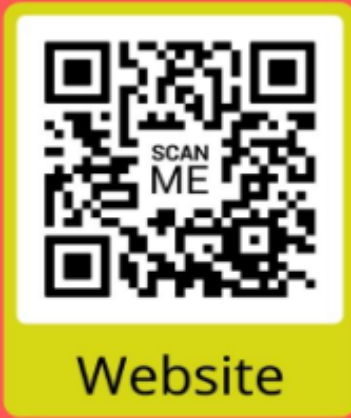


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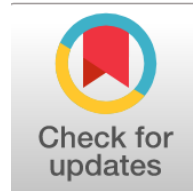
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The Preventive Role of Criminal Law in Preventing Communal Violence in Post-Conflict Societies

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Abstract

General Background: Communal violence remains a major threat to stability and sustainable peace in post-conflict societies, where unresolved identity-based grievances persist despite the cessation of armed conflict. **Specific Background:** Criminal law, traditionally punitive, is increasingly conceptualized as a preventive mechanism aimed at deterring collective violence, criminalizing incitement, and reinforcing individual accountability within fragile post-conflict environments. **Knowledge Gap:** There is a disconnection between the theoretical preventive capacity of criminal law and the practical limitations arising from weak institutions, selective enforcement, and tensions with transitional justice mechanisms. **Aims:** This study examines how criminal law contributes to the prevention of communal violence and identifies the structural and institutional constraints that limit its preventive capacity. **Results:** The findings indicate that criminal law can establish normative boundaries, deter violence through punishment, and promote individualized responsibility; however, its preventive function is conditional upon institutional independence, procedural fairness, legal certainty, and public trust, while being undermined by institutional fragility, lack of legitimacy, and competing transitional justice priorities. **Novelty:** The study integrates doctrinal and interdisciplinary perspectives to position criminal law as both a normative and institutional preventive tool within post-conflict governance. **Implications:** Criminal law should be incorporated into broader peace-building strategies that combine accountability, reconciliation, and institutional strengthening to reduce the recurrence of communal violence and support long-term rule of law.

Highlights:

- Establishes legal boundaries distinguishing collective violence from lawful expression
- Demonstrates conditional deterrence dependent on institutional credibility and fairness
- Identifies structural barriers including weak enforcement and legitimacy deficits

Keywords: Criminal Law, Communal Violence, Post Conflict Societies, Preventive Justice, Rule Of Law

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Introduction

The problem of communal violence is one of the most dangerous issues of peace and social integration in the societies that appear in the aftermath of conflict. In spite of the official end of hostilities, numerous such societies continue to have a long-standing ethnic, religious, sectarian or political resentment that can further break out into new waves of mass violence and retaliation. The consequences of such violence are not limited to the victimisation of individuals, disintegration of social cohesion, dilution of state power, and the jeopardisation of weak peace accords, especially in situations where the reconstruction of political competition takes place at a much faster pace than that of the institutions being rebuilt.¹

In this respect, criminal law has always been perceived as a system that is aimed at penalizing illegal behavior and protecting societal order by imposing penalties. However, in post-conflict situations the law is progressively forced to take a proactive role besides its punitive role. The idea of criminal law as a preventive tool is aimed at minimising the susceptibility to future harm by making preparatory acts criminal, to incitement,² collective violence deterrence, and entrenching the legitimacy of law as the main tool of settling disputes in post-conflict societies. But the effectiveness of criminal law as a preventive tool is subject to intense discussion. This insecurity is in large part due to the weakness of courts, politicisation of the police, biased delivery of justice, and the continued lack of trust of the common people to the state apparatuses which may have been involved in the abuses related to conflicts.³

Further, the issue of criminal responsibility in post-conflict settings is often faced with opposition by the transitional justice practices like amnesties, reconciliation programmes, and truth commissions⁴. Although such mechanisms can serve to promote political stability and peacebuilding, they also can ruin the deterrent effect by sending a signal to the effect that communal violence can be condoned or compromised to include larger peacebuilding goals.⁵

With such deliberations in mind, this paper examines the preventive role of criminal law towards curbing communal violence in post-conflict communities. It examines how criminal law can be used to deter or prevent such violence and appraises the structural and institutional issues which drain it of its effectiveness in preventing violence.

First: Importance of the Study

The importance of the research lies in the fact that there is increasing instances of communal violence in many post conflict societies where weak peace settlements fail to eradicate those conditions that allow the recurrence of communal violence. It is clear that communal violence poses a direct challenge to the stability and legitimacy of the society because it breeds revenge and further polarisation of groups as well as mistrust amongst communities.⁶

Moreover, the paper gains its significance due to the key role that criminal law is expected to play in strengthening the rule of law in the context of post-conflict transitions. Criminal law is a very necessary tool to the preservation of social order, discouragement of incitements and accountability. However, its preventive success relies on the reputation of the law institutions and its regularity of application. Thus, studying the preventive possibilities of the criminal law has a role to play in academic jurisprudence as well as the policymaking process that would enhance justice systems in transitional contexts.⁷

Second: Problem of the Study

The research problem will focus on the fact that the theoretical role of criminal law in preventing crime has been disconnected with the practical constraints that hinder its effectiveness in post-conflict societies. Although criminal law is supposed to help to deter communal violence and ensure accountability, most post-conflict justice systems are affected by institutional weakness, a lack of independence, and discriminatory enforcement, which negatively affects deterrence and may even make communal grievances worse.⁸

Further, reconciliation and political stability are usually of greater importance in transitional justice systems, which places criminal prosecution in a secondary role and leads to a legal problem in which accountability is conditional or partial and thus undermines the normative message of communal violence being punished. Therefore, the following two main questions will be answered during the research:

How well criminal law could prevent communal violence in post-conflict societies, and which institutional and structural limitations do not allow it to do so?

Third: Study Methodology.

A doctrinal and analytical methodology applies in this study. It is based on the analysis of the criminal law principles and the preventive justice theory, with references to the comparative legal practices as well as the international legal instruments. The study also uses interdisciplinary literature related to the post-conflict governance, transitional justice, and institutional legitimacy to understand the condition of the social and political environment in which criminal law functions.⁹

This approach to the methodology of study allows evaluating criminal law as both normative and practical institutional tool; its preventive role, however, is conditional upon the capacity to effectively enforce it, its legitimacy, and procedural fairness.

Fourth: Research Organization.

The research is broken down into two main chapters in order to achieve the goals of the research:

Chapter One addresses the conceptual and theoretical framework of communal violence and post-conflict societies, with specific focus on how the collective violence is related to preventive criminal law.

Chapter Two discusses the main preventive strategies of criminal law such as criminalisation, deterrence, prosecution, and legal certainty. It also deals with the institutional and structural barriers to the preventive power of criminal law, including selective enforcement, lack of legitimacy, institutional weakness, and conflicts with transitional justice policies.

The paper is summed up by the conclusion which reflects the main findings and provides some recommendations that may help to reinforce the preventive role of criminal law in post-conflict societies.

Chapter One

Conceptual Framework of Communal Violence and Post-Conflict Societies.

The phenomenon of communal violence is a complex legal and sociological phenomenon, which is not similar to the normal criminal behaviour. Its communal character, identity driven motives and its large scale effect in society make it a major threat to peace and stability especially in the post conflict societies. A deeper insight into communal violence and the nature of post-conflict situations is essential to the assessment of the deterrent effectiveness of criminal law. In this regard, this chapter critically examines the communal violence concept, the character of the post-conflict societies, and theoretical premises of criminal law prevention in this context.

First Section

The Idea and Legality of Community Violence.

Communal violence is the violence involving members of one social group against members of another, where group identity is used as the most important factor in mobilisation and targeting. This identity can take the ethnic, religious, sectarian, tribal, or political identities. In contrast to personal criminals and offenses that occur because of self-interest, communal violence aims at intimidating, excluding or dominating whole communities, hence generating a collective harm that extends beyond the immediate victims once they occur ¹.

Juridically, communal violence poses the criminal law with significant challenges. Whereas the traditional criminal law is based on the idea of the individual responsibility, communal violence is often carried out in a group and may involve coordination, incitement, and the possibility of direct engagement. This is making the distinction between individual and collective responsibility blurred and criminal responsibility more difficult to attribute criminal liability as a result. ²

Further, communal violence is usually supported with hate speech, propaganda, and incitement that prepares the social situation to violence. These pre-emptive acts help in the normalisation of violence and a mass involvement making post-hoc punishment to be an inadequate preventive action. As a result, the criminal law should not only deal with immediate offenders but also with the individuals who instigate, plan or abet the communal violence ³.

In these ways, communal violence ought to be seen as a manifestation of collective criminality that requires a preventive legal system to be in place to step in and prevent the situation before it can get out of control.

Second Section

The Post-Conflict Societies and the Conditions of the Occurrence of Communal Violence Recurrence.

The typical features of post-conflict societies are formal premise of armed conflict but are still severely impacted by the societal, political, and institutional consequences. All these factors result in weakening of state authority, low level of social trust and poorly functioning legal institutions that attract the recurrence of communal violence in these societies ⁴.

The most noticeable aspect of the post-conflict situation is that grievances remain unresolved. In the communities where violence, discrimination or exclusion has occurred in conflict, injustice can remain noticed and this leads to resentment and insecurity. In case these grievances are not resolved in plausible legal and political means, they can be rekindled and turned into a fresh communal violence ⁵.

Moreover, the rapid political transitions are often experienced in the post-conflict societies. Political competition can lead to the instrumentalisation of communal identities when the reintroduction of political competition is done without sufficient reconciliation or institutional reform. Group-based narratives can be used by political actors to gain power and hence the probability of collective violence increases as well ⁶.

Moreover, in the post-conflict environment, the legal institutions of a state are frequently severely at fault. The role played by courts and law enforcement agencies may be viewed as biased or covert because of their involvement at point of conflict.

Such a lack of confidence undermines the deterrent impact of criminal law; since individuals and groups might not have faith that criminal law mechanisms will offer a fair and effective form of accountability⁷.

Therefore, the repetition of communal violence in the post-conflict societies is directly associated with the lack of institutional strength and structural instabilities as well as unaddressed social divisions.

Third Section

Theoretical Underpinnings of Criminal Law Prevention during Post-Conflict.

Traditionally, criminal law is used to ensure social stability by use of punishment and deterrent. Its preventive role, however, becomes especially important in the post-conflict societies. Preventive criminal law aims to curb the risk of future harm through creating a legal space, deterrent effect in violent behaviour and reaffirming of the principle of individual responsibility⁸.

The preventive purpose of the criminal law functions both at the instrumental level and on the symbolic level. At an instrumental level, criminal law will eliminate violence, by criminalising communal violence, incitement, and involvement in acts of violence, and thus early legal intervention. Symbolically, it confirms the rule of law by sending the signals that group retaliation is not tolerated and that the conflicts must be discussed in the courts.

One of the most important preventive roles of the criminal law in the post-conflict societies is the substitution of the collective blame with the criminal one. There are many ways in which communal violence is justified based on the idea of collective victimhood or revenge. With the purpose of ensuring that people are held accountable to the actions they commit, criminal law aims at preventing situations where entire communities can be punished as a block, thus ending retaliation cycles¹⁰.

However, the proactiveness of the criminal law is conditional. Criminal law must be applied impartially, legally unambiguously, and in an institution that is legitimate otherwise its prophylactic effect might be compromised. Criminal prosecution can fuel complaints in these situations instead of stopping violence¹¹.

Based on this, the criminal law prevention in the post-conflict societies should be perceived as a relational process that is based on institutional independence, procedural fairness, and public trust. It is only in this case that criminal law can play a constructive role in ensuring that communal violence is prevented.

Chapter Two

Criminal Law Mechanisms in Prevention of Communal Violence and Implementation Problems.

Criminal law plays a central role in the process of controlling communal violence in a post conflict society and is neither only a tool of punishment but a body of preventive measures which are aimed at reducing the likelihood of further communal violence. These processes include criminalisation of communal violence/incitement, preventive punishment, believable prosecution and adjudication and strengthening of legal predictability and personal accountability. However, the effectiveness of these devices is limited by institutional and structural factors that often characterize post-conflict situations.

In this regard, this chapter has been split into two major parts. The former part gives a clear explanation of the major preventive measures in which criminal law aims at preventing communal violence. The second part explores the institutional and structural limitations which deter the preventive ability of criminal law.

First Section

The Preventative Criminal Law.

Criminal law is an attempt to ensure communal violence is prevented by use of a network of coordinated systems that are designed to hinder the dynamics that would lead to the rise of collective violence. These processes go beyond post hoc punishment but its focus is on early intervention, deterrence, responsibility and fortification of lawful behavior as a normative standard.

Subsection One

Criminalisation of Communal Violence and Incitement.

The most crucial and fundamental step in preventive legality is the criminalisation of communal violence. Through the clear definition of collective violence, participation and incitement as criminal offences, criminal law aims at creating a clear normative framework that distinguishes legal political expression and unlawful collective violence. This distinction is particularly important in post-conflict situations, in which the violence can be justified by the culture of self-defence, protection of national identity, or struggle against the perceived threat.¹

Furthermore, incitement is a decisive factor to the increase of the communal conflict. Hate-speech, propaganda, and revenge are very often used as preliminary actions to prepare the communities and normalise violence. As a result, incitement is increasingly being identified in international and comparative criminal law as punishable where it leads to a real threat of violence.² In weak post-conflict environments, an incitement may be a prophylaxis, by preventing the cycle of mobilisation before violence is too extensive to handle.³

The preventative quality of criminalisation, however, depends on how accurately, proportionately, and in a consistent manner criminal law definitions are consistent with the rule of law. General criminal provision can end up being used wrongly as instruments of political repression and hence eroding legitimacy and increasing grievances.⁴ To that end, preventive efficacy of criminalisation depends on the legal clarity and proportionality.

Subsection Two

Punishment is used to deter an unwanted behavior by a person or community.

Deterrence is one of the key preventive roles of a criminal law. The logic behind the deterrence theory is that the fear of being punished would deter individuals and organizations to engage in criminal activities by increasing the price of criminal behavior. Under communal violence the deterrence is at the individual level and collective level whereby communal based violence will not be condoned and receive legal penalties.⁵

Deterrence can take two approaches; the general deterrence approach, whereby the deterrence seeks to deter the whole society, by showing that criminals will face punishment and the special deterrence approach which seeks to deter the offender who has already been convicted. The success of each of the two forms hinges on the accuracy and regularity of enforcement. Prosecutions which are infrequent, slow, or random undermine the deterrent message and criminal law is deprived of its effectiveness as a deterrent.⁶

Also, too much punishment is counter-productive. Sentences that are seen as either politically driven or unfairly distributed may strengthen group victimization and create resentment therefore enhancing the chances of the new violence.⁷ Deterrence should therefore be matched by fair proportional punishment and procedural justice in order to maintain legitimacy.

Subsection Three

Prosecution, Judicial Credibility and Preventive Accountability.

The validity of prosecution and adjudication is the core determinant of the preventive efficacy of criminal law. The legal norms cannot work when they are not reinforced by impartial institutions that will be able to provide justice on time and equally. The prosecution services and the courts in post-conflict societies have an important prophylactic role in that they change the abstract legal rules into plausible expectations of accountability.⁸

In particular, timely prosecution is very important. Delay of justice is not just a setback to deterrence, but can also lead to retaliatory violence by creating an impression of impunity. On the contrary, regular and open prosecution can help the society regain trust and discourage the individual to take the law in their own hands.⁹

However, in the post-conflict situations, prosecutor discretion is usually limited by the political factors. The act of deciding whether or not to grant immunity, delay prosecution, or discriminate based on particular groups can undermine the preventive goal of criminal responsibility. These practices lead to responsibilities hierarchies and contribute to the possibility of negotiating instead of punishing violence.¹⁰ In this respect, the preventive effect of prosecution is based on the institutional independence and procedural fairness.

Subsection Four

Legal Certainty and Individualised Criminal Responsibility.

Individualised responsibility is one of the greatest preventive roles of criminal law. Criminal law attempts to replace a collective responsibility with a personal one so that individual wrong-doers are held accountable instead of the whole society. This role is especially acute in the post-conflict societies, in which the communal bloodshed is usually justified by the joint accounts of vengeance.¹¹

Legal certainty increases prevention in the sense that, individuals and groups are able to predict the legal implications of their actions. Definitive descriptions of crimes, uniformity in the application of punishments and certainty of execution enhance the normative aspect of criminal law and enhance deterrence. Contrarily, indistinct criminal laws and unreliability in their enforcement undermine law and promote deviance.¹²

Therefore, the prevention of the law and individual responsibility are crucial elements of preventive criminal law under post-conflict conditions.

Second Section

Institutional and Structural Constraints of Criminal Prevention.

Despite the provision of valuable prevention mechanisms by the criminal law, structural and institutional obstacles tend to undermine its functionality in the post-conflict society. Such limitations not only decrease efficiency in its operation but also the legitimacy that deterrence is based on.

Subsection One

Institutional feebleism and selective application of the law.

Institutional fragility is a widespread hindrance to the prevention of criminal law in post-conflict societies. Military conflicts generally undermine the judicial system, undermine professionalism in law-enforcement institutions, and subject prosecutors and courts to political interference. Therefore, criminal law can be used in an irregular or discriminative manner.¹³

Selective enforcement is especially dangerous in the communal context. In case prosecutions are used against one group and the rest are overlooked, it tends to be perceived as a tool of domination rather than justice, thus criminal law. Empirical research implies that perceptions of bias significantly contribute to aggravating grievances and can lead to the new waves of violence.¹⁴ as such criminal prevention is not only about having legal norms but about the decent and consistent application of these norms.

Subsection Two

Legitimacy, Public Trust, and Obeying Criminal Law.

Preventive criminal law assumes a minimum of criminal trust in the law institutions. Nevertheless, there are so many post-conflict societies, where a high level of mistrust towards state institutions exists because of historical oppression, corruption, or discriminatory rule. In a situation whereby criminal law is seen as illegitimate obedience comes as a result of fear or opportunism instead of obedience to law. This kind of compliance is volatile and not able to maintain the prevention over a long period.¹⁵

Socio-legal studies have indicated that people tend to comply with the law when they think that legal authorities are fair and they have some morality.¹⁶ Procedural justice thus plays a critical role in deterring and ensuring voluntary obedience, whereby, the criminal law would not be able to stop community violence, in spite of stringent sanctions.

Subsection Three

Conflict of interest Transitional justice versus criminal prevention.

The second major structural limitation is the conflict of criminal prosecution and transitional justice systems. The amnesties, truth commissions, or reconciliation, are common post-conflict societal strategies aimed at supporting the political stability in the society. Although such mechanisms can be used in the process of peace-building, they can also dilute deterrence by sending the signals that violence is akin to forgiveness or political bargaining.¹⁷

Normal ambiguity is often created by the presence of criminal justice and transitional justice. However, criminal law can lose its preventive power when the concept of accountability is made conditional or symbolic. Survey studies on post-conflict transitions suggest that the lack of effective punitive mechanisms against collective violence can become an entitlement to impunity, especially in organised groups which can be mobilised again.¹⁸

Therefore, policies focusing on transitional justice should be well adjusted with criminal responsibility to prevent prevention of legality.

Subsection Four

Structural Inequality and the Limits to Legal Deterrence.

Lastly, socio-economic as well as political disparities are significant obstacles to prevention of criminal law. Marginalisation, exclusion and unequal access to resources are some of the factors that often contribute to communal violence. In the crime deterrence paradigm, rational actors react to penalties; nevertheless, in cases where violence is driven by perceived existential threats or chronic injustice, the legal penalty can have a weak effect.¹⁹

Additionally, the institutional and social reforms should be considered more globally instead of depending on the punitive approach. Criminal law is simply inadequate to deal with the structural causes of communal violence, including poverty, political exclusion, unequal access to justice, etc.²⁰ Criminal law must be considered an essential but incomplete part of an overall peace-building approach.

Conclusion

This chapter has demonstrated that criminal law has got great preventive measures that can be used to help curb communal violence within post-conflict societies. Criminal law could provide normative limits by criminalisation, deterrence, prosecution and the strengthening of the individualised responsibility to prevent collective violence.

But it has also been established in the chapter that the preventive value of criminal law is also conditional. Deterring is weakened by institutional fragility, selective enforcement, lack of legitimacy/tensions against transitional justice and structural inequalities, which can weaken compliance. In this regard, it should be noted that criminal law can never be an independent measure of communal violence but rather it should act under a bigger institutional and peace-building measure which strengthens legitimacy, fairness, and social stability.

The current research has engaged in an analysis of the preventive role of criminal law in the abatement of communal violence in post-conflict societies and has focused on the law working mechanisms whereby the criminal law is able to prevent communal violence and the institutional limitations which limit its preventive effect. The discussion has shown that communal violence is a unique variant of collective criminality, which has a strong root in identity-related grievances and post-conflict instability; hence, its prevention requires more than retribution and the legal framework that can intervene on a timely manner, deter such acts, and remind individual responsibility.

The study posits that the criminal law can play a significant role in preventing the occurrence of communal violence by criminalising collective violence and incitement, the preventative effect of punishment and the development of a reputable prosecution and adjudicated process. The symbolic role of criminal law is also crucial in ensuring the rule of law and that social reasoning should be restored to its proper path where collective retaliation is replaced by individual criminal responsibility. However, the preventive ability of the criminal law is provisional and significantly relies on the validity, self-sufficiency and effectiveness of the legal institutions.

The paper also demonstrates that post conflict societies tend to face structural and institutional issues that undermine the preventative role of criminal law. Poverty of the judicial systems, selective application, inability to be trusted by the population, and political interference in the enforcement undermine the deterrence and lower the compliance levels. Besides this, transitional justice mechanisms, though arguably indispensable to the reconciliation and stability, can also sabotage the principles of preventive legality by creating incentives towards impunity or by diluting the accountability of acts of collective violence. Equally, structural disparities and political exclusion reduce the effectiveness of deterrence since communal violence is often triggered by complaints that cannot be addressed by criminal penalties alone.

In line with this, criminal law cannot be considered as an independent remedy to communal violence in post-conflict societies. Central to this, it should be functioning as part of a wider peace-building process that enhances institutional credibility, procedural fairness and deals with socio-political inequalities that lie beyond it. Only then can the criminal law be an effective prevention tool that can help maintain sustainable peace and minimize the chances of the re-escalation of the communal conflict.

First: Findings (Results)

The results of the analysis made during the course of this research are as follows:

The collective violence is a severe danger to the peace and stability of post-conflict societies since such violence is based on identity-related grievances and causes collective damage rather than individual damage.

Criminal law also has an important preventative role in post-conflict situations so that in addition to creating legal boundaries between permissible expression and criminal collective violence they also prevent mobilisation by encouraging incitement.

Criminalisation of communal violence and incitement is the most crucial preventive tool because it offers a legal tool through which action can be taken before violence immerses.

Deterrence is one of the primary preventive purposes of criminal law, but deterrence only works in cases where the punishments are certain, have uniformity, and the punishments are viewed as valid by the society.

The only difference is that prosecution and adjudication credibility are decisive factors in the preventive efficiency of criminal law, as legal rules cannot rule out the impartial enforcement without impartial and timely enforcement.

Criminal law is a way to prevent through strengthening individualized criminal responsibility, which is essential in interrupting a cycle of shared blame and retribution that is typical of post-conflict societies.

Institutional vulnerability, selectivity, and politics are some of the biggest obstacles to crime prevention through the criminal law and can augment complaints rather than curb violence.

Preventive compliance requires structural preconditions such as the trust and legitimacy of the public. Devoid of procedural fair play and institutional credibility, criminal law will have lost its deterrent power.

Transitional justice can be at odds with criminal prevention when they create conditional accountability or impunity

expectations, thus undermining the crime deterrence effect of criminal law.

Criminal law is not enough to avert communal violence since structural inequalities, political marginalisation, and socio-economic marginalisation are some of the greatest contributors of collective violence.

Second: Recommendations

Due to the results achieved in the present study, the following recommendations will be suggested:

Clear and precise legal provisions criminalising communal violence, participation and incitement must be adopted by the post conflict legislatures and such should be proportionate and in line with the rule of law.

The reforms must be made to strengthen criminal law enforcement institutions especially prosecution services and courts which are to be independent, professional and not at all politicized.

The judicial processes must be carried out with transparency and fairness to contribute to an increased level of trust in the population and strengthen the legitimacy, since procedural justice is one of the key requirements of long-term preventive adherence.

Prosecution policies need to be uniformed when dealing with communal groups so that there is no discrimination when it comes to the enforcement and to avoid the accusations of discrimination that can stir up doubts and bring an eruption of re-violence.

Transitional justice must be synchronized with criminal accountability systems in order to make sure that reconciliation does not negate deterrence and naturalize impunity.

The criminal justice approaches must be part of the general peace-building policies that tackle the structural inequalities, political marginalisation, and social exclusion because they are still major causes of the communal violence.

Preventive monitoring and early intervention systems should be introduced in post-conflict societies, such as control of hate speech and incitement, but ensuring that the fundamental freedom of expression is not compromised.

There should be the incorporation of international cooperation of the law and comparative experiences to reinforce domestic criminal law in areas particularly incitement, organised collective violence as well as accountability of the mass crimes.

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