



Benefits that a Zemiological Approach can bring to the Study of Global Crime and Insecurity

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Abstract

Zemiology is the study of social harm which looks at broader structural form of harm than the notions exclusively falling under the definition of crime. The study of Zemiology focuses on defining the policies to address harm from its origin to its end by moving beyond the binary concept of criminal or non-criminal act as defined by the criminal justice system. This paper explains the concept of zemiology and studies the benefits of zemiological approach to understand the origin and effects of harm on society. The paper specifically explains the harm caused by social evil of Prostitution to the Indian society through the prism of zemiology. Further, in the next section, the paper distinguishes between the criminological and zemiological approaches to study harm and the benefits that zemiology can provide over criminology. In conclusion, the paper finds the possible positive direction taken or that can be taken by the study of zemiology.

Keywords: Zemiology, Social Harm(s), Criminology, Prostitution, India.

Introduction

Zemiology is an emerging area of study that is attempting to move beyond conventional legal notions of crime and draw attention to social harms (financial, physical, social and psychological) which have a profound impact¹. Any balanced strategy to control crime needs to be underpinned by a proper understanding of the underlying social, cultural and economic causes of crime (making the case for social sciences)².

Harm is a concept which includes criminal acts and non-criminal acts and thus is a better tool for examining complex issues like social and environmental problems³. In 'Beyond Criminology,' Hillyard and Tombs⁴ detail the many failings of criminology as a discipline, as well as those of its sponsor, the criminal justice system⁵. Many incidents which cause serious harm are either not part of the criminal law or, if they could be dealt with by it, are either ignored or handled without resort to it⁶. "The redefining of crime as harm opens up the possibility of dealing with pain, suffering and injury as conflicts and troubles deserving negotiation, mediation and arbitration rather than as criminal events deserving guilt, punishment and exclusion"⁷.

Studying Social Evil of Prostitution through Zemiology:

One of the examples in the context of social harms as explained above can be prostitution in India. The Immoral Traffic (Prevention) Act (PITA) [criminalises] activities associated with prostitution such as brothel keeping; living off the earnings of a prostitute; procuring or inducing and detaining a woman for prostitution and soliciting in public

places, while falling short of outlawing the practice itself⁸. The practice cannot be classified into the binary definition of crime, because even though not a crime per se, prostitution entails an element of potential social harm that can affect the current as well as many future generations to come. Since anti-trafficking laws handle "forced prostitution," the law remains silent on "prostitution by choice." Public perception and popular imagination fill the vacuum of indeterminacy in this regard, which only reinforces the unfavourable mental constructs of prostitution in India⁹.

"[Z]emiology takes a more holistic approach to the study of the consequential harm(s) of socio-legal phenomena - social, psychological, physical and financial - that have profound impacts and effects"¹⁰. A full acceptance of the concept of zemiology results in an understanding that many social phenomenon that are not actionable at law are nevertheless contrary to the common good¹¹. Through the zemiological lens prostitution appears to be a global crime, affecting also the persons associated with those involved in the practice. The harm can only be studied under the microscope of zemiology because many advocate for legalising prostitution, not just in India but all round the world. Some jurisdictions opt for legalisation as a means to reduce crimes associated with prostitution¹². The underlying premise is that prostitution is necessary for stable social order, but should nonetheless be subject to controls to protect public order and health.

The main issue with global crimes is the lack of uniformity on the domestic levels in recognising what falls within the definitions. Also, many global crimes are state sponsored

making it extremely difficult to collect evidence against those responsible. Thus, the binary concept of criminology of identifying the crime and rectifying it cannot be used, especially when the state does not recognise a global crime as crime in itself or when there is not enough evidence for carrying out a prosecution. Zemiology avoids such confrontation because it still considers conventional crimes as harmful and also recognises the structures involved in creating the crime. In case of prostitution it is the lack of alternative with the victim which makes her submit to the abuse. A large proportion of such population suffers from Post-traumatic Stress Disorder or nearly 43% to 69% have faced sexual abuse in childhood¹³. Criminalising such activities or providing for punishments cannot be the answer to better the situation because these activities are resorted to when there is lack of other alternatives. Certainly in such cases the response through zemiological approach is a way out because it is only when the social harms leading to the practice are overcome, or when better alternatives are provided for, can the issue be resolved. However, when white collar crimes are studied [under the umbrella of global crimes], there is no necessary correspondence between the harm caused by private and public organizations and the status of such harm as crime in legal sense¹⁴.

Difference of Approach in Criminology and Zemiology:

Criminology restricts itself to the question of cause and remedy, instead of studying the process of criminalization: how certain harmful acts/events come to be defined and recognised as 'crime' whilst others do not¹⁵. "The study enunciates punishment as a form of remedy against the crime"¹⁶. Whereas zemiology shows that criminalization and punishment can inflict social harms, and argues that the criminal justice system has many stages which can inflict pain in a discrete manner: defining, classifying, broadcasting, disposing and punishing the offender⁴. From this point of view the two studies appear to be taking different approaches.

Criminology propagates four theories of punishment: deterrent theory, retributive theory, reformatory theory and preventive theory. The reformatory theory is the most superior among the theories of punishment because it is compatible with the modern humanitarian ideals and seeks to eliminate the causes of and prevent crime¹⁷. According to this theory a person commits crime because of an unhappy and broken home life, poverty or the influence of bad friends¹⁸. "The emphasis under this theory is more on the person committing the crime than on the crime"¹⁹. This means that the offender must receive the right treatment, counselling or help so that he or she can become a normal part of the society again²⁰.

The reformatory theory looks beyond rectifying the crime and instead focuses on improving the conditions that may have led to the crime. Zemiology takes the same approach but with wider domain to include social harm. Hillyard and Tombs observe that the study of harm permits a much wider

investigation into who or what might be responsible for the harm done, unrestricted by the narrow individualistic notion of responsibility or proxy measures of intent sought by the criminal justice process²¹. With this perspective, the study of zemiology does not seem to be absolutely independent of criminology, rather an extension to it catering to the elements falling under the process of criminalisation and not just the crime.

Hillyard and Tombs in 'Beyond Criminology?' discuss how criminology perpetuates the myth of crime with the premise that 'crime has no ontological reality'⁴. Hulsman argues that since so many acts are dealt with under the heading of 'crime', a standard response in the form of the criminal justice punishment cannot *a priori* be assumed to be effective²². However, when once an act is committed which the society or the state by law would term as crime, an action against the same has to be taken to set an example and to prevent similar future occurrences. Criminology acts as a tool to immediate rectification, may be by instilling fear through the provision of punishment. Zemiological approach eliminates the root cause of the harm which helps in the long run, but for immediate action or for putting things back to the place they were (in certain forms of harm), an action propagated by criminology may be necessary. This brings us back to the previous argument that zemiology and criminology are interdependent as studies where zemiology focuses on the origin and the elimination of the various social harms that lead up to a crime, and criminology provides for the immediate rectification to that act of crime.

"Zemiology is preferably, insofar as a by-product of *Beyond criminology* has been the co-option of the language of social harm into criminological discourse²³. Simon Pemberton has highlighted"⁴. The potential of the social harm perspective to explain the failure of criminal justice policies and generate the space for alternative social policies which, freed from the rhetoric of law and order, can genuinely reduce the harm communities experience²⁴.

Conclusion

The study of global crimes can benefit from zemiology by understanding the structural harm in social policy context alongside the international criminal justice system. The concentration on means that caused the harm in conjunction with the outcome gives the study of global crime a wider perspective. Zemiology, the progressive 'new directions' in critical criminology, has broadened the focus of the discipline beyond a narrow emphasis on crime and its control²⁵. In a long run, zemiology's focus on welfare might provide basis for a framework, which could eliminate situations in which people feel that turning into crimes gives them more opportunities to lead a fulfilled life than making a living through licit means²⁶.

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