

CONFERENCE REPORT

Intersections of International Human Rights Law and Criminal Law

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The Human Rights Studies Programme, School of International Studies (JNU), in collaboration with the Centre for Inner Asian Studies, School of International Studies (JNU), and the Indian Law Institute (Delhi), organized a Human Rights Day Webinar on the **Intersections of Human Rights and Criminal Law** on December 9-10, 2021.¹

Experts and young scholars from the field shared their insights and research on the webinar theme. The presentations were organized under four sessions, including Session I on Rights Jurisprudence and Criminal Law (Session Chair- Prof. Sangeeta Thapliyal, JNU), Session II on Proposals for Criminalisation and Decriminalisation (Session Chair- Prof. Sharad K. Soni, JNU), Session III on Crimes, Victims, and Punishments (Session Chair- Prof. Anju Vali Tikoo, DU), and Session IV on Reforms in the Future (Session Chair- Dr. Upma Gautam, GGSIPU).

The Webinar was conceptualized keeping in view the responsibility of states under international human rights law to *prohibit and punish* for the protection of human rights and the redressal of violations. The obligations of States to *prohibit and punish* inform the development of criminal rules and procedures under different legal systems, leading to the near *universalization* of legislative frameworks, legal justifications, and punishments. In the working of international human rights institutions, the criminal laws adopted by States are an indicator or marker of the level of compliance of States with the international mandates. In recent years, the interface between the two fields, i.e., international human rights and domestic criminal laws, has sparked great jurisprudential, political, and constitutional debates in different parts of the world. Against this backdrop, the Webinar was organized on Human Rights Day to discuss the relevant issues.

During Session I on *Rights Jurisprudence and Criminal Law*, the presenters traced the importance of international human rights standards within domestic laws/ provisions on

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¹ The members of the organizing team included Prof. Sharad K. Soni, Director, Human Rights Studies Programme (JNU), Prof. Sangeeta Thapliyal, Chairperson, Centre for Inner Asian Studies (JNU), Prof. Manoj Kumar Sinha, Director, Indian Law Institute, Prof. Anuragdeep, Faculty, and Webinar Coordinator, Indian Law Institute, and Dr. Deepa Kansra, Faculty and Webinar Coordinator, Human Rights Studies Programme, JNU.

national security matters, domestic violence, and information-based rights. In this regard, Prof. Anurag Deep covered the leading human rights arguments advanced in different jurisdictions regarding their national security-based responses and laws. He also shed light on the more recent security jurisprudence in India and the United States of America. Mr. Vishnu Prasad, on the themes of access to information and criminal justice, made a comparison between the approaches of the European Court on Human Rights and the Indian Supreme Court. He also summarised the various measures adopted by the two courts, particularly the European Court, towards greater access for citizens and organizations on information rights and freedom of expression. Ms. Ram Dulari Patel covered the sub-theme of domestic violence under international human rights law. She discussed the importance of domestic reforms to include internationally advanced strategies for the protection and redressal of domestic violence cases. She also spoke of the challenges posed by the limited state membership of human rights treaties and state reservations to treaty provisions and their Optional Protocols.

Session II covered the theme of *Harmful Practices against Women* and the role of criminal sanctions in this regard. The *harmful practices framework* has been a core agenda of the international human rights treaty bodies, including the Committee's under CEDAW and CRC, for ensuring effective interventions by states towards the prohibition and elimination of practices designated as harmful to women. The harmful practices framework of the core treaty bodies has been a comprehensive framework based on evidence from different fields, including cultural studies, history, anthropology, etc. In this context, Dr. Moumita Mandal spoke of the economic and cultural challenges facing the UN-led initiatives to prohibit and eliminate Female Genital Mutilation (FGM) in different regions. Ms. Aswin Grace presented her views on the challenges associated with the criminalization of abortions. She also discussed some of the leading arguments advanced for decriminalizing abortions and the liberalization of abortion laws.

In Session III, the presenters discussed the scope of *victims' rights under criminal justice systems* (international and domestic). Domestic and international bodies have carefully pursued the case of the victims of crime. In this regard, Mr. Pawan Kumar discussed the role of the International Criminal Court in adopting victim-centric approaches and procedures. Ms. Ira Rana shed light on the inadequacy of existing human rights provisions/mechanisms to address the plight of children of incarcerated parents. She also traced the short-term and long-term effects that the incarceration of parents can have on their children. In Session IV on *Reforms*

in the Future, Ms. Aishwarya Kashyap highlighted the justice systems' structural and procedural inadequacies in dealing with sexual offenses within marriage. In addition to the legal inadequacies, she also spoke of the cultural factors that shape the issues at hand.

At the end of the Webinar, Dr. Deepa Kansra presented the key observations made by the participants during the webinar discussions. The observations include:

1. There is an over-dependency of international human rights bodies on the criminal law machinery of States.
2. The inadequacy of data (region and country-specific) on crimes and violations is a roadblock to meaningful legal interventions.
3. There is a lack of harmony between international and domestic standards on criminal justice matters.
4. There is a significant influence of global politics and lobbying on selective agendas for criminalization/decriminalization.
5. The use of interdisciplinary approaches to understanding crimes and victimization can contribute significantly to research and reforms in criminal law.

The participants also advanced proposals for reforms, including;

1. Need for active intervention by domestic courts in matters concerning national security and traditional harmful practices against women.
2. Need for uniform provisions and sentencing guidelines across jurisdictions for offenses against children and women.
3. Need for a framework to address the needs of children of incarcerated parents.
4. Need for ratification by all States of the significant international human rights treaties, including the Optional Protocols.