FUNCTIONING OF THE LAW COMMISSION OF INDIA

Mubashshir Sarshar, National Law University, Delhi
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1 Mubashshir Sarshar, Student at National Law University, Delhi
Origin

Law Reform has been a continuing process particularly during the last 300 years or more in Indian history. However, since the third decade of the nineteenth century, Law Commissions were constituted by the Government from time to time and were empowered to recommend legislative reforms with a view to clarify, consolidate and codify particular branches of law where the Government felt the necessity for it. The first such Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay which recommended codification of the Penal Code, the Criminal Procedure Code and a few other matters. The first four Law Commissions put in a lot of labour in constituting the Indian Code of Civil Procedure, the Indian Contract Act, the Indian Evidence Act, the Transfer of Property Act. etc.

Post Independence Era

After independence, the Constitution of India with its Fundamental Rights and Directive Principles of State Policy gave a new direction to law reform geared to the needs of a democratic legal order in a plural society. On 2\textsuperscript{nd} December, 1947, Dr Sir Hari Singh Gour moved a resolution in the Constituent assembly recommending the establishment of a statutory Law Revision Committee. The resolution was however, withdrawn by him on being given assurance by the then Law Minister, Dr Ambedkar that the government would try to formulate some other suitable machinery to revise the laws. One of the recommendations given by Dr. Ambedkar was the setting up of a permanent commission which would be solely working on revising and codifying laws. Seven years later, On 5\textsuperscript{th} August, 1955 the law minister, Shri C.C Biswas, made the following statement in the Lok Sabha which announced Government of India’s decision to appoint a Law Commission. He voiced,

“Suggestions have been made from time to time both in the parliament and outside that a law Commission should be appointed for revising our statute law and suggesting ways and means of improving the judicial administration in the country…”

Though the Constitution stipulated the continuation of pre-Constitution Laws (Article 372) till they are amended or repealed, there had been demands in Parliament and outside for establishing a Central Law Commission to recommend revision and updating of the inherited laws to serve the changing needs of the country. The Government of India reacted favourably and established the First Law Commission of Independent India in 1955 with the then Attorney-
General of India, Mr. M. C. Setalvad, as its Chairman. Since then eighteen more Law Commissions have been appointed, each with a three-year term and with different terms of reference.

**How does the Law commission function?**

The regular staff of the Law commission comprises of a large number of research personnel of different ranks and varied experiences. A small group of secretarial staff looks after the administration side of the Commission's operations. Basically the projects undertaken by the Commission are initiated in the Commission's meetings which take place frequently. Priorities are discussed, topics are identified and preparatory work is assigned to each member of the Commission. Depending upon the nature and scope of the topic, different methodologies for collection of data and research are adopted keeping the scope of the proposal for reform in mind. Discussion at Commission meetings during this period helps not only in articulating the issues and focusing the research, but also evolving a consensus among members of the Commission. What emerges out of this preparatory work in the Commission is usually a working paper outlining the problem and suggesting matters deserving reform. The paper is then sent out for circulation in the public and concerned interest groups with a view to eliciting reactions and suggestions. Usually a carefully prepared questionnaire is also sent with the document.

The Law Commission has been anxious to ensure that the widest sections of people are consulted in formulating proposals for law reforms. In this process, partnerships are established with professional bodies and academic institutions. Seminars and workshops are organised in different parts of the country to elicit critical opinion on proposed strategies for reform.

Once the data and informed views are assembled, the Commission's staff evaluates them and organises the information for appropriate introduction in the report which is written either by the Member-Secretary or one of the Members or the Chairman of the Commission. It is then subjected to close scrutiny by the full Commission in prolonged meetings. Once the Report and summary are finalised, the Commission may decide to prepare a draft amendment or a new bill which may be appended to its report. Thereafter, the final report is forwarded to the Government.

It is obvious that the success of the Commission's work in law reforms is dependent upon its capacity to assemble the widest possible inputs from the public and concerned interest groups. The Commission is constantly on the lookout for strategies to accomplish this goal within the
limited resources available to it. In this regard the media plays an important role which the Commission proposes to tap more frequently than before.

The Reports of the Law Commission are considered by the Ministry of Law in consultation with the concerned administrative Ministries and are submitted to Parliament from time to time. They are cited in Courts, in academic and public discourses and are acted upon by concerned Government Departments depending on the final Government's recommendations. The Law Commission of India has forwarded 201 Reports so far on different subjects.

In regards to its functioning, some functions which could be taken up by the Law Commission were recommended by the 14th report of the Commission. They are-

(a) To take up academic exercises in order to recommend the manner in which the existing laws could be amended, revised, consolidated, codified or repealed altogether.
(b) To clarify and settle questions of law that requires elucidation and explanation.
(c) Keep the laws up-to-date with the changing needs of the society and legislative developments in other parts of the world.
(d) To advise, as a consequence, on the current legislation from time to time.

**Critical analysis of the Thirty-ninth report of the Commission**

The Law commission of India, in its thirty-ninth report in July, 1968 gave recommendations to the Government of India regarding the punishment of ‘imprisonment for life’ under the Indian Penal Code.

The question which was of central importance in the report was whether the punishment of imprisonment for life ought to be simple or rigorous in nature. Imprisonment for life as a distinct punishment under the IPC was authorized on 1st January, 1956 when the Code of Criminal Procedure (Amendment) Act, 1955 was enacted. This act abolished the punishment of transportation altogether and replaced the punishment of ‘transportation for life’ with ‘imprisonment for life’.

The question which arose here in relation to this provision was whether a person who is transported for life previously could be imprisoned in one of the jails in India and if so, what was supposed to be the term for which he could be imprisoned. Consequently, this effect of section 53A was explained by the Supreme Court in consonance with the decision of Privy Council in
Pandit Kishori Lal v. King Emperor Case\(^2\) where it held that whatever justification there might have been for the contention that a person sentenced to transportation could not be legally made to undergo rigorous life imprisonment in a jail in India until he was transported, was no longer available after the amendment. So, persons previously transported for life would now be treated as persons sentenced to rigorous imprisonment for life or the said term.

It must be noted that even the Supreme Court consented to the fact that ‘Imprisonment for life’ was equitable with the more rigorous form of punishment of ‘Transportation for life’. In regard to the views of the Joint Committee which reported the Criminal Procedure Code (Amendment) Bill, 1954, the IPC does not define ‘transportation’ neither does it prescribe the duration for it. Therefore the mere substitution of the expression ‘imprisonment for life’ for ‘transportation for life’ would not alter the nature of punishment, so the form of punishment for imprisonment for life should be rigorous rather than simple. By inserting a new section of 53A in the IPC, the parliament even did not intend to make any material changes in the nature of punishment of ‘transportation’ by calling it ‘imprisonment for life’ and advocated that the punishment should remain rigorous in nature.

With regard to the directions in which the law being rigorous or simple should be appropriately clarified, there are two alternatives indicated respectively by the judgments of the Kerala\(^3\) and Orissa High court\(^4\). According to the Kerala high court, imprisonment for life like imprisonment for specific period may be of either description and the court awarding the sentence should have the discretion and duty to direct in the sentence that such imprisonment shall be wholly rigorous, or wholly simple, or partly rigorous or partly simple. However in Orissa high court’s view, the clarity in the legislation will take the simple form of stating in the appropriate place that “imprisonment of life shall be rigorous”. Apart from these two alternatives, a third possible course can be adhered to, i.e. clarifying as to the kind of punishment that is distinct from rigorous imprisonment or simple imprisonment and to make provisions in the concerned legislation as to the manner of carrying out of the life sentence.

\(^2\) AIR 1945 P.C 64
\(^3\) Mathammal Saraswathi v. The state of kerala, AIR 1957 Kerala 102
\(^4\) Urlikia v. The State of Orissa, AIR 1964 Orissa 149
In context to the first alternative provided, it can be said that cases occasionally arise where a capital offence has been committed and the offender does not merit the sentence of rigorous imprisonment for life.\textsuperscript{5}

Such cases are rare and when they do occur they can be readily dealt by the Government exercising the powers of commutation and remission vested by them. Therefore it does not seem feasible or necessary that under the law the punishment of imprisonment for life should be declared to be either rigorous or simple and then the court should have the discretion to direct in the sentence which kind it should be.

In the adoption of the third alternative, namely keeping of the sentence of imprisonment of life as a distinct punishment would involve the working out of details as to the manner in which the sentence is to be carried out. In regard to life imprisonment the questions would naturally arise whether it should be milder or severer than rigorous imprisonment. It’s not feasible raise such problems and then attempt at solving them.

Therefore to conclude, in accordance with all the views, the best course would be to adhere to the second alternative and provide categorically in the IPC that ‘imprisonment for life shall be rigorous’ in nature. As an indication by the transitional provisions made in section 53A and the statement of the joint committee report, the intention of the parliament was not to make any material change in the pre-existing position to treat persons sentenced to transportation for life and persons sentences to rigorous life imprisonment. Therefore the form of punishment in the case of ‘Life Imprisonment’ should be rigorous in nature.

\textsuperscript{5} Mathammal Saraswathi v. The state of kerala, AIR 1957 Kerala 102