

# COMPOUNDABILITY OF OFFENCES: TRACING THE SHIFT IN THE PRIORITIES OF CRIMINAL JUSTICE

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*A, the employer, comes to know about embezzlement of funds by B, the employee. Although it's an offence punishable by law, and A should call police, A decides that it's more pragmatic for her to recover the money back, maybe because she doesn't want the company to gain disrepute or perhaps because the embezzled funds were not insured. She confronts B instead of reporting her, and B confesses. They bargain and A agrees not to report the crime if B returns the embezzled money. The offence of theft and fraud in Indian law, are compoundable only with prior permission of the court. The question thus arises, has A become an accomplice to the crime by compounding a non-compoundable offence?*

## I. INTRODUCTION

Compounding as a criminal procedure, challenges the foundational principles of criminal justice system introduced by Britishers: that the State alone monopolises all forms of violent behaviour, and any criminal offence committed by anyone towards another, is an act challenging the authority of the State and therefore, the State has an interest in punishing all the wrongdoers. Compounding, instead, grants the agency to the injured and the injurer to decide the course of action. Yet, by requiring the victim to actively conceal knowledge about the crime, compounding puts the State's interests in jeopardy. This paper does not seek to question/challenge the foundational principles of criminal justice as introduced by British. It rather seeks to understand compounding as a criminal procedure within the criminal justice system, which may be categorised as retributive model, and seeks to examine the evolution of the concept of compounding through the years.

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S. 101 of the Larceny Act (UK) made it an offence to procure a good from an offender who may have stolen or obtained that good illegally.<sup>1</sup> That is, if anyone would perform an act that would help the offender to evade trial, it was considered as a misdemeanour and treated as a criminal offence called *compounding a felony* or *ante-bote*. In 1885, in the case of *R. v. Burgess*,<sup>2</sup> the logical implications of S. 101 came into question. Arthur Bagley had stolen 28 shillings from one Mr. Bedford. Mr. Bedford involved the accused, Burgess, in the matter. Burgess entered into a written agreement with Arthur Bagley's mother stating her not to charge him with any criminal case in lieu of 30 shillings, which Burgess duly returned to Mr. Bedford. Nevertheless, on evidence of Mr. Bedford, Bagley was charged of theft and subsequently, Burgess of compounding a felony.

Even though Burgess was eventually convicted, the case raised several important questions. The implication of the compounding would have meant that had Burgess broken the agreement and had filed the complaint with the police, then Burgess could not have been charged. The agreement was illegal, and thus void ab initio. But if, Burgess had further committed fraud against the other party by breaking it, then he would not have been prosecuted against. It also raised a hypothetical, where the owner of goods itself recovers the goods, would the owner be charged for compounding? Coleridge C.J. in his judgment, did note observations that *Blackstone* had made in his commentaries regarding the fact that the concept of *ante-bote* had perhaps failed to conceive of an occasion where the owner of stolen goods itself could have been accused of compounding.

This paper begins by tracing historical development of criminal law in British India and how *razeenamahs* (settlement deeds) were dealt with by the British law enforcers. The developments during the colonial regime and post-independence are examined. Over the years, the approaches of the Courts and commissions towards criminal law as a whole and towards composition has also undergone considerable changes: these changes are sought to be examined through the means of this paper. The recent trends towards increasing the scope of composition and making more offences such as S. 326 IPC and 498A IPC compoundable, need to be understood not only in light of recent developments and judicial pronouncements, but an attempt has been made to contextualise the concept of compounding as part of the criminal procedure by tracing its historical evolution. Due to lack of access to historical sources, like the very important earlier editions of *Archbold's Commentaries*, the history of compounding was difficult to chart. Instead reliance has been placed on earlier judgments and other available sources. Finally, the lack of studies regarding implications of compoundability beyond the formal system is also a serious limitation of this paper.

<sup>1</sup> S. 101, The Larceny Act, 1861 (United Kingdom).

<sup>2</sup> *R. v. Burgess*, (1885) 16 QBD 141.

## II. 18TH CENTURY IN INDIA – FROM RAZEENAMAHS AS PROCEDURE TO OUTLAWING OF RAZEENAMAHS

The State's interference in personal interactions was limited in the pre-British era. Guided by the Islamic legal schools and general norms, the State would interfere only in cases when offences of grave nature had been committed: murder, dacoity, robbery etc. (Britishers would later extend the State's sovereignty, by basing punishment not just on the gravity of crime but also the 'intent').<sup>3</sup> The Islamic laws and general norms that prevailed allowed for payment of fine of blood, even in the case of homicide, as restitution to the heirs of the deceased.<sup>4</sup> If the consent deed or the *Razeenamah* were obtained by the accused from the heirs of the deceased, the case could not be registered. In some cases, the *patron* of the deceased or some corporate body that the deceased belonged to, would also have had to be given some 'satisfaction'.<sup>5</sup> At the turn of the nineteenth century, the interests of revenue dominated over the interests of administration. The investigation process in the British-ruled Benaras Zamindari was noted to have been focused towards securing a *razeenamah* and not towards securing clear-cut verdict of guilty or not guilty.<sup>6</sup>

<sup>3</sup> The late Mughal period is noted for lawlessness and criminal administration is remarked as being in complete disorder. The criminal justice was dispensed with by the local zamindar; in most cases it was discretionary fines that were imposed. See N. Majumdar, *Justice and Police in Bengal 1765-1793: A Study of the Nizamat in Decline*, 32-35 (1960).

The advent of British law was noted as — "British rule brought equality before the law [...] the poorest peasant was entitled to all the solemn formalities of a judicial trial and the provisions for punishment made no difference between the highest functionary and a sweeper." Also see T.K. Banerjee, *Background to Criminal Law*, 290 (1970); B.B. Misra, *Central Administration of the East India Company 1773-1834*, 298, 339 (1959); N.K. Sinha, *Preface* in N. Majumdar, *Justice and Police in Bengal 1765-1793: A Study of the Nizamat in Decline* (1960). The impact of British is widely categorised under two periods: Company Rule — when the revenue collection was the supreme concern; and Colonial Rule — post 1857, when the subcontinent came under direct rule of the British Crown.

<sup>4</sup> R. Singha, *A Despotism of Law: Crime and Justice in Early Colonial India*, 24 (1998).

<sup>5</sup> *Ibid.*

A distinction seemed to have existed between individual cases of homicides and murders linked with highway robberies/banditries. The Indian rulers would hesitate in imposing capital punishment in the former cases, but the crimes committed in context of highway robberies were seen in different light, they were seen as direct challenge to the sovereignty of the ruler.

*Abu Hanifa* school of Islamic law drew a distinction on the basis of mode. As per this school, capital punishment could only be awarded if the instrument which was used to cause death, was one commonly associated with shedding of blood. It thus drew a distinction between murder and murder using dangerous weapons.

*Hanafi* school of Islamic law maintained that in certain cases, such as homicide caused by drowning/struggling, would not impose a liability of retaliation — only blood money/composition could be claimed in such cases.

*Ibid.* at 52. Also see J. Forbes, *Oriental Memoirs*, vol. 2, 25 (1813); N. Majumdar, *Justice and Police in Bengal 1765-1793: A Study of the Nizamat in Decline*, 116(1960).

<sup>6</sup> *Ibid.* at p. 41.

This was in contradiction to the criminal process the Britishers were accustomed to, back at home.<sup>7</sup>

The interests of uninterrupted revenue may have let the Britishers acknowledge the efficiency the *razeenamah* and similar instruments had to offer, but they continued to look disdainfully at the indigenous legal system. Warren Hastings would describe blood money in his letters as—“*of barbarous construction and contrary to the first principles of civil society by which the State acquires an interest in every member and a right in his security.*”<sup>8</sup> The law of *kisas* (retribution in form of retaliation) offended British conceptions of justice for its notion that the punishment could depend upon the nature of relationship between the victim and offender. A magistrate of Bhagalpur declared that such provisions “*..destroyed, those ideas of natural justice [...] criminality levels all distinctions which owe their origin to human conventions.*”<sup>9</sup> At the time, notably family ties usually prevailed to secure pardon in case of murder within a family: this would lead to opposite stances within the early British criminal justice system. In one such case, where the perpetrator was the son of the victim, the Banaras adalat law officers stated that the perpetrator should be released. The British Resident, however, succeeded and ultimately persuaded the law officers that this was ideal case for *Siyasatan* (Ruler’s authority to impose extraordinary

<sup>7</sup> Aside from Razeenamah, there was another instrument that was used — *Surathal* which also resulted in restitution/composition. Unlike an eyewitness testimony, a *surathal* was a form of composite attestation to the facts which may have happened, drawn by men of “credit and influence” (deputed by the Amil and those from the locality). It is not ascertained how much the adalats gave consideration to the *surathals*, but the *surathals* are noted to be more focused towards securing reconciliation and smooth uninterrupted flow revenue to the company. Later, in 1795, when the power of a mils was reduced to that of being revenue officers alone (they were redesignated as “*tehsildars*”), the *surathals* were thereafter drawn by the *darogha* (who was now vested with police powers).

The procedure of drawing up of *surathal* was very susceptible to power dynamics: the Amil’s delegates would often fail to get the local notable men to verify and attest the *surathal* if, one, the *surathal* implicated someone of some standing amongst them or second, the local notables did not accept the legitimacy of intervention by the Amil in the dispute. In cases of robberies, on the basis of mere representation of the “respectable inhabitants”, the British magistrates were also noted to arrest men from low castes or wandering groups.

See R. Singha, *supra* note 4, 42-45.

<sup>8</sup> R. Singha, *supra* note 4, 52. Also see Letter from Warren Hastings, In Supplement, 114-119.

<sup>9</sup> *Ibid.* at p. 53. Also see BRC P/52/22, 3-12-1790, 371 (Magistrate, Bakarganj) (Unreported). (plz chk)

The said position was not unanimous i.e. magistrates were not all as disdainful towards composition. Magistrate of Bakarganj on the other hand noted “*If the perpetrator could satisfy next of kin and obtain a razeenamah, no prosecution can or ought to be carried out against the murder.*” (emphasis supplied) It is unclear however, whether at the relevant time there were any Indian Magistrates i.e. whether the Magistrate of Bakarganj was actually Indian. In absence of any recorded description of ethnicity, it could be presumed that the said Magistrate was a British Magistrate.

*Ibid.* at p. 56. Also see BRC P/52/33, 3-12-1790, 312 (Magistrate, Bakarganj) (Unreported). (plz chk)

punishment to set an example for public). The perpetrator was eventually transported for life.<sup>10</sup>

The choice was between an outright composition (pardon and compensation) and retaliation on the other. There was no midway that was offered by the indigenous system. Aside from the fiduciary relationships, other factors that led to composition in such cases were poverty, loss of breadwinner and/or where the perpetrator was superior (either socioeconomically or physically).<sup>11</sup> Evidently, the system that prevailed, did not lead to equal treatment of everyone before the law as noted by T.K. Banerjee.<sup>12</sup>

It was Warren Hastings who originally proposed the modification in law that if the ‘intention’ of murder was clearly proved, no such distinction was to be made with respect to the weapon by which the crime was perpetrated.<sup>13</sup> This proposal was later implemented by Cornwallis in stages. Previously, Hastings had introduced Bengal Regulations that prohibited imposition of commissions on money recovered in cases of robberies/thievery/dacoity.<sup>14</sup> In 1790, Cornwallis introduced Bengal Regulation that in cases of homicide it would be the opinion of Abu Yusuf and Imam Mohammed schools that would be applied. These schools provided for capital punishment for wilful murders.<sup>15</sup> In 1793, Cornwallis introduced another regulation for the Bengal Presidency that provided for capital punishment for wilful murder, even if the heirs of the victim had pardoned him or accepted compensation from him. Similarly, Duncan at that time, in cases of theft, had given sentences for imprisonment/

<sup>10</sup> The contrast between conceptions of justice system between Islamic law officers and the Britishers is also noted from another instance where the Islamic law officers strongly defended the right of heirs to compensation, despite strong objections by Jonathan Duncan (Governor of Bombay) remarking about the “indecency” of selling a relative’s blood.

See R. Singha, *supra* note 4, 56, 59. *RB to Sub-Secy.*, 30-12-1791, BRJ P/127/77, 6-1-1792, 7-17. (plz chk)

<sup>11</sup> *Ibid.* at p. 58.

<sup>12</sup> See *supra* note 3.

<sup>13</sup> R. Singha, *supra* note 4, 52.

<sup>14</sup> Art. 16, Bengal Regulations, 1772.

Judges of the indigenous courts/tribunals were not paid fixed salaries, they received emoluments as a fixed percentage fines levied. As a consequence, the wealthy culprits, even if guilty of capital offences, could escape by agreeing to pay a fine decision of the Judges was derided as “a corrupt bargain with the highest bidder”. The fees of Judges/Qazis was noted as a heavy burden on the poor; “On receiving a suitable fee, the Qazi used to turn right into wrong and injustice into justice”.

See N. Majumdar, *Justice and Police in Bengal 1765-1793: A Study of the Nizamat in Decline*, 45-46, 71-72 (1960).

R. Singha, *supra* note 4, 26.

<sup>15</sup> The greater focus given by the company administration to “intention” and “pre-mediation” extended the claims of the State at the expense of the punitive claims of the victims or his/her heirs.

R. Singha, *supra* note 4, 63-66.

See Governor General’s Minutes, BRC P/52/22, 3-12-1790, ¶¶ 22-23 (Governor General’s Council) (Unreported).

transportation where the offender had offered to recompense for the loss and the victim was ready to accept the razeenamah.<sup>16</sup> Finally in 1797, composition/razeenamah was prohibited entirely for all serious crimes.<sup>17</sup>

Radhika Singha comments that due to these changes and razeenamah becoming prohibited, there was little incentive for the thief brought to the court to offer to make up for the loss. That also discouraged the victims of theft/robbery from bringing their suspect to trial if they had any hope of persuading or coercing the offender to repay.<sup>18</sup> This observation, howsoever logical, is not backed by historical sources; Singha, further fails to consider the impact of this prohibition in light of T.K. Banerjee's comment that the advent of British rule brought equality before law. Singha notes that as a combined result of the said regulation prohibiting razeenamahs, along with others such as fixed measure of punishments, the element of composition between victim and offender lost its significance in trial procedure. She notes that as a consequence, informal deals were still conducted outside the court procedure—often contrary to law, with the *darogha* often supplying the element of threat or coercion which ensured that the arrangement was reached upon.<sup>19</sup>

### III. COMPOUNDING AS AN ELEMENT OF CRIMINAL PROCEDURE IN BRITISH INDIA

The Indian Law Commissioners asserted that their work (drafting of the Penal Code and the Code of Criminal Procedure Code) was not based on 'any digest of cases or existing body of law in force in the subcontinent'.<sup>20</sup> In the draft Indian Penal Code ["IPC"], the Commissioners suggested to make it an offence of subsequent abetment where 'a person knowing that an offence has been committed, and knowing himself to be directed by law to give information in any quarter of that offence, subsequently abets that offence by intentionally omitting to give such information, shall be punished with imprisonment of either description for a term which may extend to six months, or

<sup>16</sup> R. Singha, *supra* note 4, 66.

<sup>17</sup> S. 8, Bengal Regulation 9, 1807. The police officers were barred from accepting razeenamahs except in petty cases.

Around this time, even the special regulations put in place for tribal population in the Bengal Residency were also amended in the same regard. Sentences for mutilation and blood money were converted into death sentence or imprisonment. For petty offences, magistrate was empowered to adjudicate only if the Magistrate could persuade the parties to agree, but if they refused, even these cases were to be referred to the adjudicating authority (Hill Assemblies). See The Regulation for the Trial of Hill People in the Districts of Rajmahal and Boglepore for Crimes and Misdemeanours, Regulation I of 1796.

Also see Vasudha Dhagamwar, *Role and Image of Law in India — The Tribal Experience*, 101-102 (2006).

R. Singha, *supra* note 4, 66.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.* at 68.

<sup>20</sup> Thomas Macaulay, A Penal Code Prepared by the Indian Law Commissioners, 6 (1837).

fine, or both'.<sup>21</sup> On the other aspect, Macaulay and other Commissioners were clear in recognising that the criminal law must not recognise authority of any other person other than the State to inflict violence, i.e., they did not recognise the authority of the master to inflict 'corrections' on its slaves.<sup>22</sup> The significance of the same, the Commissioners' notes on this aspect have failed to gain adequate credit. Even if merely on paper, the non-recognition of the zamindar/master's sovereignty was a watershed event in Indian legal history: there is no other recorded incident in the subcontinent when any ruler/sovereign had by promulgations monopolised the right to inflict violence. The Commissioners viewed the same to be of utmost importance in order to end slavery.

The IPC made compounding a penal offence (*Burgess* would have become liable for having compounded a felony in British India also, see footnote 2).<sup>23</sup> In the subsequent year (1861), Code of Criminal Procedure was enacted. Significantly, the Code did not provide for compounding as a procedure; it only provided for the complainant to withdraw in certain specific cases prior to issuance of summons/warrant, where the maximum punishment was six months imprisonment.<sup>24</sup> It was only in 1872, when the subsequent Code of Criminal Procedure reduced the scope of compounding as an offence, and provided for compounding as a criminal procedure.<sup>25</sup>

<sup>21</sup> S. 105, Indian Penal Code Bill, 1837.

The provision was adopted, however, it was made a separate offence (S. 202) under the Chapter — "False Evidence and Offences against Public Justice". The scope was modified as well:

*"Section 202 Intentional Omission to give information by person bound to inform— Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."* S. 202, Indian Penal Code, 1860.

<sup>22</sup> "We recommend that no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave." The preceding quote also becomes important to contextualise the recommendation:

"It appears to us therefore that if we can really prevent the master from exacting service by the use of any violence, or restraint, or by the infliction of any bodily hurt, one of two effects will inevitably follow. Either the master will obtain no service at all, or he will find himself under the necessity of obtaining it by making it a source of advantage to the labourer as well as to himself."

Thomas Macaulay, A Penal Code Prepared by the Indian Law Commissioners, 9, 20 (1837).

<sup>23</sup> S. 213, Indian Penal Code, 1860. Also see Ss. 214 and 215.

<sup>24</sup> S. 271, Code of Criminal Procedure, 1861.

*"Section 271 Magistrate may permit withdrawal of the complaint – If a complainant at any time before a final order is passed in any case under this Chapter, shall satisfy the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit such complainant. A complaint withdrawn under this Section shall not again be entertained."*

<sup>25</sup> S. 188, Code of Criminal Procedure, 1872.

*"Section 188 Compounding offences — In the case of offences which may lawfully be compounded, injured persons may compound the offence out of Court, or in Court with the permission of the Court."*

However, before enactment of 1872 Code, two cases of adultery wherein the husband was unwilling to proceed with prosecution, came up for consideration before the Bombay High Court.<sup>26</sup> Adultery, being an offence wherein the accused could be sentenced for five years, was not compoundable statutorily under S. 271, CrPC.<sup>27</sup> The first case arose in 1864. The Sessions Court had convicted the accused of adultery. The decision was subsequently reversed by the High Court on the ground that the husband had desired withdrawal of the charges at the trial stage; the full-bench of High Court held that it was competent to the husband to withdraw from prosecution, there being nothing to show collusion.<sup>28</sup> The second case came up for hearing in 1868 where the accused was ordered to be discharged by the Asst. Sessions Judge, who, recorded:

*“Witness is the party whom the present offence most concerns, and, if he be willing to overlook the same, I am of opinion that no benefit would accrue to society by ordering him to depose to the facts of the case, as far as he may know them, and by continuing the prosecution”.*

The High Court following the previous case, declined to interfere with the discharge order.<sup>29</sup>

On the other hand, Calcutta High Court stuck to the statutory limitations and held that once the complainant had been brought to the Court's cognizance, the complainant could not withdraw, unless the offence committed was one specified in S. 271, CrPC. It held that offence of adultery could not be compounded even at the instance of the husband pleading for withdrawal prior to issuance of summons/warrant.<sup>30</sup> The Judicial Commissioner of Punjab made the following note which reflects the criminal justice system as conceptualised by the colonial judges:

*“A Criminal Court is not lightly to be moved and converted into an engine of oppression. If a man launches his case, he stands the consequences of convicting his adversary, or being himself convicted of having made a false accusation. The Code has conveniently made the fact of a summons or warrant being issued the limitation of the power of withdrawal.”*<sup>31</sup>

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*Such withdrawal from the prosecution shall have the effect of an acquittal of the accused person.”*

<sup>26</sup> *Jamni and Parshotum, In re*, 19-6-1864 (Bom HC) (Unreported)(Plz chk); *Reg. v. Ramlo Jerio*, (1868-69) 5 Bom HCR 27.

<sup>27</sup> S. 497, Indian Penal Code, 1860.

<sup>28</sup> *Jamni and Parshotum, In re*, 19-6-1864 (Bom HC).(plz chk)

<sup>29</sup> *Reg. v. Ramlo Jerio*, (1868-69) 5 Bom HCR 27.

<sup>30</sup> H.T. Prinsep, *The Code of Criminal Procedure, Act XXV of 1861, and Act VIII of 1869, and Other Laws and Rules of Practice, with Notes Containing the Opinions Delivered by All the Superior Local Courts*, 152-153 (3rd edn., 1869).

<sup>31</sup> *Ibid.*

S. 188 of Code of Criminal Procedure of 1872 made compounding a statutory procedure. Select offences were permitted to be compounded outside or within the Court, however the permission of the Court was indispensable.<sup>32</sup> The unamended exception to S. 214, IPC stated the category of offences that could be amended:

*"The provisions of Sections 213 and 214 do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action."*<sup>33</sup>

The exception could be understood as: that the criminal law forbids taking and giving of compensation (S. 213 and 214, IPC); however, where the (civil) law itself would award a compensation, those offences could be compounded (Exception to S. 214, IPC). Compounding was made permissible in cases where the civil action could be brought by the injured to claim damages, without needing to/instead of instituting criminal proceedings.<sup>34</sup> "*Irrespective of the intention of the offender*" was interpreted to mean that only those petty offences could be compounded, whose definition does not includes words referring to intention like 'voluntarily', 'intentionally', 'fraudulently', 'dishonestly', etc.<sup>35</sup> The withdrawal of prosecution were taken to have effect of an acquittal.<sup>36</sup>

The Code of Criminal Procedure was re-enacted in 1882. This time the Code provided for definite list of offences that were deemed as compoundable.<sup>37</sup> The victim was empowered to compound the specified offences; for certain other offences, the victim could compound with the permission of the Court. Code of Criminal Procedure, 1898 retained the provision, however it expanded the list of offences compoundable with prior permission of the

<sup>32</sup> S. 188, Code of Criminal Procedure, 1872.

<sup>33</sup> S. 214, Indian Penal Code, 1860.

<sup>34</sup> *Reg. v. Rahimat*, ILR (1877) 1 Bom 147.

Lack of clarity over interpretation of exception clause remained until the clause was amended in 1882. For instance adultery had been deemed to be a compoundable offence at the instance of the injured husband, however "intention" was a vital element of the offence. Also see *Reg. v. Jetha Bhala*, (1873) 10 Bom HCR 68; *Reg. v. Madan Mohun*, 6 NWP HCR 305. <sup>35</sup> *Reg. v. Rahimat*, ILR (1877) 1 Bom 147. In this case the Bom HC held that offence of "grievous hurt" cannot be compounded. Also see H.T. Princep, *The Code of Criminal Procedure (Acts X of 1872 and XI of 1874) and Other Laws and Rules of Practice Relating to Procedure in the Criminal Courts of British India, with Notes Containing the Opinions Delivered by All the Superior Local Courts*, 154 (5th edn., 1875); Fendall Currie, *The Indian Code of Criminal Procedure*, 583 (4th edn., 1872). For adultery, see Ss. 478, 479, Code of Criminal Procedure, 1872.

<sup>36</sup> H.T. Princep, *supra* note 35, 626.

<sup>37</sup> S. 345, Code of Criminal Procedure, 1882.

Exception to S. 214, IPC was suitably substituted, it now read as "The provisions of Ss. 213 and 214 do not extend to any case in which the offence may be lawfully compounded."

Court.<sup>38</sup> The 1898 Code also provided that where an accused had been committed for trial or had been convicted and an appeal was pending, composition of offence could only take place with the leave of the Court.<sup>39</sup>

The changes in law saw widening of scope and applicability of compounding within criminal justice system. Courts' approach towards compounding remained that of cautious nature.

#### IV. COLONIAL COURTS APPROACH TOWARDS COMPOUNDING

The outlook of Bombay High Court towards compounding in 19<sup>th</sup> century has been captured quite well in the then-Justices conceptualisation of civil and criminal wrongs as per the decision in *Reg. v. Rahimat*.<sup>40</sup> The case arose prior to the 1882 amendment and the issue was whether offence of grievous hurt could be compounded. The Court identified civil wrongs as the ones not so flagrant nor so dangerous to the society at large and that they did not warrant immediate interference of the State. It noted the object of State's coercive powers in case of civil wrongs as not penal, but remedial/compensatory. It understood criminal sanctions to mean as intending

*"...to enforce duties regarded as of such importance to the community that the option of insisting on them, or of bringing the provided penalty to bear in cases of their infringement, cannot safely be left in the hands of private persons."*<sup>41</sup>

Noting that the views on enormity of a wrong has always varied with time and other influences, it recognised the third category: wrongs that depending on the circumstances, may either be extremely pernicious or slightly pernicious. These wrongs may be subject to either criminal or civil cognizance; as they "except in some inappreciable degree", affect only the interests

<sup>38</sup> S. 345, Code of Criminal Procedure, 1898.

The Criminal Procedure Code, 1882 empowered the victim in certain cases involving bodily injuries to compound the offence with the permission of the Court. The Criminal Procedure Code, 1898 expanded the scope by including offences relating to criminal restraint, misappropriation of property, cheating, trespass, bigamy and indecency/insulting modesty of woman.

<sup>39</sup> S. 345(5), Code of Criminal Procedure, 1898.

S. 345(5) —

*"When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard."*

<sup>40</sup> *Reg. v. Rahimat*, ILR (1877) 1 Bom 147. The bench consisted of British Chief Justice, two British puisne Judges and one Indian Judge. Judgment of the court was authored by J. Raymond West (British origin).

<sup>41</sup> In these cases of serious wrongdoing, "the criminal law machinery must first be put in motion before civil redress for private wrong can be effectually sought". *Reg. v. Rahimat*, ILR (1877) 1 Bom 147, ¶ 7.

of the individual.<sup>42</sup> In a case that arose in Agra, where the accused who had defrauded a bank into extending them a loan of Rs. 20,000 had agreed and had paid back the amounts to the satisfaction of bank authorities.<sup>43</sup> However, by then the bank had already instituted criminal proceedings. Thereafter it sought to withdraw its complaint. The Allahabad High Court reversed the decision of the magistrate, who had compounded the offence, by holding that cheating was not a compoundable offence. In doing so, the High Court noted: “*Nothing could be more mischievous than to allow the process of the Criminal Courts to be used for the purpose of enforcing civil claims*”.<sup>44</sup>

A case arose in the Madras Presidency in 19<sup>th</sup> century, out of a dispute over right to office in a temple between a Brahmin father-son and Defendant. The father and the son had better claim to the office on paper, yet the temple at that time was in possession of the Defendant who was relatively more influential. To assert their right, the father and the son had entered the temple on one occasion, which prompted the defendant to institute proceedings for criminal trespass against the two. Immediately thereafter, the defendant got them to sign an agreement waiving their right to the office and thereafter withdrew the charges of criminal trespass. The father and son thereafter moved the munsif court for cancellation of the agreement, on the ground that it was obtained by coercion.<sup>45</sup> Madras HC in the matter held while nullifying the agreement, that had the case been of a clear criminal trespass and not that of dispute over property, duress and coercion could not have then been claimed for overturning the agreement/composition, as the threat of asserting one’s legal rights cannot amount to coercion.<sup>46</sup>

Macaulay and other Law Commissioners at the time of drafting of IPC were clear, that amongst many objects, one object of recognising the State as having the sole legitimate authority to inflict violence was to discourage slavery. The IPC as had been drafted, made compounding an offence. In one case that arose in 1893, coolies employed in a tea garden had complaint against the British owner for various instances of abuse, including, wrongful restraint. The British owner sought to get the proceedings quashed on the basis of *razeenamah* he had obtained from the coolies.<sup>47</sup> The Calcutta High Court, before examining the validity of the composition, delved into the relationship between the parties and the surrounding circumstances. It also noted

<sup>42</sup> *Reg. v. Rahimat*, ILR (1877) 1 Bom 147, ¶ 7.

<sup>43</sup> *Raunak Husain v. Harbans Singh*, 1880 SCC OnLine All 37 : ILR (1880) 3 All 283.

<sup>44</sup> *Raunak Husain v. Harbans Singh*, 1880 SCC OnLine All 37 : ILR (1880) 3 All 283. Also see *Emperor v. Ranchhod Bawla*, 1912 SCC OnLine Bom 21 : (1913) 15 Bom LR 61: “*In respect of a non-compoundable offence, it is not competent for a Magistrate to order an acquittal on a private complainant offering to withdraw from the prosecution in a warrant case.*” and *Hanmant Shrinivas Kulkarni v. Emperor*, 1929 SCC OnLine Bom 134 : AIR 1929 Bom 375.

<sup>45</sup> *Pudishary Krishnan v. Karampally Kunhumi*, (1874) 7 MHCR 378.(plz chk)

<sup>46</sup> *Pudishary Krishnan v. Karampally Kunhumi*, (1874) 7 MHCR 378 (per J. Innes).(plz chk)

<sup>47</sup> *Murray v. Queen Empress*, ILR (1893) 21 Cal 103.

that the coolies had signed in Odiya on the purported razeenamah in Bengali language. The Court, focusing on the power imbalance between the parties and the failure on part of the accused to prove composition, held: “*Unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition.*”<sup>48</sup>

At the same time, it would be an error to think that the colonial judiciary was entirely on one page as far as compounding was concerned. In one reported case, the complainant, a female, had instituted a complaint against three persons (gender or any circumstantial details not provided) for causing hurt. The offence being that of S. 323 IPC, was compoundable by the parties themselves. Later an application for compounding was moved. The Magistrate refused to accept composition and proceeded with trial, where the complainant herself turned hostile to the prosecution’s case. Yet the Magistrate convicted all three. Bombay High Court, in its 2-page judgment while overturning the conviction held that where the offence is of the nature that the parties are competent to compound amongst themselves, Magistrates need not examine the veracity of the same.<sup>49</sup>

## V. DEVELOPMENTS AND CRIMINAL LAW REFORMS: POST-INDEPENDENCE

Elsewhere in common law jurisdictions- in United States, compounding remains an offence in the statute books, however it is effectively a dead-letter offence. A survey of reported cases between 1658 and 1975 show only forty-five cases in which the accused was/were charged with offence of compounding.<sup>50</sup> Model Penal Code, proposed in 1962, for the first time recommended introduction of compounding as criminal procedure. The drafters provided the arguments that the threat of prosecution for compounding was ineffective in getting the victims to report the crime and also that it impugns the prosecutors who are often content to drop the prosecution due to restitution amongst the offender and the victim.<sup>51</sup>

<sup>48</sup> *Murray v. Queen Empress*, ILR (1893) 21 Cal 103.

<sup>49</sup> *Emperor v. Gana Krishna Walunj*, AIR 1914 Bom 258. Also see *Sewa Singh v. Emperor*, 1930 SCC OnLine Lah 149; and *Emperor v. Jhangtoo Barai* 1929 SCC OnLine All 140 : AIR 1930 All 409, the HC held it was immaterial whether the terms of composition were actually being carried out. For failure thereof, separate action lied in the civil courts. Madras HC however took a different view in *Ramalinga Aiyar v. Budda Varadarajulu Aiyar*, 1925 SCC OnLine Mad 117 : (1925) 49 Mad LJ 544, wherein the Madras High Court held that until the terms of the composition were not concluded, the matter cannot be compounded and the accused cannot be acquitted.

<sup>50</sup> Merek Evan Lipson, “Compounding Crimes: Time for Enforcement”, 27 *Hastings Law Journal* 175, 204 (1975).

<sup>51</sup> *Ibid.*

Legally, condonation by the victim in most States, has no effect on prosecution.<sup>52</sup> At the same time, ‘adjustments’ made by their police and the compromise achieved with securing either a dismissal or reduced penalty through the public prosecutor were well-recorded facts.<sup>53</sup> The Committing Judge, i.e., the one who serves as a summons judge, would also accept the pleas for lower charges and sentence accordingly.<sup>54</sup> In the 1920s the increasing number of such out-of-legal system compromises were attributed to increasing criminalisation of practices hitherto regulated by the societal or market norms, -such as sale and manufacture of liquor, issuance of cheques, sale of securities etc.<sup>55</sup> Drawing from the queue of efficiency perspective, it notes how increasing criminalisation was putting undue pressure upon the system, leading to an increase in its inefficiency.

The thinking and approach of the judges towards criminal law as a whole seems to have undergone a sea-change from what it was in 19<sup>th</sup> century. The 237<sup>th</sup> Law Commission Report that examines the issue of compounding of offences, begins by quoting a recent Supreme Court judgment where the judges stress upon the need to make offences punishable under S. 326 and S. 498A.<sup>56</sup> The purpose of compounding, as per the Supreme Court, is identified to be as in pursuance of increasing efficiency and furthering restorative justice- *“Any such step would not only relieve the courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of re-conciliation between them.”*<sup>57</sup> The entire Law Commission Report is surmised on the idea that to reduce the burden on courts, it is important to consider that as many offences be made compoundable as possible, while being within the identified constraints of balancing societal interests in securing conviction and interests of victims. The courts often upon an application for composition in cases involving non-compoundable offences have reduced sentences to the period already undergone.<sup>58</sup> Courts end up granting composition in such cases (including the ones where the charges are of non-compoundable nature) particularly because it is their belief that in a situation where the two parties wish to end litigation, the matter would

<sup>52</sup> For views of American Judges on compounding, see *Rieman v. Morrison*, 264 Ill. 279 : 106 NE 215 (1914, Supreme Court of Illinois, United States).

<sup>53</sup> Justin Miller, “The Compromise of Criminal Cases”, 1(1)Southern California Review 1, 2-3 (1927).

<sup>54</sup> *Ibid.* at 7.

<sup>55</sup> *Ibid.* at 17. Also see John Freeman, “The Ethics of Using Judges to Conceal Wrongdoing”, 55(1) South Carolina Law Review 829, 839 (2004).

<sup>56</sup> 237th Law Commission Report, Compounding of (IPC) Offences, 17 (2011).

<sup>57</sup> *Ramgopal v. State of M.P.*, (2010) 13 SCC 540 (per JJ. M. Katju and T.S. Thakur).

<sup>58</sup> *Rajinder Singh v. State (Delhi Admn.)*, 1980 Supp SCC 337 : AIR 1980 SC 1200. Also see P.R. Thakur, “Compounding a Non-Compoundable Offence: Judicial Pragmatism: Neither Activism Nor Absolutism”, 39(2-4) Journal of Indian Law 441-444 (1997).

anyway not lead to successful conviction. Saving the parties from the agony of trial and the court of its time become the primary concerns.<sup>59</sup>

At the time of revision of the CrPC of 1898, the Law Commission rejected the view that penal offences that were classified as compoundable were those in which the individual aggrieved person is much more concerned than the community as a whole.<sup>60</sup> The 41<sup>st</sup> Law Commission had received several suggestions for allowing compounding in the cases of: unlawful assembly (s. 143), rioting (s. 147), false claim in a court of justice (s. 209), fraudulently obtaining decrees (s. 210), driving or riding on a public way so rashly or negligently as to endanger human life (s. 279), causing death by rash or negligent act (s. 304A), causing grievous hurt by dangerous weapon (s. 326), wrongful confinement for extortion (s. 347), theft in a building (s. 380), lurking house-trespass or house-breaking by night (s. 456), the same in order to commit an offence (s. 457) and bigamy with concealment (s. 495).<sup>61</sup> These offences were not made compoundable as the Commission took the view that these offences jeopardised public peace, order and security, and therefore, they cannot be left to be compounded by the person directly aggrieved. Yet, without discussing how offence of assault against a woman to outrage her modesty (s. 354, IPC) did not jeopardised public order and security, the Commission recommended making the offence compoundable by the victim with the permission of the Court. At the same time, it also recommended that the offence of unlawful compulsory labour (s. 374, IPC) should not remain as a compoundable offence.<sup>62</sup>

154<sup>th</sup> Law Commission understood compounding of an offence in terms that are necessary to be discussed here: *'The rationale for compounding of offences is that the chastened attitude of the accused and the praiseworthy attitude of the complainant in order to restore peace and harmony in society...'* [emphasis supplied].<sup>63</sup> The adjective 'praiseworthy' is of particular significance, seemingly indicating that for the Law Commission in 1996, it was praiseworthy/good/encouraging behaviour if the complainant does not pursue a complaint, particularly in case where the offences are compoundable. Instead, according to

<sup>59</sup> *Sanjay Sandhya v. State*, 1994 SCC OnLine Del 61 : (1994) 54 DLT 126 and *Arun Kumar Vohra v. Ritu Vohra*, 1994 SCC OnLine Del 673 : (1995) 2 RCR 76.

<sup>60</sup> 41<sup>st</sup> Law Commission Report, *The Code of Criminal Procedure*, 1898, vol. 1, 213 (1969).

<sup>61</sup> *Ibid.* at 214.

<sup>62</sup> *Ibid.* at 214, 215.

Accordingly, the Code of Criminal Procedure, 1973, at the time of enactment made the suggested changes. Even the 42<sup>nd</sup> Law Commission Report, which dealt directly with the Indian Penal Code (1860) fails to discuss the offences from the aspect whether they should be compoundable or not. The Report lacks any discussion whatsoever regarding S. 374 and discusses S. 354 only regarding whether it ought to extend protection to minor females. A survey of reported judgments prior to 1969, also fails to indicate any decision wherein compoundability of S. 374 or S. 354 IPC was an issue.

S. 320, Code of Criminal Procedure, 1973.

<sup>63</sup> 154<sup>th</sup> Law Commission Report, *The Code of Criminal Procedure*, 1973, vol. 1, 47 (1996).

the Law Commission it would be 'praiseworthy' if the complainant utilises the criminal law machinery to arrive at a settlement with the accused. Thereafter, the Law Commission takes note of various instances where High Courts have quashed criminal proceedings in respect of hitherto non-compoundable offences and recommends making those offences also as compoundable; it most controversially recommended S. 498A (cruelty on woman by her husband or relatives of husband) to be made compoundable also.<sup>64</sup> The understanding, as above, was same: that these non-cognizable offences were being allowed to settle '*to achieve harmony and peace in the society*'. While also discussing making a third category of compoundable offences, offences compoundable with permission of senior police officials, it categorically also recommended: "*as a matter of policy more offences be brought under the category of offences compoundable by the parties themselves without the intervention of the court.*"<sup>65</sup>

What we see is a complete u-turn in the idea of criminal justice and the role of the State in 200 years. The above-stated recommendations hinged upon the idea that it would increase harmony in the society and efficiency of courts by reducing case volume.<sup>66</sup> Question arises, why not reduce these offences to civil wrongs in that case? Perhaps, that would have been too bizarre

<sup>64</sup> It also recommended making following kinds of offences as compoundable: offences causing hurt (Ss. 324, 325 and 335), offences of wrongful restraint (Ss. 343, 344, 346), offences against property (theft: S. 379; Ss. 403, 406, 407, 411, 414, 430, 451), offences of cheating/fraud (Ss. 417, 419, 421, 422, 423, 424), offences against animals (Ss. 428, 429, 430) and offences of intellectual property rights (Ss. 482, 483, 486). While it recommended all these offences to be made compoundable at the instance of parties, without permission of the court, it recommended S. 498-A offences to be made compoundable with the permission of the Court.

154th Law Commission Report, The Code of Criminal Procedure, 1973, vol. 1, 48-49 (1996).

Whereas both the chapters of the 154th Report on Compounding and Plea-Bargaining are based on increasing efficiency, the Report also revisited the idea of crime, and made notes on present trends in victimology in context of principles of compensating the victim. See 154th Law Commission Report, The Code of Criminal Procedure, 1973, vol. 1, 57-65 (1996).

The 2009 amendment to Code of Criminal Procedure, 1973 was based largely on the 154th Law Commission Report and the 177th Law Commission Report. See Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009).

In this light, Malimath's Commission Report on Reforms of Criminal Justice System (2003) also provides valuable insights into the mindset and perceptions about the criminal justice. Inter alia, Justice Malimath led Commission recommended that the victim should be made mandatorily present for the hearings in order to increase chances of conciliation/composition (p. 36), and overall also seem to be of the opinion that composition ought to be the desired result of criminal cases (this again, driven from the idea of clearing case backlogs and increasing efficiency of Courts) (pp. 163-167), it also recommended making S. 498-A compoundable (based on how it is "grossly misused" and that every Indian married woman desires peaceful resolution within her marital home) (pp. 190-191, 287-290). The same again fails to refer to an iota of primary research. See Ministry of Home Affairs, Government of India, Dr Justice V.S. Malimath et al., Committee on Reforms of Criminal Justice System (2003). For damning critique of the said Report see Amnesty International India, Report of the Malimath Committee on Reforms of the Criminal Justice System: Some Observations (19-9-2003).

<sup>65</sup> 154th Law Commission Report, The Code of Criminal Procedure, 1973, vol. 1, 49 (1996).

<sup>66</sup> *Ibid.*

to recommend, perhaps because depending on the circumstances, commission of such offences could not always be allowed to be compounded. At the same time while recommending an increased number of offences to be made compoundable, this law commission report also fails to shed light on the procedure of compounding-whether the same needs to be made more stringent/relaxed. The 237<sup>th</sup> Report (2011) also does not delve on the procedure.<sup>67</sup> It is unfortunate that the Law Commission failed to discuss into the adequate conditions of a valid and legal composition. The courts often upon an application for composition in cases involving non-compoundable offences have reduced sentences to the period already undergone.<sup>68</sup> The Higher judiciary requires the trial courts to verify the veracities of the compromise before sentence is reduced.<sup>69</sup> Courts end up granting composition in such cases, including in cases where the charges are of non-compoundable nature), since the goal has now become to save the precious judicial time, as noted by the courts: “*where the parties wish to end litigation, matter would anyway not lead to successful conviction*”.<sup>70</sup> There is a lack of judicial pronouncement/legislative materials guiding the conditions of composition and the lack thereof, has resulted in the bar being set too low for proving validity of a composition.<sup>71</sup>

It becomes important to anticipate the implications if a criminal act is made legally compoundable. There are offences like rapes and white-collar crimes that are routinely settled without involving the state, despite being non-compoundable.<sup>72</sup> Compounding by its proponents, like the 237<sup>th</sup> Report,

<sup>67</sup> 237th Law Commission Report, Compounding of (IPC) Offences (2011).

It may be noted that the said Law Commission Report recounts the legislative history of compounding; however, the same suffers from several factual discrepancies.

<sup>68</sup> *Rajinder Singh v. State (Delhi Admn.)*, 1980 Supp SCC 337 : AIR 1980 SC 1200; *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675; *Nikhil Merchant v. CBI*, (2008) 9 SCC 677; *Manoj Sharma v. State*, (2008) 16 SCC 1. See 237th Law Commission Report, Compounding of (IPC) Offences, 14 (2011). Also see P.R. Thakur, “Compounding a Non-Compoundable Offence: Judicial Pragmatism: Neither Activism Nor Absolutism”, 39(2-4) Journal of Indian Law Institute 441-444 (1997).

<sup>69</sup> *Ram Pujan v. State of U.P.*, (1973) 2 SCC 456; *Mahesh Chand v. State of Rajasthan*, 1990 Supp SCC 681 : AIR 1988 SC 2111.

<sup>70</sup> *Sanjay Sanadhya v. State*, 1994 SCC OnLine Del 61 : (1994) 54 DLT 126 and *Arun Kumar Vohra v. Ritu Vohra*, 1994 SCC OnLine Del 673 : (1995) 2 RCR 76.

<sup>71</sup> See *Suravi Mukherjee v. State*, 1964 SCC OnLine Cal 175 : AIR 1965 Cal 469. In this case one issue that arose was the validity of composition between the victim and the accused in an offence of hurt (S. 323 IPC). The victim and the accused were related through marriage. On a previous occasion, a composition agreement signed by the victim had been filed in the trial court; on the date of hearing, however, the victim rescinded from the composition agreement, and instead submitted that the terms of composition were still being worked out. The High Court in the said matter held that as soon as composition agreement had been signed by the victim, that would entail a valid composition having been entered into. It held that the trial court was bound to accept the composition as it were and was bound to quash the proceedings against the accused.

<sup>72</sup> Justin Miller, “The Compromise of Criminal Cases”, 1(1) Southern California 1, 2-3 (1927). Pratiksha Baxi, “Justice is a Secret: Compromise in Rape Trials”, 44(3) Contributions to Indian Sociology 207, 229-233 (2010).

is seen as a process of giving the agency back in the hands of victim-to perhaps opt for an outcome which is more restorative than retributive.<sup>73</sup> By giving the autonomy in the hands of the parties, like in the case of recent amendments to Factories Act, 1948, the State is effectively withdrawing its jurisdiction and instead, handing it to individuals. Amongst them, it could be reasonably speculated that power imbalance due to nature of their fiduciary relationship and other factors, may end up playing a determining role in the nature of composition.<sup>74</sup> In an event where there is over-criminalisation, that it results in inefficiency, i.e. the police and court machinery are inadequate to deal with all the reported cases, perhaps it may be prudent for the state to withdraw its jurisdiction.<sup>75</sup>

## VI. CONCLUSION: THE EFFECT OF COMPOUNDING AS A CRIMINAL PROCEDURE

Over the two centuries, there seems to have been a sea-change in the perceptions of the law-enforcers themselves towards the criminal justice system. The Bombay High Court in 1876 understood criminal sanctions as serving the purpose-

*“to enforce duties regarded as of such importance to the community that the option of insisting on them, or of bringing the provided penalty to bear in cases of their infringement, cannot safely be left in the hands of private persons”.*<sup>76</sup>

Now the understanding has changed to-

*“Any such step would not only relieve the courts of the burden of deciding cases in which the aggrieved parties have themselves arrived at a settlement, but may also encourage the process of re-conciliation between them.”*<sup>77</sup>

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In context of plea bargaining in cases of economic offences, J. Krishna Iyer found the practice to be deplorable: “Many economic offenders resort to practices the American call “plea bargaining”, “plea negotiation”, “trading out” and “compromise in criminal cases” and the trial Magistrate drowned by a docket burden nods assent to the sub rosa ante-room settlement. The businessman culprit, confronted by a sure prospect of the agony and ignominy of tenancy of a prison cell, “trades out” of the situation, the bargain being a plea of guilt, coupled with a promise of “no jail”. These advance arrangements please everyone except the distant victim, the silent society.” See *Murlidhar Meghraj Loya v. State of Maharashtra*, (1976) 3 SCC 684 : AIR 1976 SC 1929.

<sup>73</sup> *Rieman v. Morrison*, 264 Ill. 279 : 106 NE 215 (1914, Supreme Court of Illinois, United States).

<sup>74</sup> Amnesty International India, Report of the Malimath Committee on Reforms of the Criminal Justice System: Some Observations (19-9-2003).

<sup>75</sup> Jerold H. Israel, “Excessive Criminal Justice Caseloads: Challenging the Conventional Wisdom”, 48(1) Florida Law Review 761, 769 (1996).

<sup>76</sup> *Reg. v. Rahimat*, ILR (1877) 1 Bom 147, ¶ 7.

<sup>77</sup> *Ramgopal v. State of M.P.*, (2010) 13 SCC 540 (per JJ. M. Katju and T.S. Thakur).

A sea-change has taken place.

What remains unstudied is the effect of compounding on perceptions of efficiency/reliability on criminal justice. For good or for worse, the failure to treat all offenders brought to the Courts of law, equally, is a strange aberration to a system that professes equal treatment to all. Very few studies in India touch upon the effect of compounding on the State machinery and on perceptions about State machinery (police) and the criminal justice system. Pratiksha Baxi and Amnesty International's Response Paper to the Malimath Committee Report (2003) are few which broach this subject, empirically.<sup>78</sup> These two studies, discussed summarily in this paper, do seem to indicate that the higher judiciary and other law makers are far removed from the experiences of the people, and are actually ignorant about the effect of their continuous prizing of efficiency over any other goal of administering justice. While there is need for comprehensive studies on effects of compounding, there is also a need for serious reconsideration of the subject by the judiciary and other bodies like Law Commission, bereft of the 'efficiency' and 'reducing backlog in courts' arguments.

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<sup>78</sup> Pratiksha Baxi, *Justice is a Secret: Compromise in Rape Trials*, 44(3) *Contributions to Indian Sociology* 207, 229-233 (2010); Amnesty International India, *Report of the Malimath Committee on Reforms of the Criminal Justice System: Some Observations* (19-9-2003).