

ASSESSING THE APPLICABILITY OF BROKEN WINDOWS THEORY IN INDIA

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Abstract

The Broken Window Theory was proposed by American political scientist, James Wilson and American criminologist, George Kelling in 1982 to revolutionise the policing administration. According to the notion, crime is inextricably linked to the social order. The Broken Windows thesis advocates that small transgressions should be reduced in order to lessen the frequency of severe, ferocious crimes. This article contends that lessons learned from broken window policing can aid in the deterrence of serious crimes. The author argues that existing restrictions focus on small transgressions, giving them the same weight as serious offenses.

The Broken Window does not imply a social disorder, necessarily. The Broken Window can be used as a metaphor for minor infractions that must be corrected before they worsen the situation. Petty infractions should be treated with zero tolerance. Sexual harassment should be taken seriously, instead of being normalized and condoned by society. Taking subtle offences seriously helps to prevent gender crimes in the long run. Similarly, the Motor Vehicle (Amendment) Act, 2019 demonstrates how, by penalizing minor offenses, accidents and fatalities can be reduced. Therefore, maintenance of order is achieved through the elimination of social disorders.

Keywords: Broken Window Theory, Policing, Petty Infractions, Order Maintenance and Motor Vehicle Act.

INTRODUCTION

The Broken Window Theory is an archaic criminological theory that the author has reviewed to examine the theory's application in India. It examines the different dimensions of the proposed hypothesis and how it might be modernized and used to reduce or eliminate crime in the contemporary world. Part I delves into the Broken Window Theory, which was proposed in 1982. This approach has also been used by law enforcement agencies in New York to improve policing and community safety. The article then outlines how a social disorder in

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society might lead to a horrific crime if the broken windows are not repaired or replaced within a reasonable time frame. There should be zero tolerance for petty wrongdoings.

Part II emphasizes that this theory was developed primarily for New York City, but this section examines its relevance in an Indian context. It substantiates how subtle crimes such as sexual harassment should be eliminated in order to eliminate greater crimes such as rape, and how small traffic offenses should be strongly penalized in order to eliminate accidental deaths. Corruption is also a “broken window” which needs to be fixed for the maintenance of order in the community. Therefore, minor crimes and disturbances should not be treated lightly, but rather harshly through a zero-tolerance policy.

REDUCTIONISM OF THE BROKEN WINDOW THEORY: A STITCH IN TIME

Numerous criminological theories have been proposed over the years to prevent heinous crimes from being carried out by perpetrators. Concerns have been expressed by society, politicians, and the media about the pervasiveness of violent crimes in the community.² Broken Window Theory (*hereinafter* referred to as “**BWT**”) is a criminological theory³ proposed by George Lee Kelling (*hereinafter* referred to as “**Kelling**”) and James Q. Wilson (*hereinafter* referred to as “**Wilson**”).⁴ BWT was majorly proposed for New York and the administration of New York City. “Broken windows” is used as a metaphor to indicate that “nobody cares” about this neighbourhood.⁵ The image of broken windows demonstrates how areas may deteriorate into disarray and even criminality if they are not properly maintained.⁶ Kelling and Wilson proposed that “that if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. [...] [O]ne unrepaired broken window is a signal that no one

² GEORGE L. KELLINGS AND CATHERINE M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* 1 (Simon & Schuster, 1996).

³ Prashan Ranasinghe, *Jane Jacobs’ framing of public disorder and its relation to the ‘broken windows’ theory*, 16(1) *THEORETICAL CRIMINOLOGY* 63, 63 (2011).

⁴ James Q. Wilson and George Kelling, *Broken Windows*, *THE ATLANTIC* (March 1982) <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> (last visited June 01, 2021). *See also*, U.S. Dep’t. of Justice, Office of Justice Programs, National Institute of Justice, George L. Kelling, “Broken Windows” and Police Discretion, Foreword iii (1999).

⁵ MICHAEL MORAN, MARTIN REIN AND ROBERT E. GOODIN (eds.), *THE OXFORD HANDBOOK OF PUBLIC POLICY* 22 (Oxford University Press, 2006).

⁶ GEORGE L. KELLINGS AND CATHERINE M. COLES, *Supra* note 1 at Foreword xv.

cares, and so breaking more windows costs nothing”.⁷ If the broken conditions are not fixed in a reasonable amount of time, it might be assumed that the area is socially dysfunctional.⁸

Punishing minor infractions may lower crime by delivering an unambiguous message of intolerance to further criminality and vandalism. During his mayoralty, "Rudolph William Louis Giuliani" used Wilson's BWT approach to crime deterrence.⁹ For instance, the “quality of life” initiative by the Police Department was based on BWT that small offences like public urination, graffiti, vandalism, and so on were heavily policed.¹⁰ Kelling and Wilson had anticipated that police could help to combat such incivilities by asking the troubled residents and inhabitants what conditions bother them. It will be addressed by police officers within a reasonable time like abandoned arenas can be cleaned and repaired.¹¹

A. Disorder v. Crime

Wilson and Kelling proposed the idea of social disorder, which encompasses loitering, street prostitution,¹² abandoned vehicles, and other activities that Albert Reiss referred to as "soft crimes."¹³ Gambling and drinking might result in robbery¹⁴ which is an aggravated offense.¹⁵ The crime is a "manifestation" of social order conspicuously whittled away and not revived actively.¹⁶ Wilson and Kelling were not the first individuals to bring out the adverse repercussions disorder may have on communities, but the first to indict disorder as the cause of crime.¹⁷

B.Zero Tolerance

⁷ James Q. Wilson and George Kelling, *Supra* note 3.

⁸ RALPH B. TAYLOR, *BREAKING AWAY FROM BROKEN WINDOWS: BALTIMORE NEIGHBORHOODS AND THE NATIONWIDE FIGHT AGAINST CRIME, GRIME, FEAR, AND DECLINE* 98 (Westview Press, 2001)

⁹ Christina Sterbenz, *How New York City Became Safe Again*, BUSINESS INSIDER (June 01, 2021, 12:08 PM) <https://www.businessinsider.in/politics/how-new-york-city-became-safe-again/articleshow/45354616.cms>.

¹⁰ Andrew Golub, Bruce D. Johnson, and Angela Taylor, *Quality-of-life policing Do offenders get the message?*, 26(4) POLICING 690, 690 (2003).

¹¹ RALPH B. TAYLOR, *Supra* note 7 at 100.

¹² Wesley G. Skogan, *Broken Windows: Why—And How—We Should Take Them Seriously*, 7(2) CRIMINOL. PUBLIC POLICY 195, 195 (2008).

¹³ *Ibid.*

¹⁴ Robbery is a serious offense punishable by up to ten years in prison, with the sentence being increased to fourteen years if committed between dawn and sunset. *See*, Indian Penal Code, 1860, § 392, No. 45, Acts of Parliament, 1860 (India).

¹⁵ Wesley G. Skogan, *Supra* note 11 at 196

¹⁶ Christoph Engel et. al., *First impressions are more important than early intervention: Qualifying broken windows theory in the lab*, 37 INT'L REV. L. & ECON. 126, 126 (2014).

¹⁷ Jacinta M. Gau and Travis C. Pratt, *Revisiting Broken Windows Theory: Examining the Sources of the Discriminant Validity of Perceived Disorder and Crime*, 38 J. CRIM. JUSTICE 758, 758 (2010)

BWT has been widely used in criminology to justify “zero tolerance” for petty infractions.¹⁸ However, initially the concept of zero tolerance wasn’t a part of BWT. During the mayoralty of Rudolph Giuliani, there was emphasis on having order in the community and zero tolerance was linked to BWT from there on.¹⁹ However, law enforcement agents should not abuse zero tolerance or aggressive order maintenance because this would result in an authoritarian and totalitarian regime. Zero tolerance advocates favouring the rights of citizens and victims over the rights of criminals.

CONGRUENCE OF THE BROKEN WINDOW THEORY IN THE INDIAN CONTEXT

The BWT theory of policing, which argues that punishment for petty crimes symbolizes intolerance towards barbaric and heinous offences.²⁰ India has not implemented this approach. The “social disorder” and “incivility” in India can be prevented if the theory is applied. Given India's massive population and exponentially rising crime rate, the first step in preventing serious crime is to jettison minor offenses that are easily observed.

Sexual Harassment v. Rape

The BWT was developed to target social disorders, but broken windows can also be used as a metaphor for minor crimes. It implies how minor offenses might inevitably serve as a catalyst for more significant offenses. While rape²¹ and sexual assault are more conspicuous and

¹⁸ Christoph Engel et. al, *Supra* note 15 at 127.

¹⁹ Katharyne Mitchell, *Ungoverned space: Global security and the geopolitics of broken windows*, 29 POLITICAL GEOGRAPHY 289, 290 (2010).

²⁰ Joseph S. Fulda, *The ‘Broken Windows’ Theory and The New York Experience Reconsidered*, 30(1) ECONOMIC AFFAIRS 101, 101 (2010).

²¹ A man is said to commit "rape" if he- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:- First.-Against her will. Secondly.-Without her consent. Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Fourthly.-With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly.-With or without her consent, when she is under eighteen years of age. Seventhly.-When she is unable to communicate consent. Explanation 1. - For the purposes of this section, "vagina" shall also include labia majora. Explanation 2. - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by

prevalent kinds of gender-based violence against women, the more nuanced issue of sexual harassment is frequently neglected, despite the fact that it can be more severe. The culture of normalizing sexual harassment²² and male dominance by giving it a pass and stating it occurs in every profession, encourages sexual predators to prey on women's vulnerability. Furthermore, because of the high evidentiary standards necessary in criminal justice, it may be difficult to distinguish between fake cases and actual instances that cannot be proven owing to a lack of evidence. This could have a chilling impact and silence the victims. If sexual harassment²³ and minor sexual crimes are averted, severe crimes such as rape can be prevented. For example, the #metoo movement²⁴ has put dread in the minds of those who take the exploitation of women in the office while simultaneously liberating women from the constraints of terror that prevented them from confronting workplace sexual harassment.

The Motor Vehicles (Amendment) Act, 2019

Policies have transitioned from implementing “community control” to augmenting “individualism”.²⁵ This advancement of individual liberty has resulted in the emergence of minor crimes that have progressed into egregious and barbaric offences. J.S. Mill’s harm principle states

As soon as any part of a person’s conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be

the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1. - A medical procedure or intervention shall not constitute rape. Exception 2. - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. *See*, The Indian Penal Code, 1860, § 375, No. 45, Acts of Parliament, 1860 (India).

²² Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem. *See*, Vishaka & Others v. State of Rajasthan & Others AIR 1997 SC 3011, para 12.

²³ “Street harassment has been insufficiently recognized as an offense of violence against the person, rather than merely an unattractive symptom of urban disorder. [...]street harassment carries with it the threat of sexual violence of which rape is the ultimate manifestation. *See*, Erin Sheley, A Broken Windows Theory of Sexual Assault Enforcement 108(3) JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, 455, 489 (2018).

²⁴ The #meToo movement, it originated from activist Tarana Burke. Burke started the movement in 2007 and used the term “metoo” to express solidarity with girls and women who experienced sexual assault. *See*, Elizabeth C. Tippet, *The Legal Implications of the MeToo Movement*, 103 MINNESOTA LAW REVIEW 229, 231 (2018).

#metoo movement has moved beyond the social media and are being taken to the streets, where women are rallying to protest against sexual harassment demanding the implementation ‘zero tolerance policy’ against sexual harassment at the workplace. Although, sexual harassment is tantamount to women but #me too movement is not restricted to women facing sexual harassment alone, it is also about those powerful women preying on their subordinate men or a homosexual man /woman preying on another man/woman in his/her office or elsewhere under the shields of their power. *See*, Dr Rituparna Bhattacharyya, #Metoo Movement: An Awareness Campaign, 3(4) INTERNATIONAL JOURNAL OF INNOVATION, CREATIVITY AND CHANGE 1, 4 (2018).

²⁵ GEORGE L. KELLINGS AND CATHERINE M. COLES, *Supra* note 1 at Foreword xiv.

promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself.²⁶

Thus, if an individual's liberty causes harm to another individual, it must be constrained and circumscribed. J.S. Mill's harm principle is an "absolute" defence of individual (liberty) rights against utility-based considerations.²⁷ Sometimes, individual liberty results in "social anarchy". For instance, if an individual notices someone trying to surpass them, they instantaneously overtake them, which sometimes results in on-the-spot death. The individual committed an offence by driving recklessly and dangerously, and if this could have been avoided, the accident and death may have been averted entirely. If the broken windows are fixed, it helps to prevent more serious crimes.

Accidents have tremendously affected many lives in India over the years, and in order to improve road safety, the Indian Parliament passed the Motor Vehicle (Amendment) Act, 2019.²⁸ The penalties for petty offences like not providing way to an emergency vehicle, over speeding, faulty roads, vehicle without a permit, and drunk driving were increased almost to 10000 rupees to create a deterrent effect. The objective of the Act was to reduce fatalities, and mortality in road accidents decreased by 9% in the first two months of the new Motor Vehicles Act.²⁹ In an empirical research conducted by Prakash K. Sasmal and others, it was concluded that

New motor vehicle amendment act of 2019 has reduced the number of trauma victims presenting to the emergency department of our institute. There is also a decrease in injury severity score as well as polytrauma compared to the pre-implementation months. The number of helmet users has risen, and more drivers are abstaining from alcohol than previously. The adolescent drivers (<18 years) have also reduced significantly. These signals towards a positive impact on road traffic accidents and early success of this new law.³⁰

²⁶ JOHN GRAY AND G.W.SMITH (ed.), J.S.MILL ON LIBERTY IN FOCUS 90 (Routledge, 1991).

²⁷ *Id* at 2.

²⁸ Motor Vehicles (Amendment) Act, 2019, No. 32, Acts of Parliament, 2019 (India).

²⁹ Mukesh Rawat, *Deaths in road accidents fell by 9% in 2 months of new Motor Vehicles Act: Govt*, INDIA TODAY (November 21, 2019, 6:52 PM) <https://www.indiatoday.in/india/story/new-motor-vehicles-act-reduced-road-accidents-in-first-2-months-1621314-2019-11-21>.

³⁰ There was a 41% drop in road traffic accident victims post Motor Vehicle Act amendment implementation. See, Prakash K. Sasmal, *The effect of 'THE MOTOR VEHICLES (AMENDMENT) ACT, 2019' on the clinico-epidemiological profile of road traffic accident patients presenting to a tertiary care trauma centre in Bhubaneswar*, 9(7) JOURNAL OF FAMILY MEDICINE AND PRIMARY CARE 3682, 3686 (2020).

Corruption

According to Mr. Wolfensohn “[c]orruption is a cancer. Corruption is the greatest eroding factor in a society”.³¹ Corruption includes acts such as nepotism, stealing, taking bribes and fraudulent activities, in addition to the misappropriation of resources for personal enrichment.³² Corruption is a “broken window” that needs to be fixed for social order, harmony and the welfare of society as corruption is disorder.³³ The acceptance of a bribe by a public official signals that the administration is apathetic about the “welfare” and that disorderly behaviour will be tolerated in society.³⁴ Corruption is a social disorder that reinforces the notion that government officials are deceitful, and corrupt leaders engender distrust.³⁵ For instance, police corruption clearly signals that people with wealth and muscle power can do serious crimes and get away with it. This provokes them to do serious crimes without the fear of being caught.

CODA

BWT rests on the premise that social disorders must be remedied before they promote serious and significant crimes. If the broken windows remain broken for a long time, it means nobody cares and the community is considered unsafe. In the Indian context, the BWT theory has been shown to be effective in reducing motor vehicle accidents. Further, it helps to reduce the likelihood of more gender crimes. If street harassment and sexual harassment in the workplace were prevented, it would instil fear in the minds of sexual predators and signals intolerance. The author concludes by stating that the BWT should be introduced into Indian Criminal Jurisprudence, considering the high crime rates and the accused-centric justice system.

³¹ Roger P. Alford, *A Broken Windows Theory of International Corruption*, 73 OHIO ST. L.J. 1253, 1254 (2012).

³² 2 ÖZER ÖZÇELİK (ed.), *STUDIES ON INTERDISCIPLINARY ECONOMICS AND BUSINESS* 161 (Peterlang, 2019).

³³ Roger P. Alford, *Supra* note 30 at 1255.

³⁴ Roger P. Alford, *Supra* note 30 at 1256.

³⁵ Roger P. Alford, *Supra* note 30 at 1258.