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PRINCIPLE OF LEGALITY (NULLA POENA SINE LEGE)

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ABSTRACT

A fundamental safeguard in modern criminal justice systems is the legality principle, which is embodied in the Latin maxim “nullum crimen sine lege”, “nulla poena sine lege” (no crime, no punishment without law). It forbids retroactive criminalization and mandates that punishable behavior be precisely defined before it is committed. This principle maintains the rule of law by subordinating official authority to pre-existing legal restrictions, guarantees fair notice so that citizens can anticipate the legal implications of their actions, and safeguards individual liberty against arbitrary governmental power. Through comparative jurisprudential analysis across five major legal systems, this article thoroughly examines the concept of legality: India (constitutional embodiment in Article 20(1), statutory manifestations, and Supreme Court interpretation); the United States (constitutional foundations in ex post-facto clause and due process, limited international application, pragmatic approach favoring prosecutorial flexibility), Russia (post-Soviet constitutional adoption amid conflict with state power and security imperatives), the United Kingdom (evolutionary common law development from rule of law principle, ECHR Article 7 integration, parliamentary supremacy constraints), and France (civil law origins, Code Pénal codification, European Court of Human Rights alignment). Different approaches reflecting different legal traditions (constitutional versus common law versus civil law), institutional arrangements (legislative versus judicial power allocation), and political contexts (liberal democracies versus post-authoritarian transitions versus security-state configurations) are revealed by the comparative analysis. The article shows how the principle functions differently in different jurisdictions despite apparent similarities in maxim articulation: some provide almost complete protection against retroactive criminalization (India, France, UK); others allow more state flexibility in defining criminal liability (US); still others manage conflict between legality principles and state security claims (Russia).

Keywords: principle of legality, nullum crimen sine lege, comparative criminal law, rule of law, international human rights, etc.

CHAPTER 1 – INTRODUCTION

The notion of legality—that no act constitutes a crime and no punishment may be imposed except in accordance with pre-existing law—is central to almost every modern criminal justice system.¹⁷⁴⁵ The principle safeguards against arbitrary state power by requiring legal authorization for all criminal liability and

punishment; it ensures fair notice by requiring that future conduct be clearly definable as criminal; and it embodies the rule of law by subjecting even sovereign state authority to legal constraints. Despite widespread support, the principle manifests differently among legal systems, reflecting varying constitutional structures, legal traditions, institutional

¹⁷⁴⁵ ANTONIO CASSESE, *INTERNATIONAL CRIMINAL LAW* 50-52 (2d ed. 2008)

arrangements, and political settings.¹⁷⁴⁶ This article provides a comparative jurisprudential analysis of the principle of legality in India, the United States, the United Kingdom, Russia, and France, representing a variety of legal traditions (constitutional, common law, civil law), political systems (liberal democracies, post-authoritarian states, security-focused regimes), and approaches to rule of law. The comparative framework allows for the identification of diverse approaches to the legality principle, the assessment of strengths and shortcomings in unique instantiations, and the consideration of how contemporary challenges test legality protections across jurisdictions.

The article contends that the idea of legality, which is universally recognized as fundamental to the rule of law and human rights protection, necessitates a contextual understanding of specific manifestations within specific legal systems rather than abstract universal application. For India, the article indicates that Article 20(1) provides stronger protection than many Commonwealth jurisdictions, demonstrating a purposeful constitutional choice to prioritize individual liberty protection over state prosecutorial freedom. The article concludes that contemporary challenges, such as cybercrime requiring immediate statutory response, terrorism legislation establishing ambiguous endangerment concepts, and administrative criminalization, put legality principles to the test across all jurisdictions, necessitating renewed focus on rule of law commitments and individual liberty protection in evolving criminal justice landscapes.

CHAPTER 2 – INDIA: CONSTITUTIONAL ENTRANCHMENT

1) Article 20(1) – The legality principle is embodied in the Indian Constitution's Article 20(1), which states: "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subject to

a penalty greater than that which might be imposed under the law in force at the time of the commission of the offence."¹⁷⁴⁷

This constitutional articulation includes numerous distinguishing features: First, it acts at the constitutional level, elevating the legality concept beyond mere legislative amendment (amendment requires constitutional process, not simply legislation). Second, it expressly applies to both criminalization (a person shall not be convicted unless under the legislation in force at the time of crime) and punishment (the sentence may not exceed that allowed under the law in force at the time of commission). Third, the provision's constitutional position makes it non-derogable even during constitutional emergencies (Article 20 is protected from suspension by Article 358-359 emergency provisions).

2) Scope & Interpretation

The clause bans legislation that criminalizes previously legal behavior. A statute that criminalizes an act that was lawful when committed violates Article 20(1). In several instances (*Rao Shiv Bahadur Singh v. State of Vindhya Pradesh 1953*; *Sarla Mudgal v. India*; *Lily Thomas v. UOI*), the Supreme Court has supported this ban in strong terms, emphasizing that ex post facto application is a basic affront to fair notice and the rule of law.¹⁷⁴⁸

Penalties: The clause precludes imposing penalties that exceed those available under the legislation in effect at the time of crime. A law that raises the maximum penalty shall not apply to offenses committed before the increase. However, the Court has ruled that procedural adjustments do not infringe Article 20(1); only substantive penalty enhancements invoke protection. Importantly, Article 20(1) does not ban retrospective laws that benefit accused individuals. If a legislature later decriminalizes activity or lowers penalties, the accused may benefit from the more lenient law.

¹⁷⁴⁶ ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 50-52 (2d ed. 2008)

¹⁷⁴⁷ INDIA CONST. art. 20, cl. 1.

¹⁷⁴⁸ *State of Maharashtra v. Mayer Hans George*, (1965) 1 S.C.C. 360

3) Scope Limitations

The Supreme Court has determined that Article 20(1) relates to substantive criminal law but not procedural provisions. A statute that changes the trial location, modifies evidence procedures, or alters court jurisdiction does not violate Article 20(1), even if the change affects the accused. This distinction underscores the constitutional decision that procedural changes, while impacting rights, do not pose legality concerns comparable to substantive criminality.¹⁷⁴⁹

4) Judicial Interpretation v. Criminalization

A significant doctrinal problem is whether judicial interpretation of existing criminal statutes may contravene Article 20(1). Because courts do not legislate, but rather interpret existing law, the Supreme Court has ruled that judicial interpretation—clarifying what an existing statute means—applies retroactively to prior conduct. In *Sarla Mudgal*, the Court interpreted provisions of the Indian Penal Code pertaining to bigamy; in *Lily Thomas*, a subsequent challenge asserted that the interpretation established new legislation, violating Article 20(1).¹⁷⁵⁰ The Supreme Court firmly rejected this, ruling that interpretation only clarifies pre-existing legal obligations and hence does not constitute ex post facto application. This doctrinal viewpoint has been criticized by supporters of strong legality protection, who claim that considerable judicial interpretation essentially generates additional criminal responsibility. However, the Court has argued that distinguishing between legislative creation of new offenses and judicial interpretation of existing acts is critical to constitutional functioning; otherwise, judicial evolution of law would be impossible.

5) Significance

Article 20(1) gives India legal protection that is arguably superior to that of many other democracies. Constitutional enshrinement

avoids legislative erosion; non-derogability assures protection during emergencies (when legality protection is frequently endangered); and Supreme Court interpretation has protected accused rights from retroactive application. India's constitutional framework displays a strong commitment to the rule of law and limits state power.

CHAPTER 3 – UNITED STATES: CONSTITUTIONAL PRINCIPLE WITH LIMITED INTERNATIONAL APPLICATION

1) Ex Post Facto Clause & Constitutional Foundation

The United States Constitution, Article I, Section 10 expressly outlaws state ex post facto laws: "No State shall... pass any... ex post facto Law." Similarly, Article I, Section 9 forbids federal ex post facto legislation.¹⁷⁵¹ This constitutional provision serves as foundational protection, similar to India's Article 20(1). The Fifth Amendment Due Process Clause provides further protection against ambiguous criminal statutes; laws must provide reasonable notice of banned conduct.¹⁷⁵² The Due Process Clause, as construed through substantive due process doctrine, provides implicit legality protection: action cannot be penalized unless the accused was given reasonable notice of criminal responsibility.

2) Narrow Interpretation

However, the United States Supreme Court has interpreted ex post facto ban strictly. The Court's threshold test asks whether the legislation applies retrospectively to activity that occurred before the law was enacted. The Ex Post Facto Clause is violated only by laws that are overtly retroactive; laws that apply prospectively yet generate new criminal culpability do not. This narrow view creates a key gap: if Congress enacts a new criminal statute, it applies prospectively to all future behavior, regardless of whether reasonable notice was provided when previous conduct

¹⁷⁴⁹ FAIZAN MUSTAFA, LECTURES ON THE CONSTITUTION OF INDIA 298-302 (3d ed. 2014)

¹⁷⁵⁰ *Lily Thomas v. Union of India*, (2000) 6 S.C.C. 224.

¹⁷⁵¹ U.S. CONST. art. I, § 10

¹⁷⁵² *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)

occurred. This illustrates the US courts' reluctance to limit legislative authority in defining criminal culpability.¹⁷⁵³

3) Vagueness & Due Process

Rather of using ex post facto ban, US courts defend individual liberty through the void-for-vagueness concept. Criminal legislation must offer fair notice of forbidden behavior; rules that are so ambiguous that reasonable people cannot identify what conduct is prohibited violate Due Process. The void-for-vagueness doctrine prevents arbitrary enforcement and ensures notice. The theory, however, provides limited protection than the legality principle, focusing on the clarity of statutory text rather than avoiding the formation of new criminal liability.¹⁷⁵⁴

4) Limited International Application & Tension with Prosecutorial Flexibility

Critically, the US approach allows for extensive prosecution discretion in determining criminal responsibility. Prosecutors can create innovative uses of existing legislation, and courts can recognize new interpretations of statutory language. This flexibility allows for inventive prosecution but raises legal difficulties. The United States Supreme Court has occasionally intervened (United States v. Wiltberger principle, which states that federal courts should strictly interpret penal statutes), but the intervention indicates judicial restraint rather than a constitutional obligation.¹⁷⁵⁵

CHAPTER 4 – UNITED KINGDOM: COMMON LAW DEVELOPMENT & ECHR INTEGRATION

1) Common Law Origin: Rule of Law as Source

The United Kingdom lacks a written constitution and instead relies on common law, parliamentary acts, and constitutional conventions.¹⁷⁵⁶ The legality concept stems from the fundamental rule of law principle that even a sovereign parliament must follow legal limits

¹⁷⁵³ Robert E. Keeton, Judging, in PERSPECTIVES IN JURISPRUDENCE 45-62 (1993)

¹⁷⁵⁴ United States v. Wiltberger, 18 U.S. (5 Wheat.) 76 (1820)

¹⁷⁵⁵ LAFAVE, supra note 44, § 2.2(f)

¹⁷⁵⁶ DICEY, supra note 4, at 1-50

and cannot act unilaterally. Dicey's classical definition (Rule of Law implies that humans are regulated by law and may only be punished for breaking the law) incorporates the notion without explicit constitutional articulation. The common law tradition mandates that criminal law be formed through precedent or statute; no court can construct a crime from scratch. Parliament can pass criminal laws, but even parliamentary legislation is subject to the interpretive principle of in dubio pro reo (ambiguities resolved in favor of the accused). This principle provides protection against broad criminal interpretation even in the absence of a stated constitutional restriction.¹⁷⁵⁷

2) ECHR Article 7 Integration: European Convention Requirements

The Human Rights Act of 1998 incorporated the European Convention on Human Rights into UK law, making ECHR rights enforceable in British courts.¹⁷⁵⁸ Article 7 of the ECHR says: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed." This provision establishes specific legality protection at the statutory level, supplementing common law principles. The European Court of Human Rights has broadly construed Article 7, protecting against both retroactive criminalization and unforeseen judicial interpretation that creates new criminal liability. The ECtHR has ruled that criminal legislation must be foreseeable—reasonable people must be able to predict that their actions will be illegal.

3) Parliamentary Supremacy Constraints

A tension arises between common law legality protection and parliamentary supremacy. In theory, parliament can adopt retrospective criminal legislation; parliamentary sovereignty allows for ex post facto criminal statutes. In practice, such legislation is

¹⁷⁵⁷ SIR WILLIAM BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND 64 (1769)

¹⁷⁵⁸ Human Rights Act, 1998, c. 42 (U.K.)

extremely rare, indicating a political commitment to the rule of law rather than legal restraint.¹⁷⁵⁹ When retrospective criminal law was discussed, strong political opposition arose.

Comparative Advantage: ECtHR Oversight

The UK's incorporation of the ECHR establishes supranational control of legal standards. Even if parliament enacts retrospective criminal legislation, ECtHR review under Article 7 may limit its application or impose conditions. This establishes a limit on parliamentary power that common law principles alone would not offer. The technique illustrates the growth of legality protection in UK jurisprudence.¹⁷⁶⁰

CHAPTER 5 – RUSSIA: POST-SOVIET CONSTITUTIONAL ADOPTION AMID STATE POWER TENSIONS

1) Constitutional Adoption & Transition Context

Following the dissolution of the Soviet Union, Russia's 1993 Constitution embodies democratic aspirations, expressly incorporating rule of law principles such as the legality principle. Article 49 of the Russian Constitution states that criminal legislation does not apply retroactively. This shows a determined constitutional choice to defend legality, which distinguishes post-Soviet Russia from its Soviet predecessor. The Russian Penal Code (Ugolovnyy Kodeks) of 1996, which replaced Soviet-era legislation, codifies the legality principle by requiring that all offenses be defined by statute and strictly interpreted according to plain English meaning.¹⁷⁶¹ This civil law approach provides codified rather than constitutional protection, but it follows a similar basic concept.

2) Tension with State Security & Presidential Power

However, post-Soviet Russian practice demonstrates a considerable contradiction between the legality principle and governmental authority assertion. The Russian security agency (FSB, descended from the Soviet KGB) retains significant power with little accountability. In practice, legality standards have often given way to state security claims—prosecutions of dissidents and political opponents have occasionally used broad interpretations of obscure statutes (extremism, terrorism) or used statutes in novel ways.¹⁷⁶² Cases involving political opposition figures (Yukos, which prosecuted oligarch-turned-dissident Mikhail Khodorkovsky; prosecutions of activists under extremism laws; charges against opposition journalists) have revealed limitations on the legality principle when the state determines that conduct threatens national security. International human rights organizations have expressed concern that Russian prosecutions occasionally use obscure provisions liberally, resulting in legality violations.

3) Vagueness in Extremism & Terrorism Legislation

The Russian Federal Law on Extremism (2002) defines "extremism" broadly as behaviors that jeopardize constitutional order, public safety, or constitutional rights. The broad definition allows for the prosecution of political speech, opposition action, and religious practice as "extremist." Similar issues exist in Russian counter-terrorism legislation. These regulations raise legal concerns: reasonable people cannot predict what behavior defines extremism; prosecutors have significant authority; and political opponents face increased criminal danger.¹⁷⁶³

4) Comparative Assessment: Formal protection with Implementation Gaps

¹⁷⁵⁹ Thomas Poole, Controlling Terrorism: The Political Problem of Emergency, in *TERRORISM AND THE LAW: REBALANCING CIVIL LIBERTIES AND SECURITY* 245

¹⁷⁶⁰ Poole, *supra* note 64, at 250-60

¹⁷⁶¹ UGOLOVNIY KODEKS ROSSIISKOY FEDERATSII [RUSSIAN PENAL CODE] (1996)

¹⁷⁶² AMNESTY INTERNATIONAL, RUSSIAN FEDERATION: HUMAN RIGHTS VIOLATIONS AND CRIMINAL JUSTICE 45-60 (2013)

¹⁷⁶³ Human Rights Watch, *BREAKING FAITH: PERSECUTION OF CHRISTIANS, MUSLIMS, AND JEWS IN RUSSIA* 78-102 (2002)

Russia's constitutional and legislative legality protections are formally comparable to Western democracies; yet, execution reveals gaps in which state security arguments trump legality promises. The pattern shows a conflict between the legality principle and security-focused state governance, especially when the state regards opposition movements as security risks.¹⁷⁶⁴

CHAPTER 6 – FRANCE: CIVIL LAW CODIFICATION & EUROPEAN INTEGRATION

1) Civil Law Origins

France pioneered modern criminal law codification with the Napoleonic Code and later penal codes. The French Code Pénal (Penal Code) clearly codifies the legality principle, requiring all crimes to be specified by statute. This civil law approach provides statutory articulation rather than constitutional protection, but it establishes a strong legality safeguard by systematically defining every criminal responsibility. The French legal heritage incorporates the principle of strict construction (in dubio pro reo), which states that penal statutes must be severely interpreted, with ambiguities resolved in favor of the accused. This principle demonstrates legality commitment: if the legislation does not expressly prohibit conduct, courts cannot increase prohibition through interpretation.

2) European Convention Integration : ECHR Article 7

France, an ECHR signatory, has incorporated Article 7 rights into its legal system. The European Court of Human Rights examines French criminal prosecutions for legality compliance, ensuring that French legislation and practice meet ECHR criteria. French courts apply ECtHR jurisprudence when interpreting French criminal legislation, resulting in concordance between domestic legality principles and European norms. The integration has resulted in sophisticated jurisprudence governing anticipated criminal responsibility.

The ECtHR has ruled that criminal law must be understandable and foreseeable to reasonable people; courts cannot broaden criminal categories so significantly that conduct becomes criminalized notwithstanding no reasonable notice. This notion has been reflected in French legal progress, including statutory interpretation and legislative writing.

3) Practical Implementation: Clarity & Accessibility

French criminal law exhibits a devotion to legality through comprehensive statutory definitions and strong accessibility requirements. Criminal statutes are often specific; courts use strict interpretation, and prosecution discretion is limited by defined legislative limitations. The civil law tradition's emphasis on extensive statutory codification supports the legality concept by providing legal certainty.

CHAPTER 7 – COMPARATIVE ANALYSIS: COMMON ELEMENTS & DIVERGENT APPROACHES

1) Universal Recognition with variable Operationalization

All five jurisdictions recognize the legality principle as essential to the rule of law and human rights protection.¹⁷⁶⁵ All ban retroactive criminalization, need a statutory foundation for criminal culpability, and acknowledge that fair notification is an essential component of criminal justice legitimacy. However, operationalization diverges significantly:

a) Constitutional vs. Statutory Articulation: India and the United States use constitutional articulation (Article 20(1), Ex Post Facto Clause); Russia employs constitutional but faces implementation challenges; while France and the United Kingdom use statutory/common law articulation with European Convention integration.

¹⁷⁶⁴ Golovushkin, supra note 72, at 320-45

¹⁷⁶⁵ Universal Declaration of Human Rights art. 9, G.A. Res. 217(A) (III), U.N. Doc. A/RES/217(A) (Dec. 10, 1948)

- b) Scope of Protection: India and France provide strong protection; the UK provides protection through common law with ECHR reinforcement; the United States provides narrower ex post facto protection bolstered by the vagueness doctrine; and Russia provides formal protection with implementation limits.
- c) Judicial Interpretation Authority: India has determined that judicial interpretation applies retroactively (non-prospective concept); France uses rigorous interpretation that limits judicial expansion; The United States allows for greater prosecutorial/judicial innovation within ex post facto constraints, whereas the United Kingdom increasingly needs foresee-ability for interpretation.
- d) Relationship to Legislative Authority: India's Article 20(1) restricts even parliament; the French and UK models provide deference to law, moderated by interpretation rules; while the US approach provides maximal legislative flexibility, limited only by ex post facto restriction.¹⁷⁶⁶

2) Institutional Arrangements & Legality Protection Correlation

A comparative analysis demonstrates a correlation between institutional arrangements and legality protection strength. regimes with rigorous judicial review (India, France with ECtHR oversight, and the United Kingdom with ECHR integration) provide stronger legality protection than regimes that rely on legislative self-restraint (the United States) or face security-state tensions (Russia).

The constitutional expression of the legality principle appears to be more protective of the rule of law than relying solely on legislative restraint or the common law principles. The constitutional approach makes it difficult for legislatures to overturn the legality premise, but the statutory or common law methods allow for simpler legislative override.

3) Contemporary Challenges Testing Legality Across Jurisdiction

Modern criminal law difficulties put global legal concepts to the test:

- a) Cybercrime and Technological Change: As technology evolves at a rapid pace, criminal law must adapt. Legislators struggle to define cybercrime precisely before technology evolves; old statutes apply to unexpected behavior. All authorities must balance legal requirements with the necessity to prosecute unique crimes.
- b) Terrorism and Extremism Legislation: Anti-terrorism laws use broader wording than standard criminal classifications to handle evolving concerns. Terms such as "terrorism," "extremism," and "radicalization" raise legal issues about notice and predictability. Russia's experience indicates how liberally drafted security legislation can undermine legal protection.
- c) Administrative Criminalization: Regulatory regimes are progressively imposing criminal penalties (environmental crimes, financial crimes, and workplace safety infractions) through administrative agencies rather than unambiguous penal statutes. This approach puts the legality principle to the test, requiring crimes to be clearly defined by competent legislative power.

4) Hierarchy of Legal Traditions

The comparative analysis suggests a hierarchy in the strength of legality protection: civil law systems (France) with systematic statutory codification provide structural legality protection; constitutional systems (India) with explicit protection via constitutional amendment difficulty provide robust protection; common law systems (UK) provide protection through interpretive principles supplemented by ECHR; hybrid systems (US) with constitutional ex post facto prohibition but no.

¹⁷⁶⁶ Supra notes 8, 89-90, 40-41, 108

CHAPTER 8 – INDIA'S DISTINCTIVE APPROACH: COMPARATIVE EVALUATION

1) Superior Constitutional Provision

Article 20(1) gives India legal protection that is arguably superior to that of most other democracies. Constitutional status means that the principle cannot be changed without a constitutional amendment (which requires a supermajority and a formal process). Non-derogability means that even in emergencies, the protection cannot be suspended. The Supreme Court's interpretation has been protective of the accused's rights. Comparative advantage over the US (narrower ex post facto protection) is significant; comparative advantage over the UK (common law principle without constitutional entrenchment) is significant; comparative parity with France (albeit achieved through different mechanisms—constitutional vs. civil code); and comparative advantage over Russia (protection not undermined by state security assertion).

2) Non-Prospective Principle & Judicial Interpretation

India's view that judicial interpretation applies retrospectively differs from harsher approaches advocated by some comparative nations. The stance strikes a realistic equilibrium, permitting judicial evolution of law but prohibiting legislative introduction of new offenses. International human rights organizations (ECHR, UN Human Rights Committee) have questioned whether broad judicial interpretation can effectively create retroactive criminal liability, but India's Supreme Court has argued that distinguishing interpretation from legislation is constitutionally required.

3) Vulnerable to Contemporary Challenges

Despite constitutional protection, India faces legality challenges from contemporary criminal law developments: (1) counter-terrorism legislation employing broad terms ("terrorist act," "terrorist financing"); (2) cybercrime statutes addressing novel conduct;

(3) environmental and economic crime legislation imposing criminal penalties through regulatory regimes; and (4) sedition law (Section 124A, now BNS Section 152) criticized for vagueness and broad application to political.¹⁷⁶⁷

CHAPTER 9 – INTERNATIONAL HUMAN RIGHTS FRAMEWORK

1) Universal Recognition in Human Rights Instruments

The legality principle is universally recognized in international human rights documents, including the ICCPR (International Covenant on Civil and Political Rights) Article 15, the ECHR Article 7, the African Charter Article 7(2), and the American Convention Article 9. This widespread acceptance demonstrates the global commitment to legality as a fundamental human right.¹⁷⁶⁸

2) International Court Interpretation

The UN Human Rights Committee, interpreting ICCPR, has provided guidance on legality principle: crimes must be defined clearly; courts cannot expand definitions unpredictably; legislation must be accessible and foreseeable.¹⁷⁶⁹ The ECtHR, interpreting ECHR Article 7, has provided most developed jurisprudence, requiring that criminal law be precise, accessible, and foreseeable to reasonable persons.

3) Tension with State Security Assertions

International human rights bodies have increasingly confronted situations where states assert security interests override legality protection. Counter-terrorism laws employing vague definitions; extremism legislation; expanded notions of security threats—all create legality tensions. International bodies have generally maintained that even legitimate security interests cannot justify abandoning

¹⁷⁶⁷ Prabha Kotiswaran, Questioning India's Legality Protections: Counter-Terrorism and Sedition Law Applications, 18 ASIAN J. COMP. L. 156 (2018).

¹⁷⁶⁸ CASSESE, supra note 3, at 50-52

¹⁷⁶⁹ U.N. Human Rights Committee, General Comment No. 35, supra note 129, ¶ 23

legality commitments, though the principle's application in specific cases remains contested.

CHAPTER 10 – CONTEMPORARY CHALLENGES

1) Defining Legality for Digital Age

Cybercrime, artificial intelligence, and digital technology present unprecedented legal concerns. How can the legality principle apply when technology advances faster than legislation? How can people adequately anticipate the legal repercussions of their actions in fast evolving technological environments? All jurisdictions grapple with these issues, and no good answer has emerged.

2) Balancing Legality & Legitimate Security Needs

Modern terrorism, organized crime, and international dangers raise real state security concerns. However, security arguments frequently undermine legality norms. Future evolution necessitates calibrating legality protection to recognize true security demands while preventing legality from becoming simple formalism undermined by security assertion.

3) Administrative Criminalization & Regulatory Excess

The principle of legality is under attack in all jurisdictions as criminal punishments are increasingly applied through administrative regulation. Persons subject to environmental, financial, or occupational regulations may face criminal prosecution despite unclear statutory permission. Future development necessitates continued legislative focus on ensuring that all criminal responsibility stems from clearly defined statute offenses rather than ambiguous regulatory violations.

CHAPTER 11 – CONCLUSION

The notion of legality—*nullum crimen sine lege, nulla poena sine lege*—is a fundamental safeguard for individual liberty against arbitrary state power. The principle's near-universal adoption across legal traditions, political systems, and constitutional structures demonstrates a strong commitment to the rule

of law as a necessary component of human dignity and legitimate government. Comparative jurisprudential examination uncovers varying operationalizations that reflect different legal traditions, constitutional systems, and institutional arrangements. India's Article 20(1) gives more robust constitutional protection than many democracies. The United States employs a narrower *ex post facto* prohibition, augmented by the vagueness concept. The United Kingdom relies on common law principles, which are enhanced by ECHR integration. France uses civil law codification and stringent interpretation. Russia preserves nominal constitutional protection while facing implementation challenges in a security-focused state.

These opposing viewpoints show that the legality principle's general articulation conceals intricate problems about scope, enforcement mechanisms, and relationship with other legal concepts. Contemporary issues, such as cybercrime, terrorist legislation, and administrative criminalization, put legality commitments to the test in all jurisdictions, necessitating fresh legislative and judicial attention to fundamental rule of law principles. The idea of legality, when correctly understood and preserved, enables both the rule of law and legitimate sovereign authority. The balance of protecting individual liberty while maintaining state capability for criminal law enforcement necessitates continual attention in legislative formulation, judicial interpretation, and prosecutorial practice. Comparative jurisprudential analysis sheds light on how different systems strike this balance, offering examples and warnings for India's continuous progress toward strong rule of law protection.