Three Strikes, Two Constitutions: Mandatory Recidivist Sentencing and Its Failure under India's New Criminal Laws

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ABSTRACT

This paper critically evaluates the feasibility of transplanting the United States' "Three Strikes" law a mandatory sentencing regime for repeat offenders into the Indian criminal justice framework, specifically within the context of the newly enacted Bharatiya Nyaya Sanhita (BNS), 2023. Utilizing a methodology grounded in legal transplant theory, the study juxtaposes the American penological focus on incapacitation against Indian constitutional mandates for proportionality and judicial discretion.

The analysis synthesizes empirical data from the U.S., noting that while three-strike laws aim to deter crime, they often result in disproportionate carceral costs and marginal public safety gains (citing RAND studies). The paper argues that a mechanical transplantation of such mandatory sentencing violates Articles 14 and 21 of the Indian Constitution. Through an examination of landmark precedents like *Mithu v. State of Punjab* and *Bachan Singh*, the study demonstrates the Indian judiciary's consistent rejection of rigid sentencing formulas in favor of individualized justice and the "rarest of rare" doctrine.

Furthermore, the paper highlights institutional incongruities, arguing that India's chronic case backlogs and prison overcrowding render the rigid US model practically unviable. The study concludes that while recidivism warrants enhanced scrutiny as recognized in Section 13 of the BNS India must reject the wholesale adoption of the Three Strikes model. Instead, it advocates for a policy that retains judicial discretion, ensuring that enhanced punishments for habitual offenders remain constitutionally coherent, proportionate, and institutionally sustainable.

INTRODUCTION

Sentencing policies occupy a Central position in the criminal justice system. They function as the point where crime control objectives intersect with the constitutional restraints and the moral judgment of punishments. Across jurisdictions, the legislature has been increasingly adopting the enhanced sentencing mechanism for repeated offenders. Often grounded in the

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theories of deterrence, incapacitation, and expressive condemnation of habitual criminality.[2] The developments in the recent scenario reflect a broader global trend towards punitive penal policies during the late twentieth century.This is the response to the public anxiety over the The increase of the heinous and the violent crimes and the perceived judicial leniency. [3]

Along with specific provisions of different jurisprudence Prescribing harsher punishments for repeated offenders is another prominent manifestation of this punitive turn Here is the U.S. California's Three Strikes Law And expressive condemnation of habitual criminality.1These developments reflect a broader global trend towards punitive penal policies developments in the United States Rightist sentencing policies. Which mandates life or near-life-time imprisonment upon a qualifying third felony conviction.[4] This was first enacted in California through a popular ballot initiative in 1994. The three-strike framework was designed to incapacitate repeated offenders by eliminating judicial discretion once a numerical threshold of three convictions was reached. [5]The law rests on an assumption that the habitual offenders commit a disproportionate share of serious crimes and thus the permanent incapacitation of the offender is therefore justified. [6]

The constitutionality of the three-strike law has been upheld by the Supreme Courts in the U.S., which Which have adopted a higher differential approach to the sentencing policies under the 80th Amendment. In the famous case of Ewing vs. California, the court uphold that. the sentenced Of 25 years to life for a third felony offense did not constitute a cruel or unusual punishment, emphasizing legislative prerogative over proportionality review.[7] This jurisprudence reflects a distinctively American constitutional culture in which sentencing severity is largely insulated from the substantive judicial scrutiny[8].

The paper debates over whether India should adopt US Tile III strike law bids two complementary concerns. One is the state's duty to protect public safety by Permanently

[2] Michael Tonry, *Sentencing Matters* (1996)

[3] David Garland, *The Culture of Control* (2001)

[4] Franklin E. Zimring et al., *Punishment and Democracy: Three Strikes and You're Out in California* (2001)

[5] Michael Vitiello, *Punishment and Democracy: A Hard Look at Three Strikes' Overblown Promises*, 90 Calif. L. Rev. 257 (2002)

[6] Peter W. Greenwood et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law* (RAND 1994)

[7] *Ewing v. California*, 538 U.S. 11 (2003)

[8] Michael Tonry, *Sentencing in America, 1S75–2025*, 42 Crime C Just. 141 (2013)

incapacitating recidivist, violent, and heinous offenders. And India's constitutional obligation to ensure proportional individualized punishment under the Under Article 14(Right to equality Before law) and Article 21(Right to life) of the Indian Constitution. In the U.S., three-strike law statutes like that Passed in the state of California (1994) promised us the dramatic reduction in repeated violent offenders by imposing severe mandatory terms on third-serious felonies. Promised us a dramatic reduction in repeated violent and heinous crimes by imposing harsher punishments and severe mandatory terms on the third serious felony. Later, during the empirical evaluations of the law revealed limited marginal crime-reducing and a large physical and carceral cost, prompting political and statutory rollbacks, For example the California Proposition 36 reforms and later paroles/sentencing initiatives. [See California Proposal 236, 2012 California Proposal 57, 2016]

India's criminal justice system, is a product of distinct constitutional and common law lineages, specifically the Indian Penal Code, now replaced by the BNS. The Criminal Procedure Code now replaced by BNSS. And the Indian Evidence Act, now replaced by the BSA. Now all operating within the Post-1950s constitutional framework that imposes substantial due process of law and the proportionality constraint not present in the same way in the US statutory practice. In specific, the Landmark case of Supreme Court of India Such as the Maneka Gandhi vs. Union of India, which holds that the procedure established by law must be fair, just, and reasonable. And the landmark case of Bachan Singh vs. State of Punjab that articulates the rarest of the rare proportionality tests for death penalties. Which illustrates the Indian judiciary's insistence on individualized sentencing and that limited state penal powers.

What this paper Aims Analyze the Possible incorporation of the three-strike law In three-fold method First, it synthesizes the empirical literature on US three-strike law outcomes[determines incapacitation, physical costs, racial and socioeconomic disparities] Secondly, it aims to analyze how Indian constitutional doctrine and sentencing practice, which are grounded in the articles of the Constitution such as Article 14 and Article 21 and shaped by the common law heritage, would interact with any imported mandatory schemes. Thirdly, it aims to apply comparative legal transplant theory to access feasibility, emphasizing institutional capacity (like courts, prisons, and legal aid) and the social-legal fit rather than a superficial policy mimicry. While the US literature evaluates efficacy, the Indian literature defends constitutional norms. There is no focus on a t context-specific feasibility study that

maps out the possibilities of Incorporation of empirical US lessons onto Indian legality and Jurisprudence.

BRITISH COMMON LAW FOUNDATION AND CONTINUING INFLUENCE ON INDIAN CRIMINAL LAW

British colonial legislations and the Common Law concepts act as the structural spine of Indian Criminal Laws. The old statutes of the IPC, CRPC, and the IEA were drafted under British rule and remain the primary instrument of criminal governance Till 2023. Constitutional continuity preserved these pre-1950 rules until altered by Indian legislation and the court. Article 372 expressed continued existing laws post-Constitution which are Supreme Court already early on treated as including the received common law and the previous Council precedent unless and until displaced.[9]

This inheritance is not merely textual; it is functional. The doctrines of mens rea, actus rea, and the rule of evidence and the burden of proof flows directly from the common law taxonomy and were absorbed into the Indian statutes and judicial practices[10].

The Indian courts routinely consult English cases and statutory frameworks as persuasive authorities Whenever the Indian Jurisprudential Framework lacks a direct Precedent or where the analogous principles are at issue.

The Sentencing Council/Criminal Justice Act [Criminal Justice Act 2003, C.44, Section 142(1) (UK)] , which is formulated in the UK, formalizes the purpose of sentences[Punishment Reduction of Crimes Deterrence Reformation Rehabilitation Public Protection Repression to Victims][UK Sentencing Council overarching principle: purpose of sentencing],Which persuasively have gained traction among Indian judges and reformists, even though India has not adopted a single unified sentencing code.

This selective borrowing shows up in two concrete ways---
Firstly, in the Indian sentencing jurisprudence which has absorbed the language of proportionality and the multipurpose sentencing that the UK Statutory provisions

[9] *Dir. of Rationing & Distrib. v. Corp. of Calcutta*, AIR 1960 SC 1355
[10] R vs Cunningham 1957 2 All E.R.786(Eng)

prescribed,which can be considered as the adoption in spirit rather than in body.More than one Indian judgment analyzes punishment by reference to concepts of deterrence, freformation, and proportionality, much as the UK frameworks suggest. Prime examples of such cases Judgments would be 1)State of Punjab vs. Prem Sagar (2005) discussing sentencing objectives and the case of 2)Soman v. State of Kerala, 2018 which considers comparative sentencing models.

Secondly, appellate courts accepted the Privy Council and English appellate courts' reasoning at persuasive, This is done often to fill doctrinal gaps within the Indian laws. While still subjected to any borrowing principle to the Constitutional test against Article 14 and 21.Like that in the case of Gurudev Kaur vs. Khaki which invokes Privy Councils' reasonings and the case of Maneka Gandhi vs. Union of India (1978-1 SCC 248) which places procedure within Article 21's fairness requirements.

This kind of adoption shows not the blind application or the direct importation of foreign laws but rather an Well-thought-out, guided Evolution of the Indian Jurisprudence .Where an English principle clashes with our Constitutional guarantees or the statutory structures, Indian courts choose to reject or mold it to the need of hour.Court has repeatedly said foreign PCNs are persuasive only insofar as they fit Indian social, legal, and constitutional contexts[11].

THE US JURISPRUDENCE DUE PROCESS PROPORTIONALLY AND THE SELECTIVE INFLUENCE

Unlike the structural imprint left by the British, a medical influence is more doctrinal. Especially on the constitutional rights, and often arrives as analogy or comparative arguments in rights litigation. The single differentiating and the most important factor is the case of Maneka Gandhi where the Supreme Court Expanded Article 21's procedural content by insisting the procedure established by law must be fair and reasonable, a formulation that resonates with the U.S. due process reasoning. Death penalties and proportionality debates in India explicitly borrow and engage Engages in U.S. jurisprudence and specifically the Eighth Amendment. In Bachan Singh v. the state of Punjab[12], the court canvassed US cases such as Furman Versus Georgia[13]. and GreggVersus Georgia[14]. in the development of the rarest of

[11] Nelson, Tabby, C. Robert, L. TSAI Constitutional Borrowing, 108, Mitch, L. Rev 459 201
[12] Bachchan Singh v. State of Punjab, (1980) SCC 684
[13] Furman v. Georgia, 408, U.S. 238, 1972
[14] Greg v. Georgia, 428 U.S. 153] (1976)

rare doctrines and insisted on a balance between aggravating and mitigating factors before imposing death penalties in India. The Indian test is therefore a constitutional transplantation of proportionality concerned and imported as persuasive jurisprudence but reformed to fit within the Indian institutional constitutional norms[15].

The U.S. Criminal Procedures Development (Miranda Type Safeguards. Plea bargaining dynamics, mandatory minimum critiques) also have informed Indian debate but rarely been embraced as a whole. The Indian courts have been cautious as they borrow only the functional insights of US law like the necessity of meaningful judicial review, the risk of mechanistic mandatory minima[16], etc. While upholding that any adoptions must pass under the constitutional mandates of Articles 14 and 21.

The most political visible US exports, the three-strike law mandates recidivist model has been intensely studied in the US, but only selectively cited in India to warn against the mechanical mandatory sentencing. Empirical studies within the US literature, like the RAND studies{Rand studies, Tonry;Marvel C Moody }, show that three-strike law produced large prison growth and ambiguous public safety gains[17]. In some economic-centric studies, it correlates with a higher homicide rate than before. Indian jurists often cite these empirical lessons while evaluating any proposal to import rigid receipt penalties.[18]

HOW THE TWO FOREIGN INFLUENCES DIFFER IN PRACTICE AND IN EFFECT?

The British legacy is plumbing of the criminal justice system, statutes, doctrines and procedures. So the UK influence is structural and enduring. On the other hand, the US influence is primarily doctrinal and empirical. The American Constitutional and Empirical Criminal Justice Scholarship supplies us with modes of reasoning, e.g., due process analogies, measurement of deterrents' effect, that Indian courts and policymakers borrow as analytical tools rather than direct templates. [Maneka Gandhi (1978) 1 SCC 248] Bachchan Singh 1982 SCC 648 Tonry Supra.]

[15] Dirk Van Zyl Smith C. Andrew Ashworth, Disproportionate Sentences as Human Rights Violations, 67 Mod. L. Rev. 541

[16] United States vs. Booker, 543 U.S. 220, 2005

[17] C Just. 141(2013)]Thomas B. Marvels C. Carl Lissy E. Moody The Lethal Effect of Three-Strike Law, 30 J. Legal Stud., 89, 2001

[18] Michael Toney Sentencing in America 1975-2025, 42 Crimes

This difference explains why transplantation in India might have been selective Up-to-date England has supplied us with the bones and the skeleton. America has supplied arguments on how to shape these bones. The Supreme Court repeatedly insists that any borrowed element must reconcile and be in line with India's constitutional Values of proportionality [Mithu vs State of Punjab 1983 2 S.C.C. 277.] , dignity, and individualized sentences, and with the local institutions and realities, such as delayed trials and under trial's detention And resource constraints. The practical takeaway for the comparative borrowing is that the lesson for India is pragmatic. India can and does borrow often here and there, but it does so as an imperative community, not as a copy shop. Any imported principle will be filtered through Article 14 and 21 and hand-moulded to fit the Indian Philosophical puzzle and institutional Capitacity.Policy makers and scholars must therefore treat UK/U.S statutes as structural incidents[19] ,U.S. jurisprudence as an analytical instrument is useful, but neither can be transplanted whole without constitutional and institutiona adaptations.[20]

The practical differences widen the gulf of Indian criminal justice students, which wrestle with chronic case backlog, high pre-trial detentions, and a limited legal aid capacity. The conditions that magnify the risk of mandatory high state penalties, for example, overcharging to trigger and hence penalties, inequitable outcomes of indigent defendants, and the ballooning of the prisoners population. In short, by the Indian judges regularly consent US and the UK's authorities for structural arguments. Indian constitutional values of Articles 21 and 14 statutory designs, and the institutional realities make a direct import on US three-strike law both legally risky and practically problematic.[21]

SENTENCING OF REPEATED OFFENDERS IN INDIA: THE EXISTING STATUTORY FRAMEWORK AND JUDICIAL PRACTICES

Indian criminology does not aim to treat Recidivism Through rigid numerical thresholds, instead it aims to adopt a discretionary offender-centric That treats prior convictions as Aggravating factor rather than automatic trigger for mandatory punishment like that in the US. The statutory recognition of repeated offenders primarily found in the BNSS and the BNS

[19] Nelson Tebbe, C. Robert L. Tsai, Constitutional Borrowing, 108, Mitch L. Rev. 459, 2010
[20] Pierre Legrand ,The impossibility of legal transplants, 4 Mass Rich J. EU R C.Comp L. 111 1997.
[21] Maneka Gandhi v. Union of India, 1978 1. SCC 248

Which is supplemented with the judicial interpretation which are rooted in the constitutional principles.

Particularly the section 13 of the BNS 2023 Which prescribes an enhanced punishment where a person has been previously convicted for an offence under Chapter 10 or Chapter 17 of the SahitaAnd then Commits a subsequent offense within the same chapter. [22]The provisions simply do not create a separate offence, but merely permit the court to impose a higher sentence, which is within the statutory limits. Quotes has clarified that the Section 30 (previously Section 75) is enabling rather than compulsory, and its application is purely based on the judicial satisfaction regarding proportionality and culpability. [23]More importantly, procedural safeguards require a private conviction to be specifically charged and proved, ensuring due process before enhanced punishment.[24]

In addition to the punitive enhancement of punishment, preventive mechanisms exist under Criminal Procedures. Section Section 129 of the BNSS. An executive magistrate is required to require security for good behavior from a habitual offender.[25]However, codes have narrowly Conferred this mandate. That holding mere police suspension or registration of multiple FIRs do not suffice to brand a person as a habitual offender.[26]

The recent enactment of the Bharatiya Nyaya Sanhita (BNS), along with the BNSS (procedural code) and BSA (evidence code), represents a major paradigm shift in Indian criminal law. This transition has sparked significant constitutional debate, particularly regarding the enhancement of sentences, mandatory life imprisonment, and the treatment of "repeat offender" regimes. This discourse becomes even more critical when viewed alongside the POCSO Act (2012) and various state-level Habitual Offender laws.

A central feature of the BNS is its explicit focus on incapacitating repeat offenders. Section 71 of the BNS mandates enhanced punishment for recidivism. It states that if a person previously convicted of specific serious offenses is convicted again of the same, they face a mandatory

[22] Bhartiya Nyaay Sahita Section 13
[23] State of Punjab v. Bawa singh, AIR 2015, SC 339
[24] K. Satwant Singh vs. State of Punjab, A.I.R. 1960 S.C. 266.
[25] Bhartiya Nagrik Suraksha Sahita ,Section 129
[26] Sabri vs Assistant Commissioner of Police , 2018 SCC OnLine Mad 2125

sentence of life imprisonment or death. This provision stands as one of the most vocal endorsements of "mandatory severity" in the Indian legal system, aiming to permanently deter and incapacitate habitual criminals.

This severity is echoed in other sections of the BNS designed to punish heinous crimes. Section 70 prescribes imprisonment for the "natural remainder of the person's life" for gang rape, while Section 66 allows for life imprisonment or death for other aggravated sexual offenses. Furthermore, Section 111, which addresses "Organized Crime," authorizes the death penalty or life imprisonment if the criminal activity results in death. Together, these sections signal the incorporation of a logic of "incapacitative sentences" directly into the penal code.

The procedural aspect, governed by the BNSS, reinforces this strict approach by introducing restrictions on the remission and commutation of life sentences. This effectively increases the severity of the punishment by ensuring that offenders serve longer terms, even if judicial discretion technically exists during the initial sentencing. While the BSA (evidence code) does not prescribe punishments itself, it facilitates convictions under these severe statutes, ensuring that the mandatory minimums are enforceable.

The POCSO Act remains a primary example of this trend toward mandatory minimums. Section 6 of the Act prescribes a minimum of 20 years of rigorous imprisonment, which can extend to life or death, continuing to be a major site for mandatory sentencing. However, the Supreme Court has consistently held that such provisions must still align with the principles of proportionality and fair trials. This tension is evident in laws like Section 19 of the Bombay Habitual Offenders Act (1959), which prescribes life imprisonment for registered habitual offenders upon subsequent convictions, raising ongoing questions about the balance between state security and individual rights.

The courts have judicially developed life sentencing clauses that have been replaced by the softening sentencing measures rather than being declared nugatory. Conversely, the court case Union of India v. S. Haran, notwithstanding the judicial discretion, allowed the life imprisonment for the remainder of natural life clauses to stand.

Judicial statements have emphasised that preventive provisions must not degenerate into instruments of harassment or of informal punishment. Judicial practices further demonstrate the resistance to mechanistic sentencing. The Supreme Court has repeatedly held that the

sentencing must reflect a balance between the gravity of the offense, the circumstances of the offender, and the interests of society.[27] This philosophy directs its flows from the Article 21 of the Constitution which requires the deprivation of personal liberty to be just, fair, and reasonable. [28]Subsequently, even repeated offenders should be entitled to individualized considerations And new process, rather than predetermined outcomes.

Recent constitutional jurisprudence reinforces this approach.The Supreme Court has invalidated colonial-era practices of categorizing some communities as 'habitual criminals', holding that such a classification is vague, stigmatizing, and violative of the Articles 14 and 21.[29] These decisions Single-handedly Highlights a broader judicial unwillingness to accept status-based or statute-based punishment divorced from the individual culpability. Although the Indian law recognized recidivism as relevant, it deliberately Tries to avoid rigid sentencing formulas. Repeated offenders enhance judicial discretion rather than replacing it thus in theory Maintaining proportionality as the governing principle.

COMPARATIVE SENTENCING PHILOSOPHY: MANDATING PUNISHMENT VS. JUDICIAL DISCRETION IN INDIA AND THE UNITED STATES

The philosophical divide between Indian sentencing practice and the US mandatory sentencing regime, particularly the three-strike law, is stark.American street strike law statutes impose mandatory life or near-life sentences upon third qualifying conviction, significantly curtailing the judiciary's discretion.[30] The U.S. Supreme Court has upheld such schemes under the 8th Amendment, differing heavily to legislative judgment, even where punishment severity appears extreme. [31]

While the empirical and the scholarly literature raises serious concerns about the mandatory sentences, Michael Tonry's seminal study demonstrates that the mandatory penalties consistently fail to produce sustained deterrence, instead shifting sentencing power from judges to prosecutors and generating disproportionate outcomes.[32] . These findings undermine the utilitarian justification of advancing in support of three-strike regimes.

[27] State of Punjab v. Prem sagar (2008) 7 SCC 550.
[28] Maneka Gandhi vs Union of India, (1978) 1 SCC 248
[29] Sukanya Shanta vs Union of India, 2024 SCC Online SC 112.
[30] Ewing v. California, 538 U.S. 11, 2003.
[31] Lockyer v. Andre, 538 U.S. 63, 2003.
[32] Michael Tonry's Mandatory Penalties, 16 Crime C.Just. 243 (1992)

Moreover, the troubling part is that the three-strike law has an capacity. generate perverse incentives. Marvellous and Moody's Econometric analysis found that the state adopting a three-strike law experienced a statistically significant increase in homicide rates, attributing to offenders' incentive to eliminate witnesses and when facing severe mandatory penalties.[33] Such finding directly incapacitates the deterrence rationales that are underlying the mandatory sentences.

For a more normative perspective, mandatory punishment Raises acute proportionality concerns, Van Zyl Smith and Ashworth argue that grossly disproportionate sentences violate human rights norms by treating offenders as a means to an end rather than the right-bearing individuals.[34] While the U.S. constitutional doctrine permits such disproportionality outside the capital context, Indian law derives proportionality from Article 14 and Article 21, which Bring on heels The imposition of Disproportionate punishments.

Judicial discretion serves the institutional mechanism through which proportionality is to be realized. Unlike mandatory schemes,Discretionary sentencing allows the courts to calibrate punishment based on Offender-specific factors such as Age, socio-economic background, and temporal distance between prior communications. [35]Such flexibility seems to be absent from the three-strike law Where only the numerical threshold often overrides moral culpability.
Michael Vittiello's Reviews of California's three-strike experience further illustrate how populist penal policies can entrench excessive punishment while delivering limited public safety benefits. [36]The Indian judiciary has choose to consciously resisted such populist pressures, emphasizing the principled sentencing over symbolic severity. In comparative terms, the Indian discretionary sentencing framework aligns more closely with the constitutional proportionality Under the Indian Constitution. and human dignity than the mandated American model.

[33] Thomas B. Marvell, C. Carlisle, E. Moody, "The Lethal Effect of the Three-Strike Law," 30 J Legal Study, 89, (2001).
[34] Dirk van Zyl Smit C Andrew Ashworth, *Disproportionate Sentences as Human Rights Violations*, 67 Mod. L. Rev. 541 (2004)]
[35] *Soman v. State of Kerala*, (2013) 11 SCC 382
[36] Michael Vitiello, *Punishment and Democracy: A Hard Look at Three Strikes' Overblown Promises*, 90 Calif. L. Rev. 257 (2002)

While it will be far fetched to say that discretionary doesn't have its own set of problems, Indian courts have preferred refining judicial standards over the abandonment of the discretionary powers of the courts altogether. Such steps Such steps can indirectly be assumed to be a commitment to individualized justice.

The Three Strike Law in the U.S. was introduced as a crime controller mechanism premised on incapacitation and deterrence, promising substantial reduction in serious crimes by mandating life or near-life sentences for the repeated offenders. Early policy advocated that the framework of the law, is an rational, responds to the public anxiety over the violent receiver, especially the Polly klaas case. But empirical evaluations conducted over the last three decades paint a far more complex and often critical picture.

One of the earliest comprehensive assessments was conducted by the RAND Corporation, which Talked about the projected effect of three-strike law on crime and prison populations. Rand estimated that if fully implemented, the law could reduce serious felons by approximately 22-34%, but only at the cost of a dramatic prison expansion and an annual expenditure increase of between $4.5B to $6.5B[37]. Crucially, Rand itself acknowledged that comparable crime reduction could be achieved through less punitive, alternating targeting of violent offenders, specifically undermining the necessity of an across-the-board three-strike law. [38]

Subsequent studies question whether even the projected benefits materialized or not. Zimmering, Hawkins, and Carning demonstrated that the population of offenders affected by the three-strike constituted a relatively small proportion of overall felony offenders. Meaning that the law's incapacitative effect was inherently limited. [39]Their analysis concluded that much of the crime declining is attributed to the three-strike law overlapping with the broader national crime trend of the 1990s, making casual attribution tenouos.[40] The study repeated that some empirical evidence suggests Are counterproductive outcome. Marvell's and Moody's econometric studies found that the statistical increase in homicide. Also from a policy

[37] Peter W. Greenwood et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law* (RAND 1994)

[38] Peter W. Greenwood et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law* (RAND 1994)

[39] Franklin E. Zimring et al., *Punishment and Democracy: Three Strikes and You're Out in California* (2001)

[40] Franklin E. Zimring et al., *Punishment and Democracy: Three Strikes and You're Out in California* (2001)

perspective, mandatory sentences under the three strikes substantially reduce judicial discretion while expanding prosecutional power. Michael Tonry observed that the mandatory punishment regime routinely shifts sentencing authorities from just to irrefutable. This shift undermines consistency and accountability while exacerbating judicial disparities against judges.

The physical and the social cost that the three-strike law brings further weakens its policy justification. Prison population expanded rapidly after the last impact meant, and the contribution to the severe overcrowding and long-term castration of aging prisoners with limited public safety returns. The early 2000s, even proponents considered that the three-strike laws imposed unsustainable budgetary burdens while delivering merely marginal additional crime control.[41]

Empirical consensus reflects the three-strike law has failed to achieve the ambitions of deterrence and capacitance goals in proportion to the economic, social, and human cost.

CONSTITUTIONAL COMPATIBILITY OF THE THREE-STRIKE MODEL WITH INDIAN JURISPRUDENCE

The Supreme Court of India has constantly Rejected mandatory sentences that eliminate judicial discretion. Specifically, in the Mittu v. State of Punjab, the court came to the conclusion of striking down Section 303 of the Indian Penal Code that mandated the death penalty for murder committed by a life convict Upholding that the complete exclusion of judicial discretion renders the punishment arbitrary and unconstitutional. [42] This principle was further reinforced in the Bachchan Singh v. State of Punjab case, where the court upheld the constitutionality of death penalty only by introducing the 'rarest of the rare' doctrine. Requiring individualized balancing of aggravating and mitigating factors. [43]The three-strike law, if it mandates a life penalty for the third felony, irrespective of the gravity of the offense, would collapse the Constitutional framework by equating minor and grave offenses as equal for sentencing purposes, like in the case of Ewing v. California. Which might be ultra vires the constitutional and the institutional principles within the Indian jurisprudence.

[41] Michael Vitiello, *Punishment and Democracy: A Hard Look at Three Strikes' Overblown Promises*, 90 Calif. L. Rev. 257 (2002)

[42] *Mithu v. State of Punjab*, (1983) 2 SCC 277

[43] *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

Indian Constitutional jurisprudence also impels proportionality as a substantial requirement of the Article 21, Specifically, in the case of Sunil Batra v. Delhi Administration, the court held that even convicted prisoners retain their fundamental rights, and the punishment must not degrade human dignity.[44] Mandatory life sentences without parole would Come into conflict with this rehabilitative and dignity-based approach.

Judicial discretion in sentencing has been reaffirmed as a basic and a structural feature of the Indian criminal justice system. In the case of State of Punjab v. Prem Sagar The Supreme Court stressed that the sentencing must reflect a rational synthesis of deterrence, rehabilitation, and proportionality, cautioning against excessive legislative rigidity.[45]Comparatively, US. US Constitutional Doctrine Tolerates extreme sentences outcome due to legislative supremacy in penal policy, as illustrated in the Supreme Court's refusal to invalidate California Street Strike law in the Ewing v. California. [46]

TRANSPLANTATION - CAN A FOREIGN RULE, LIKE THE THREE STRIKE LAW, SURVIVE WITHIN THE INDIAN ATMOSPHERE?

Legal transplantation is the movement of a ruler or an institution from a jurisdiction into another. It's not just a simple copy-paste of text but a transfer that requires fit with the local institutions, cultures, and practices. [47] Scholars' discovery whether transplantation succeeds as needed packages or whether they must be remade locally. [48]While Watson's sanguine view treats law as a portable proposition that can safely travel and be usefully used between systems, Legard warns us that the law is embedded in a social meaning and rarely behaves the same in a new home.[49] Recent developments and works on the constitutional borrowing refine this debate by offering a practical criterion that is fit, transparency, completeness, and yield to ask whether a borrowed doctrine fits and will produce the intended effect in the recipient polity. [50] Thus, understanding applying the three-strike law in India and three immediate problems shows up. The first of which Institutional problems more specifically the institutional fitting Which requires Reliable Prosecutorial Records, Faster adjudication, ample prison capacity and

[44] *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494
[45] *State of Punjab v. Prem Sagar*, (2008) 7 SCC 550
[46] *Ewing v. California*, 538 U.S. 11 (2003
[47] Alan Watson, Legal Transplants: An Approach to Comparative Law (2d ed. 1993)
[48] Pierre Legrand, The Impossibility of Legal Transplants, 4 Maastricht J. Eur. C Comp. L. 111 (1997)
[49] Alan Watson, Legal Transplants, supra; Pierre Legrand, supra
[50] Nelson Tebbe C Robert L. Tsai, Constitutional Borrowing, 108 Mich. L. Rev. 459 (2010)

parole/review mechanism for managing lifers[51]. which form the prerequisites for a successful adoption of the three-strike law.

The Indian criminal system directly opposes on many of those matrics. Huge case backlogs, chronic undertrial populations, limited legal aid, and overcrowded prisons.[52] A rule that depends on prompt, accurate conducting of prior felons will misfire in a system where convictions are delayed or uncertain. [53]

Secondly is the doctrinal and the constitutional fit. Indian constitutional doctrine, Article 14 and 21, demand individualized sentences and proportionality. A judicial stance repeatedly enforced by the Supreme Court. [54]A law such as the Three-Strike that imposes an automatic life sentence for any third felony clashes with the Bachchan Singh case that rejects mandatory mechanist punishment which extinguishes judicial assessment.[55] Tabby C. Tersai cautions that borrowing constitutional or rights-sensitive rules without ensuring the cultural and doctrinal compatibility risks judicial pushback and legitimacy loss.[56]

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Third is the social-political and distributive fit. The three-strike law in the U.S. amplified racial and socio-economic disparities because enforcement and changing practices were read by country and community.[57] India's multicultural and And the existence of multiple Cost, class, and regional inequities make similar selective enforcement likely inaddition to the Watson's transplant optimism underestimates how even institutional incentives will skew the outcomes of the ground.[58]Legrand's critique is worth repeating here as the rule that detaches from its original social meaning has strong affinity produces unintended social costs in the host system.[59]

1. The Methodological Is the TC tsai test Which gives us the evaluation that needs to be done before borrowing. The fit- that does the rule match institutional capacity

[51] RAND Corp., Three Strikes and You're Out: Estimated Benefits C Costs (1994)
[52] National Crime Records Bureau prison statistics
[53] Pierre Legrand, supra
[54] Mithu v. State of Punjab, (1983) 2 S.C.C. 277; Bachan Singh v. State of Punjab, (1980) 2 S.C.C. 684.
[55] Mithu, supra; Bachan Singh, supra.
[56] Tebbe C Tsai, Constitutional Borrowing, supra
[57] Thomas B. Marvell C Carlisle E. Moody, The Lethal Effects of Three-Strikes Laws, 30 J. Legal Stud. 89 (2001)
[58] lan Watson, supra; Marvell C Moody, supra
[59] Pierre Legrand, supra

2. The completeness -which talks about the complementary institutions such as prisons, parole boards, legal aids in place
3. The yield- Will the rule produce the claimed public safety benefit once transplanted?

In the Indian context, a transplant is practically possible if it is molded for the Indian Institutional and jurisprudential needs, Such a transplant to stand a chance. We must be. A)Limited in scope, meaning to be only be extending to the violet felonies. B Aims to preserve judicial review and proportionality safeguards. C. Be piloted alongside investment in case management, legal aid, and prison capacity. Without these steps, transplantation risks constitutional invalidation and serious social acts. Exactly the hazards Legard and critics warn about[60].

Bottom line is Transplant theory forbid borrowing but it insists on an honest precondition. The three-strike law as packaged in the US might be a poor fit for India. Any borrowing must be selective, constitutionalized, (protected under 21) and institutionally supported.[61]

Reversing the research gap, absence of a context-specific analysis or transplanting US three-strike law into Indian criminal Jurisprudence.

There exists extensive literature on the three-strike law but it is fragmented between jurisdictional and methodological lines. The American scholarship primarily focuses on the empirical effectiveness, physical consequences, and the constitutional permissibility of the three-strike law within the United States without examining their suitability for transplantation into the foreign legal system. [62] These studies only assume the institutional capacity, the structuring and sentencing culture of the American criminal justice system but fail to answer whether such a regime can function in a jurisdiction where there is a fundamentally different constitutional commitment.

India Sentencing Scholarship, on the other hand, concentrates on the proportionality, judicial discretion, and the basic structure of the Constitution and the Constitution limits on punishment

[60] Pierre Legrand, supra
[61] Disproportionate Sentences as Human Rights Violations, 67 Mod. L. Rev. 541 (2004)
[62] Franklin E. Zimring, *Punishment and Democracy: Three Strikes and You're Out in California* (2001)

but do not stress these principles against the three-strike framework.[63] The Supreme Court has been successful in developing a robust jurisprudence rejecting mandatory punishment that excludes judicial discretion. Most notably in the *Mithu v. State of Punjab*[64], where the Court struck down the mandatory debt provisions as arbitrary and violative of Article 14 and Article 21. However, Indian courts have never been called upon to access a sentencing regime based on numerical receiverism threshold rather than the offense gravity. Comparatively, Constitutional scholars acknowledges that a legal borrower occurs frequently In between different jurisdictions But warns that transplantation without the understanding of the contextual adaptation can lead to systematic failure.Alan Watson argues that legal rules can migrate across systems but only where functional compatibility exists.[65]In contrast, Pierre pessimistic view contend that law is inseparable from its culture and institutional context Rejecting and thus rendering the Transplantation as conceptually flawed.[66]While the debate is well-developed in theory, it is notyet applied particularly to the post-constitutional system like that.

Unfortunately, no existing study synthesizes American empirical data,Indian Constitutional Doctrine and the transplant theories of accessing feasibility, proportionality, institutional capacity, and the social legal compatibility in a single framework. Thus, the literature fails to answer whether the US law is fundamentally flawed and is fundamentally incompatible with the Indian justice system. The absence constitutes the core research gap that the present study seeks to fill.

EVALUATING THE PROS OF THREE STRIKE LAW INCORPORATION INTO INDIA

The strongest argument in favour of the Strike Laws type sentencing system lies in its focus on recidivism. Criminal jurisprudence across jurisdictions has been traditionally treated to be repeating offenders as an aggravating factor on the assumption that the prior punishment having failed increases culpability justifies enhancing sanctions. The three-strike law seeks to formalize this institution by prescribing progressively harsh punishment for repeated offenders,

[63] M.P. Singh, Sentencing Policy in India, 42 J. Indian L. Inst. 1 (2000)
[64] *Mithu v. State of Punjab*, (1983) 2 SCC 277
[65] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (2d ed. 1993)
[66] Pierre Legrand, The Impossibility of "Legal Transplants", 4 Maastricht J. Eur. C Comp. L. 111 (1997)

particularly those convicted of serious or violent crimes. Michael Bitello, Punishment and Democracy, supra. From a penological perspective, such a law is justified on the grounds of deterrence and incapacitation. The main proponents argue that clear definition of consequences attached to the repeated criminal conduct may discourage further offending and protect society by removing persistent offenders from circulation.Richard S. Fray's Excessive Punishment Sentences, Punishment Goals, and the 80th Amendment. , 89minn.l.rev.571 2005 In societies where the violent divisive generates public anxiety, such an approach is often defended as a legitimate legislative response.

Another argument that supports three-strike law is the sentencing uniformity. Mandatory enhancement rules reduce variability in sentencing outcomes by constraining judicial discretion and ensuring that similar situations are handled similarly. This is often defended as promoting equality before the law and curbing arbitrary sentencing disparities within the judiciary. [Eric Luna and Paul G. Cassella, Mandatory Minimalism, 32 Cardozo L. Rev. 1 (2010)]. Particularly, in the Indian context, supporters may further point out that the Parliament has already shown willingness to impose several punishments on repeated offenders in particularly heinous crimes. Section 736E of the Indian Penal Code, introduduction of the Criminal Law Amendment Act, that permits life imprisonment for the remainder of natural life or death for repeated rape offenders. This indicates the Indian legal system that it does not reject enhanced punishment for recidivism in principle but applies it in selective cases involving grave harm.

ARGUMENTS AGAINST WHOLESALE ADOPTION

Despite these justifications, the It is against adoption of the US Strike law is substantially stronger. One of the most serious concerns is the erosion of judicial discretion which in turn hurts the Article 21 and the basic structure of the Constitution. Indian sentencing jurisprudence has consistently emphasized individualized punishment, often referring courts to require and assess the nature of the offense, the circumstances of the offender, and the proportionality of the sentence. Mandatory escalation rules undermine this structural mechanism by converting sentences into a mechanical outcome rather than an individualized sentence. Scholars have long warned that mandatory sentencing regimes shift decisive powers from judges to prosecutors, charging decisions effectively determining punishment. (Michael Tondrey Mandatory Penalty 16 Crime and Just. 243 (1992)).

This problem is closely connected to the constitutional proportionality under the Article 21 of the Indian Constitution that requires the deprivation of personal liberty to be just and fair. The Supreme Court has, on many occasions, invalidated mandatory punishments that foreclose individual sentencing. The most notable Case is Mithu vs. State of Punjab. Where a mandatory death sentence for a class of offenders was struck down as arbitrary and unconstitutional. Thus a rigid 3-strike framework rises and risks reproducing the same defect by trying to punish primarily due to criminal history rather than the gravity of the offense.

There is also senior concern about Article 14 that To treat offenders disproportionately. who commit fundamentally voilate three different laws identically merely to satisfy a numerical threshold. Which in turn rises the spectre of arbiter-ness. (Abhinav Chandrachud, Wendsbury reformulated, 13, Oxford U. Commw. L. J. 191. (2013)) Indian Proportionality Reviews that Increasingly scrutinizes whether legislative classification be as a rational relationship to the objects and whether a less restrictive alternative is available. [Aparna Chandra, Proportionality in India, A Bridge to nowhere, University of Oxford, Hum. Rts. Hub J. 55(2020)]

Institutional capacity further weakens the case for transplantation. Indian prisons are severely overcrowded, and a mandatory life sentence for a broader category of reputed offenders would exacerbate a systematic stress. Without corresponding investment in infrastructure or rehabilitation, spekaing fromthe experience of the US Such law can overload the Indian instituions While in the US, the increase in incarceration was significant, and the limited marginal benefit in crime reduction, prompting a rollback through California's Proposition 36. (Judith Appal, et. al. California Proposition 36: A Success Right for Refinement and Replication, 3. Criminology and Pub. Pol. 585 (2004))

Modification rather than transplantation. Importantly, India is not under any obligation to adopt a foreign sentencing model in its entirety. Comparative constitutional practices show that legal borrowing is often selective and adaptive rather than wholesale buying. Even California's ultimate narrowed its three strikes regime to apply life sentences only where the third offense is serious or violent. [Bracket open, CAL. Penal Code section 667As amended by Proposition 36. [2012]].

If India were to draw from the three-strike idea, it would incorporate only the constructive elements while rejecting its most problematic features. Any adaptation should be limited to

serious violent offences, preserve judicial discretion to depart in expressional cases, and allow for a periodic review or parole eligibility. Such a model would resemble enhanced habitual offender provisions already present within the Indian law rather than a rigid American transplant. Furthermore, the punishment of community service should be excluded from the three strikes of the law. As community punishment is only given for petty crimes.

CONCLUSION

The paper examined whether a U.S.-based three-strike law can be meaningfully incorporated into the Indian criminal justice system. The analysis demonstrated that, whether the underlying concerns, such as how to respond to persistent offenders, is legitimated, the wholesale adoption of the three-strike law would be doctrinally unstable and constitutionally invalid. Indian law already recognizes recidivism as an aggregating factor with provisions such as the Section 13 Bharatiya Nyay Sahita 2023 And often, Prescribes increased punishment for rape cases or cases of heinous Crimes. POSCO act in particular Gives minimum mandated punishments Of 20 years under Section 6 of the statute. The Indian Constitutional jurisprudence under Article 14 and 21 places substantive limits on punishment. The Supreme Court's rejection of mandatory sentencing in Mithu and its instances in the individualized reasoning, even in cases involving extreme punishment, such as in the case of *Union of India v. V. Sriharan*[67] upheld life-imprisonment-for-remainder-of-natural-life formulations when accompanied by judicial discretion.Such punishment without remission confirms constitutional resistance to mechanized sentencing schemes. The appropriate conclusion therefore is that India should not be lenient towards repeated offenders but it should resist plent legislative instruments that sacrifice constitutional coherence for symbolic toughness. That India is free to mold foreign ideas to its own needs and adopt only those elements which benefit it, rejecting the other. A careful calibration may enhance the framework within India for the tackling of repeated offenders and offer a more principled and sustained response to recevidism.

POLICY CONSIDERATIONS AND DIRECTIONS FOR FUTURE RESEARCH

From a policy perspective, law makers should prioritize evidence-based sentencing reform rather than the symbolic transplantation. India would greatly benefit from a systematic collection of recidivism data and development of a structured sentencing guideline that reduces disparity without eliminating judicial discretion. The creation of a sentencing commission, for

[67] *Union of India v. V. Sriharan*, (2016) 7 SCC 1.

example, is long recommended by scholars. Such institution could provide a forum for future Future Policy Recommendations and Considerations The future research should focus on:

1. The empirical pattern of repeating offenders in India
2. Its comparative analysis of the habitual offenders in the common law jurisdictions

The deeper doctrinal study of the doctrine of proportionality under Articles 21 and 41 in the context of enhanced sentencing would greatly benefit the Sentencing of repeated offenders with proportionality and in line with the principles of the Constitution under Article 14 and Article 21. Such research would allow India to refine its approach to recidivism without importing the Constitution and the institutional frameworks Such as the failings of three-strike law.

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