Revisiting The Criminal Law Amendment Process Through The Prism of Principles Guiding The Criminal Justice System

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ABSTRACT

The substantive criminal law has witnessed frequent changes at the hand of the Parliament in the recent past. However, the changes made by the Parliament through criminal law amendments have not been received well by the criminal justice system of the country. With many jurists labelling these changes as inadequate and misplaced, it is important to identify the basic principles of criminal law which should guide the process of drafting an amendment in the criminal law. This paper will focus on the importance of planned changes in the criminal law. This paper traces six major factors of planned change in law influencing the crime rate, conviction rate, reporting of crime or change in mind set of the society. It gives an account of the issues which affect the criminal justice policy. Practical consequences of such amendments have been discussed to explain how to achieve positive results through a planned amendment.

Key words: Amendment, Criminal law, Planned changes, Principles of criminal law, Legislative drafting.

INTRODUCTION

A legislative reform can be done through various techniques and for various reasons. Before getting into why there should be 'planned' reforms, an understanding of why reforms, at all, are attempted should be there. The dictionary meaning of the word reform is 'to improve (someone or something) by removing or correcting faults, problems,

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etc.'

Human race has progressed, by incomparable margin, more than any other living being because of its power to logically analyse everything that is happening. Humans have improved themselves and things around them through repetitive reforms, by bettering the techniques, developing the science, creating and amending the law. It is no secret that criminal law is the most powerful and restrictive tool in the hands of the state. Therefore, it must always be reformed periodically so that it does not become overly restrictive and problems with criminal law can be corrected. Criminal law has been used in patently unjust manner, in the past, punishing menial acts.

Therefore, a very logical reason for reforms is that it allows us to improve the working condition of a thing, situation or a person or an entire country. And reason for a planned reform is that it will generate a reform which is more effective and workable. This chapter focuses on the 'rationale' of planned reforms.

REASONS FOR PLANNED REFORM

The reasons why a 'planned reform' should be done by the Parliament rather than a hasty change or no change at all are the following:

1. Tokenism[1]: A planned reform is a reflection of the seriousness with which a subject has been dealt. It portrays the thought and hard work that has been put into development of the reform rather than just symbolic work done to prevent criticism and giving the appearance that problem has been handled. A lot of law amendments can be labelled as 'tokenism' in the sense that the end result of these amendments is plain nil or too negligible to make an impact on the problem which it was supposed to tackle. Only thing that it was able to achieve was to pacify the public sentiment momentarily. A successful reform would have a noticeable impact in terms of drop of number of criminal incidents, etc. But when no change is noticed prior to or after the amendment, in courts, police or in society, then that amendment can be labelled as tokenism.

2. Constitutional Arguments: In India, the constitutional debate in criminal law is happening like never before. The recent trend has led to constitutionalisation

1 Rituparna Bhattacharyya, *Criminal Law (Amendment) Act, 2013: Will it ensure women's safety in public spaces?*, Vol. 1 No. 1, Space and Culture, India 13-27 (2013), http://www.spaceandculture.in/index.php/spaceandculture/article/view/11/2 last visited on 16.08.2019.

of the criminal law but that happened through the Supreme Court[2] and not through Parliament. Nevertheless, it has awakened the Indians to the idea of constitutionalisation of criminal law and criminal law is being challenged on constitutional doctrines rather than blind acceptance of criminal law as correct. Principles developed through interpretation of Constitution by the courts have been used to test the criminal law of the nation by the courts. The importance of Constitution in criminal law has been realised and it should be the utmost duty of the legislature to bring reforms in criminal law which are consistent with the constitutional principles. With bodies like Law Commission at its disposal, the Parliament is well equipped to address constitutional arguments. Incorporating constitutional values and principles in criminal law will ensure that rights of the individuals are not supressed and liberty, equality, freedom of the people is maintained and words of the preamble are given meaning and justice - social, economic and political is attained.

3. Consistency[3]: Consistency, not just in time (consistency in time means consistency with other laws operating during same time period) but with time. Every law should be consistent and in-line with the principles of the time, ideologies and values prevailing in the society, legal doctrines and other statutes. There should be a harmony in various parts of life and any undue invasion of state in an individual's private space is an abuse of the criminal law by the state. A part of the objective of criminal law reform is to resolve ambiguity and modernise the law. Consistency, in this sense, adds to the certainty, coherence and fairness of the system.

4. Comprehensibility[4]: Most of the codified laws are old, many are even older than 100 years. It is hard to imagine a statute which is comprehensive enough to include all, or most of the things of the modern times in such old statute books. Not only these statutes are missing out on many important provisions such as marital rape, they include acts which are not qualified to be mentioned as 'crimes' in the modern times, such as gay sex. An all-encompassing or comprehensible statute can be achieved only with regular reforms which are undertaken by the legislative. "Lord Macaulay, the architect of the Indian Penal Code (IPC) was of the view

2 Navtej Singh Johar v. Union of India Writ Petition (Criminal) No. 76 of 2016, Joseph Shine v Union of India Writ Petition (Criminal) No. 194 of 2017, Common Cause v Union of India Writ Petition (Civil) No. 215 of 2005.

3 Simon Bronitt, Is Criminal Law Reform A Lost Cause?, New Directions for Law in Australia: Essays in Contemporary Law Reform 133-142 (Ron Levy ed. Et al., 2017).

4 *Ibid.*

that a good code should have three qualities – Precision (free from ambiguities), Comprehensibility (easily understandable by ordinary citizens), and Product of legislative law making (minimum judicial interference)"[56]. A regular study of the criminal laws is very important to understand the need of the society and also in order to be able to enact legislative reforms. While the Criminal Law (Amendment) Act, 2013 introduced long, overdue changes in the law, it is a first step in the long journey to ending violence against women in India through criminal law intended to change the mentality of future generations. Only baby steps is not a compulsion nor advisable. Legislation no longer faces the limitations faced by the legislators earlier. Technological advancements, financial stability, know-how of the subject matter, availability of teams of experts – everything is at disposal of the Parliament and if time taken to complete this journey is long, then women and society will have to suffer for that much more time which the parliament will consume in doing its work.

5. Policy: A coherent policy of criminalization is required to direct the courts in the right direction while also guiding and regulating the discretion in the hands of the judges sitting in criminal courts. The courts of the nation have not been able to make a satisfactory criminal policy and decisions in similarly placed cases are dependent on who the presiding judge is in the matter, i.e., sheer luck and not any guided principle. The principle of rule of law mandates that similarly placed cases are handled in the same manner devoid of emotions, personal biases and prejudice of the judge. In practice, even in the Supreme Court of India, in cases of death penalty, separate benches of the Supreme Court were simultaneously giving totally opposite orders. If the matter was put in the court of Justice Arijit Pasayat, it was certain that he would award death penalty and if the matter was put in the court of Justice S. B. Sinha, then in all probability, he would not go forward with death penalty and would definitely commute the death sentence. An article printed in the Fronline compared the ratio of conviction rates of three Supreme Court judges[7] which reflects the kind of discretion enjoyed by the judges even in matters as serious as death penalty-

"Justice Pasayat's conviction rate of about 73 per cent was significantly higher than

5 Stanley Yeo, Barry Wright et. al, Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform 4-5 (Routledge, 2011).

6 Abhishek Gupta, *Decoding 'Deterrence': A Critique of the Criminal Law (Amendment) Act, 2018*, Summer Issue ILI Law Review 136, (2018).

7 JJ K.G Balakrishnan, Ariit Pasayat and S.B Sinha.

the collective conviction rate (19 per cent) of other judges during his tenure. Thus, a case not allotted to Justice Pasayat's Bench was about four times more likely to escape capital punishment. A death-penalty case had an almost equal chance of being heard by Justice Pasayat's or Justice Sinha's Bench, but the convict's chances of living were almost 100 per cent if his case was allotted to the latter instead of the former. A prisoner's chances of living were better by more than 50 per cent if his case was allotted to Justice Balakrishnan's Bench rather than Justice Pasayat's Bench."[8]

Before the Supreme Court of India went ahead and finally decriminalised consensual gay sex under section 377 after a series of litigation, people had looked up to the Parliament to decriminalise it. People had urged the Parliament to take action in this regard but it fell on deaf ears.[9] But because of lethargy and lack of interest on the part of the Parliament, the matter lingered on in courts for a long time before it was finally decided.

6. Implementation Deficit[10]: Implementation of the law is a challenge in itself. But laws enacted by the Parliament are more sternly implemented than dictates of the court. For example, in 1997, the Supreme Court laid down the Vishakha Guidelines[11] for prevention of sexual harassment of women at workplace but these were not implemented in a majority of organisations.[12] Moreover, these guidelines did not provide a detailed framework and missed out on crucial definitions and the remedy prescribed was 'appropriate disciplinary action'. The Vishakha guidelines were converted into Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the Parliament which are better implemented with a cost attached for non-implementation of the act. It is discernible that Parliamentary acts are better circulated and publicised than court judgments. The state authorities are habitual of following the Parliament more religiously than the court's order where they can give excuses for non-compliance. In short, the compliance of court order on such large scale is very difficult and highly improbable but parliament

8 Yug Mohit Chaudhry, *Uneven Balance*, Vol. 29 – Issue 17, , FRONTLINE (Aug. 25, 2012) https://frontline.thehindu.com/static/html/fl2917/stories/20120907291702500.htm last visited on 08.05.2019.

9 D Manjit & Asish Gupta, *A Blow to Equality and Dignity*, Vol. 48 No. 51 Economic and Political Weekly 4, (2013).

10 *Supra* note 3.

11 Vishakha v State of Rajasthan (1997) 6 SCC 241.

12 Abhyudaya, *Is Vishaka-compliance equal to Sexual Harassment of Women at Workplace Act, 2013 compliance?*, IPleaders (Oct. 31, 2014) https://blog.ipleaders.in/is-vishaka-compliance-equal-to-sexual-harassment-at-workplace-act-2013-compliance/ last visited on 09-05-2018.

can pass laws which are implemented by the state authorities. Hence, there is an implementation deficit if the reforms are ordered and undertaken by the court rather than the Parliament with all the functionaries at its disposal.

Besides above points, a major issue is that because of the inherent limitation of the court, it is not possible for court to formulate a policy of criminalization for the entire country. Different judges have different views and then there is hierarchy amongst the judges and neither do they have the power to undertake policy work which falls under the domain of the Parliament. Courts can never do a holistic reform. They are limited by the kind of matters which is brought in front of them but Parliament, on the other hand, enjoys a free hand over the subject and can make, amend or delete any law it wants.

The illusion of a society without crime should be given up. Crime is a natural, germane thing in an aspirational society. But tackling crime cannot be solved with a mathematical equation or basic assumptions such as stricter punishment – less the crime, which India's current criminal law trend seems to be following. A better criminal justice policy should be formed taking in account the following issues.

1. Whose 'role' is it?

The role of law making and policy making is not that of judiciary. Judiciary's role is to interpret the law made by the legislature. It is the Parliament's role to make laws. "When laws involve constitutional matters, this role involve making sure that they are constitutional"[13]. Making criminal laws and reforming them is the role of a democratically chosen government and not judges. But there is no guidelines or framework guiding the legislature in reforming the law. Having a certain framework or guidelines in the form of a policy will prove to be a litmus test for the legislature to test its proposed reforms. This will ensure that a coherent criminal law structure is built even though the legislators change over time since every set of legislators will test the feasibility of the proposed amendment with the existing legal structure and principles developed over time. The legislature will also rely on certain markers to determine the validity and legality of the amendment which will prevent the legislature from making a law purely on the wave of public emotion or a particular event which moved the conscience of the nation. This is a positive thing since criminal laws made under influence of community emotions lead to extremely harsh punishments[14] as can be seen in the Criminal Law (Amendment) Act, 2018.

13 Tsvi Kahana, *Constitutional Cosiness and Legislative Activism*, 55 U. Toronto L.J. 129 (2005).

14 Andrew Ashworth & Jeremy Horder, Principles of Criminal Law, (7d ed., 2013).

"The 'role' question is appropriately asked about the courts, since the court's role does not include making laws and therefore it is important to prescribe the court's power such that it does not amount to second-guessing the legislature and creating legislation."[15] The court enjoys the power of judicial review which means that it can reject the proposed amendment as unconstitutional but under no circumstances it can prescribe a legal policy encompassing the entire criminal law reform process. It cannot pass mandates on the legislature to pass certain form of policy. Therefore, it is only in the hands of the legislature to make a coherent criminal law policy.

Similar to judicial adventurism, if the legislature also amends laws without paying head to any coherent policy or the Constitution, then this also amounts to legislative adventurism which then leads to judicial review. "There are two legitimate concerns about constitutionalism. First, it is correct to believe that legislatures are not sufficiently involved in discussion about the constitutionality of legislation. Second, it is correct that sometimes there is a sense of suspicion between the branches (the legislature and the judiciary). Moreover, legislators will feel more comfortable dealing with constitutional issues if they know their judgment will be treated respectfully by the courts and, hence, by the public at large."[16] So to prevent a lot of unnecessary exercise, the legislature should perform its duty with utmost care while paying attention to details. For this, a criminal law policy is required.

2. Purpose of Criminal law reforms:

Codification and harmonisation are the dual related agendas of criminal law reform. 'Law in books' and 'law in action' have always been diverse. But it is not always the 'law in action' which is varying from the normatively laid down laws. Sometimes, the 'law in books' is also problematic and courts have to become judicially creative to implement the law in accordance with the circumstances. Law should be in harmony with the changing standards of the society and modern constitutional morality and values. There has been a shift from societal morality to constitutional morality in analyses of an action. Because of introduction of constitutional values in criminal law, there has arisen a need for harmonisation of criminal law with constitutional values and then its codification. This process of harmonisation of criminal law with the constitution involves checking the existing laws for compatibility with the constitutional values such as equality, liberty, freedom, fundamental rights, etc, and if deviance is found, then to make them compatible with each other.

15 *Supra* note 12.

16 *Ibid.*

The second type of harmonisation which takes place is the harmonisation of the criminal law in itself. There should be consistency between different provisions of criminal law. This means that the punishment prescribed for offences, definitions, exceptions available should be coherent and should be in line with other provisions. The law should be stated in a clear, unambiguous manner so as to maintain the consistency of the law. Providing different kind of punishments in statute books gives a lot of discretion in the hands of the judges. There cannot be provisions such as minimum 20 years imprisonment along with death penalty in a country which claims to be following restorative and deterrent theories of punishment. Death penalty is a retributive feature which is not the policy of India according to various Supreme Court judgments. The Law Commission in its 262nd report suggested for abolition of death penalty whereas the Criminal Law (Amendment) Act, 2018 introduced death penalty. There is no coherence between the advised policy and the one which is being followed. More recently, a 2014 ruling of the Supreme Court has clarified that "retribution has no constitutional value" in India.[17] In the last two months of 2018, the Supreme Court commuted 11 death penalties to life imprisonment while rejecting the review plea filed by the 2012 Delhi gang rape case convicts. There is no harmonisation between the highest institutions where one is regularly reducing the death penalty awards and the other is introducing it at new places.

In the modern era of individualisation, more and more importance is being given individual's right and the biggest impediment against such rights is state's exercise of power through criminal law. Criminal law is power source in the hands of the state and there is a need to harmonise this power source with individual's right.

3. Penal Policy:

A penal policy is a major part of a coherent criminal justice policy. A critically important part of criminal trials is imposition of sentence. "It determines how much an offender must suffer for his or her offence, and that suffering may include the deprivation of the individual's liberty. Moreover, when the facts of the offence are undisputed… the nature and quantum of sentence is the primary decision to be made. In most common law jurisdictions courts enjoy wide discretion at sentencing – although this discretion has been circumscribed by guidelines in many countries."[18] The Indian judges enjoy unbridled discretion in imposing sentences. A penal policy would include regulating this discretion. A three step approach is adopted to decide whether an act should be followed by punishment

17 Shatrughan Chauhan v Union of India (2014) 3 SCC 1.

18 Andrew Ashworth & Julian Roberts, Principled Sentencing: Readings On Theory And Policy, (Andrew von Hirsch ed., 3d ed. Hart Publishing 2009).

or not:

i. What particular response is made and why?

ii. If the response is penal, which particular penal option is selected?

iii. What is the particular level of penal response?[19]

The first question is a rather basic question which, basically, addresses the question 'what to punish?'. The question can be answered by the doctrine of 'Ultima Ratio'[20] i.e., an act should be punished only when criminal law is the only response which can provide a reasonable response to the act which cannot be catered by other responses such as social assistance. This means that the resort to criminal law should be the final step which was taken to address a problem. The idea is to exhaust all the remedies before criminal law is used to tackle any act. As an immediate relief, the principle of ultima ratio takes away a lot of unnecessary criminal litigation away from the already over burdened courts. Secondly, it opens up for objection all kinds of arguments including constitutional arguments which can be made against criminalization of an act since criminalization is the last step and the legislature would have to listen to all the arguments and provide answers as to why these arguments are not right. The counter questions such as why should the act be criminalised and what is the problem with using any other kind of remedy will also be asked. The golden rule is to 'punish where you must'.

The second and the third question, which are 'how to punish?' and how much to punish?' can be answered once it is decided what theory of punishment is followed. There are 5 major theories of punishment, namely, deterrent theory, preventive theory, retributive theory, reformative theory and expiatory theory. Choosing a certain type of theory automatically closes a certain range of punishments which can be given. But the problem arises when no particular type is picked up and punishments are handed in an arbitrary manner without any theory or other framework to guide the courts. For example, due to non-adherence to any single type of theory, the punishments in India ranges from simple fines and 24 hours imprisonment at one end and death penalty at the other. There is no guidelines provided to courts according to which they should use their discretion and hence glaring disparities can be notice in the sentencing styles of different judges who are guided only by their personal choices.

19 Susan Easton & Christine Piper, Sentencing And Punishment: The Quest For Justice (4d 2016).

20 Kimmo Nuotio, *The Boundaries of the Criminal Law* 238 (Oxford 2017).

CONCLUSION

Although, the Law Commission and the Supreme Court are heading towards the deterrent theory, the Parliament and the lower courts are more tilted towards awarding harsh punishments. The courts in India passed 1,677 sentences of death from 2000 to 2012 with an average of 140 death sentences per year. Last year, this number jumped to 162 convicts who were sentenced to death by lower courts in India. The Parliament also added new provisions in the Penal Code through the Criminal Law (Amendment) Act, 2018 which introduced death penalty without any proof of death penalty working as a deterrent.[21]

A planned reform would address these issues in a coherent manner and would lead to a criminal justice policy which provides for better penal code, proper use of discretion of court in sentencing and a consistent punishment which will handle crime in a better way. Present system of criminal justice is very uncertain which leads to low chances of conviction which in turn reduces the deterrent effect of punishment. "A penalty may be very severe, and imposed swiftly upon conviction, but if potential offenders consider it highly unlikely to be imposed, there may be little deterrent effect"[22]. To maintain the purpose and effect of criminal law, a criminal justice theory should be adopted.

REFERENCES

BOOKS

ANDREW ASHWORTH & JEREMY HORDER, PRINCIPLES OF CRIMINAL LAW, (7d ed., 2013).

ANDREW ASHWORTH & JULIAN ROBERTS, PRINCIPLED SENTENCING: READINGS ON THEORY AND POLICY, (ANDREW VON HIRSCH ed., 3d ed. Hart Publishing 2009).

SIMON BRONITT, IS CRIMINAL LAW REFORM A LOST CAUSE?, NEW DIRECTIONS FOR LAW IN AUSTRALIA: ESSAYS IN CONTEMPORARY LAW REFORM 133-142 (Ron Levy ed. Et al., 2017).

STANLEY YEO, BARRY WRIGHT ET. AL, CODIFICATION, MACAULAY AND THE INDIAN PENAL CODE: THE LEGACIES AND MODERN CHALLENGES OF CRIMINAL LAW REFORM 4-5 (Routledge, 2011).

SUSAN EASTON & CHRISTINE PIPER, SENTENCING AND PUNISHMENT: THE QUEST FOR JUSTICE (4d 2016).

21 *Supra* note 18.

22 *Ibid.*

REPORTS

Justice J.S. Verma et al., Report of the Committee on Amendments to Criminal Law, (Jan. 23, 2013).

Parliament of India, Rajya Sabha, Department – Related Parliamentary Standing Committee on Home Affairs, One Hundred and Sixty Seventh Report on the Criminal Law (Amendment) Bill, 2012, (Mar. 2013).

Law Commission of India, 262nd Report on Death Penalty, (Aug. 2015)

Law Commission of India, 172nd Report on Review of Rape Laws, (Mar. 2000).

Government of India, Ministry of Home Affairs, Committee on Reforms of Criminal Justice System 193 (Mar. 2003).

ARTICLES

Abhishek Gupta, *Decoding 'Deterrence': A Critique of the Criminal Law (Amendment) Act, 2018*, Summer Issue ILI Law Review 136, (2018).

D Manjit & Asish Gupta, *A Blow to Equality and Dignity*, Vol. 48 No. 51 Economic and Political Weekly 4, (2013).

Kimmo Nuotio, *The Boundaries of the Criminal Law* 238 (Oxford 2017).

Lao Dongyan, *Judicial Activism and Criminal Law Interpretation Theory on the Functionalism*, 5 China Legal Sci. 63 (2017)

Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 Buff. L. Review 703 (2000).

Mrinal Satish, *Laws relating to Sexual Violence in India: Constitutional and Human Rights Dimensions*, Vol. 15 Journal of the Nat. Human Rights Comm., 225 – 246 (2016).

Neetika Vishwanath & Ninni Susan Thomas, *The Supreme Court's Death Penalty Focus: Reflections on Sentencing Developments*, Vol. 54 No. 3, Economic & Political Weekly 15, (2019).

P S Thakur et al., *Criminal Amendment Act 2013 and Issue of Age*, Vol. 37 No. 4, J Indian Acad Forensic Med. Oct.-Dec. 2015, 422-423 (2015).

Rituparna Bhattacharyya, *Criminal Law (Amendment) Act, 2013: Will it ensure women's safety in public spaces?*, Vol. 1 No. 1, Space and Culture, India 13-27 (2013).

Tsvi Kahana, *Constitutional Cosiness and Legislative Activism*, 55 U. Toronto L.J. 129 (2005).

NEWSPAPERS

Annie Gowen, *India now has nearly 400 fast-track courts for rape cases. But 'fast' is a relative term*, The Washington Post, August 15, 2016 https://www.washingtonpost.com/world/asia_pacific/india-has-nearly-400-fast-track-courts-for-rape-cases-but-fast-is-a-relative-term/2016/08/15/e57d44b8-54cc-11e6-bbf5-957ad17b4385_story.html?noredirect=on&utm_term=.0710f2e9f417

Aparna Viswanathan, *A task only half finished*, The Hindu, Jun. 10, 2016. https://www.thehindu.com/opinion/lead/a-task-only-half-finished/article5065462.ece

G S Bajpai, *Mainstreaming Victims of Crime*, The Hindu, January 01, 2019, https://www.thehindu.com/opinion/op-ed/mainstreaming-victims-of-crimes/article25874475.ece last visited on 17.05.2019.

Indira Jaisingh, *Stringent punishment to score political points*, The Deccan Herald, Sept. 21, 2018, https://www.deccanherald.com/national/sunday-spotlight/stringent-punishments-score-political-points-667220.html.

Rahul Tripathi, *Beyond The News: The Debate over Death: How have India's Parliament, Law Commissions and the Supreme Court dealt with the question of capital punishment and the many issues it raises?*, The Indian Express, Mar. 14, 2018, https://indianexpress.com/article/explained/the-debate-over-death-penalty-law-commissions-supreme-court-on-capital-punishment-5096813/.

Was any study done before bringing out rape ordinance, The Hindu, April 14, 2018, https://www.thehindu.com/news/cities/Delhi/was-any-study-done-before-bringing-out-rape-ordinance/article23651748.ece.

Yug Mohit Chaudhry, *Uneven Balance*, Vol. 29 – Issue 17, , FRONTLINE (Aug. 25, 2012), https://frontline.thehindu.com/static/html/fl2917/stories/20120907291702500.htm last visited on 08-05-2019.

WEBSITES

Abhyudaya, *Is Vishaka-compliance equal to Sexual Harassment of Women at Workplace Act, 2013 compliance?*, IPleaders (Oct. 31, 2014) https://blog.ipleaders.in/is-vishaka-compliance-equal-to-sexual-harassment-at-workplace-act-2013-compliance/.

Akanksha Yadav, *SC Case Analysis on Marital Rape: Independent Thought v. Union of India and Another*, LatestLaws.com, Aug. 12, 2018, https://www.latestlaws.com/case-analysis/sc-case-analysis-on-marital-rape-independent-thought-v-union-of-india-and-another-by-akanksha-yadav/.

Albeena Shakil, *Protests, the Justice Verma Committee and the Government Ordinance*, Vol. 48, Issue No. 06 Economic & Political Weekly (2013), https://www.epw.in/journal/2013/06/web-exclusives/protests-justice-verma-committee-and-government-ordinance.html?0=ip_login_no_cache%3Dbbf2f10ffccbb27236203160eca2338c.

Divya Arya, India death penalty: Does it actually deter rape?, BBC News, Delhi, https://www.bbc.com/news/world-asia-india-44922084#share-tools

https://theprint.in/opinion/death-penalty-ordinance-is-a-reactive-and-disproportionate-response-to-child-rape/51585/

Mrinal Satish, *Several Verma panel recommendations left untouched*, Live Mint, 13 Dec 2013,

https://www.livemint.com/Politics/NVAKs00OBMkBLZoHdqGRJO/Several-Verma-panel-recommendations-left-untouched-Mrinal-S.html.

Ritika Jain, *MP issued most death sentences in 2018 — a result of harsher child rape law*, The Print, 30 January 2019, https://theprint.in/governance/mp-issued-most-death-sentences-in-2018-a-result-of-harsher-child-rape-law/184934/

Sourya Banerjee, *Criminal Law (Amendment) Ordinance, 2018: How The "Bandaid Legislation" Creates More Problems Than It Solves*, The Logical Indian, https://thelogicalindian.com/awareness/criminal-law-ordinance-2018/

Sushila Rao, *India's Parliament Passes New Law on Sexual Offenses*, Harvard Law and Policy Review, American Constitution Society, https://harvardlpr.com/2013/04/01/indias-parliament-passes-new-law-on-sexual-offenses-2/

Swagata Raha, *Death penalty ordinance is a reactive and disproportionate response to*

child rape, The Print 22 April, 2018.

UN Women welcomes India's Criminal Law Act as a deterrent to violence against women, UN Women (Apr.8, 2013), http://asiapacific.unwomen.org/en/news-and-events/stories/2013/4/un-women-welcomes-india-s-criminal-law-act.

CASES

Common Cause v Union of India, Writ Petition (Civil) No. 215 of 2005.

Joseph Shine v Union of India, Writ Petition (Criminal) No. 194 of 2017.

Navtej Singh Johar v. Union of India, Writ Petition (Criminal) No. 76 of 2016.

Shatrughan Chauhan v Union of India (2014) 3 SCC 1.

Vishakha v State of Rajasthan (1997) 6 SCC 241