Symbiosis Law School Nagpur Multidisciplinary Law Review ISSN 2583-1984 (Online)
Volume I Issue 1 (2021), pp. 114-129

DUE PROCESS & LEGISLATIVE POLICY IN CRIMINAL LAW

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Abstract

The Constitution of India has empowered the legislative bodies to enact law on subject matters within their jurisdiction. It has further laid down the process how any Bill shall be introduced and passed by the legislative bodies. But, it does not lay down the process that needs to be followed in making of the Bill. What needs to be taken care of by Bill drafting authority is also nowhere discussed in the Constitution. This paper explores the process that is followed by the competent authority, i.e., ministry concerned of subject matter of the Bill, while any Bill is drafted. It is important to explore if fundamental right of due process established by law, as guaranteed to every citizen under Art. 21 of the Constitution of India, is followed in pre-legislative process or not. This paper has used case study of five major amendments / repeals carried by the Parliament in criminal law during last two decades.

This paper proposes to apply the principle of 'due process' in 'pre-legislative process'. It is so suggested because any proposed legislative enactment on subject matter of criminal law which is under consideration during 'pre-legislative mechanism' will affect the life & liberty of an individual; hence, 'pre-legislative process' can neither be arbitrary, nor it can be unfair or unreasonable.

Keywords: due process, pre-legislative mechanism, legislative policy, rule of law, legislative discretion

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DUE PROCESS & LEGISLATIVE POLICY IN CRIMINAL LAW

I. Introduction

The Constitution of India bestows discretion upon legislative bodies to legislate upon any subject matter, including criminal law. The only limitation on such discretion of legislative bodies is either provided in the Constitution under Schedule 7, or it is developed through application of principle of 'judicial review'. Judicial review is power of the court to determine constitutional validity of any legislative enactment. Like, the Supreme Court in *Mithu v. State of Punjab* [1] had struck down Sec. 303 of Indian Penal Code unconstitutional. While making review of any Act, court does not look into process through which legislative enactment under question has come into existence; it looks into constitutional validity of such law in light of constitutional provisions. It neither looks into purpose nor object behind legislative enactment in question.

Purpose of any legislative enactment in criminal law is to maintain law & order in society. Hence, it is important that any such enactment is preceded with careful examination of facts & circumstances prevailing in its contemporary society. This process is termed as 'due process in legislative enactment' in the present paper. It could be done by taking notice of 'circumstances under which such enactment was carried', 'time spend by the legislative body in discussion upon proposed bill', 'if the matter was referred to any committee or not', and 'if any authoritative study was relied upon or not'. A policy document released by M/o Law & Justice in February, 2014 also emphasizes upon a process that needs to be followed during 'pre-legislative process'. This paper discusses the same herein below.

If we take notice of recent instance of promulgation of the Criminal Law Amendment Ordinance, 2018, and the circumstances in which Criminal Law (Amendment) Act, 2013, & Juvenile Justice (Care & Protection of Children) Act, 2015, were enacted, it would seem that desired 'due process' was not followed, neither by the executive when Ordinance was promulgated, nor by the legislature when two said statutes were enacted. But, it is found that both the Acts, Act of 2013 as well as Act of 2015, were enacted only after extensive consultations being carried by competent authorities at relevant times.

[1] AIR 1983 SC 473

This paper further has a brief mention of statistical data which shows that despite of extensive process adopted by the Ministry concerned as well as by the Parliament, even new law has failed to achieve its purpose. In view of increasing rate of crime in India during last two decades, and failure of criminal justice system in controlling such increase, it is important that an audit in terms & meaning of 'due process' is done of procedure practised by the Parliament while enacting law on subject matter related to criminal law. Besides this, this paper suggests that scientific study of statistical data be conducted by experts which may be used by the Ministry concerned as well as by the legislative bodies.

This paper is a study on 'process through which various enactments were carried in criminal law' during last two decades. It is a study on history of 'pre-legislative process' that was followed by competent authorities before five major changes were brought in criminal law during last two decades. In r/o said historical study, an hypothesis, i.e., 'due process in legislative enactment in criminal law has been done away with', is formed which is being testified in this paper.

II. Legislative Discretion and Rule of Law & Due Process

Part V of the Constitution of India provides for establishment of Union which constitutes of the Executive, the Parliament, and the Union Judiciary. Parliament is a legislative body having authority to do multifarious functions, like, legislation, deliberation & discussion, control of public finance, removal of persons from constitutional posts, and other constituent functions.

Legislation upon various subjects is primary function of the Parliament. Changing & complex socio-economic problems constantly demand new laws, and thus, Parliament spends a good deal of its time on legislative activity.[2] The Houses of Parliament are constantly engaged in discussion, deliberation, debating public issues, shaping and influencing government policy, and ventilating public grievances.[3] Any public outcry on any issue may be taken up any member of the Parliament and the minister concerned is required to answer the question raised. Sometime, public outcry leads to change in law as had happened in case of Nirbhaya gang-rape case. Large scale public protest after the said case had led to enactment of Criminal Law Amendment Act of 2013.

[2] M. P. Jain, INDIAN CONSTITUTIONAL LAW, 64 (7th Edition, 2016)
[3] *Id*. at P. 80

Though not recognised in expressed words, Constitution of India provides for separation of power among three constituents of the Union. Although in the Constitution of India there is no express separation of powers, it is clear that a legislature is created by the Constitution and detailed provisions are made for making that legislature pass laws.[4]

Article 107 of the Constitution of India provides for introduction and passing of Bill, other than finance Bill. The term 'bill' is nowhere defined in the Constitution. As per Cl. (1) of Art. 107, a Bill may originate in either House of Parliament. As per Cl. (2) of Art. 107, a Bill is deemed to have been passed only when it is agreed upon by both the Houses. Art. 108 provides for joint session of both the Houses if both the Houses don't agree at any Bill.

As per Parliamentary convention, Minister concerned introduces a Bill in either of two Houses. Once introduced, it is discussed in the said House; then, it may be send to Select Committee of the said House for its opinion on the Bill; or, it may be passed by the said House. Once report of the Select Committee is received at the House, re-drafted Bill is introduced in the House for discussion. Once, it is passed by the originating House, it is send to the other House wherein same process is repeated. Once, it is passed by both the Houses, it is send to the President for his assent.

Legislative Discretion

The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated, and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.[5] Does it not imply that unless it can be gathered from other provisions of the Constitution, other bodies, executive or judicial, are not intended to discharge legislative functions?[6]

Is it then too much to say that under the Constitution the duty to make laws, the duty to exercise its own wisdom, judgment and patriotism in making laws is primarily cast

[4] In *Re Delhi Laws Act, 1912*, AIR 1951 SC 332
[5] *Ram Jawaya* v. *State of Punjab*, AIR 1955 SC 549.
[6] *Supra* note 2.

on the legislatures?[7] It means that the legislative bodies, under scheme of the Constitution, is expected to exercise its discretion with good sense of wisdom and judgement.

In *Re Delhi Laws Act case*[8], Fazl Ali, J. has opined that '*once it has been established that it has sovereign powers within a certain sphere, it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law*'. Patanjali Sastri, J. in the same case, has opined that '*it is now established beyond doubt that the Indian Legislature, when acting within the limits circumscribing its legislative power, has and was intended to have plenary powers of legislation as large and of the same nature as those of the British Parliament itself'*.

Parliamentary discretion with its wisdom & judgement should be reasonable as well as just. No discretion can be absolute, neither it can be arbitrary. Hence, it is important that discretion of Parliament is circumscribed within certain limits, like, 'rule of law be applied in r/o Parliamentary functions', and certain checks & balance through judicial review be ensured to not to let Parliament exercise its function arbitrarily.

Due Process

Art. 21 of the Constitution of India provides that 'no person shall be deprived of his life or liberty except according to procedure established by law'. It provides procedural safeguards to a person in r/o his life or liberty; violation of procedural safeguards will be struck down by the judiciary through its power of 'judicial review'. Judiciary can further strike down any law if it violates any constitutional principle; it is termed as 'substantive due process'.

The term 'procedure established by law' refers to the procedure that the government must follow before it deprives a person of life or liberty. It is expected that the state shall always supply certain safeguards, like, 'notice of accusation', 'fair hearing', and 'independent judiciary', so procedure established by law could be exercised freely & fairly. Classic procedural due process issues concern what kind of notice and what form of hearing the government must provide when it takes a particular action.[9]

Substantive due process looks to whether there is a sufficient justification, in light of constitutional principles, of legislative action. The Supreme Court in *Selvi & Ors.* v.

[7] *Id*.
[8] *Id*.
[9] Ervin Chemerensky, CONSTITUTIONAL LAWS: PRINCIPLES & POLICIES, 557 (IVth Ed., 2011).

State of Karnataka & Anr.[10] case has stated that '*standard of substantive due process is of course threshold for examining the validity of all categories of governmental action that tend to infringe upon the idea of personal liberty*'.

Scope of meaning of the term 'due process' is explained by V.R. Krishna Iyer, J. in a case[11] in following words, *'true, our Constitution has no 'due process' clause or the VIII Amendment; but, in this branch of law, after Cooper [(1970) 1 SCC 248] and Maneka Gandhi [(1978) 1 SCC 248] the consequence is the same. For what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Article 14 and 19 and if inflicted procedural unfairness, falls foul of Article 21.'*

Rule of law

The doctrine of Rule of Law is ascribed to A.V. Dicey, a British jurist, whose writing on the British Constitution included three distinct ideas, i.e., absence of arbitrary power, equality before law, and individual liberties. Dicey asserted that wherever there is discretion there is room for arbitrariness. In substance, Dicey's emphasis in his enunciation of Rule of Law is on the absence of arbitrary & discretionary power, equality before law, and legal protection to certain basic human rights; these ideas remain relevant and significant in every democratic country even today.[12]

Rule of law is considered to be one of basic feature of the Constitution by the Supreme Court of India. In a case[13], it is stated by the Supreme Court that *'there was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13 (2) of the Constitution provides that no law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution. The object of such a provision is to ensure that instruments emanating from any source of law, permanent or temporary, legislative or judicial or any other source, pay homage to the constitutional provisions relating to fundamental rights'.*

In *Som Rai & Ors. v. State of Haryana & Ors.*[14], it was stated by the Supreme Court that *'if the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by*

[10] (2010) 7 SCC 263
[11] *Sunil Batra* v. *Delhi Administration*, (1978) 4 SCC 494
[12] *Supra* note 3 at p. 07.
[13] *Renu* v. *District & Sessions Judge, Tis Hazari*, Civil Appeal No. 979 of 2014, decided on 12th February, 2014
[14] AIR 1990 SC 1176

law or governed by known principles of rules, not by whim or fancy or caprice of the authority'.

Above stated opinions of the Supreme Court show that democratic set up is governed by rule of law which acknowledges supremacy of law, and absence of arbitrariness is considered to be essence of rule of law. The Constitution of India seeks to promote Rule of Law through many of its provisions, like, members of legislative bodies are elected through adult sufferage, independence of judiciary is ensured, and judicial review is guaranteed.

The Supreme Court in various cases[15] has characterized judicial review as a basic feature of the Constitution. The Supreme Court has invoked the 'rule of law' several times in criminal cases and has re-emphasized upon constitutional values and principles. Like, in *Bachan Singh case,* Bhagwati, J. has emphasized that '*rule of law excludes arbitrariness and unreasonableness'.* To ensure this, he has suggested that it is necessary to have a democratic legislature to make laws, but its power should not be unfettered, and that there should be an independent judiciary to protect the citizens against the excess of executive and legislative power.[16] A significant derivative from 'rule of law' is judicial review. It is an essential part of the 'rule of law'. Judicial review involves determination not only of the constitutionality of the law but also of the validity of administrative action.[17]

III. Judicial Review of Legislative Policy

As stated earlier, power to govern the state is shared among three constituents, i.e., Legislature, Executive, and Judiciary. The judiciary is entrusted with the power of judicial review. The term 'judicial review of legislative action' and its scope is described by the Supreme Court in *State of Bihar v. Subhash Singh*[18] in following words: *'basically judicial review of administrative actions is also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to etat de droit, i.e., the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits*

[15] *Minerva Mills Ltd*. v. *Union of India*, AIR 1980 SC 1789; *State of West Bengal* v. *Committee for Protection of Democratic Rights, West Bengal*, AIR 2010 SC 1476; *S.R. Bommai* v. *Union of India*, AIR 1994 SC 1918
[16] Supra note 3 at p. 08.
[17] *Id*.
[18] AIR 1997 SC 1390

set by the law, i.e., constitutionalism. The more the administrative action in our welfare State expands widely toughing the individuals, the more is the scope of judicial review of State action. Judicial review of administrative action is, therefore, an essential part of rule of law. The judicial control on administrative action, thus, affords the courts to determine not only the constitutionality of the law but also the procedural part of administrative action as part of judicial review'.

The Supreme Court and the High Courts exercise their power of 'judicial review' to ensure that the authorities, including legislative bodies, in which certain power is entrusted under any law discharges it without violating 'rule of law'.

IV. Pre-Legislative Consultative Policy[19]

The above discussion was all about process that is followed post-introduction of a Bill. Constitution does not define the term Bill; it has no mention of essential contents of a Bill. The Constitution does not discuss about process that needs to be followed in making of the Bill. What needs to be taken care of by Bill drafting authority is also nowhere discussed in the Constitution. This paper explores the process that is followed by the competent authority while it drafts any Bill. For the purpose of this conference, subject matter of the Bills under consideration deals with criminal law only.

Primary function of Legislative Department in M/o of Law & Justice is to draft a Bill on a subject matter in r/o which Ministry concerned intends to legislate upon. The Bill is drafted before it is introduced before the Parliament. Till the yr. 2014, there was no policy framework in r/o pre-legislative consultations that any competent authority should follow. In February, 2014, the Legislative Department had issued a Pre-Legislative Consultative Policy' to be put into practice by the Ministries concerned while drafting any Bill. This document was drafted by Committee of Secretaries on the basis of recommendations made by the National Advisory Council, the National Commission to Review the Working of the Constitution, and the practice followed in other countries. The Policy advises all the Ministries to follow the guidelines laid down in said document before they submit any legislative proposal the Cabinet for consideration and its approval.

Few salient features of the said document are following:

[19] Available at http://legislative.gov.in/

i. Publication of Draft Bill: every department / ministry shall publish proposed legislation on internet as also through other means. It should remain in public domain for at-least thirty days.

ii. Contents of the Published Draft Bill: every published draft Bill should include brief justification, essential elements, estimated assessment of impact of such legislation on environment, fundamental rights, lives & livelihoods of the concerned people, etc. Further, it should contain key legal provisions with explanation in simple language.

iii. Object of Publication of Draft Bill: it should invite opinion from the public.

iv. Publication of Feedback / Opinion Received: summary of feedback / opinion received from the public / stakeholders should be placed on website of the department / ministry concerned.

v. Consultation with Stake-holders: the department / ministry concerned might hold consultations with all stakeholders.

vi. Inter-ministerial Consultation: once the above process gets over, the draft Bill be send to various ministries for their opinion.

vii. Reference of the Bill to the M/o Law & Justice: the Bill be referred to the M/o Law & Justice for vetting purposes. This reference should include a brief summary of the feedback received from stakeholders, including departments to whom draft Bill was send and the public.

viii. Role of Department Related Parliamentary Standing Committee: once the Bill is introduced before either of two Houses in the Parliament, and it is referred to Standing Committee, the department / ministry concerned should place summary of pre-legislative process before the said Committee.

ix. Exception Clause: if department / ministry concerned is of the view that it is not feasible or desirable to hold pre-legislative consultation, it may record the reason in the note for the Cabinet.

V. Enactment of Legislative Policy in Criminal Law – Recent Amendments

This section is a discussion on five major changes that have been brought in by the Parliament in criminal justice system in India during last two decades. It traces pre-legislative mechanism followed by the authorities concerned in r/o five laws, i.e., Juvenile Justice (Care & Protection of Children) Act, 2000; Prevention of Children from Sexual

Offences Act, 2012; Criminal Law Amendment Act, 2013; Juvenile Justice (Care & Protection of Children) Act, 2015; and Criminal Law Amendment Ordinance, 2018.

Juvenile Justice (Care & Protection of Children) Act, 2000

The Juvenile Justice (Care & Protection of Children) Bill, 2000 was introduced before the Lok Sabha on 15th December, 2000; it was discussed for two days and was passed by the Lok Sabha on 18th December, 2000. The same day, it was presented before the Rajya Sabha. It was discussed in Rajya Sabha for two days and was passed on 20th December, 2000.

During discussion on the Bill in Rajya Sabha, the Minister concerned had stated that *'it has taken me two years to bring this Bill which, according to me, was the best possible I could do. We have consulted Justice Krishna Iyer, Justice Bhattacharjee, Justice Jeevan Reddy, Chairman, Law Commission of India, Prof. N.R. Madhav Menon, Member, Law Commission of India, Dr. K.N. Chandrasekharan Pillai, School of Legal Studies, Cochin, Dr. B.B. Pandey, University of Delhi, Ms. Vibha Parthasarthy, Chairperson, National Commission for Women, Ms. Sheela Barse, Ms. Indira Jaisingh, Senior Advocate, Ms. Aparna Bhatt, Human Rights Law Network, Prof. B.N. Chattoraj, Sh. Rajeev Dhawan, & ors. This shows that we have consulted many experts and knowledgeable people'.*

The Minister concerned continued with her introduction of the Bill saying that '*the Bill was drafted by the Law School, Bangalore. After they drafted it, we held a series of consultations with Judges and other legal luminaries, including heads of police, the Councils for Child Welfare, officials of the Planning Commission, and officials of the Law Ministry. So, this is possibly the best that we could do'.*

Above brief mention of pre-legislative mechanism in r/o said Bill shows that the department concerned had taken care of all the guidelines, except publication of the draft Bill in public domain, as were to be suggested by above mentioned Policy framework. It is important to take notice that the policy framework was issued in the yr. 2014 though the Bill was enacted by the Parliament in the yr. 2000.

Prevention of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Bill, 2011 was introduced in the Rajya Sabha in March, 2011. It was referred to Parliamentary Standing Committee by the Chairman, Rajya Sabha for examination and report.

The Committee issued a Press Release in June, 2011 for inviting views and suggestions of the general public as well as stakeholders. All the opinion received were

forwarded to the ministry concerned. Further deliberations with M/o Women & Child Development, National Commission for Protection of Child Rights, & various N.G.Os were held by the Committee.

The Secretary, M/o Women & Child Development had drawn attention of the Committee towards the Annual Reports released by the National Crime Records Bureau as the same indicated significant increase in sexual offences against children. The said Ministry had conducted a study covering 13 states in the yr. 2007; the Committee was apprised of report of the said study. Further, the Secretary had apprised the Committee of outcome of consultation that they had with various Ministries, stakeholders, experts, & N.G.Os.

It is important to take notice of the fact that the draft Bill introduced before the Rajya Sabha was outcome of long process of consultations, discussions, suggestions & recommendations received from various stakeholders. The said process was initiated in the yr. 2005 when the then Department of Women & Child Development had prepared a draft Bill and had forwarded it to various ministries for their comments. The said draft Bill was re-drafted by the M/o Law & Justice; and, then it was re-drafted by the M/o Women & Child Development once more.

While drafting its report, the Committee had various meetings from August, 2011 to December, 2011. Its final report was adopted by the Committee on 19th December, 2011, and the same was submitted to the Chairman, Rajya Sabha.

Criminal Law Amendment Act, 2013 / Justice J.S. Verma Committee Report[20]

The Criminal Law Amendment Act. 2013 was legislative response to demand of society in wake of gang-rape case that had happened in Delhi in December, 2012. In response to large scale public protest held by the citizen large in numbers against failure of State in making life of women safe, the government had constituted Justice J.S. Verma Committee with the task of suggesting changes in criminal law to provide safe & dignified environment to women.

The Committee was established in December, 2012, and intent of the government was to introduce the Bill in upcoming session of the Parliament which was due in two

[20] Available at www.prsindia.org

months; hence, Committee was assigned to complete its task within 30 days so further action could be taken at ministerial level before Bill is introduced in the Parliament.

A public notice inviting suggestions from public as well as stakeholders was issued by the Committee and it received more than 70,000 responses. The Committee further consulted various public functionaries, such as Judges from High Court, Advocate General of various States, officials from various ministries, officials from National Commission for Protection of Child's Rights, officials from National Commission for Women, members of the administrative and police services, legal experts, and representatives from N.G.Os.

The Committee further considered statistical database that was collected by various organizations. It helped the Committee in evaluating the problem more scientifically. It further considered past judgements laid down by the Supreme Court. Various civil society group helped the Committee to understand various socio-political contexts of the issue under consideration. Finally, the Committee submitted its report on 23rd January, 2013.

Meanwhile, the President had promulgated Criminal Law Amendment Ordinance, 2013 in February, 2013 which was withdrawn and the Criminal Law Amendment Act, 2013 was enacted by the Parliament.

Juvenile Justice (Care & Protection of Children) Act, 2015

The Juvenile Justice (Care & Protection of Children) Bill, 2014 was introduced in the Lok Sabha on 12th August, 2014. The proposal to re-enact the juvenile justice law was initiated at M/o Women & Child Development. The Ministry had intensive consultation with various stakeholders which was initiated in June, 2011 when Regional Consultations were conducted. Further consultations were held with state governments, including administrators at Union Territories. In November, 2011, a Review Committee was established. It constituted of Secretary, M/o Women & Child Development, Member, National Commission for Protection of Child's Rights, officials from Child Welfare Committees from the various states, officials from Juvenile Justice Boards, officials from Department of Social Welfare from various states, and representatives from various N.G.Os.

As per guidelines issued by the Legislative Department, the draft Bill was put up on website of the Ministry in June, 2014. But, it was put up for fifteen days instead of thirty days as was advised under policy framework issued by Legislative Department. It received more than two hundred & fifty comments from various individuals, N.G.Os, State

Commission for Protection of Child's Rights, Child Welfare Committees, and Juvenile Justice Boards across the country. Thereafter, a Cabinet Note was circulated to various ministries and Planning Commission for their comments.

Finally, it was introduced in Rajya Sabha; its Chairman had referred the bill to Departmental Standing Committee in September, 2014. The Committee had invited opinion from public through public notice which was released in September, 2014. Further, it had consulted officials from various authorities, like, M/o Women & Child Development, National Commission for Protection of Child Rights, Central Adoption Resource Authority, and representatives from various N.G.Os. Its report was submitted to the Chairman, Rajya Sabha on 16th February, 2015.

It is noted by the Committee in its report that *'a closer scrutiny of the suggestions reveals that major concerns of the stakeholders right from the rationale of repealing the Juvenile Justice Act of 2000 to the constitutional safeguards and India's commitment to U.N. Conventions have not been given due importance by the Ministry while drafting the proposed legislation'*. The Committee has further expressed at its dismay *that inspite of such a huge feedback made available to the Ministry, it failed to analyse and incorporate many of the valid suggestions of the stakeholders on some crucial provisions in the proposed legislation, and many observations & suggestions of the stakeholders have not found place in the proposed legislation*[21].

Criminal Law (Amendment) Ordinance, 2018

Art. 123 of the Constitution of India empowers the President to promulgate Ordinances during recess of Parliament. It says that if both the Houses of Parliament are not in session, and the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances may require.

It is important to mention here that as per Art. 74 of the Constitution, there shall be a Council of Minister to aid & advice the President who shall act in accordance to such advice. In light of said provision, it may be said that legislative function of the President is largely dependent upon policy decision of the Executive. Criminal Law (Amendment) Ordinance, 2018 was also policy decision of the Executive in wake of two child rape cases.

[21] Available at www.prsindia.org

During April, 2018, there was large scale public outcry at two cases of child rape that had happened in Kathua and Unnao, two cities in states of Jammu & Kashmir and Uttar Pradesh respectively. In response to said public outrage, the President exercised his power under Art. 123 and promulgated an Ordinance bringing some changes in child rape related laws. The Ordinance was notified in the Gazette on 21st April, 2018. It is stated in the Ordinance that 'the Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action'.

VI. Post-Legislative Enactment Review – Precursor to Future Repeal / Amendment

It is important that periodical review of existing laws in light of its 'statement of purpose & object' is conducted; and the same may be used by the legislature whenever any existing law is repealed or amended.

Since, purpose of criminal justice system is not only to give justice, it aims at making life more safe & secure, it is important to look into crime rate in r/o offence under consideration. Above section of this paper has discussed pre-legislative process adopted by various authorities in r/o laws related to child rape, rape against women, and juvenile justice system; following is a brief review of outcome of post-legislation of same laws.

Table I: Crime Rate – Rape Cases from Yr. 2009 to 2016

Sl. No.	Year	Crime Rate	
		Child Rape	Rape Against Women
1	2009	**0.5**	1.8
2	2010	**0.5**	1.9
3	2011	**0.6**	2.0
4	2012	**1.99**	4.26
5	2013	2.81	**5.69**
6	2014	3.1	**6.1**
7	2015	2.4	**5.7**
8	2016	4.4	**6.3**

Since, the Prevention of Children from Sexual Offences Act was enacted in the yr. 2012, Table I shows 'crime rate' in r/o 'child rape' cases for yrs. 2009 to 2012 and yrs. 2013 to 2016. It shows that 'crime rate' during pre-enactment days of the said Act was less than '01', it increased to '4.4' in the yr. 2016.

Since, Criminal Law Amendment Act, 2013 had brought major changes in rape offences, Table I further shows 'crime rate' in r/o 'rape against women' cases for yrs. 2009 to 2012 and yrs. 2013 to 2016. It may be taken notice of that 'crime rate' till pre-enactment of Criminal Law Amendment Act of 2013 was '4.26' which increased to '6.3' in the yr. 2016.

Table II: Crime Rate – Offences Committed by Juveniles from Yr. 2003 to Yr. 2016

Sl. No.	Year	Crime Rate		Sl. No.	Year	Crime Rate
1	2003	1.7		8	2010	1.9
2	2004	1.8		9	2011	2.1
3	2005	1.7		10	2012	2.3
4	2006	1.9		11	2013	2.6
5	2007	2.0		12	2014	2.7
6	2008	2.1		13	2015	2.5
7	2009	2.0		14	2016	Not Considered

Juvenile justice system had two major enactments in the yr. 2000 and then in the yr. 2015. Table II shows 'crime rate' in r/o offences committed by juveniles from the yr. 2003 to the yr. 2016. It shows that 'crime rate' has increased from '1.7' in the yr. 2003 to '2.5' in the yr. 2015.

It is suggested that data released by the National Crime Records Bureau in its Annual Report should be studied scientifically by Ministries concerned on regular basis. The above data could be studied in various other aspects that could lead to the reason why there has been increase in 'crime rate' in r/o relevant offences.

It is important to mention here that no conclusion or inference has been drawn in above tables; it simply states facts to suggest that said facts could be studied scientifically.

VII. Conclusion

Testing of hypothesis: above discussion shows that the hypothesis laid down in 'introduction' of this paper has failed to be proved. It is found that, except in case of promulgation of Ordinance in April, 2018, due process, either as prescribed by the Pre-Legislative Consultation Policy', or, as exercised through constitutional convention was followed by the Parliament.

The above discussion is more of a description of existing facts in r/o 'pre-legislative process' adopted by Ministries concerned and the Parliamentary Standing Committee in relevant instances. This paper has used case study of five major amendments / repeals carried by the Parliament in criminal law during last two decades.

The process adopted by the Ministries concerned and the Parliament is discussed in light of various constitutional principles, like, 'rule of law', 'judicial review' and 'due process'. In constitutional theory, first two principles are read in context of legislative mechanism; but in same context, the third principle, i.e., 'due process' is read only to the extent of 'substantive process' which checks 'constitutional validity' of the law under question.

It is clarified that this paper proposes to apply only the reasoning behind the principle of 'due process' in 'pre-legislative process'. It is so suggested because any proposed legislative enactment on subject matter of criminal law which is under consideration during 'pre-legislative mechanism' will affect the life & liberty of an individual; hence, 'pre-legislative process' can neither be arbitrary, nor it can be unfair or unreasonable.

In light of above suggestion, the above discussed Pre-Legislative Consultative Policy, issued by M/o Law & Justice, can be used to check if 'due process' is followed or not by the Ministry concerned as well as by the Parliament. It is important to check if said Policy framework will fall within the meaning of 'law' or not under constitutional framework.

Further, it is suggested to use the empirical data released by the National Crime Records Bureau, or, released by various studies conducted by law schools / universities; such statistical date may be used by the Ministry concerned during 'pre-legislative process'. Participation of experts in conducting scientific study of such database will help competent authorities during 'pre-legislative process' to frame more relevant laws which will lead to better results in r/o 'statement of purpose & object' in criminal law.