

# Criminal law has to be a weapon of last resort

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## It is time to look at criminal law as a weapon of last resort and focus our overstretched criminal justice resources on rapes and murders instead.

Certain reactions to the Delhi High Court's historic verdict on section 377 have called into question the fundamentals of our pluralist democracy. A statement endorsed by some Muslim religious leaders urged the government not to give in to demands of a minuscule minority by repealing Sec 377.

If anyone, these leaders should recognise the dangers inherent in a majoritarian argument. Majoritarian and theocratic arguments were rightly made unacceptable when we adopted our secular democratic Constitution, which guarantees not only freedom of religion but also freedom from religion.

The philosopher John Rawls famously defended the idea of public reason: it is unreasonable for citizens to attempt to impose what they see as the whole truth on others. Political power must be justified in ways that no citizen, regardless of religious or other affiliation, could reasonably reject. Citizens have a duty of civility to justify their public arguments on the basis of public values (such as liberty, equality, fairness and justice) rather than sectarian convictions.

Shah Bano, Babri Masjid, MF Hussain, Salman Rushdie and Gujarat 2002 were all victims of our failure to engage with public reason. As the high court affirmed citing Nehru and Ambedkar, numbers are strictly irrelevant to our constitutional ethos based on public reason.

Then there is the bogeyman of civilisational anarchy raised by some Hindu groups. Nepal, South Africa and Brazil's championing of gay rights will put many Western states to shame if none of these societies appear to be in imminent danger of meltdown.

Parliament should use this opportunity to restructure the role of criminal law in society. Criminal law is the most drastic form of state sanction, and the criminal justice apparatus costs a good deal to the taxpayer. The debate on 377 should force a rethink on a host of other pointless crimes in our colonial penal code. Victimless crimes, such as attempted suicide, begging, hawking, etc., should be decriminalised.

Other provisions, like adultery, are better regulated by divorce laws than criminal measures. It is time to look at criminal law as a weapon of last resort and focus our overstretched

criminal justice resources on rapes and murders instead.