state still continues to victimize those who are no longer criminals
on the count of harm but on the count of governmentality archaic in its given time and space. Thus, over-criminalization emerges as conundrum of governance to damage the community and the state alike. Reformulation of general principles toward criminalization, therefore, ought to offer opportunity for the lawmakers to rework on state of affairs in the law:

“The processes of criminalisation and the power to punish have been approached in specific contexts as particular forms of social calculation, in the belief that what are essentially different forms of regulation will be continued to be developed by policymakers under the broad label of ‘criminal law’ and that it will be increasingly difficult to identify ‘general principles’ underlying all criminal offences. Having said that, and despite scepticism at the possibility of developing a normative theory of criminal law through the agency of moral philosophy, rather than sociological critique and empirical analysis, the attempt to establish a set of normative principles that generally should be taken into account in decisions to criminalize particular forms of behaviour, as part of an exercise to combat ‘over-criminalisation’ and promote debate over the appropriate limits of the criminal law, has been broadly supported.” (Brown: 2013)

Also, morality has had complicated underpinnings with criminalization. Thus, action or omission cannot get criminalized by law only because the same is not in consonance with moral standards in specific context of given time and space of the society until there are protective interests recognized by law of the land for the time being in force. At the same time, mere endorsement of the black letter law to get action or omission criminalized lacks the legitimacy despite the legality since the same leads to injustice:

“How can one demarcate the legal world from the moral world? Certainly they are not independent worlds. A rights-centred approach must give reasons why in a process of pre-legal deliberation a right should be
acknowledged to be protected by the criminal law. If such reasons are based on recognizing intersubjective and important human interests, the line of argument necessarily interacts with moral reasoning: what really is important to persons tends to figure prominently in the world of moral duties and moral rights. But the point is to narrow the much larger field of moral wrongs down to acts which are wrong in a legal-political sense, meaning they violate interests which are so important to citizens that they deserve to be accepted as protective rights.” (Hornle: 2014)

In the given trail of legality-legitimacy dilemma, several yardsticks of criminalization get contested, criminalization on the basis of age, disease, economic status, sexuality, etc. being few of them, where criminal jurisprudence lacks sound reasoning in defence of law and practice. The way lower age of criminalization stands compromised in India, HIV patients get victimized across the world, poverty is put to peril by criminalization of the underprivileged, sexual minority stands subjected to criminalization out of taboo, all these are insignia of pervasive vacuum, if not void, vis-à-vis law-morality face-off *inter se* while poor subjects suffer the brunt. Few representative concerns follow hereafter:

“It is most paradoxical that on the one hand we speak of a distinct juvenile justice/youth justice system, yet bring in the issue of criminal responsibility. … Perhaps the reason for this paradox lies in in the fact that world-over, the juvenile justice system continues to be heavily dependent upon the adult criminal justice system in matters of definition of delinquency, pre-trial processes, adjudication and punitive responses. As a consequence, though every system claims that they render juvenile justice through a distinct and exclusive system, the reality is that the juvenile justice system is, at best, an entailed system. But the fact cannot be denied that over a period of past one hundred years the lower age of juvenile justice has progressively increased.

... ... ... 

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“The position of age in respect of total and partial exception from criminal liability has remained unchanged over a period of nine decades during which the system of juvenile justice has slowly evolved on the account of the enactment of the Provincial Children Acts, the State Children Acts, the Juvenile Justice Act, 1986 and the Juvenile Justice Act, 2000. In none of the aforesaid statutory measures was the lower age bar for instituting juvenile justice proceedings or the concept of ‘age of innocence’ ever debated. The focus remained on fixation of the upper age of 16 or 18 years for claiming exclusion from the adult criminal justice system.” (Pande: 2014)

While the criminalization of tender age represents a universal concern, several others being specific to individual concerned are even worse, e.g. criminalization of disease, poverty, sexuality, may get illustrated to this end. In particular, HIV phobia constitutes a major concern of law far and wide in perspective of criminalization across the world:

“‘HIV criminalization’ refers to the use of criminal law to penalize alleged, perceived or potential HIV exposure; alleged nondisclosure of a known HIV-positive status prior to sexual conduct. (including acts that do not risk HIV transmission); or non-intentional HIV transmission. Sentencing in HIV criminalization cases sometimes involves decades in prison or requires sex offender registration, often in instances where no HIV transmission occurred or was even likely or possible.” (AIDS-WATCH)

As offshoot of an increasingly materialist public policy, poverty becomes criminalized in a way or other. In particular, while welfare is played out, state apparatus is driven by presupposition against the underprivileged as the opportunist in search of fortune and that also free of cost. Consequently, the beneficiary is dehumanized by the state:
“Today, when applying for welfare in the United States, many applicants are photographed, finger-printed, drug-tested, interrogated, and asked to prove paternity of children. Similarly, eligibility for public housing is restricted or denied if the applicant has a criminal record, including misdemeanours or a price lease violation. Further, local public housing authorities, can be even more restrictive and evict occupants if a member of their family or another person residing in- or in some cases visiting commits a crime, such as misdemeanour drug offence. Poverty, in other words, is too often treated as a criminal offence.” (Dolan and Carr: 2015)

Also,

“The criminalization of poverty highlights economically and legally institutionalized ideologies of neoliberalism, racism, sexism and the dehumanization of the poor. The growth of punitive welfare policies and the policing of welfare fraud add to something more than the policing of crime. These policies and practices are rooted in the notion that the poor are latent criminals and that anyone who is not part of the paid labour force is looking for free handouts.” (Gustafson: 1999)

Likewise, despite consensual sexual life being private life and beyond public domain, the law pokes its nose in the sexual orientation as well with criminalization of personal behavioural pattern of individual subjects as usual. In a way or other, sexual minority is thereby exposed to illicit victimization so perpetrated by conservative majority rule:

“In at least 76 countries, discriminatory laws criminalize private, consensual same sex relationships exposing millions of individuals to the risk of arrest, prosecution and imprisonment- and even in at least five countries- the death penalty.” (OHCHR)

In the realm of crimes, of criminalization in particular, lawlessness seems apparent. In the absence of jurisprudence vis-à-vis criminalization, who may get criminalized
and on what count are left to whim and fancy of those driven by eventuality rather than rationality and reasoning out of criminology. Import of constitutional morality seems a route to fill in the blank. Due to want of express mention, such morality but appears a mere derivative and too remote to get translated to positive law of the land as such:

“In the absence of an explicit constitutional right not to be criminalized, unprincipled criminalization can be regulated by restructuring the policy of criminalization along the principles of constitutional morality.

... ... ...

“Since the Constitution of India protects of all facets of individual diversity, any conduct that is a reflection of diversity, cannot be labelled as harm. ... transforming the structure of society by addressing the existing social and economic inequalities, is the aim of social revolution. In the Preamble, the Constitution guarantees justice- social, economic and political- to all the citizens; it protects the identities of minorities secures the wellbeing of marginalized and vulnerable individuals, and directs the government to work towards the interests of impoverished classes by policy decisions that have an egalitarian objective and content. These all form part of the norms of constitutional morality. The text of the Constitution of India is an important guide to establish a connection between what the Constitution wants and what should not be permissible in criminalization decisions.

... ... ...

“There can be no possible reconciliation of state’s conduct in violating the norms of constitutional morality, there by endorsing policies that create impoverishment whilst simultaneously imputing criminality on the impoverished through its unprincipled policies of criminalization.”

(Vashist: 2013)
Last but not least, criminalization of thought constitutes an increasingly emerging area of concern as a basis of criminalization. Whatever thought of political potential appears inconvenient to the dominant discourse is thereby subjected to retribution of the state and at times with too crude tools and techniques to keep the same undercover anyway. For this purpose, sedition and contempt of court- along with concerned law and practice- resemble two sides of a coin to silence dissidence roaming around. Even without action or omission, mere expression of thought- or suspicion of state apparatus thereof about alleged expression- is enough for one to get victimized. Consequently, the same may and does open floodgate for witch-hunt on the part of those in power to settle score and thereby eliminate political opposition for electoral mileage. With regime change, savage-victim relations may reverse, may turn worse than ever before. What remains constant is criminalization, and consequent victimization, of thoughts despite freedom of the same otherwise being a constitutional mandate in contemporary democratic governance.

Nowadays victimology is on its rise to raise newer concern appurtenant to criminal law and thereby facilitate betterment for administration of criminal justice. In a nutshell, victimology concentrates its focus on the victim of the criminal and the crime. Savage-victim relations pave the way for the newer jurisprudence while a fallacy lies in the basis of criminalization that leaves the criminal vanquished (read victimized) by the systemic subversion of public policy, law, practice and procedure involved therein, to render criminalization of an otherwise innocent individual for no fault of his own. All these prompt travesty of justice and thereby defeats the purpose of good governance while the state as a political institution is meant for the same.
Basis of criminalization, therefore, constitutes a blind spot below the nose of law and falls severely short to attract attention of the lawgivers and of the policymakers alike to gross detriment of good governance. As a subject matter, criminalization has had potential to create an interdisciplinary space for the people in power to grapple with multidisciplinary issues of concern; cynicism, multiculturalism, populism, being few among them. Besides, power arrangement and given politics, economics, and the law involved therein play respective roles. As a political institution, also, a state apparatus as well, even the judiciary is yet to transcend the given trend.

5. Criminalization and legislation in India

In the legislation landscape of India, the genre of criminalization suffers from paradox at several crossroads with case, ethnicity, gender, and other socio-economic dynamics involved therein. Also, at times, there lies inbuilt contradistinction in the legisprudence (the way V. R. Krishna Iyer referred to). For instance, while the constitutional regime is by and large adhered to liberal feminism to claim equality with men before the law, Indian Penal Code criminalizes the male partner alone in adultery case that deals with sexual intercourse with the wife of another man. Indeed, by implication, the same ought to be mutually consensual (otherwise the same is construed as rape to be dealt with under Section 375 of the Code), *culpa* of the female partner (despite being stakeholder of the offence for her consent by default) stands ignored by the law under Section 497 of the Code in apparent departure from the discursive positioning of liberal feminism. Also, in an age of increasingly pervasive trend of self-determination for the individual, criminalization of attempt to commit suicide under Section 309 of the Code appears otiose while the
underprivileged are left to hunger and consequent malnutrition, even starvation death; by courtesy de facto state policy of neoliberal economic governance. Therefore, whether and how far the State has locus to criminalize poses a moot point to this end. Several other statutes deserve inclusion to this inventory.

On this count, inventory of statutes includes, but cannot get limited to, the following:

1. The Evidence Act, 1872
2. Probation of Offenders Act, 1958
3. Narcotic Drugs and Psychotropic Substances Act, 1985
5. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
6. The Transplantation of Human Organs Act, 1994
7. Information Technology Act, 2000
8. Protection of Women from Domestic Violence Act, 2005
10. Statutes vis-à-vis economic offences, viz.
   (i) Import and Export Control Act, 1947
   (ii) Banking Regulations Act, 1949
   (iii) Income Tax Act, 1961
   (iv) Customs Act, 1962
   (v) Antiquity and Art Treasures Act, 1972
   (vi) Securities and Exchange Board of India, 1992
   (vii) Competition Act, 2002
   (viii) Foreign Exchange Management Act, 2002
   (ix) Prevention of Money Laundering Act, 2002
   (x) The Companies Act, 2013
   (xi) Statutes vis-à-vis intellectual property offences
All these are ridden with the paradox of their own. For instance, rather than the truth, the law is content with evidence to prove the fact contended beyond reasonable doubt. In several statutes, there is reversal of onus of proof to put the burden on the accused with rationale that may at ease get contested. The jurisprudence of probation, despite its otherwise *bona fide* statutory intention behind, falls short of durable rehabilitation in favour of the probationer concerned. Economic offences being nonviolent in essence, there are better curative measures than imprisonment of such otherwise talented- yet tainted- mind with potential to play critical role in progressive development of the given market economy. Also, moral poverty vis-à-vis intellectual property offender deserves creative treatment than criminalization followed by penology behind the bar. Resort to victimology has had potential to serve the remedial purpose. Last but not least, legislation ought not to get (mis)used as panacea to cure evil in every sundry case; nor criminalization that has had sanctity of its own and to be used sparingly to cure what is otherwise incurable anyway. By regular resort to last and final curative instrument, the sanctity of criminalization is increasingly reduced to naught. While taking resort to criminalization, in larger interest, care and caution must be taken on the part of state in democratic governance that the jurisprudence may transcend given dominant discourse and thereby merge wherever lies the public good.

6. **Conclusion**

To sum up, what requires mention is an unambiguous statement to underscore the law- criminal law in particular- as a social and albeit political instrument for state apparatus to run dominant discourse the way joyriders run roller-coaster with little
heed around. Criminalization with pervasive want of jurisprudence thereby leads to social exclusion of whatever appears odd to the mainstream lifeworld. Consequently, diversity is reduced to defiance in the eye of criminal law; followed by consequent wrath of administration of justice and penology of its own along with wide variation in given time and space of the society concerned. Together these characteristics carry forward the larger project of state governmentality under the disguise of legal fictions, e.g. collective interest, public order, social good, etc. while *bona fide* individual interest, micro-level justice, etc., along with established canons of criminal jurisprudence turn vulnerable. While basis of criminalization is stuck to plenty of pitfalls, state of affairs in criminal justice needs no mention to narrate the judicial travesty further in vivid details. Criminology, therefore, needs engagement by dialogue among diverse stakeholders of the society and its state *inter se* with more judicious rather than mere judicial discourse in its essence. A democratic space with the caucus-representation of many voices across the board- ought to minimize the inbuilt fallacy of dominance lest the basis of criminalization may get reduced to disciplinary decadence of criminology as discursive source of law. Even the caucus may not necessarily offer a fortified forum to secure criminalization from the wrath of arbitrariness. The idea, however, lies in minimizing the menace and thereby striving for perfection as a perennial ordeal. With the passage of time, basis of criminalization may and does take volte-face to keep pace with ever-changing value of time and space concerned. Therefore, more it changes its course, lesser it facilitates the commoners customize with the same. Consequently, criminalization ought to shot through the roof by default while there is little human agency (of guilt syndrome) to this end.
Reference:


16. Vashist, Latika, Rethinking *Criminalizable Harm in India: Constitutional Morality as a Restraint on Criminalization*, Indian Law Institute, 2013, pp. 73-93.