



DETERRED ENOUGH? – THE CRIMINAL LAW AMENDMENT ACT, 2018

*By Parinishtha Jindal & A. Rangarajan
From Symbiosis Law School, Pune*

Abstract

The parliament on August 6, 2018, passed the Criminal Law (Amendment) Bill, 2018, which replaced the Criminal Law Ordinance, promulgated by President Ram Nath Kovind on April 22. The spectrum of the Ordinance provides for heavy punishments, speedy investigations and easy disposal of cases, and modifies provisions relating to anticipatory bail. The capital punishment prescribed, begs the question of effectiveness in deterring rape, as evident from the Criminal Law (Amendment) Act, 2013, which increased the minimum possible punishment, yet resulting in no significant change. The paper follows an exploratory pattern of research as it probes into issues that deserve attention in relation to the said ordinance. Although punishment for the rape of minor girls and women has been increased, the question of equivalent provisions for men is left unanswered. Further, with recent developments regarding the judgment on Section 377 of the IPC, the Ordinance should evolve to provide for the abuse of homosexuals and bisexuals. Therefore, this paper strives to study the possible limitations to the amendment that may subsequently lead to misuse of the said provision, thereby avoiding gross miscarriage of justice to the above-mentioned groups who have been overlooked in the ordinance.

Keywords: Criminal Law Ordinance 2018, deterrence, homosexuals, minor, punishment, rape.

I. Introduction:

In exercise of the powers conferred by Clause (1) of Article 123 of the Constitution, president Ram Nath Kovind promulgated the Criminal Law (Amendment) Ordinance, 2018. The said ordinance amends the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012. The ordinance as promulgated by the President in the backdrop of national outcry, as a result of the rapes in Kathua¹ and Unnao, subsequently became the Criminal Law (Amendment) Act, 2018 upon being approved by the Union Cabinet chaired by Prime Minister Narendra Modi. The ordinance makes an attempt to develop the existing law against rape from all possible aspects, bringing in speedy investigations [Section 14 of the Criminal Law (Amendment) Act, 2018], rigorous imprisonment [Section 4, 5 and 6 of the Criminal Law (Amendment) Act, 2018], extendable to death penalty [Section 5 and 6 of the Criminal Law (Amendment) Act, 2018], time limit for completion of trials [Section 20 and 21 of the Criminal Law (Amendment) Act, 2018] and provision against issuance of anticipatory bail [Section 22 of the Criminal Law (Amendment) Act, 2018].

II. Review of Literature:

¹Mohd. Akhtar v. State of Jammu & Kashmir, (2018) 5 S.C.C. 336 (India).



The three primary aspects of the deterrence theory are severity of punishment, certainty of punishment and celerity of punishment, as propounded by Bentham. Of these, celerity is the least studied aspect. In essence, it refers to the swiftness with which punishment is administered, and therefore, this paper seeks to provide some real-world implications of such an aspect (Kennedy, 1983)². Despite several years of research, it is unclear as to how individuals form their perceptions of a sanction regime so as to threaten punishment to the end of deterrence. The assumption that people are rational and logical beings who will carefully and even economically weigh the benefits and the consequences of their actions has been systematically stumped by several researchers (Nagin, 2013)³. The Justice Verma Committee Report succinctly summarizes the position of the law with regard to deterrence, and considers in detail the questions of life imprisonment and the death sentence, for the latter of which it discusses the tests laid down by the Judiciary in various cases beginning from *Bachhan Singh v. State of Punjab*, and makes suggestions as to minimum imprisonment for various categories of sexual offences, and further considers possibilities such as castration as punishment. The 262nd Law Commission on Death Penalty recommended police reforms and victim compensation schemes. Most importantly, the commission recommended the abolition of the death penalty for all

offences except those related to terrorism and waging war. The absence of gender-equal criminal laws and their implications for men in India has already been discussed (Rajan, 2017). An empirical study was conducted with regard to deterrence, incapacitation and overloading theories, and patterns were devised which enabled choice between the theories (Geerken & Gove, 1997)⁵.

III. Research Objective:

Through this paper, an attempt has been made to critically analyse the Criminal Law (Amendment) Ordinance, 2018 having regard to the conditions and the public outcry which prompted the President to promulgate the Ordinance. Considering that the object behind the move was to deter future crimes of a similar nature, the paper evaluates if the Ordinance and the subsequent Amending Act have effectively served that object which they purport to achieve. Researchers will also identify the possible abuse of the law as it presently stands post amendment. The aim is to explore aspects of the Ordinance such as the categorisation of victims based on the age, consent, gender bias, incapacitation and the role of media.

IV. Research Methodology:

The paper follows an exploratory pattern of research as it probes into issues that deserve attention in relation to the said ordinance. The data published by the National Crime Records Bureau, has been utilized, with specific emphasis on data relating to women

² Kevin C. Kennedy, *A Critical Appraisal of Criminal Deterrence Theory*, 88 Dick. L. Rev. 1, 13 (1983).

³ Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 Crime & Just. 199, 204-205 (2013).

⁴ (1980) 2 S.C.C. 684 (India).

⁵ Michael Geerken & Walter R. Gove, *Deterrence, Overload, and Incapacitation: An Empirical Evaluation*, 56 Social Forces 427-447 (1977).



within the ages of 0-18. Further, the paper relies heavily on governmental data reports, decisions of the various Courts of Law in India, and journal articles on the subject.

V. Discussion and Findings:

To begin with, the intention behind the Ordinance is readily apparent: Deterrence and Incapacitation. In this regard, how effectively increasing punishment will serve towards these purposes is a question that has been left unanswered or perhaps even unconsidered by the legislature, as has been questioned by the Delhi High Court as well. The ordinance comes at a time when pendency percentage for rape cases remains at 30.3% for the year 2016. It is also interesting to note that over 18,552 cases in which trial were completed, only 4739 (34.30%) cases resulted in a conviction. The remaining 13813 cases resulted in the accused being acquitted or discharged.⁶ In this regard, the NCRB provides some, albeit limited, insight into the amount of cases which are dismissed as “true but insufficient evidence”. This finding points in the direction increased standards of interrogation and evidence. Therefore, it is fit to mention the Women’s Safety Division that was set up by the Ministry of Home Affairs,⁷ following the Ordinance, which purports to deal with these issues by seeking to increase the quality of investigations, setting up of Fast Track Courts and strengthening forensic laboratories among other measures. The effectiveness and the

mode of implementation of these methods remain to be seen, and therefore, factors other than those preliminarily mentioned above shall be the primary focus of the paper. The Ordinance is perhaps most important for increasing the punishment contemplated by various sections of the IPC. In this connection, it shall be argued that while the intention behind the Ordinance appears sound, the Ordinance is not effective in accomplishing that goal. It is reiterated that the act of increasing punishment cannot be regarded as a miscalculated move per se since the increased punishment may serve the ends of the retributive theory, and there is no reason why these benefits must not be treated as a windfall gain of the Ordinance. However, considering that the need of the hour is deterrence of crime in India, it shall be discussed as to why the Ordinance fails in being effective in that regard, and what measures can be made to that extent. Further, considering that in 94.6%⁸ of cases of rape, the offender was in some way or the other known to the victim, it is questionable if an increase in punishment would deter rape, since the dynamics change drastically between situations in which the offender is a random passer-by and a situation in which the offender is known to the victim. On the contrary, the victim may be deterred from reporting the crime at all, due to the increased punishment, especially the death sentence, with the perpetrator being a family member whom a child may not want to subject to such sentences.

⁶Ministry of Home Affairs, National Crime Records Bureau 149, Indian Penal Code, *Police Disposal of Crime Against Women Cases (Crime Head-wise) - 2016 (Concluded)*(2016).

⁷ Ministry of Home Affairs, Government of India, *Women Safety Division in MHA - 25.05.2018*, MANU/PIBU/0871/2018.

⁸ Ministry of Home Affairs, National Crime Records Bureau, Indian Penal Code, *Crime Statistics in India 2014-2016* (2016).



One of the strongest arguments against the effectiveness of the Criminal Law Ordinance of 2018 is that, when the Criminal Law (Amendment) Act of 2013 was enacted, Crime against women shot up by nearly 10%⁹ instead of decreasing. While it is conceded that these figures have not been calibrated for the increase in actual reports of crimes, it is submitted that the lack of decrease in crime owing to the 2013 amendment was no statistical aberration, since almost all extensive research on the subject consistently conclude that an increase in severity of punishment does not result in deterrence. While the present stance in criminal literature is dismissal of motive or what goals a person may expect from rape for the same reason that it would be impossible to determine why some people store their money in banks, others use it to buy entertainment, and still others use it differently, it is submitted that the realizing of cause-effect relationships with external factors that may not be goals or motivators in themselves, but a disabler of inhibitors is required for implementing deterrence.

The NCRB data for 2016¹⁰ records different incidences of rape against women state-wise. While it is conceded that these figures have not been calibrated for their corresponding population rates, it is imperative to understand the factors that cause lesser rapes in a few states more than other states, for it would be a fallacious position to assume that the difference in population is the cause of rapes. However, it is important to note that incidence of crimes

against women suddenly dropped by 3%¹¹ in 2015 on average across India. Therefore, the endeavor of the legislature at the present moment must be to understand the patterns that caused the downfall and replicate those patterns for effective deterrence.

Surprisingly in Goa, only 61 incidences of rape (both under 376 and 376D of IPC) were recorded as opposed to Madhya Pradesh, with the highest score of 4882 in the year 2016.¹² One possible inference for higher reported instances is that the female literacy levels in the region are better off than those regions that do not see as many reports. However, Goa fares well in female literacy as well. Therefore, it cannot be said conclusively that the only reason for reduced reports of rape is illiteracy. Secondly, upon calibrating the reports for the population rates in both states (instances in 2016/Female Population as of Census 2011), we find that Goa records a ratio of 0.0000847 (61 instances/719405 women), whereas Madhya Pradesh records 0.0001394279 (4882 instances/35,014,503 women), a percentage difference of approximately 64.6%, implying that rapes in fact tend to occur more in Madhya Pradesh than in Goa. Hence, we find again that it is not owing to the state's small population that there are lesser reports of rape. It is also worthy of mention that both states fare more or less equally on the Sex ratio figure: with only a difference of 42 women per 1000 men. To summarize our findings so far:

- a. It cannot be said that the reason for lack of incidences of rape in Goa is due to lack of reporting, since Goa

⁹*Id.* at 133.

¹⁰Ministry of Home Affairs, National Crime Records Bureau 138, Indian Penal Code, *IPC Crimes Against Women - 2016*(2016).

¹¹*Id.* at 138.

¹²*Id.*



fares among the highest in literacy rates in India.

- b. Nor can it be said that the reason for lesser incidences is because of the smaller population,
- c. Nor can it be said that the discrepancy is owing to sex ratio, since the difference is almost insignificant.

Here arises the question: What could be that factor present in Goa which has resulted in lesser incidences of rape in the State, which has been absent from Madhya Pradesh? It may be posited that the answer could be that, owing to Goa being a tourist destination, and considering the situation of women safety in India, the Government has stationed more police troops in the State. Further, such a statement is empirically verifiable considering that the land area of Goa is 3702 sq.km., and since as of 2011¹³ there were 4196 total civil police personnel, giving a police deployment density of 1.13. However, Madhya Pradesh with an area of 308252 sq.km., and a total civil police personnel count of 53658¹⁴, thereby implying that the state has only 0.17 police personnel per sq.km. Therefore, it goes without saying that a typical resident in Goa is exposed to police personnel more than 500% of the time they may be exposed to one in Madhya Pradesh.

Further, considering that Goa has no SLL or local amendments to the IPC in this regard, it is evident that without any increase in the severity of punishment, deterrence can be

¹³Ministry of Electronics & Information Technology, National Informatics Center, *All India and State-wise Actual Police Strength*, (2011).

¹⁴*Id.*

achieved by providing a reasonable fear in the minds of potential perpetrators, that the possibility of them getting apprehended for the commission of a crime is extremely likely, and such a finding would be in conformity with most existing research on the subject. Further, in attempting to conclusively answer questions about discrepancies in population, it is submitted that there need be no matching of police power with the population of the State itself, since, on comparison with the police deployment data for 2011 and the census of 2011, we find that Goa had a females/policescore of 171.45, whereas Madhya Pradesh performs several times better with a score of 652.54. It is also submitted that the answer also depends on factors that are not altogether extraneous to the prevailing attitudes of the residents of Goa, and therefore, it would not be absurd to hypothesize that since Goa is a tourist destination, the reason for lack of crime is due to the government floating more notices about public safety with posters also stating the punishment if caught, leading to firstly, increased safety consciousness for tourists, and secondly increased fear of being actually apprehended for a crime.

If the above hypothesis is proved to be true, the implications are that, given a region with the same socioeconomic status as India, deterrence does not, relatively speaking, require a lot of man power, or increased punishment (Goa does not have any SLL in this regard, nor are there any special amendments made by Goa to the IPC), but rather requires a simple exercise of making known the law to the masses.

In this connection, existing research suggests that humans may not always be



logical actors, and therefore do not entirely weigh the consequences of the acts against the benefits, and a prime example is alcoholism. According to available Government data¹⁵, there were no alcohol related accidents in Goa in 2015, whereas Madhya Pradesh saw 2357 alcohol related road-accidents that either resulted in injuries or death, which implies heavy alcohol overconsumption and thereby strong correlation with available crime data, suggesting yet another reason to rethink deterrence from the point of view of increasing punishment. Moreover, research suggests that recidivism is either unaffected or even increased owing to increased severity in punishment. However, the NCRB does not appear to have any disaggregate data on recidivism with regard to rapes simpliciter.¹⁶

By seeking to increase punishment to sentences such as 20 years or life imprisonment, the object sought to be achieved by the Ordinance is incapacitation. Incapacitation is the means by which a potentially dangerous member of society is isolated so as to not allow the member to cause further damage to society. When a statute seeks to increase incapacitation, it follows as a matter of fact that the rate of imprisonment increases as well. In light of a division bench of Justices Madhan B Lokur and Deepak Gupta expressing their concerns

over the inhuman conditions in prison,¹⁷ it is questionable if India can afford to generate further prison population. Moreover, it would be a higher ideal to seek effective deterrence, thereby not generating surplus prison population.

It is further interesting to note that while no relationships can be drawn that can be described as directly proportional, Uttar Pradesh, which has a startling amount of rapes against women has the highest amount of custodial rape as well. And so it is that certain States such as Madhya Pradesh and Maharashtra display high incidences of voyeurism, stalking, and insulting the modesty of women.¹⁸ It is also startling to note that there is virtually no incidence of child rapes in the state of Tamil Nadu, whereas Maharashtra fares the highest in terms of rape of a child under 6 years of age.¹⁹ It is submitted that for custodial rape to take place, the culture of rape must be rooted deep in the minds of society, with little apprehension of its consequences. In this regard, it can only be said that the Ordinance worsened the situation by making harder punishment more easily granted. Existing research consistently provides that deterrence as an objective is met only if the punishment contemplated is a rarity, and not the norm.²⁰

With regard to the disposal of cases, it is worthy of mention that over 249 cases of

¹⁵Ministry of Electronics & Information Technology, National Informatics Center, *State/UT wise Number of Accidents caused due to Intake of Alcohol/Drugs by drivers during 2006-15*.

¹⁶Ministry of Home Affairs, National Crime Records Bureau 138, Indian Penal Code, *IPC Crimes Against Women - 2016 (Continued)*.

¹⁷ Re, *Inhuman Conditions in 1382 Prisons*, Writ Petition (Civil) No. 406 of 2013 (S.C.) (Unreported).

¹⁸Ministry of Home Affairs, National Crime Records Bureau 141, Indian Penal Code, *IPC Crimes Against Women - 2016 (Concluded)*.

¹⁹Ministry of Home Affairs, National Crime Records Bureau 141, Indian Penal Code, *Women & Girls Victims of Rape under Different Age-Groups - 2016*

²⁰*supra* note 5.



rape were disposed of as a “mistake of fact”, with Maharashtra disposing over 7.5% of total cases for investigation as a mistake of fact (Which included cases reported during the year and cases which had been pending from previous years).²¹ It goes without saying that such a position in law implies a lack of apprehension for facing punishment for the act of rape. Therefore, it is important to study and deprecate where necessary, the defense of mistake of fact. To do so, the standard of consent endorsed by the IPC must be improved to conform to that of the United States – affirmative and verbal consent,²² as opposed to the IPC contemplating non-verbal expression of consent as well.²³ Further, as a result of a remark of an imputation of character as was unfortunately made in the case of *Vikas Garg and Ors. v. State of Haryana*²⁴, may be avoided. The IPC also lays down a rider in this regard, which further complicates the issue: When a woman does not resist, such an act per se does not amount to giving consent. In light of the difficulties that arise in finding out if consent has been given at all, and secondly considering that amendments to the Juvenile Justice Act²⁵ enabled minors to be tried as adults, it is submitted that increasing the minimum mandatory punishment has not received the

due and cautious consideration that it should have.

Therefore, having considered two states on various parameters, it is concluded that the objective of deterrence is met only where certainty of punishment exists, and not merely severity of punishment.

Further, the statement of objects and reasons also mentions that the Ordinance was promulgated in light of increasing rapes against women (sic) under the age of 16 years and 12 years. There are two points of consideration with the aforementioned proposition – Whether or not child rapes have actually increased, and secondly, whether the differentia is sound. Insofar as the first point is concerned, suffice it to say that child rapes have actually increased, as is evident upon a comparison of the reports released by the NCRB firstly in 2013²⁶, and secondly in 2016²⁷. Upon aggregating the incest and non-incest rape data for the ages 0-18 from the 2013 report, we arrive at a total reported rape count of 13,304 whereas the figure stands at 16,863 for 2016, giving an increase of 26.7%. However, as to the second point, considering that the Amendment of 2013 increased the age of consent from 16 to 18, and the POCSO Act of 2012 also defines a “child” as any person below the age of 18 years,²⁸ it is submitted that the basis upon which only gang-rapes of women (sic) below the age of 16 years is punishable by an enhanced sentence, is not

²¹Ministry of Home Affairs, National Crime Records Bureau 148, Indian Penal Code, *Police Disposal of Crime Against Women Cases (Crime Head-wise) - 2016*.

²²California Senate Bill 967.

²³ Section 375(2), The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

²⁴ (4) R.C.R. (Criminal) 924 (India).

²⁵ Section 15, Juvenile Justice (Care And Protection Of Children) Act, 2015, No. 02, Acts of Parliament, 2016 (India).

²⁶ Ministry of Home Affairs, National Crime Records Bureau 393-395, Indian Penal Code, *Age-Group-Wise Victims of Incest and Other Rape Cases During 2013*(2013).

²⁷*supra*, note 22.

²⁸ Section 1(d), The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).



based on any sound basis. Such a differentiation forces the judiciary to treat the same horrendous crime differently on the basis of the age of the victim.

Moreover, the ordinance is adding up to the pile of gender-bias laws in the country. The word “man” used for the offences under Section 354C of IPC (Voyeurism), Section 354D of IPC (Stalking), Section 354A of IPC (Sexual Harassment) and Section 375 of IPC (Rape) indicates the lack of equality in laws owing to the long prevailing presumption of innocence of women in such cases. Without prejudice to the foregoing proposition of men being treated as offenders, the stance of law as it stands today is such that it does not give due appreciation to the possibility that men may be victimized too.

All the changes brought in by the ordinance are in respect to the female victims and no provision for male rapes or rapes of homosexuals and bisexuals can be identified. Another major issue is the unreported crimes against sexual abuse of these genders, which is again a consequence of lack of recognition of these genders as victims. Despite laws relating to abuse of men and third-genders being recognised widely, one of the major changes being the Section 377 Judgement²⁹, the Ordinance must evolve to give equal emphasis on these genders.

Regard must be had to the definition of “child” in the POCSO Act again – a “child” is defined as any person below the age of eighteen.³⁰ The use of “any person” denotes

²⁹ 2018 S.C.C. OnLineS.C 1350 (India).

³⁰Section 2, The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

not only girl child but all other genders. The question that arises here is: When the POCSO Act deals with the age of the victim irrespective of its gender, then the focus of the ordinance on only the girl child is discriminatory or not?

Further, upon a cursory look at the conviction rates of the nation, we find that the conviction rate dropped from 27% in 2013³¹ to 25% in 2016³², as opposed to 67.4% in the year 2000³³. On a relevant note, with regard to charges of domestic violence, the Supreme Court implied in the case of Rajesh Sharma and Ors. vs. State of U.P. and Ors³⁴, that where the conviction rates were staggeringly low, (in the instant case the rates were about 15%), there is an imputation that the majority of the complaints made are frivolous in nature. Here arises the question of if it would be justifiable to add provisions that provide protection to men against the filing of false complaints. At the outset, it even seems unnecessary, considering the heavily enhanced sentences of punishment, including a minimum mandatory punishment of 10 years for the rape of a female over the age of 12 years, and 20 years for a female below the age of 12. This is an intriguing question considering the difficulty of providing evidence for rape, and the dangerous

³¹ Ministry of Home Affairs, National Crime Records Bureau 357, Indian Penal Code, *Disposal of IPC Cases by Courts During 2013* (2013).

³² Ministry of Home Affairs, National Crime Records Bureau 155, Indian Penal Code, *Court Disposal of Crime Against Women Cases (State/UT-wise) – 2016 (Concluded)*

³³ Ministry of Home Affairs, National Crime Records Bureau Para 4.3.4, Indian Penal Code, *Disposal of Cases by Police and Courts* (2000).

³⁴ Rajesh Sharma and Ors. v. State of U.P. and Ors., A.I.R. 2017 S.C. 3869 (India).



threshold at which one would distinguish “lacking evidence” from “frivolous” or “actuated by malice”. On this ground alone, it can be said that the very purpose of the legislation would be defeated if safeguards were enacted in this regard, as was observed by the Parliament³⁵ with regard to Section 22 of the POCSO Act, where it was succinctly noted that fear of reprisal may prevent a person from coming forward to file complaints, perpetuating the cycle of violence. Therefore, the Section still came into force, albeit in a slightly modified form – The bone of contention with regard to Clause (2) and Clause (3) of the Bill, providing for sanctions against minors who made false complaints, were deleted. It is submitted if the same basis is to be followed, there can be no provisions providing for punishment for false accusations of rapes.

Further, the question of implications for men in light of toughened provisions, should an abuse of process be made cannot be ignored. In 2016³⁶, 3342 cases of rape and attempt to rape were disposed of as “false”, out of the total 62,603 cases reported, bringing it to a startling 5.3% of the total cases of rapes reported against women. It must be held in mind that these include only those cases that were identified as false. This submission becomes pertinent, considering the fact that an amendment to the Cr.P.C. has made bail and anticipatory bail provisions more stringent for men as well. In fact, it is presently a startling position that, an innocent man who is charged is regardless

punished for 15 days because of the requirement of a notice to be given.

Moving on to the emergence of the ordinance, the impetus can be accredited to the infamous rapes of Kathua and Unnao along with the increasing number of rapes of minors. This raises an important aspect of law making, i.e., the influence of media over legislation. Despite the ongoing influence of media in democracies, there’s not much written about its influence in the field of law. In addition to playing the role of watchdogs, media provide people with news covering all events, and thus acts as a major platform to influence public opinion, which further affects the action of the government.

When media provides scrutiny of the law, the working of the legislature, executive and the judiciary, it makes sure that as a result, these organs work appropriately in their field. Therefore, it can be submitted that the media has compelled the government to take public opinion into consideration before coming to any conclusion. The horrifying Delhi gang rape case³⁷ highlighted the power of media in changing attitudes and the media succeeded in creating a huge impact in the minds of the people.³⁸ It seemed that people were unwilling to accept such a gruesome act to be “normal”. The media has the power to create pressure on the government to act in a certain way, which has been a cause for the formulation of many legislations. The Criminal Law (Amendment) Act, 2018 is an example of such media influence. However,

³⁵ STANDING COMMITTEE ON HUMAN RESOURCE DEVELOPMENT, *Report on The Protection of Children from Sexual Offences Bill, 2011*, Two-Hundred-Fortieth Report (2011).

³⁶ *supra*, note 36.

³⁷ *Mukesh & Anr. v. State (NCT of Delhi) & Others*, (2017) 6 S.C.C. 1 (India).

³⁸ Rishikesh Kumar Gautam & Sonalee Nargunde, *The Delhi Gang Rape: The role of Media in Justice*, PENNSYLVANIA STATE UNIVERSITY (2012).



in this case, it is difficult to say if the outcome was an applaudable one or not.

VI. Suggestions and Conclusion: Should the Ordinance be Reversed?

It has been suggested upto this point that the increase in punishment was not a well calculated move. This raises the subsidiary question of if the punishment must be lessened again. The argument of this paper has always been that the *object* of increasing punishment has not been met, and not that the increase in punishment *itself* is bad. If heinous offences such as these do not receive adequate punishment, very simply put, the people of the nation will lose faith in the criminal justice system and the judiciary, as was observed by the Supreme Court as well in the case of Mahesh v. State of M. P.³⁹ Therefore as was observed in the comparison of Goa and Madhya Pradesh, to adequately meet the object of the Ordinance, the Government must invest in bringing to the knowledge of the people, the penalties that they shall attract as a consequence to the act. In this connection, the Hong Kong example of publicly displaying the faces of litter bugs from a recreation of their DNA found in the litter must be cited –Evidently, the purpose is effectively met: There was a real apprehension created in the minds of the people that there was a very likely probability that they would be publicly shamed if they littered. With regard to Gender bias suffice it to say that it is time that an amendment was made to make the Criminal Law of the country, gender-neutral.

In the long run, policy making cannot serve its end of alleviating crime if the conditions that trigger criminal behavior are not extensively studied. However, there is a dearth of literature in this regard and therefore it is questionable if any further ordinance or other legislation will effectively serve their purposes without having understood the root cause of these problems. In this regard the attitudes of rapists must be studied and a suitable course of action must be adopted.

³⁹(1987) 3 S.C.C. 80 (India).