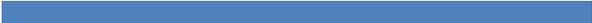


# Intrinsic Change or International Status?

Exploring the motivations  
for the policy change in  
India after December 2012

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**MASTER'S THESIS  
INTERNATIONAL RELATIONS**

**Submitted to the Department of Political Science  
Radboud University Nijmegen  
in fulfillment of the requirements for the degree  
of Master of Science**

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2015  
Nijmegen School of Management**

**April 2016**

**Word Count: 28.581**



**Radboud  
University  
Nijmegen**



## Abstract

This research is aimed at explaining what are the motivations for the policy change that occurred in India after the Delhi gang-rape case of December 2012. In a country where gender discrimination has still a large cultural acceptance, it is remarkable how this particular episode has marked the beginning of a law reformulation in the matter of rape and other crimes of a sexual nature. By using a specific gang-rape case as a foundational example, this research attempts to enhance the understanding of the dynamics leading to policy change in the field of human rights in emerging countries. Two theoretical frameworks are employed in this thesis, namely, the English School of International Relations (IR) theory and the Transnational Advocacy Networks (TANs) approach. The empirical evidence shows that the English School of IR theory has overall more explanatory power regarding the case study under investigation. Guided by this theory, the policy change occurred in India after December 2012 can be explained as an attempt of the Government of India to avoid reputational losses at the international level. Even if the premises of the TANs approach are not supported by the analysis, the findings of the research bring to light dynamics that could have relevant consequences for the adjustment and development of both the English School theory and the TANs approach.

Keywords:

India – Rape – Policy Change – English School of International Relations (IR) Theory – Transnational Advocacy Networks (TANs) Approach – Human Rights – Violence Against Women

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## Acronyms and Abbreviations

ACHR: Asian Centre for Human Rights  
ADR: Association for Democratic Reforms  
AIDWA: All India Democratic Women's Association  
AIPWA: All India Progressive Women's Association  
BJP: Bharatiya Janata Party  
BRICS: Brazil Russia India China South Africa  
CCP: Code of Criminal Procedure  
CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women  
CPIML: Communist Party of India (Marxist-Leninist)  
CRC: Committee on the Rights of the Child  
CRC: Committee on the Rights of the Child  
CSR: Center for Social Research  
ES: English School  
EU: European Union  
GOI: Government of India  
IEA: Indian Evidence Act  
INGOs: International Nongovernmental Organizations  
IPC: Indian Penal Code  
IR: International Relations  
JVC: Justice Verma Committee  
MP: Member of Parliament  
NAWO: National Alliance of Women  
NCRB: National Crime Records Bureau  
NGOs: Non-Governmental Organizations  
NTAC: National Tourism Advisory Council  
OSCC: One Stop Crisis Center  
PCSO: Protection of Children from Sexual Offences Act  
SIT: Social Identity Theory  
TANs: Transnational Advocacy Networks  
TNAs: Transnational Actors  
UN: United Nations  
UNDHR: Universal Declaration of Human Rights  
UNICEF: United Nations Children Fund

*"Don't teach me what to wear, teach men not to rape"*

Anti-rape slogan during the protests in New Delhi

## 1-Introduction

The status of women in India is a long-term, ongoing issue fraught with controversy and conflict. On 30 July 1980, India has signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and has ratified it on 9 July 1993<sup>1</sup>, with the aim to monitor the condition of women and to promote women's rights in the country. With the changing status of the country as an emerging global economic power in recent years, the situation for women has improved but sexism has continued to be a vital concern in the country known as the world's largest democracy. Hence, the juxtaposition of leading-edge changes with a continuing commitment to female subjugation and subordination as evidenced in such things as domestic violence and rape is a conundrum. In 2011, India was ranked the world's fourth most dangerous country for being a woman, preceded only by Afghanistan, Democratic Republic of the Congo and Pakistan<sup>2</sup>. Therefore, despite the ratification of CEDAW and other human rights treaties, violence against women still enjoys some degree of social acceptability in the Indian society, in particular among conservatives, thus making the path towards gender equality longer and more arduous. However, something seems to have changed after the occurrence of a particular gang-rape case.

In 2012 India was shaken by the brutal gang-rape and beating of a young woman. On 16 December, 23-year-old Jyoti Singh, a physiotherapy intern, was beaten and gang-raped by five men and a teenager on a moving bus in New Delhi. The victim consequently died as a result of her injuries. The crime generated strong and widespread national and international reactions. The fact that the victim was a young woman exacerbated the reactions and the case became the catalyst for change. A few days after the rape, public protests over women's safety were organized in New Delhi and other cities all over the country. This sweeping and immediate response to a gender-related crime was unprecedented in India. Thousands of ordinary people, joined the ranks of women's rights activists, representatives of non-governmental organizations (NGOs) and students and took to the streets demanding action from the Government against rape and discrimination against women.

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<sup>1</sup> India is a party to CEDAW, but with reservations to articles 5 (a), 16 (2) and article 29, and not a party to the Optional Protocol to the CEDAW, 2000.

<sup>2</sup> The ranking has been made by Thompson Reuters Foundation. See also <http://tribune.com.pk/story/189294/pakistan-ranks-3rd-on-list-of-most-dangerous-countries-for-women>.

It is furthermore remarkable how this particular gang-rape case was able to spark awareness of the problem of rape and sexual harassment in a country where violence against women seems to be a persistent phenomenon, despite the involvement of India in several treaties for the protection of human rights. The case under investigation represents a violation of the internationally agreed norms in the matter of human rights, as it underlines the failure of India to provide effective protection against rape and sexual assault. The official documents of CEDAW, for instance, reveal that all the “Lists of Issues”<sup>3</sup> (even the ones previous the Delhi scandal) that the CEDAW Committee addressed to India always contained the requests to remove the exception for marital rape and define it as a criminal offence and to promote and guarantee the consistent implementation of the Convention throughout the country. However, India never fully complied with the issues pointed out by the Committee. Only after December 2012 were some of the issues addressed. These considerations make this case study particularly puzzling because, despite all the precedent recommendations to India from international institutions, it was only after December 2012 that violence against women has become a prominent topic of discussion, in and outside India, with particular attention paid to the crime of rape. These dialogues are representative of radical change, as in India, prior to the Delhi gang-rape scandal, the discussion of rape was even considered a taboo.

As a result of the public outcry and the widespread media attention following the crime, the Government of India took responsibility and significant legal reforms with respect to the treatment of crimes of a sexual nature were initiated. In 2013, Indian president Pranab Mukherjee assented to the Criminal Law (Amendment) Act, 2013. The Act was broad in scope and addressed a full spectrum of the crimes of a sexual nature committed in Indian society. Several new laws were passed and new courts were created for hearing rape cases. Moreover, the death penalty was introduced in cases where the victim of a rape dies or is left in a vegetative state. The changes to the existent law will be discussed in details later in this thesis. However, despite these efforts, the effectiveness of the policy change is controversial. While the representatives of the Indian Government depicted the Act as a revolutionary achievement, several human rights activists stressed the deficits of the new legislation.

At this point, some questions arise. Why did the Government of India behave in this way? What was the aim of the legislative changes? The goal of this research is to analyze the motivations for the sweeping legislative reforms and changes (policy change) that occurred in India after the brutal gang-rape case of December 2012.

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<sup>3</sup> To access the documents see:  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=79](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=79).

### 1.1-Research Question and Theoretical Framework

---

In order to address the aforementioned research goal, the research question is formulated as follows:

*“What were the motivations for the policy change that occurred in India after the Delhi gang-rape case of December 2012?”*

The research question, hence, focuses on the dynamics that resulted in a shift regarding rape and other crimes of a sexual nature in India. It is interesting to notice that the domestic protests that followed the Delhi gang-rape seemed to have sparked a broad internal exhortation for change and, at the same time, the brutal incident provoked a significant international response. The official response of the Government of India came only after this domestic and international outcry. These facts allow considerations concerning the motivations that led to the occurrence of the policy change. The policy change could be an attempt of India to avoid reputational losses vis-à-vis other state actors, or it could be the outcome of domestic and international pressure. For the purpose of this research, the analysis will be limited to these two possible explanations. Therefore, the English School of International Relations (IR) theory and the Transnational Advocacy Networks (TANs) approaches will be used in order to understand the motivations of the policy change.

The main assumption of the English school of IR is that there is a so called “society of states” at the international level, despite the persistent condition of anarchy. The membership to this society is ratified by mutual recognition, meaning that every sovereign state both claims sovereignty and recognizes sovereignty’s right to other states. Thus exists an international society that bases its existence on a series of shared values. Respect for human rights is one of the universal values central in the classic English School’s conception of world society and it is so important that it can even limit, to some extent, the exercise of state sovereignty (Dunne, 2009). The whole international human rights norms machinery and the involvement of India in human rights treaties could be related to the concepts of international and world society developed by the English School theory. As previously stated, India is a state party of CEDAW and the Delhi gang-rape case represents a clear violation of it. The events that followed the gang-rape case of December 2012 could be explained by the English School as the fear of the Indian Government of reputational losses at the international level, seen the worldwide media attention that the scandal has gathered. India, seen its status as member of the “society of states” at stake, could have opted for the reformulation of rape laws just in order to avoid, or at least limit, international reputational losses. This might also explain why, once the

international pressure lessened, the Indian Government did not give priority to the implementation of those same laws, as official documents of CEDAW Committee clearly show. These considerations will be further elaborated in the empirical chapter.

The Transnational Advocacy Networks (TANs) approach, on the other hand, claims that forms of transnational collective action can play a decisive role in the influence of and changes to public policy. Among the main actors that can be included in advocacy networks, this research pays particular attention to international and domestic non-governmental organizations (NGOs), advocacy organizations, international organizations, media, foundations and local social movements. Moreover, it has to be pointed out that Transnational Advocacy Networks are more likely to emerge around issues that need external pressure to create and foster connections between internal groups and their own Government. Finally, Transnational Advocacy Networks are more likely to succeed in “issues involving physical harm to vulnerable or innocent individuals” (Keck and Sikkink, 1998). Considering these claims, the TANs approach can be used as a heuristic tool to understand the nature of the policy change occurred in India after December 2012. The TANs approach, in fact, could argue that the aforementioned policy change would be mainly motivated by the reaction of the Government of India to the pressure exercised on it by domestic and international societal actors.

The English school of IR theory and the TANs approach give the impression to be competent perspectives. The English School theory emphasizes the importance of state actors, where the TANs approach is mainly concerned with the actions of non state actors. The main differences between the two approaches will be recalled later in the formulation of the hypotheses. The empirical research will show if one perspective has more explanatory power, concerning the case under analysis, or if the two perspectives could be combined.

## ***1.2-Methodology***

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In the methodological chapter, six hypotheses are presented. The hypotheses are derived from the following three factors: the motivation for the policy change, the crucial actors in the policy change and the purposes for the policy change. This chapter furthermore contains the operationalization of the dependent and independent variables measured in the thesis.

The method of investigation used in this thesis is qualitative, as all single-case research designs require. Process tracing is hence used, as this qualitative technique is designed to identify “steps in a causal process leading to the outcome of a given dependent variable of a particular case in a

particular historical context” (George and Bennett, 2005 in Della Porta and Keating, 2008, p.231). As such process tracing is an indispensable tool of case study research because it allows the researcher to trace the evolution of a series of events within a case (Brecher and Harvey, 2002).

Additionally, this thesis makes extensive use of what are commonly known as ‘institutional documents’. Institutional documents are all documents created by institutions and they, hence, include formal governmental publications and such things as relevant speeches and international newspaper articles (Corbetta, 2003). The empirical analysis of this thesis is mostly based on newspaper articles and official websites, mainly available in English. However, in the development of the other chapters of the thesis, articles from peer-reviewed journals are also used.

### *1.3-Scientific and Societal Relevance*

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‘Policy change’ can be defined as incremental shifts in existing structures, or new and innovative policies (Bennett and Howlett 1992). In this thesis, ‘policy change’ indicates the reformulation of the Indian legal framework and a new policy course in the matter of rape and other crimes of a sexual nature, after the Delhi gang-rape case of December 2012. Gang-rape represents a clear violation of international human rights norms. Hence, the episode fostered a debate regarding the condition of women in the country, entailing considerations about the (non) compliance of India with international and domestic politics surrounding violence against women (CEDAW, for instance).

Human rights in the context of emerging countries have become a prominent topic of discussion in the last decades (Darrow, 2003; Sundstrom, 2012; Giuliani and Macchi, 2014; et al.). The literature highlights the role of both public and private actors, but their respective role has remained rather theoretically underspecified. By providing an answer to the research question, this thesis attempts to develop a better understanding of the conditions under which emerging countries comply with international human rights norms, and to what extent fundamental human rights have the power to influence and shape the behavior of state actors in their domestic arena. The choice of the theoretical framework explicitly juxtaposes a state-driven theory (English School of IR theory) and a society-driven approach (the TANS approach) in order to assess those factors which yield more explanatory power for the dynamics of the particular case study under investigation. Therefore, the findings of this research could help to adjust and refine the two approaches and contribute to the ongoing debate in International Relations literature on the role of human rights. Here lies the scientific relevance of this work.

Understanding the factors that produced the norm change can help to clarify the strong and weak points of the new legislation and therefore contribute to study different measures to tackle the problem of crimes of a sexual nature in India. Moreover, knowing the factors that play a role in the development of human rights-related norms can also assess whether the activity of NGOs and other societal actors involved is effective. The proper application of the new law as it is could mean an improvement in the living conditions of a large part of the population.

Lastly, the findings of this research can contribute to the broader academic debate on human rights issues in the BRICS<sup>4</sup> countries. Ikenberry reflects on the possibility of an alternative to the contemporary human rights regimes offered by BRICS countries (Ikenberry in Rivers, 2015). The cultural, historical and political differences between them could be an obstacle to the creation of a common agenda on human rights (Hopgood, 2014). For instance, Brazil's foreign policy is historically based on the universality of international human rights (Armijo and Burges, 2010) while Russia and China remain less open to the promotion of them (Human Rights Watch, 2014). Therefore, the way India deals with international and domestic politics surrounding violence against women, after December 2012, could be confronted with the behavior of other emerging countries in order to observe if it exists a regular pattern. Here lies the societal relevance of the research.

#### *1.4-Structure of the Thesis*

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The thesis has the following structure. After this introductory Chapter, the theoretical framework used in the analysis of the case is presented and deeply debated in Chapter 2. In the first part of Chapter 2, an overview of the English School of IR theory will be provided, followed by a clarification of how this theory can explain the policy change. The second part of the Chapter 2 dedicated to the Transnational Advocacy Networks (TANs) approach. As in the first part of the Chapter, an overview of the approach is provided, together with the theoretical explanations of the case study. Chapter 3 is devoted to the description of the epistemology and the methodology used in this master's thesis. In Chapter 4 the empirical analysis of the case study is constructed by the identification of three main stages, named by the researcher as "agenda setting", "law-making" and "implementation". Each stage is followed by reflections on the theoretical framework and hypotheses' testing. The last Chapter is dedicated to the conclusion, where the main findings are presented, together with the limitations of the research and ideas for further research on the topic.

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<sup>4</sup> BRICS is the acronym for Brazil, Russia, India, China and South Africa, five emerging national economies.

## 2-Theoretical Framework

### *2.1-Introduction*

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Two theoretical approaches are used in this thesis, in order to provide an exhaustive explanation of the reasons that led to the policy change that occurred in India after the scandalous gang-rape of the 16<sup>th</sup> of December 2012. This incident produced strong reactions of protest both at the national and international level. A few months later, the Criminal Law (Amendment) Act, 2013 was proposed and promulgated, and other attempts to decrease and prevent the occurrence of rape in India were undertaken. As stated above, this thesis aims to explain the rationales of the aforementioned policy change. In order to narrow the analysis, this thesis focuses on two plausible explanations for the policy change that occurred in India. Therefore, the issue addressed is whether or not the policy change was the product of an intrinsic change in the attitude of India towards rape and other crimes of a sexual nature, or more of an attempt to maintain a certain international status vis-à-vis other state actors (a window-dressing exercise). Therefore, in this chapter, the English School of International Relations (IR) theory and the Transnational Advocacy Networks (TANs) approach are presented and discussed.

In the next sections, the main features of the theories, with particular emphasis on the concepts that will be employed in the empirical part of this master's thesis, are largely explained. A concise overview on which types of actors can play a role in shaping or influencing the agenda setting of a government is also provided.

### *2.2-The English School of International Relations (IR) Theory*

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Compared to other approaches, the English School theory is an underexploited research resource that should deserve more visibility in the field of International Relations (IR) (Buzan, 2001). The label "English School" indicates a group of scholars, mainly located in the United Kingdom<sup>5</sup>, who share the same ontological disposition and have a critical attitude towards the positivist scientific method. The School began its evolution in the late 1950s with the meetings of the British Committee on the Theory of International Politics. However, earlier traces of the key concepts of the English School, as the idea of international society, can be found in the lectures of Charles Manning and Martin Wight

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<sup>5</sup> The label "English School" was given by Roy Jones in 1981. It includes also some important contributors that are not English (even if they all built their academic reputations at British universities). This anomaly has generated a great debate on the nature of this approach.

(Buzan, 2001). According to Dunne (1998), there are “three preliminary articles” that set the boundaries of the intellectual terrain of the English School. These elements are a given tradition of enquiry, a broadly interpretive approach to the study of IR and an explicit concern with the normative dimension of IR theory. Despite this demarcation, however, the “membership” to the English School is not easy to define and, for this reason, it has been largely debated (Buzan, 2001).

Since the very beginning till today, the English School was considered the most substantial and most controversial alternative to the mainstream perspectives of American IR, (Dunne, 2009). Nowadays, the English School, together with the constructivist approach, occupy a middle ground position in IR because they propose a synthesis of different theories and ideas, consequently avoiding the strict constriction of choice between realism and idealism (Dunne, 2009). The English School theory, hence, incorporates realist postulates and combines them with the notion of a human element that emerge from the domestic sphere (Murray, 2013). As explained by Murray (2013), “most theories which examine the global arena focus on either one, or a small number of, issues or units of analysis to make their case about the nature or character of the global realm. While some theorists may desire alterations or a decline in the power of the state, states have not declined so far as to be removed from their place as the central actors in international relations. Even those efforts which aim at changing politics above the state level to focus more on humanity, rather than purely state concerns, often rely on states to implement new doctrines. The changes to interstate relations and the new issues facing the world at present require new ways of approaching international relations, while not abandoning rational preferences completely” (Murray, 2013, p.8). The strong point of the English School theory hence lies in its attempt to encompass a more accurate picture of contemporary international relations by trying to incorporate assumptions of both realism and liberalism (Murray, 2013). Therefore, the question that directs the research of English School theorists is “how is one to incorporate the co-operative aspect of international relations into the realist conception of the conflictual nature of the international system” (Roberson in Murray, 2013, p. 8).

The core idea of the English School theory is the existence of a society of states at the international level, despite the permanent condition of anarchy, typical of the international system. The English School theory undeniably leans on realism for what concerns the focus of the analysis on state actors and international level, leaving rather uncovered the domestic dynamics occurring inside the state actors themselves. However, the conviction that ideas, and not simply material capabilities, can play a role in determining the outcome of international politics brings the English School theory more in line with the perspective of social constructivism. Anyway, the English School theory remains a state-centered approach for more than one reason. State actors are seen as the main players in shaping the international arena with non-state actors only fulfilling a complementary role, as they are only

marginally taken in to account in the English School theory. Moreover, despite the possibility of sharing common values among state actors is a strong point of the English School (respect for human rights, for instance), the main concern for the members of the society of states is the maintenance of a certain international status vis-à-vis the other members. Therefore, according to the English School theory, every state actors' political decision may be seen as an attempt to avoid, or limit, reputational losses at the international level.

The key elements that are central to the English School's thought are the aforementioned concepts of international system and international society and the one of 'world society'. These concepts constitute three different spheres at play in international politics which are always operating simultaneously (Murray, 2013). In a nutshell, the concept of international system entails the existence of structural relationships between states. The international system has to do with the material interaction between state actors and it is characterized by international anarchy. The concept of international society represents, as stated above, the main focus of the English School theory and it indicates that the institutionalization of shared interests and values among state actors constitutes the relationships between them. Finally, the concept of world society is based on the idea of shared norms and values, not merely at the international level, but also at the individual one (Buzan, 2004). While all state actors are automatically members of the international system, the membership to the international society and to the world society is not to be taken for granted. State actors could comply with international shared values in the attempt to be part of the international (and world) society, even if the compliance is mostly driven by reputational motivations.

The three key elements coexist and interact with each other, even though the distinction between them may often to be difficult to discern. This overlap perfectly explains the pluralist methodological approach adopted by the English School in its study of IR. Moreover, the interaction between international society and world society is of primary importance in the (ongoing) development of the English School theory (Buzan, 2001). This issue fosters a debate between two different ways of perceiving the idea of international society, namely a pluralist conception of international society as opposed to a solidarist one. According to the pluralist view, sovereignty depends on political difference; a distinction between the member states of the international society has to be maintained. If this occurs, then the scope of international society is mainly focused on international order under anarchy and thus limited to agreement about sovereignty, diplomacy and non-intervention. In this conception, international society is depicted as a way to counterbalance international anarchy. On the other hand, solidarists have a broader understanding of what is meant by international society. Proponents of this perspective embrace the possibility of shared norms and they take into account the relationship between states and citizens. Great importance is given to the

role of human rights and a certain “standard of civilization” is required of the state members to be part of the international society. In this sense, solidarism results in a more interventionist conception of international order. However, this does not mean that solidarists make no distinction between international society and world society (Buzan, 2001). As already stated, the dynamics of the relationship between international society and world society figures prominently in the ongoing debates among the English School scholars and, hence, the further development of this topic is an important challenge for the future of International Relations. The English School has always embraced history but, at the same time, the advocates of this perspective have shown a willingness to apply their ideas to the analysis of contemporary and future world orders. For this reason, the theory has great potential for explaining the phenomenon of globalization. However, in order to accomplish this, much has still to be done in order to formulate a coherent and cohesive position on world society (Buzan, 2004).

In the following paragraphs, the three main concepts of the English School theory are presented and discussed in detail, with particular attention paid to the meaning of the core concept of international society. This is necessary in order to use the concept later in the empirical analysis of the case study investigated in this master’s thesis.

### *2.2.1-International System*

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An accurate analysis of world politics needs a systemic component (Wight and Bull in Dunne, 2009). The concept of international system has a lot in common with the realist and neorealist approaches and, it is for this reason that it is largely developed. The international system is about power politics among states, and it considers the international anarchy central to IR theory (Buzan, 2004). According to Bull (1977), the international system is an arena where the interaction between communities occurs, but the presence of shared institutions or rules is not contemplated. The existence of a system is determined by the presence of sufficient interaction among the actors, that makes “the behavior of each a necessary element in the calculation of the other” (Bull, 1977). Tilly (2012) stated that the regular interaction of states with each other has to be considered the constituent factor of a system, and that the behavior of each state is affected by the degree of interaction. The system is thus based on an ontology of states, and, hence, “positivist epistemology, materialist and rationalist methodologies and structural theories” are used to approach it (Buzan, 2004). Therefore, in a nutshell, the concept of international system can be defined as the entirety of structural relationships among state actors that exist despite the condition of anarchy.

The concept and conceptualization of international system plays a fundamental role in the English School's theory of world politics for different reasons. A first point of discussion involves the largely debated distinction between international system and international society. As stated above, both realism and the English School theory exploit the idea of a state-centered system in their analysis of world politics. However, a substantial difference lies in the fact that the interest of the English School is essentially devoted to the history of international society. Moreover, the discussion goes further and raises questions about the connection between the existence of the system and the existence of the society, which step determines the shift from systemic order to society, if this step can be reversible, and so on. Therefore, the English School theory attempts to go beyond the realist conception of a mere competitive international arena.

However, the concept of "international system" itself is broadly parallel to mainstream realism and structural realism. In his work, Bull (1977) stresses the importance of the formation of the system and he notes how the distribution of capacities among the actors plays a role in it. He therefore identifies war as the main determinant of the international system. Moreover, in the analysis of the factors that shape the system, the English School takes into account the logic of the balance of power in the states' system (Dunne, 2009). Under conditions of international anarchy, all states are prone to contrast the emergence of a hegemonic power, in order to prevent a change in the international system. In other words, the survival of the international system is dependent on the balancing behavior of its members. Thus, the balance of power becomes a steady feature of the system (Wight, 1978).

Other important features that have to be considered regarding the international system are the "levels of technology, the distribution of material power and the interaction capacity of the units" (Dunne, 2009). These issues foster a debate about the difference between the ability of units to act and this ability conceived in systemic terms. Levels of technology, for instance, can be seen as features of the single unit (as in the case of single states with different nuclear weapons capability), and, at the same time, as features of the system itself, in particular in areas such as communication, transportation, and levels of destructive capacity, areas that play a role in determining the degree of the "interaction capacity" of a system (Buzan, Jones, and Little, 1993).

### 2.2.2-International Society

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The idea of “international society” is considered the main focus of the English School theory and, for this reason, it has been quite well developed and explained. In *Expansion of International Society*, Bull and Watson (1984) define international society as “a group of states (or, more generally, a group of independent political communities) which not merely form a system, in the sense that the behavior of each is a necessary factor in the calculations of the others, but also have established by dialogue and consent common rules and institutions for the conduct of their relations, and recognize their common interest in maintaining these arrangements” (Bull and Watson, 1984, p.1). In other words, international society has to do with the institutionalization of shared interests and identities amongst states (Dunne, 2009). Unlike realism, which largely confines the focus of its research to the systemic level, the English School is much more an inside-out theory: international society is made by units and, consequently, those units reflect their domestic character (Hollis and Smith, 1991). The idea that lies in the concept of international society is that states, just as individuals, are part of an international society, which they both shape and are shaped by (Buzan, 2001). Bull (1977) argues that international politics are not chaotic and anarchic as realist approaches depict them. Even though the international realm lacks of a supreme authority that sets rules, states do not have to be seen as individual elements of the system. Therefore it exists a substantial institutionalization of mutual understandings, shared values and common interests. Even ethics, prudence and morality are taken into account as part of world politics (Bull, 1977). This means that the character of the units of the international system is not preset and that changes at the domestic level will produce a transformation of the international society. In this way, the creation and maintenance of shared rules become the centre of IR theory.

A social element has thus been added to the realist’s mere anarchical view of the international system and this creates the conditions for the existence of an international society. As stated by Wight (1978), a necessary condition for an international society to exist is a certain degree of cultural unity among the member states of the system. In other words, the idea of international society has to do with the entirety of norms constituting the relationships among state actors. Dunne (2009) notices that in the writings of the British Committee on the process of decolonization, the change from system to society is marked by the progressive acceptance of the non-Western world into a globalized society of states. Therefore, even if system and society clearly coexist, the concept of international society seems to be something that goes further than the mere existence of a system. The idea of international society entails the existence not only of material relationships among states, but also of agreed norms among them. The regression from society to system could be a

plausible scenario in case the main member states of an international society would stop to comply with previous shared rules. The absence of some common norms and institutions would provoke the collapse of the international society itself (Dunne, 2009).

The first key feature of the international society has to do with the prerequisite for the membership: that the primary members be sovereign states. Membership is decided by an “act of mutual recognition”, as Wight describes it, because the states both ask for recognition and recognize one another’s right to sovereignty (Wight, 1978). Mutual recognition reveals the presence of a social practice and it marks the first step in the direction of an international society. Moreover, Dunne observes how, in particular in the nineteenth century, a certain “standard of civilization” was a prerequisite for membership, meaning that European values and beliefs were used as a measure to assess the recognition of the members of the international society (Dunne, 2009). While all state actors are automatically members of the international system, the membership to the international society is more complex and hence more difficult to achieve. As Dunne (2009) points out, actors in the states system can also choose to comply with a certain framework of institutions and norms of an international society. However, this compliance will be likely to remain at the systemic level if it is not followed by the mutual recognition and inclusion by the members of the international society.

Another crucial and controversial issue is about the ability of the states to “act”. Empiricists have strongly criticized this idea of the English School, as they are persuaded by the impossibility of collectivities to have agency. On the contrary, the English School theory argues that the action of the states is put into practice by all the diplomatic and foreign-policy activities of officials who act at the international level on the behalf of the state itself. In effect, the term “international society” was exploited for the first time in the eighteenth century, indicating all the corps of ministers operating abroad (Dunne, 2009).

As stated before, the English School theory has often been associated with realism for what is understood to concern the primary importance of sovereign states. However, states are not the only members of the international society. Non-state actors of different natures are not left behind by the theory proposed by the English School, even though state actors remains the most important players in the international arena, and societal actors only fulfill a complementary role. Dunne (2009) reports, as examples, the influence exercised by the Catholic Church throughout the centuries, or, nowadays, by some international nongovernmental organizations (INGOs) such as Amnesty International, which can come into play in shaping the outcome of international decisions. Therefore, states are no longer the only players even if they still hold a primary position in the decision-making process. Therefore, the English School theory mentions the existence of several forms of non-state

actors that, using their ability to exercise pressure, are increasingly becoming more visible in different areas of world politics, particularly for what concerns human rights issues.

Taking a step back to the idea of mutual recognition, one must make mention that although mutual recognition is a necessary condition for the recognition of the existence of the international society, it is not a sufficient condition to meet the criteria for entity as delineated in the theory. Another fundamental prerequisite is the presence of common interests among the members. Economic and security reasons play a big role. For instance, the more states are economically interdependent, the greater will be the chances for institutions to develop. This means that the nature of the interests also matters (Buzan, 1993). Anyway, the fact that the sovereign states are independent remains an obstacle to the accomplishment of common purposes (Dunne, 2009). Moreover, speaking about identities and common values, another consideration has to be made. As Dunne (1998) observes, the identities of states and their shared rules, values and institutions have a meaning only inside the context of the international society where they are located. Regarding this point, the relations between the west and the post-colonial world have to be taken into account. The different perceptions of values and rules of these two realities are largely debated and too often result in the conclusion that west and non-west worlds are incompatible and incommensurable. However, it is interesting to observe that, after the process of decolonization, the newly independent states have been willing to create diplomatic relations with other states and even maintain contacts with the previous colonial powers. This attitude of respect towards other states' sovereignty entails an interest in taking part in the game of the international society (Bull, 1977).

Another issue concerns the degree of presence of "society" in the inter-state order (Dunne, 2009). This assumption entails a distinction between "thin" and "thick" societies, based on the level of interaction between the members of the society itself. Going back to the aforementioned debate between pluralism and solidarism, the idea of a thin society is associated with the pluralist view, while thick societies are a feature of the solidarist perspective (Buzan, 2004). When the presence of shared institutions is solely related to the maintenance of order and the collective enforcement of further rules is unlikely, the international society is thin. This would be the case in a society where the member states do not share the same political systems and common traditions, and the only reason that order is maintained is to ensure the survival of the units. States are likely to respect the rules because compliance is relatively cost free and produces considerable collective benefits (Bull, Alderson and Hurrell, 2000). On the contrary, thick societies are characterized by a strong likelihood of the existence of common norms, rules and institutions among their members. Interaction is not limited to self-preservation and self-help, and, hence, cooperation over different issues, pursuit of common gains and shared values are more likely to occur (Buzan, 2004). Bull (1977) describes a thick

international society in terms of the collective enforcement of international rules and the development of human rights. Moreover, universal values (such as agreed upon human rights) can limit the exercise of a state's sovereignty (Dunne, 2009).

Lastly, another fundamental issue related to the idea of "international society" that deserves to be mentioned is the concept of reputation. The recognition of common interests and values does not lack of consequence. Being a member of the international society entails the existence of responsibilities towards the other members. At this point, reputation comes into play, as the member states want to be perceived by the others as reliable actors (Brown and Ainley, 2005). Mercer describes reputation as a "judgment of a state's character, which is used to predict and explain its future behavior" (Mercer, 1996, p.6). This means that, the perceptions that states have of each other, can influence their behavior. What is at stake, therefore, is their status in the international society and, for this reason, states are concerned about losses of reputation (Koh, 1997). Reputation can play a crucial role in the development of the cooperation between member states. According to the English School theory, in fact, the avoidance of reputational losses at the international level could be a compelling reason why state actors decide to comply with shared values. The compliance can be seen as an attempt by state actors to preserve their international status vis-à-vis the other members of the international society.

The concept of reputation developed by the English School presents similarities with the main assumption of social identity theory (SIT), according to which social groups struggle to achieve a positively distinctive identity (Welch Larson and Shevchenko, 2010, p. 66). Applied to International Relations, this idea suggests that state actors strive to show to other state actors that they live up to the standard of the "civilized world". From a realist perspective, the international status of a state is based on military power and the concentration of power plays a role in determining a state's behavior at the international level (Gilpin, 1981). On the contrary, English School theorists have stressed the importance of the approval of other states for the admission of another state in the international community, and how having superior military capabilities does not necessary guarantee a superior status, respect and acceptance in the international society of states (Bull, 1977).

### *2.2.3-World Society*

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As the idea of "International Society", also the one of "World Society" occupies a key place in English School thinking, even if it is less developed than the first one. As it has been argued before, while the international society is focused on states, the concept of world society entails something that goes

beyond the state and it is more oriented towards a cosmopolitan conception of humankind. The conception of world society has also usually been associated to revolutionism, as they share the idea of priority of humanitarian responsibilities (Buzan, 2004). Bull provides the following definition of world society: "By a world society we understand not merely a degree of interaction linking all parts of the human community to one another, but a sense of common interest and common values on the basis of which common rules and institutions may be built. The concept of world society, in this sense, stands to the totality of global social interaction as our concept of international society stands to the concept of the international system" (Bull, 1977). In other words, the concept of world society refers to the entirety of norms constituting the common political values both among and within state actors.

Therefore, by incorporating the concept of world society, the non-state element is included in the English School analysis, even if this point is still quite unaddressed. The relationship between international society and world society has been largely debated and still remains one of the weakest and less clear points of the English School theory. However, it is undeniable a strong interconnection of the three levels: elements of world society, as common values, are a precondition for the existence of international society and, at the same time, international society protects world society from the dangers of international anarchy, by giving it a stable political framework (Buzan, 2004). The existence of an international system is the basis for the existences of the other two, more developed, levels of relationships among state actors. As Buzan (2001) points out, the main focus of world society are the global societal identities and arrangements of individuals, non-state organizations and also the global population as a whole. In other words, world society is based on the idea of shared norms and values at the individual level, "linking all parts of the human community" and transcending the state level (Bull, 1977). Therefore, the concept of world society is mainly based on the claim of individuals to human rights and it clearly underlines "the needs of transnational corporations to penetrate the shell of sovereign states" (Dunne, 2009). The spread of individual rights and the development of a world society, will tend to undermine the states, which are the fundamental units of international society. Consequently, the presence of strong dissimilarity at the world society level, concerning human rights or other values, will threaten the stability of the international society (Buzan, 2001). Dunne (2009) argues that the emergence of international humanitarian law suggests an evolution at the world society level and stresses the importance of the United Nations Charter.

To sum up, concerning world society, it has to be said that the concept still remains something of an "analytical dustbin, comfortably containing revolutionism, cosmopolitanism and transnationalism" (Buzan, 2004, p.44), and that its development is strongly connected to the explanation of

international society. The confusion and underspecification surrounding the idea of a world society make this a key priority for further research.

### *2.3-Expectations for the Case Study*

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As stated before, the English School of IR theory is characterized by three approaches to analysis and understanding which are underpinned by these three concepts: international system, international society and world society. The international system has to do with the entirety of structural relationships among states, the international society with the entirety of shared norms constituting the relationships among states and, finally, the world society with the entirety of norms constituting the common political values both among and within states. The existences of the three levels are strongly interconnected.

However, the core of the English School theory is the concept of an 'international society of states'. While all state actors are assumed members of the international system, membership in the international society (and to the world society) is more complex since it requires that certain conditions be met before membership is established. Therefore, in the attempt to be accepted as members of the international society, states need to comply with globally recognized values, such as the respect of human rights, for instance. The compliance of states could hence be motivated by reputational concerns, meaning that states could comply just because they are concerned to show the other members that they are reliable partners. The English School theory, as realism, leaves rather uncovered the domestic dimension of the state actors of the international society (state actors), as they are still considered as "black boxes". What matters most is the status that each state actor has in the international arena.

Therefore, the case study pays particular attention to the concept of reputation that a state actor has in the international society. This is done in recognition of the reality that state actors remain the most important players in the international decision-making process and non-state actors only play a complementary role. The fact that states are constantly worried about possible reputational losses at the international level makes the English School of IR theory a suitable option for the analysis of the case study under investigation in this research. This theoretical approach would depict the law change occurred in India as mainly motivated and limited by the fear of possible reputational losses at the international level. Concerning the nature of shared norms and values, the English School of IR is well suited for the analysis since this approach attributes particular relevance to human rights issues. Hence, according to the theory, the Indian Government would be more inclined to initiate a

policy change, seeing the impact that political decisions in the matter of an issue such as rape can have on its international reputation. Therefore, referring to the research question, the English School theory could argue that the reasons that led to the policy change which occurred in India after 2012 could be connected to reputational motivations.

#### ***2.4-The Transnational Advocacy Networks (TANs) Approach***

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*“A transnational advocacy network includes those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services”.*

(Keck and Sikkink, 1998)

Far from the state-centered assumptions of realism and the English School theory, the Transnational Advocacy Networks (TANs) approach offers an interesting alternative explanation for the policy change that occurred in India after December 2012, by addressing the activity of non-state actors and the domestic dimension of state actors.

In the last two decades, several scholars focused their attention on Transnational Advocacy Networks (TANs), observing that they are becoming more and more influential, emerging as powerful new forces in international politics and capturing world attention. Even if TANs seem to remain relatively weak actors in terms of their control of and access to military and economic power, scholars note that, regardless, they succeeded in changing the way international policy and practice occur (Keck and Sikkink, 1999). Usually, forms of transnational collective action involve non-governmental organizations and aim at changing norms and practices of states, international organizations, private sector firms and so on (Khagram, Riker, & Sikkink, 2002). According to these researchers it is undeniable that the role played by TANs in certain issue areas, such as human rights and the environment in particular, is increasingly important in the international arena, mostly because, as non-state entities, these networks are not limited by national boundaries.

The decision to use the Transnational Advocacy Networks (TANs) approach as a theoretical framework of this research has to do with the main goals of the approach, namely the creation, the strengthening, the implementation and the monitoring of international norms. Hence, in the case of India, the involvement of TANs and the transnational pressure that these networks may have brought to bear could be used to explain the reasons that led to the policy change which occurred in India after the gang-rape case of December 2012.

According to Risse-Kappen, Ropp, and Sikkink (1999, p.5), TANs serve three purposes, which are described as “necessary conditions for sustainable domestic change in the human rights area”. First, TANs “put norm-violating states on the international agenda in terms of moral consciousness-raising”. This can function as a reminder for liberal states to promote human rights. Second, TANs “empower and legitimate the claims of domestic opposition groups against norm-violating governments, and they partially protect the physical integrity of such groups from government repression”. Thus, a TANs presence is fundamental in the mobilization of NGOs, domestic opposition, social movements and so on in the target countries. Third, TANs “challenge norm-violating governments by creating a transnational structure pressuring such regimes simultaneously ‘from above’ and ‘from below’” (transnational pressure) (Risse-Kappen, Ropp, and Sikkink, 1999, p.5). This assessment sees support in the work of Van der Vleuten (2005), who argues that a state will be more likely to change its behavior when its prestige is at stake and when it is “squeezed between two pincers”, meaning that the supranational and the domestic actors exercise pressure at the same time (Van der Vleuten, 2005, p.465). In particular, in her work on the implementation of EU gender equality legislation, Van der Vleuten pays heed to the fact that prestige represented for states a relevant source of power both at the domestic and at the supranational levels (ibid, pp. 467-468).

In order to explain how Transnational Advocacy Networks make a difference in international policy and practice, an examination of the processes by which an (international) norm emerges and evolves must be undertaken. To this end, in the following paragraphs, the process of the “socialization” of norms and the “spiral model” of human rights change (Risse-Kappen, Ropp, and Sikkink, 1999), will be described and discussed. Moreover, the nature of international actors and the role they play in shaping the agenda setting of governments will be elucidated.

#### *2.4.1-Transnational Actors and Transnational Civil Society*

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As stated before, the behavior of states regarding the compliance with (international) norms is influenced by a large variety of actors. According to Risse-Kappen, Ropp and Sikkink (2013), particular attention has to be paid to the relevant “Transnational Actors” (TNAs). Transnational Actors include different kinds of organizations, such as NGOs, social movements and the aforementioned Transnational Advocacy Networks, the activities of none of which are constrained by national boundaries (Keck and Sikkink, 1999).

Nowadays, TNAs have gained so much influence regarding new issue areas of world politics, that they can be no longer ignored in the debate on the development of the international system.

Therefore, given the increasing importance of TNAs in the international scenario, it can be expected that states will engage an active cooperation with them. TNAs, moreover, are considered to be part of what Price (1998) calls “transnational civil society”. In a still viable assessment, Price (1998) holds that transnational civil society is characterized by “a set of interactions among an imagined community to shape collective life that are not confined to the territorial and institutional spaces of states” (Price, 1998, p.615). In particular, TNAs are becoming extremely influential in the matter of human rights. Given these findings, it is possible to point out the main differences between the TNAs approach and the English School theory. First, the TNAs approach would perceive global norms as given facts, since, based on their organization and functions, and the fact that their activities are not constrained by national boundaries, the advocacy for global norms are intrinsic to the nature of the TNAs themselves. Second, unlikely the English School theory, the TNAs approach is more interested in explaining the dynamics that lie behind the realization of these norms at the domestic level. Lastly, another difference, which is fundamental for the development of the empirical part of this research, is the emphasis put on the role of (transnational) societal actors, which perceive state actors as ‘norm recipients’. The TNAs approach, therefore, argues that, if the lobbying activities of societal actors are successful, an intrinsic change of the attitude of the target state actor will occur.

In the next paragraphs, an effort is made to show under which conditions, according to the TNAs approach, TNAs may be successful in influencing the outcome of a policy change.

#### *2.4.2-The Processes of “Socialization” of (Human Rights) Norms*

Risse-Kappen, Ropp and Sikkink (1999) define the process of “socialization” of norms as the creation among individuals of “collective understandings about appropriate behavior which then lead to changes in identities, interests, and behavior” (p.11). In describing this process, Risse-Kappen, Ropp and Sikkink rely on the definition of socialization provided by Barnes, Carter and Skidmore, where socialization is the “induction of new members [...] into the ways of behavior that are preferred in a society” (Barnes, Carter, and Skidmore, 1980, in Risse-Kappen, Ropp and Sikkink, 1999). What is clear from this is that socialization presupposes the existence of a society and, by extension, also an international society. The main purpose of socialization is the norm internalization, in order to avoid the dependence of norm compliance by external pressures (ibid, p.11).

The political identity of a state is the result of different factors, such as interaction with other states, and international non-state actors, among others. Risse-Kappen, Ropp and Sikkink (1999) identify three kinds of socialization processes, which are necessary conditions for a lasting change in state

approaches to human rights issues. Those three conditions are: “processes of adaptation and strategic bargaining”; “processes of moral consciousness-raising, ‘shaming’ argumentation, dialogue, and persuasion”; and “processes of institutionalization and habitualization” (ibid, p.11). In reality, the three types of processes are likely to occur at the same time since socialization is an ongoing, dynamic process that occurs throughout the lifetime of individuals and, hence, also, the state.

In the first case, it is about the “instrumental adaptation” to domestic and international pressures. Norm-violating states can therefore choose to opt for some tactical concessions. According to this process, actors, in this case “target states”, may be willing to change their behavior, to facilitate the fulfillment of goals where, for instance, they can decide to comply with certain international human rights norms, even if they do not believe in their validity (ibid, p.12). The second type has to do with “argumentative discourses” and it entails “processes of communication, argumentation, and persuasion” (ibid, p.13). This process takes into account morality and sees the justifications of norms as something related to the identity of the actor itself. Actors can moreover make use of persuasion tools, as “emotion”, “symbols” or “logical arguments” (ibid, p.14). The third and last type of socialization process stresses “the gradual institutionalization of norms as theorized by sociological and historical institutionalism” (ibid, p.16). The compliance of actors with a norm can be, in the beginning, simply a result of external pressures. In time, however, there is the possibility of a gradual acceptance of the validity of a globally sanctioned human rights norm. When full acceptance occurs, “human rights norms are then incorporated in the ‘standard operating procedures’ of domestic institutions” (ibid, p.17) and those norms are respected, just because they have come to be internalized and compliance is unquestioned. This type of analysis represents a fundamental difference with the English School theory. According to the TANs approach, in fact, if the activities of societal actors are successful, an “intrinsic change” in the attitude of the target towards an issue will occur, i.e. internalization of the norm.

Some of these notions are similar to the approach seen in the “spiral model” of human rights change and hence they are discussed in detail in the following paragraph.

### ***2.4.3-The “Spiral Model” of Human Rights Change***

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It is now useful to understand how human rights norms and rules emerge, are internalized and implemented domestically, and how policy change takes place. From a TANs perspective, the diffusion of human rights norms strongly depends on the presence of networks among domestic and transnational actors. As stated before, these networks have the power to link up with international

regimes and exercise pressure to influence the outcome of governments' decisions. These considerations are useful for this research, as they take into account the policy impact that transnational non-state actors have on state policies. Moreover, Risse-Kappen, Ropp, and Sikkink (1999) consider the conditions under which networks of domestic and transnational actors succeed to influence the domestic structures themselves (Risse-Kappen, Ropp, and Sikkink, 1999, p.4).

Risse-Kappen, Ropp, and Sikkink (1999) propose a five-phase "spiral model" of human rights change, aiming at an explanation of the degree of internalization of these norms. They argue that, in order to obtain lasting human rights changes, domestic structural changes have to occur. A strong point of this explanatory model consists in the formulation of hypotheses concerning the conditions under which progress toward the implementation of human rights norms is more likely to take place (Risse-Kappen, Ropp, and Sikkink, 1999, p.6). The model is applicable among countries, in spite of differences at the cultural, political or economic level.

Risse-Kappen, Ropp and Sikkink base their model on the work of other scholars. For instance, they take into account the so called "boomerang model" proposed by Keck and Sikkink (1998), according to which "a 'boomerang' pattern of influence exists when domestic groups in a repressive state bypass their state and directly search out international allies to try to bring pressure on their states from outside" (Risse-Kappen, Ropp, and Sikkink, 1999, p.18).

The first phase of the model is called by Risse-Kappen, Ropp and Sikkink (1999) "repression and activation of network". It has to do with a repressive situation in the "target" state, where domestic societal groups are not strong enough to oppose the government. When the TAN possesses sufficient information regarding the "target state" and the international public attention is gathered on the issue at stake, then, the norm-violating state becomes part of the international agenda (Risse-Kappen, Ropp and Sikkink, 1999, p.22).

The second phase is called "denial", because, as first reaction, the "target state" is always likely to deny, meaning that it refuses to "accept the validity of international human rights norms themselves and that it opposes the suggestion that its national practices in this area are subject to international jurisdiction" (ibid, p.23). At this stage, the cooperation of the activities of domestic human rights organizations (in the norm-violating state) is crucial. After that, TANs usually actively seek the support of human rights organizations and Western states. The purpose of this "lobbying" is often based on "some discursive activities in terms of moral persuasion" (ibid, p.23). Another tactic largely exploited during this phase is "shaming": TANs try to persuade Western states to join their campaign for moral reasons. However, the "target state" can still find a way to undermine and undo the

transnational and international pressure, since at this stage the domestic actors are still not powerful enough to threaten the norm-violating government (ibid, p.24).

The third phase is called “tactical concessions”. “If international pressures continue and escalate, the norm-violating state seeks cosmetic changes to pacify international criticism” (ibid, p.25). The “target state” makes an effort towards an (apparent) improvement of the situation. However, the attempt does not produce a stable change of the human rights condition on the ground. During this stage, if TANs succeed in obtaining tactical concessions by the norm-violating state, the pressure exercised shifts from the transnational to the domestic level (ibid, p.25). The “tactical concessions” phase is the most precarious one, but also the most crucial one, because it can result in two opposite outcomes. The first scenario entails the embrace by the “target state” of the international norm and, consequently, a permanent change in the human rights conditions (intrinsic change). The second scenario, on the contrary, expects the repression by the norm-violating government of the domestic actors. Nevertheless, “if the cycle is not delayed, the domestic opposition is likely to gain strength” (ibid, p.26) and the “target state” progressively loses the control on the domestic situation. In this way, the norm-violating state is subject to a process called “self-entrapment” by Risse-Kappen, Ropp and Sikkink (1999), where, due to the tactical concessions made, the denial of the validity of international norms is no longer a viable position for a state to take. This situation occurs because the “target state” has underestimated the persuasive power of TANs and of domestic opposition actors. As a result, the norm-violating government is forced to start a true dialogue with them (ibid, p.28).

The fourth phase is called “prescriptive status” because “the actors involved regularly refer to the human rights norm to describe and comment on their own behavior and that of others” (Rittberger, 1993 in Risse-Kappen, Ropp and Sikkink, 1999, p.29). During this stage, as in the end of the previous one, the “target state” does not deny the validity of the norm anymore, even if that state keeps violating the human rights rules. What really matters in this phase of the model is argumentative behavior, but it is not verified if concrete deeds actually follow words and the “true beliefs” of actors are hence not important. According to Risse-Kappen, Ropp and Sikkink, there are four situations that prove the acceptance of human rights norms by the “target state”. These situations occur when states “ratify the respective international human rights conventions including the optional protocols”; when “the norms are institutionalized in the constitution and/or domestic law”; when “there is some institutionalized mechanism for citizens to complain about human rights violations”; and when “the discursive practices of the government acknowledge the validity of the human rights norms irrespective of the (domestic or international) audience, no longer denounce criticism as ‘interference in internal affairs’, and engage in a dialogue with their critics” (Risse-Kappen, Ropp and

Sikkink, 1999, p.29). After the recognition of a normative idea, actors who later change their mind regarding that idea, will become suspect. The monitoring activities of TANS are hence still fundamental, because a change in an actor's behavior is more likely to occur if the TANS stop to exercise their pressure. When TANS accuse a national government of ongoing violations of human rights, the government may react to the accusations by apologizing or promising further changes to its behavior (ibid, p.30). During this stage of the process, thanks to the constant action of the TANS, "new institutions to protect human rights are created, public officials including police forces are trained, and procedures for individual complaints are instituted"(Risse-Kappen, Ropp and Sikkink, 1999, p.30). In a nutshell, it is at this point that the institutionalization of the norms into domestic law begins.

The fifth and last phase of the "spiral model" is called "rule-consistent behavior"<sup>6</sup> and it has to do with a situation in which the international human rights norm is "fully institutionalized domestically and norm compliance becomes a habitual practice of actors and is enforced by the rule of law (ibid, p.33). At this point in the process, a human rights norm can be considered internalized (intrinsic change). However, the problem with this stage is that, as a consequence of the aforementioned situation, the human rights violations in the "target state" can actually decrease, but with them will decrease also the pressure exercised by the international attention. The risk is that, after the apparent success, many INGOs, international institutions and Western states are satisfied with their achievements in the matter of respect of human rights, and they consequently decrease their coercive activities. Therefore, it is important that the domestic-transnational-international networks keep on exercising a certain level of pressure, because a substantial and lasting policy change concerning human rights conditions may only be possible when the combined pressure from the national and international levels continues (ibid, pp.31-33). If these conditions occur, a norm may be considered to be fully internalized domestically. At this stage of the process, it can happen that political leaders in office are willing to fully implement the human rights norm, but this will be nowhere to be found for what concerns their opponents or (as in the case of Indian Government) public officials and police forces. Once again, then, the role played by the TANS can be seen to be decisive in the final outcome regarding the successful implementation of a norm (ibid, p.33).

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<sup>6</sup> The "rule-consistent behavior" phase is not directly relevant for this thesis, since the case study under investigation does not allow the assessment of long-term implications of the investigated policy change. Therefore, this phase will not be largely addressed in the empirical analysis.

## *2.5-Expectations for the Case Study*

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To conclude, the “spiral model” of human rights change proposed by Risse-Kappen, Ropp and Sikkink is useful in understanding the way in which internationally established norms affect domestic structural change. This change is largely seen to occur as the result of the advocacy and the support of TANs, which have the power to persuade and mobilize “domestic NGOs, transnationally operating INGOs, international institutions, and national governments” (Risse-Kappen, Ropp and Sikkink, 1999, p.33).

As stated before, according to the TANs approach, the increasing importance of Transnational Advocacy Networks in the international arena is mostly due to the fact that they are not constrained by or limited to national boundaries. Moreover, Transnational Actors (TNAs) are becoming extremely influential in the matter of human rights’ protection. This was a compelling reason for the use of this approach as a theoretical framework for the present research. As it concerns the case study under investigation and using the TANs approach, the pressure exercised by TNAs could lead to the occurrence of a policy change, mainly aimed at the internalization of agreed norms in the matter of rape and other crimes of a sexual nature. The TANs approach might therefore argue that, if TNAs successfully exercise transnational pressure on the Government of India, in the end this state actor will be persuaded to modify its behavior concerning the issue of rape (intrinsic change).

## *2.6-Conclusion*

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The purpose of this chapter was to provide an overview of the theoretical framework employed in this master’s thesis. First, the main claims of the English School of International Relations (IR) theory were presented and discussed, with particular attention paid to the key concept of “international society”. The second part of the chapter was devoted to explaining the emerging role in the international arena of new types of actors, namely, transnational actors and Transnational Advocacy Networks. Additionally, insights on the different kinds of processes of socialization and on the “spiral model” proposed by Risse-Kappen, Ropp and Sikkink (1999) were presented.

Summing up the main ideas presented in this chapter, few considerations can be made regarding the main differences of the two aforementioned approaches – the English School of IR theory and the TANs approach. First, it must be noted that both perspectives assume the possibility of a policy change. However, what differs is the approaches is the motivation for the policy change, the crucial actors in the policy change and the purposes for the policy change. According to the English School of

IR theory, the motivations that lead to any policy change are linked to the avoidance of reputational losses at the international level. On the contrary, the Transnational Advocacy Networks (TANs) approach argues that a policy change would mainly be motivated by a state actor's reaction to transnational pressure exercised by societal actors. A second difference has to do with the nature of the crucial actors for the policy change. Even though the English School of IR theory admits the existence of non-state actors in the international arena, the focus still remains on state actors. Therefore, English School theorists argue that the policy change would mainly be initiated by state actors. On the other hand, the TANs approach, is wholly built on the increasing influence that TNAs are gaining in different areas of world politics, especially concerning human rights issues. Hence, the TANs approach would argue that the policy change would likely be initiated by non-state actors. A final difference in the two approaches is what each see as the purpose of the policy change. The English School theory explains and limits any policy change to reputation-oriented reasons. The policy change is seen as a window-dressing exercise in order to avoid international reputational losses. The TANs approach argues that the purpose of any policy change is the internalization of internationally agreed norms, as the activities of some actors that the latter approach takes into account, as for instance NGOs, are by nature motivated by the promotion "of a perceived common good" (Risse, 2007, p.523). Therefore, if the transnational pressure exercised by societal actors would be successful, the occurrence of an intrinsic change in the state actor's behavior should take place.

The next chapter is dedicated to the presentation of the methodology and operationalization of concepts used in this master's thesis. Six hypotheses, based on the theoretical framework discussed in this chapter, are presented and operationalized, together with the dependent and independent variables. The following table (Table 1) stipulates the three main differences between the two theoretical frameworks.

	English School	TANs
<b>Motivation for the policy change</b>	Avoidance of reputational losses	Reaction to transnational pressure
<b>Crucial actors in the policy change</b>	State actors	Non-state actors
<b>Purposes for the policy change</b>	Window-dressing	Intrinsic change

*Table 1: Main Differences between the English School theory and the TANs approach*

## 3-Research Methodology

### 3.1-Introduction

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As stated before, the aim of this master's thesis is to analyse and explain the motivations for policy change that occurred in India after the Delhi gang-rape of December 2012. The purpose of this chapter is, thus, to provide the reader with the methodology employed to develop the research in order to link the theoretical framework, presented in the previous chapter, to the empirical reality. Moreover, six hypotheses based on the aforementioned theories are formulated and operationalized. Following the presentation of the hypotheses, the data and the type of the sources used in the thesis are provided. A clear and precise presentation of the methodology plays a fundamental role in this thesis, as a single case study design usually requires a deep analysis of the factors and causes relevant to the matter at issue (Odell, 2001).

### 3.2-Case Selection

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This research is built focusing on the motivations which led to the policy change that took place in India after the Delhi gang-rape case of December 2012. It is hence limited in "space" and "time" because the analysis is constructed by taking into account only those facts and data that are considered to be useful to explain the policy change that occurred after December 2012. Moreover, the research pays particular attention to the creation and the subsequent (non-) implementation of the Criminal Law (Amendment) Act, 2013, an improvement made to the Indian legal framework, regarding the crime of rape, in general, and other crimes of a sexual nature. Furthermore, it has to be kept in mind that India needs to be considered an emerging power, similar to the other BRICS countries. These countries, under the pressure caused by geopolitical shifts and rapid economic growth, are said to be more likely to change their policy agendas, particularly for what concerns human rights. This makes the reaction of the Government of India a relevant and challenging topic on which to conduct research.

Gerring (2006), provides a clear definition of what a case study is: "an intensive study of a single unit or a small number of units (the cases), for the purpose of understanding a larger class of similar units (a population of cases)" (Gerring, 2006, p.37). The single case study is actually "a family of research designs" (Odell, 2001, p.162) that uses process-tracing as its main technique (Odell, 2001). This way of conducting research aims at a deep and precise investigation of a case study and at the creation of hypotheses, starting from a chosen theoretical framework (Gerring, 2006). These features are the

advantages that case study methods can offer, compared to statistical methods that do not focus on a particular case (Odell, 2001). Based on the aforementioned considerations, the analysis conducted in this thesis is considered to be a single case study since the research focuses only on the dynamics of change, and how the process of changing the law evolves. Consequently, the researcher is not trying to make a comparison between the policies in place before and after the 16<sup>th</sup> December 2012. The analysis intentionally uses the Delhi gang-rape case as an initiation point, and, thus, is focused on the limited time frame of the resultant process of change and its political, legal and social consequences. Some data employed in the analysis are previous the occurrence of the gang-rape, however they are used only to explain the motivations of the policy change. This is in line with the demands of the method of process tracing and it enables a more rigorous application of the theories to the data. This justifies the choice of the single case study.

As argued above, according to Gerring (2006), a single case study is suitable for research that involves a small number of cases and, consequently, aims for a deep and explanatory analysis of the case (Gerring, 2006). It follows that the researcher who opts for this kind of method is interested in going beyond the superficial aspect of the case study he or she is analysing. Moreover, “the single case can represent a significant contribution to knowledge and theory building by confirming, challenging, or extending the theory” (Yin, 2013, p.51). This research design thus well fits the understanding of new and specific phenomena in a real-life situation and it is not well-suited to tackle well-known and largely-explained phenomenon (Yin, 2011). The issue investigated in this thesis (the process of law change in India) is a very circumscribed phenomenon and, therefore, the single case study design is the most appropriate option to develop this thesis. The research design is based on a “disciplined interpretive case study” (Odell, 2001, p. 163). This kind of case study aims at explaining an event by applying a known theory to an as yet unexamined terrain. Therefore, the analysis could likely result in suggestions that might be used to refine the known theory employed (ibid, p.163).

The inductive nature of the method of inquiry employed in this thesis does not allow for far-reaching generalizations concerning the explanatory power of the two competing approaches, however it serves to explore the relative explanatory power of those approaches. Those approaches, hence, could be extended and improved in order to account for a new event.

### *3.2.1-Process Tracing*

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In this thesis, process tracing is used to conduct the research, as this qualitative technique is designed to identify “steps in a causal process leading to the outcome of a given dependent variable of a particular case in a particular historical context” (George and Bennett, 2005 in Della Porta and Keating, 2008, p.231). thus process tracing functions as an indispensable element of case study research because it allows the researcher to trace the evolution of a series of events within a particular case (Brecher and Harvey, 2002).

Gerring (2006) argues that there is a similarity between the process tracing method and the job of a detective. The research conducted by making use of process tracing can be compared to an investigation. The collection of all pieces of the story is needed in order to provide an answer to the ‘puzzle’ proposed. The researcher uses process tracing to assess a theory by analysing the causal chain(s) that link the independent and the dependent variables (Della Porta and Keating, 2008). In a nutshell, “through the use of histories, archival documents, interview transcripts and other sources, the investigator examines whether the causal process of the theory that he is using can be observed in the sequence and values of the intervening variables” (Mahoney, 2003; George and Bennett, 2005 in Della Porta and Keating, 2008, p.232).

Another feature of this technique is that general assumptions about reality are also considered analytical tools of process tracing. The focus is both on what happened and on how it happened (Della Porta and Keating, 2008). For this reason, it is of primary importance to collect as much information as possible to have a wide knowledge of the case under investigation. Case studies largely depend on the existence and accessibility of empirical sources (ibid). With process tracing it is possible, moreover, to examine the reasons and motives that actors give to justify their behavior and, then, to investigate the relations between beliefs and behavior (Jervis, 2006 in Della Porta and Keating, 2008, p.233). When the researcher has the necessary amount of knowledge of world facts, process tracing is a useful analytical tool for the organization of data.

However, the process tracing method has limitations. For instance, process tracing is focused, since it has to do only with selected aspects of a phenomenon. Therefore, as process tracing needs empirical data, it can be the case that some fundamental piece of information may be lost during the analytical process (Della Porta and Keating, 2008). Another limitation of the process tracing method rests with the theories employed in the analysis. “Case study research and process tracing presuppose the existence of theoretical frameworks” (ibid, p.236). In other words, an existing theory may be not

perfectly suited to the analysis of the chosen case study. Given that, there is no guarantee that any empirical investigation undertaken will be wholly successful.

In the next chapter of this thesis, process tracing is used to collect data in order to illuminate the reasons which led to the policy change in India following the Delhi gang-rape case of 2012. The main events are organized following a chronological sequence to give a clear and coherent overview of the case study. This precise reconstruction of the main events is useful in testing the theories used as framework since it shows step-by-step the behavior of the Indian Government, all the actors involved and the roles they played. In the next paragraphs, six hypotheses are presented and operationalized. In the empirical chapter they are thus tested using process tracing.

### ***3.3-Research Design***

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The purpose of these paragraphs is to provide the reader with a clear overall picture of the processes at stake in the case study under investigation, in order to have the appropriate knowledge to deal with the empirical part of the research. The dependent and independent variables, first, are described, and then the formulation and the operationalization of the hypotheses follow. To conclude, a section is devoted to the method of enquiry.

#### ***3.3.1-Dependent and Independent Variables***

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*Dependent Variable:* In the next section, hypotheses are formulated. All the hypotheses have the same dependent variable. The dependent variable is the policy change in the field of human (women's) rights in the context of an internationally recognized scandal. The concept of 'policy change' refers to incremental shifts in existing structures, or new and innovative policies (Bennett and Howlett 1992). In this thesis, the concept of 'policy change' is used to refer to the reformulation of the Indian legal framework and the resulting new policy course which was focused on the specific crime at issue, rape as a crime, in general, and other crimes of a sexual nature. This case study addresses policy change as manifested in the increasing domestic and international debate about policy reforms (called the "agenda setting" stage), the legal reforms (called the "law making" stage) and the initial phase of the application of the new law as ratified (called the "implementation" stage). The last stage is the most controversial of the case study. The fact that the event at issue (the 2012 Delhi gang-rape) is relatively recent does not allow the assessment of any long-term implications of the policy change.

*Independent Variables:* The different independent variables are explained and operationalized together with the hypotheses in the next section.

### **3.3.2-Hypotheses and Operationalization**

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The hypotheses, as Gerring (2006) argues, have the purpose of linking the theory with empirical reality, helping the researcher in building an exhaustive answer to the research question. However, it has to be kept in mind that the hypotheses remain vulnerable to an empirical test (Della Porta and Keating, 2008). Based on the main statements of the two approaches used as theoretical frameworks in this thesis (the English School theory and the TANs approach), some competing hypotheses are formulated and operationalized, in order that they can be tested in the empirical chapter. The structure of the hypotheses is based on the aforementioned three main differences between the English School theory and the TANs approach (i.e. motivation of the policy change, crucial actors for the policy change, purpose of the policy change) and they are, hence, presented by taking this 'rivalry' into account.

- *Motivation for the Policy Change:* fear of reputational losses versus Transnational Pressure.

**H (1) ES** *When human rights violations are globally scandalized, policy change will mainly be motivated by the fear of reputational losses among state actors.*

#### **VERSUS**

**H (1) TANs** *When human rights violations are globally scandalized, policy change will mainly be motivated by state actors' reactions to transnational pressure.*

*Reputation:* The concept of 'reputation' is employed in this thesis, in relation to the aforementioned idea of international society (see theoretical chapter). The recognition of common interests and shared values entails responsibilities towards the other members of the society. It is at this point that reputation comes into play. Member states want to be perceived by the others as reliable actors. They want to maintain a certain "international" status towards the other members and, for this reason, they are inclined to act like trustworthy partners (Brown and Ainley, 2005). Mercer (1996)

describes reputation as a “judgment of a state’s character, which is used to predict and explain its future behavior” (Mercer, 1996, p.6).

Transnational Pressure: The term ‘transnational pressure’ indicates the different activities of several kinds of societal actors, intended to influence and/or change a state’s behavior, regarding different areas of world politics. The pressure is exercised simultaneously by domestic and international societal actors.

When a globally scandalized human rights violation takes place, both theoretical approaches would predict the occurrence of a policy change, although as a result of different motivations. With ‘globally scandalized human rights violation’ is meant any violation of the international human rights law. The development of the modern international human rights law started in 1948 with the adoption of the Universal Declaration of Human Rights (UNDHR) and, since then, it has grown thanks to the creation of several other treaties on specific human rights (CEDAW for instance) universally adopted.

Regarding the case study under investigation, seeing the brutal gang-rape (and consequent death) of a young woman in Delhi, English School theorists would predict a law change to be mainly motivated by the fear of reputational losses among other state actors, for instance among the member parties of international human rights treaties (such as CEDAW). The propositions of the English School theory would be confirmed whether the motivation of the policy change would be related to reputation. English School theorists would predict scenarios where the state actor spontaneously takes action in order to maintain a positive international perception of itself. For instance, statements of public officials that express concern related to their country’s prestige, even if there is no proof of previous lobbying activities or condemnation of that state by societal actors, would confirm the first hypothesis of the English School theory ( $H_{(1) ES}$ ). The hypothesis would be disproved if a state actor would aver that, despite the occurrence of the human rights violation, the state is not worried for its international prestige, or whether the concerns of state public officials would not be related to reputation.

On the contrary, seeing the brutal gang-rape and death of a young woman in Delhi, the TANS approach would predict policy change to be motivated, mainly, by India’s reaction to transnational pressure. Seeing the matter at issue (the gang-rape and murder of a young woman), the TANS approach would predict a large mobilization of different societal actors in order to persuade the Government of India to change its agenda regarding and policies towards rape and other crimes of a sexual nature. Transnational pressure is understood as the pressure exercised simultaneously by supranational and domestic actors (Van der Vleuten, 2005). Media attention, state power and actual level of human rights abuses (among other factors) could affect the outcome of the transnational

pressure (Ron, Ramos and Roger, 2005). The first hypothesis of the TANs approach ( $H_{(1) \text{ TANs}}$ ), therefore, would be confirmed whether the Government acts in reaction to the concern expressed by societal actors in ways such as lobbying activities, naming and shaming global campaigns, worldwide media attention. This hypothesis ( $H_{(1) \text{ TANs}}$ ) would be disproved whether there was no evidence of any kind of action taken by TANs or whether the target Government rejected or ignored the advocacy of TANs.

- *Crucial Actors in the Policy Change: State actors versus Transnational Advocacy Networks.*

**$H_{(2) \text{ ES}}$**  *When human rights violations are globally scandalized, policy change will mainly be initiated by state actors.*

### VERSUS

**$H_{(2) \text{ TANs}}$**  *When human rights violations are globally scandalized, policy change will mainly be initiated by Transnational Advocacy Networks.*

State Actor: The term 'state actor' indicates an autonomous political unit that has sovereignty over an area of territory and the people within it (Grant, 1998). More precisely, in this thesis, the term refers to all branches of a government (executive, legislative, judicial).

Transnational Advocacy Networks (TANs): The term 'Transnational Advocacy Networks' refers to a wide range of (private) non-state actors that, as such, are not constrained into the national boundaries. The term includes different kinds of organizations, for instance non-governmental organizations (NGOs), social movements, and other transnational actors (TNAs) (Keck and Sikkink, 1999). Nowadays, TANs are becoming prominent in influencing several areas of world politics, particularly in matter of human rights. They are significant transnationally, regionally, and domestically (Keck and Sikkink, 1998).

Seeing the occurrence of the brutal gang-rape and death of a young woman in Delhi, English School theorists would predict the policy change to be mainly initiated by a state actor (in this case, the Government of India). Based on the previous considerations on reputational losses, it follows that the Indian Government, concerned about its international status, would be likely to spontaneously initiate policy change that addressed the problems of rape and sexual violence (particularly that perpetrated against women). The second English School hypothesis ( $H_{(2) \text{ ES}}$ ) would be confirmed

whether there would be a major engagement of domestic political actors, very actively involved in proposing and initiating improvements to the situation. The promptness of the action could depend on different factors, for instance, the nature of the human rights violation itself and the involvement of the country in human rights treaties. Additionally, the range of the international reactions to the crime could play a role in that. This hypothesis ( $H_{(2) ES}$ ) would be disproved whether there was no evidence of particular initiatives of domestic political actors, that is whether the executive, legislative and judicial branches of the Government remained unresponsive to the problem.

On the other hand, the TANs approach would expect the policy change to be mainly initiated by Transnational Advocacy Networks. Different types of transnational actors would exercise pressure on the Government of India. As the matter at issue is gang-rape and (broadly speaking) violence against women, the TANs approach would first predict a large mobilization of domestic women's rights societal actors, focused on creating a link with analogous actors at the international level. Therefore, the second TANs hypothesis ( $H_{(2) TANs}$ ) would be confirmed whether there was evidence of a significant cooperation between domestic and international non-state actors instigated in order to persuade the Government to take action. Moreover, it would be plausible that they would make use of international norms in the matter of human rights to corroborate their claims against the behavior of the target Government. The hypothesis ( $H_{(2) TANs}$ ) would be disproved whether, after the occurrence of the human rights violation, TANs were entirely absent or they were present but uninvolved.

- *Purposes for the Policy Change: Avoidance of reputational losses versus Intrinsic change.*

***H<sub>(3) ES</sub>*** *When human rights violations are globally scandalized, policy change will mainly aim at the avoidance of reputational losses.*

#### VERSUS

***H<sub>(3) TANs</sub>*** *When human rights violations are globally scandalized, policy change will mainly aim at the internalization of internationally agreed norms (intrinsic change).*

*Avoidance of Reputational Losses:* (Within this context) all actions of state actors aimed at the preservation of a certain status vis-à-vis other state actors in the international arena.

Internalization of Internationally Agreed Norms/Intrinsic Change: With 'internationally agreed norm' is meant a rule, a behavior or a law that have been accepted internationally. The protection of human rights, for instance, can be considered an internationally agreed norm. If a shared norm is internalized by a state actor, it means that an intrinsic change took place in the state actor's attitude towards the matter at issue (rape in this specific case). With 'intrinsic change' is meant a real and concrete change in the perception that state actors may have of the matter at issue, a shift of their interests and preferences, a transformation of their discursive position and consequently the willingness of state actors to change procedures, policies and behavior (Keck and Sikkink, 1999).

Seeing the occurrence of the brutal gang-rape and death of a young woman in Delhi, English School theorists would expect the policy change to be aimed, mainly, at the mere avoidance of reputational losses, meaning that all the measures adopted by the Government of India would seek the preservation of state international prestige, by persuading other state actors that India is a trustworthy member of the international society. Therefore, the third English School hypothesis ( $H_{(3)ES}$ ) would be confirmed whether the Government initiated minimal reforms, without any significant attempt at implementation, seeking only to assuage possible international criticism. This hypothesis ( $H_{(3)ES}$ ) would be disproved whether there was evidence of significant reform and visible attempts by the Government to improve the condition of women in the country.

On the contrary, the TANs approach would predict that policy change be directed, mainly, at the internalization of internationally agreed norms. The transnational pressure effected on the Indian Government by TANs, if successful, would cause an intrinsic change in the perception that India has of the problem of rape and sexual violence, and violence against women. This means that the resulting policy change would be fully institutionalized domestically and, hence, it would become a habitual in practice, and enforced by rule of law (i.e. the "rule-consistent behavior" phase of the spiral model of human rights change) (Risse-Kappen, Ropp and Sikkink, 1999). Therefore, the third TANs hypothesis ( $H_{(3)ES}$ ) would be confirmed whether the Government acted in ways that exceeded international demands and which sought the effective implementation of the new legislation. This hypothesis ( $H_{(3)ES}$ ) would be disproved whether there was evidence that the effort of the Government was limited to the scope of the international demands, with no significant attempt devoted to the implementation of the new legislation.

### *3.4-Method of Inquiry*

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As stated above, this research is conducted by making use of qualitative research methods. Therefore, in the empirical chapter to follow, the hypotheses presented in the previous sections are tested by using the aforementioned technique of process tracing. The uniqueness of this kind of research is that it makes possible the collection of detailed data that can be used to explain the emergence and the evolution of processes (Lamont and White, 2009).

The sources employed in this thesis include a significant use of so-called 'institutional documents.' The concept 'institutional documents' refers to all documents created by institutions and, hence, the designation encompasses speeches and newspaper articles (Corbetta, 2003). The empirical analysis is based, mainly, on newspaper articles, reports of the Human Rights Council, and official websites. The collection of data, essentially, is accomplished by using Lexis Nexis as a research tool, for the gathering of international newspaper articles and/or translations (to English) of local newspapers concerning the Delhi gang-rape case, starting on the 16<sup>th</sup> December 2012. Public speeches by and declarations from the Indian President, the Prime Minister and other involved political actors, also, are taken into account to have a clear overview of the case study. Moreover, to address the action of transnational actors, official website pages of the different societal actors are consulted and the materials contained therein are evaluated. Concluding observations of the Human Rights Council and of CEDAW Committee, also, are consulted. All data were selected with the two theoretical approaches in mind.

Finally, sources were selected taking into account varying perspectives, thus aiming at the avoidance of bias and overcoming possible inaccuracy. However, it must be noted that the nature of some of the aforementioned sources generates an intrinsic lack of objectivity, and, hence, the researcher was aware that the information provided by such sources, for instance, newspaper articles, might have been incomplete, inaccurate, and/or biased (Corbetta, 2003). Moreover, all the sources considered in this research are in English, due to the lack of knowledge by the researcher of Hindi. This clearly limits the range of accessible sources, as translations can be biased, inaccurate, and/ or incomplete. With these considerations in mind, the empirical analysis of the case study is conducted in the following chapter.

## 4-Case Analysis

### 4.1-Introduction

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In this chapter, the hypotheses are tested. As stated in the methodology, the empirical analysis is conducted using the technique of process tracing, in order to collect data to explain the occurrence of the dependent variable, notably the policy change (meant as a law change in matter of rape and other sexual offences) after the Delhi gang-rape case of December 2012. Before starting with the empirical analysis, a concise description of the gang-rape case is needed.

As previously stated, the evening of the 16<sup>th</sup> December 2012 in New Delhi, a 23-year-old female student was repeatedly beaten, tortured and gang-raped by six men on a moving bus, in which she was travelling with a male friend (The New York Times Blog, 2012). The brutality of the episode immediately produced large mobilization within India and this surely played a big role in making the event an international cause, as it provoked unprecedented public protests all over the country and mass media outcry across the globe. The Delhi case was not the first shocking gang-rape. However nothing had changed before. However, the nature of the protests after the incident showed that, for the first time, rape was not just a women's problem but a larger democratic issue. In this occasion, rape issue has been politicised (Shackle, 2014). Thousands of ordinary people took the streets demanding action from the Government of India concerning the problem of rape and other crimes of a sexual nature. This interest of the general public hinted an openness of the Indian society towards change. Meanwhile, six alleged aggressors were arrested. Few days after the incident, the critical conditions of the gang-rape's victim required her to be transferred to a hospital of Singapore for further medical treatment, where she died thirteen days after the sexual aggression. A new wave of outrage hit New Delhi and other main cities in the country. Once again, public demonstrations and angry expressions toward the gang-rape case filed social networks, and caught media attention of Asia, the United States and Europe. Seen the range of the protests, the Government assured the protesters that all possible measures would be taken in order to improve women's conditions throughout the country. In January 2013, a judicial committee headed by Justice J.S. Verma, 27<sup>th</sup> Chief Justice of India, was set up by the Indian Cabinet, aiming at a quicker investigation and prosecution of sex offenders. The commission had a month to submit to the Government of India a report, containing recommendations about how to bring substantial changes to existing anti-rape laws and to speed up sex assault trials. In February 2013, the Indian president Pranab Mukherjee promulgated the Criminal Law (Amendment) Ordinance, 2013, which, in March of the same year, was replaced by the Criminal Law (Amendment) Act, 2013. The new legislation provided, among other innovations, a broader definition of rape and other crimes of a sexual nature. These improvements

satisfied some of the requests of the CEDAW Committee to India. Already in the Committee's report of 20 February 2007, the Committee expressed its concern about the "absence of a comprehensive plan to address all forms of violence against women" and about "the narrow definition of rape in the current Penal Code and its failure to criminalize marital rape and other forms of sexual assault" (CEDAW/C/IND/CO/3, 2007, p.4-5). The Committee had furthermore pointed out how the still widespread violence against women in India was negatively affecting the implementation of CEDAW and it had already urged the state party to broaden the definition of rape in its Penal Code. However, despite these attempts, almost three years after the scandal of New Delhi, the Indian legal system and law enforcement seem to remain rather slow and often ineffective. Moreover, some requests, for instance the criminalization of marital rape, have remained unaddressed.

In the next paragraphs, the case study is analysed in three stages, named, for the purpose of the research, "agenda setting", "law making" and "implementation", each one followed by a reflection according to the theoretical framework. The step-by-step description of the facts helps to have a concise and distinct overview on the different independent variables that come into play in determining the policy change.

#### ***4.2-Stage 1: "Agenda Setting"***

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During the days following the gang-rape case, New Delhi was shaken with public outrage. Thousands of people, especially students, women's right activists and representatives of local NGOs, took the streets in solidarity with the victim, demanding the immediate action of the Indian Government against rape and other forms of sexual harassment. Protesters tried to block a major highway and surrounded the police station where the complaint was filed, and other public places, in order to catch the attention of the authorities. "This is an expression of our horror and anger and discontent at how things are" said one of the protesters, "The Government has to take responsibility" (Associated Press Online, 2012). Police tried to disperse demonstrators with water cannon and tear gas. However, this move provoked just further protests and the spread of the general outrage to other main Indian cities. The case gained more and more media attention inside the country and abroad, as the news of the incident became viral even in social networks. For instance, some India's most prominent activist groups, *Breakthrough* and *Blank Noise*, took advantage of Twitter to voice their opinions and spread the news all over the web, with the use of strategic key words and hashtags such as #delhirapecase or #delhigangrape (Losh, 2014). Even several Bollywood stars reacted on social networks, by posting personal reflections on the attitude towards the crime of rape

of the political system, and by showing their solidarity to the victim's family (The Hindu, 2012). Women's rights activists also had a prominent role in that. Sehba Farooqui, member of All India Democratic Women's Association (AIDWA), demanded greater security for women in the country, blaming the Government, the police and others responsible for public security to not give priority to the issue of violence against women (Associated Press Online, 2012). Moreover, activists demanded fast-track courts to deal with the crime of rape and other crimes of a sexual nature, since Indian justice system seemed incredibly slow on this matter.

All these mass protests produced strong reactions even among the opposition leaders in Indian Parliament, who accused the Government of being insensitive to the problem of violence against women. Female MPs from the opposition Bharatiya Janata Party (BJP) organized a separate protest outside the Parliament, while thousands of other activists across the country were demanding improvements in women's condition (International Business Times, 2012). Some lawmakers have called for harsher punishments, some of them have even proposed the death penalty for convicted rapists. Sushma Swaraj, a leader of the opposition Hindu nationalist BJP, was a strong supporter of death penalty and another prominent senior figure of BJP, Ravi Shankar Prasad, labelled New Delhi as the "rape capital" (The Australian, 2012). The head of the ruling Congress Party, Sonia Gandhi, the most influential female figure in India, visited the victim in a Delhi hospital and expressed her opinion about the situation in letters to Home Minister Sushilkumar Shinde, responsible for law and order in Delhi, and Delhi Chief Minister Sheila Dikshit: "Such violence and criminality needs not only to be condemned, it calls for a concerted effort to fight it. [...] It is a shame for us, who are responsible for the security of our cities that a young woman can be raped on a moving bus in the capital of the country and flung onto the street. [...] It is imperative that the police and other agencies concerned are sensitized to the dangers that our daughters, sisters and mothers face every day. The security agencies must be motivated, trained and equipped to deal with the menace. I hope [the Delhi Government] will initiate immediate action to remedy the situation." (International Business Times, 2012). Arun Jaitley, parliamentarian of the opposition BJP, also expressed all his grief for the victim's death, saying that the episode was a national shame for India. "She has become the daughter of the entire nation" said the leader of the opposition BJP (The Journal, 2013).

Moreover, India's Association for Democratic Reforms (ADR) found that more than thirty men, involved in different political parties in the country, were charged of rape crimes. The report of the think tank was based on court documents (ADR Report, 2012). Kavita Krishnan, secretary of the All India Progressive Women's Association (AIPWA), a movement with a revolutionary left orientation, declared that India needed a top-down cultural change: "Changing the culture of rape starts with

holding the politicians and religious leaders responsible for their actions and changing their attitudes” she stated (The Record, 2013).

Meanwhile, thanks to the effort of local activists and international NGOs, something began to change when several petitions with a lot of signatories appeared online, aiming at persuading the Government of India to quickly formalize its response to rape and other crimes of a sexual nature. A petition proposed on Avaaz.org, a powerful online activist network, demanded to the Indian Government and to the aforementioned Verma Committee a public education campaign to eradicate sexism and sexual violence in India: “We call on you to urgently strengthen sexual violence legislation and enforcement, and to launch a massive public education program with hard-hitting and high quality content designed to bring about a profound shift in the shameful attitudes that permit and promote violence against women” (Avaaz.org, 2013, A). In 2007, the CEDAW Committee already called upon India “to create public awareness of forms of violence against women rooted in custom as an infringement of women’s human rights” (CEDAW/C/IND/CO/3, 2007, p.5). However, the request was left unaddressed.

After days of intensive protests in the streets of the main Indian cities, the news was spread worldwide, giving the world the image of a passive and insensitive Indian Government. The national and international outcry stunningly grew with the announcement of the victim’s death, thirteen days after the aggression. Newspapers such as The New York Times, Le Monde and The Guardian, among others, had criticized the slow response of the Indian political leadership to the gang-rape case. In an editorial of the 28<sup>th</sup> December 2012, The New York Times commented as follows what happened in India: “This reprehensible crime reflects an alarming trend in India, which basks in its success as a growing business and technological Mecca but tolerates shocking abuse of women. Rape cases have increased at an alarming rate, roughly 25 percent in six years. New Delhi recorded 572 rapes in 2011; that total is up 17 percent this year. And those are just the reported cases. [...] Still, political leaders were slow to react. It was days before Prime Minister Manmohan Singh appeared on television to plead for calm and to promise to make India safer for women. [...] India, a rising economic power and the world’s largest democracy, can never reach its full potential if half its population lives in fear of unspeakable violence” (The New York Times, 2012, A). Likewise, the French newspaper, Le Monde, reported the news, blaming the Indian Government for its initial inaction (Le Monde, 2012) and the British newspaper, The Guardian, underlined the detachment of the Indian Government with public emotion (The Guardian, 2012). Protests and demonstrations in the streets took place even in India’s neighboring countries such as Nepal, Pakistan, Bangladesh and Sri Lanka. Moreover, in Toronto, a group of people from the Indo-Canadian community marched outside the Indian consulate, delivering a petition to demand action from the Government of India (CBC News, 2013).

In this atmosphere of general disappointment, the United Nations (UN) human rights chief, Navi Pillay, called for a fundamental change of the women's condition in India. In a statement, she criticized political systems that discriminate against women (The Associated Press, 2012). In the same days, the Indian Representative of the United Nations Children Fund (UNICEF) expressed deep concern for the number of rape cases and the widespread pattern of violence against women and children in India. Lise Grande, UN Resident Coordinator in India, emphasized the importance of the collaboration between authorities and civil society to improve the situation (UNICEF Press Centre, 2012).

Seen the range of the protests and after several accusations of inaction, the Indian Government broke the silence. Prime Minister Manmohan Singh condemned the event describing it as "a heinous crime" and he assured that all possible measures would have been taken in order to change the condition of women in the country and to prevent the incident to become another sad statistic (Agence France Presse, 2012). Under Singh's direction, Home Minister Sushilkumar Shinde promised that steps would have been taken to guarantee more security on busses and other public transports. Shinde stated that the Government of India was pushing for a speedy trial for the attack, as the alleged aggressors had been arrested. He furthermore stated that "the Government shares the widespread concern and support that has been expressed throughout society for the girl who has so suffered. The Government also respects the right of legitimate protest" (Agence France Presse, 2012). He added that the Congress-led Government was considering to punish the crime of rape even with death penalty, since the maximum penalty for rape at that moment was life imprisonment. As the protests in the capital did not seem to come to an end, he appealed to the demonstrators asking for calm, stating once again that all possible measures would have been taken in order to manage the situation in the best way and promising to keep the public informed about the steps taken. As the news had reached worldwide media attention, Prime Minister Manmohan Singh furthermore declared, in a public statement, that safety of women was his Government's highest concern: "Women and girls represent half the population and our society has not been fair to this half. Their socio-economic status is improving, but gaps persist" (ANI, 2012).

As outlined in the introduction of this chapter, to face the delicate situation of general outcry and disappointment over governmental and judicial inaction, the Indian Cabinet planned to set up a commission, headed by J.S. Verma to follow the rape case and to suggest measures to improve safety of women in public places. The commission had one month to submit a report to the Government of India. The promise was to bring substantial changes to existing anti-rape laws and to speed up sex assault trials. Hence, the Indian Government asked all political parties in the country to share their opinions with the aforementioned judicial panel on possible ways to improve anti-rape laws (BBC

Monitoring South Asia, 2012). Additionally, the Government planned to recruit 2.000 new judges for fast-track courts. In particular, Indian authorities decided to fast-track rape and murder charges against the six aggressors of the gang-rape case of New Delhi.

#### *4.2.1-Theoretical Reflection on the “Agenda Setting” Stage*

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The facts that took place immediately after the gang-rape scandal are considered as the first stage of the case study, called “agenda setting”. During this phase, the Government of India had to face strong waves of protests and criticism. The facts, which are chronologically reported, show that the general public and national and international pressure societal actors have been extremely involved at this stage, while the Government of India seemed to be rather passive. The outcome of the “agenda setting” stage is the promise of the Government to take action in order to change the situation inside the country, regarding rape and other sex crimes. As expected by both theoretical approaches, India showed an attitude of openness toward the possibility of reformulating the current legislation. However, as argued above, the two approaches disagree on the motivation for the policy change, on the crucial actors in the policy change and on the purposes for the policy change. A closer look at the hypotheses is needed to clarify which theoretical framework fits better the first stage of the case study under analysis.

The data collected shows that the first political move of the Government of India was not immediate and that it came only after a strong wave of public protest and a following involvement of several societal actors, at the domestic level first, and at the international level then. After the initial inaction, the Government of India broke the silence by declaring its concern towards the situation. Seen the occurrence of the gang-rape of a young woman in Delhi, the English School theory would argue that the willingness of the Indian Government to start a process of change of its legal framework would be mainly motivated by the fear of reputational losses among the other state actors in the international arena. However, no significant explicit reaction of other state actors was found at this preliminary stage. The concept of “thick international society” of states, characterized by a quite wide degree of common norms, rules and institutions among the members, could, in practice, be identified with the whole UN human rights machinery. As a state party of numerous international human rights instruments, India should have always been interested in maintaining a certain international reputation vis-à-vis other state parties. However, UN reports previous to December 2012 prove that more than once India ignored its duties as a state party. For instance, the CEDAW Committee’s report of 2<sup>nd</sup> February 2007 showed that the concern of the UN towards the

condition of women in India was not an issue that emerged only after the Delhi gang-rape case, as the Committee was pushing India to take all the measure to effectively implement the CEDAW already a long time before the incident of December 2012. The “fear of reputational losses” argument proposed by the first hypothesis of the English School theory seems to be quite weak under these circumstances. There is no evidence that the Government of India took spontaneously action because it was concerned to lose international prestige. The statements of public officials, such as the Prime Minister Manmohan Singh or the Home Minister Sushilkumar Shinde among others, were not immediate and spontaneous as English School theorists would expect.

Concerning the motivation of the policy change, the data collected at this stage rather seems to confirm the first hypothesis of the TANs approach which argues that the policy change would be mainly motivated by state actors’ reactions to transnational pressure. As expected by the “repression and activation of network” phase of the spiral model of Risse-Kappen, Ropp and Sikkink (1999), representatives of domestic societal actors (common people, women’s rights activist groups, local NGOs) started protests in order to gather the international public attention on the issue at stake. The attempts to stop the manifestations with tear gas and water cannons could be seen as a way to avoid the spread of the protests and consequently limit the attention of the international community on India (“denial” phase of the spiral model). The seriousness of the incident, combined with the activities of domestic societal actors, as AIDWA and AIPWA, made India to become part of the international agenda. At this point the Government of India promises to take action in the attempt of pacifying international criticism (“tactical concession” phase of the spiral model). The behavior of the Indian Government is hence a reaction to the strong transnational pressure exercised by societal actors, particularly international media. It cannot be excluded that, once the news reached worldwide media attention, India was concerned about its international status. However, the English School theory alone cannot provide a sufficient explanation for the motivation of the policy change because it does not account for such an influence of societal actors.

The aforementioned argumentations bring to light considerations concerning the nature of the crucial actors responsible for the start of the policy change at this stage. On one hand, the English School theory second hypothesis claims that, if gross human rights violations are globally scandalized, policy change will mainly be initiated by state actors. The outcome of the “agenda setting” stage is the promise of the Indian Government to take action in order to change the domestic situation towards the crime of rape and other crimes of a sexual nature. However, as argued above, this attitude was a response to the transnational pressure exercised by different societal actors. The first stage of the case study showed how the action of TANs was successful in creating synergy between different domestic societal actors and international organizations and in

creating opportunities for dialogue and exchange. Protesters on the streets, women's rights groups (AIDWA and AIPWA), online activist networks as Avaaz.org, the UN human rights chief, the Indian Representative of UNICEF, the UN Resident Coordinator in India and the CEDAW Committee were all publicly asking for a fundamental change of the women's condition in India. Data furthermore shows a significant activities of "lobbying" and "naming and shaming" (for instance public protests, mailing campaigns, organization of petitions, letters to the Government, etc.) promoted by the protesting groups. Once they managed to capture worldwide attention on the issue, the Indian Government was successfully pressured both at the domestic and at the international level and it was forced to take action. Data collected matches the expectations of the TANs approach. The second hypothesis of the English School theory is disproved, since the action of domestic political actors was not immediate but reactive. The Government remained rather passive and broke the silence only after TANs strong exhortation.

The data collected at "agenda setting" stage does not allow considerations concerning the third hypotheses proposed by both theoretical frameworks since the achievements obtained so far remain rhetorical rather than practical.

To sum up the results at this stage, the TANs approach has more explanatory power than the English School theory for what concerns the main motivation and the crucial actors in the policy change. The empirical data shows how the reaction of the Indian Government was mainly motivated by the transnational pressure exercised by societal actors ( $H_{(1) \text{ TANs}}$  confirmed) and, consequently, how the policy change was initiated by TANs ( $H_{(2) \text{ TANs}}$  confirmed). However, it has to be kept in mind that the empirical analysis done so far covers only the first stage of the case study under investigation. It is early to come to conclusions about the overall explanatory power of the two approaches.

#### ***4.3-Stage 2: "Law Making"***

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The second stage of the case study has been named, for the purpose of this research, "law making". After the first phase of the policy change under enquiry, the Government of India, seen the strong transnational outcry, promised to revise its attitude towards the crime of rape and other crimes of a sexual nature, in order to improve women's condition in the country. Therefore, in this second stage, the reforms are presented and analyzed.

On the 3<sup>rd</sup> of February 2013, Indian president Pranab Mukherjee signed off on new anti-rape ordinance, the Criminal Law (Amendment) Ordinance, 2013, which included the death penalty for

extreme rape cases. This move raised new waves of criticism and disagreement among women's rights groups in the country. They were afraid that the capital punishment, instead of decreasing the number of rape cases, would have just encouraged aggressors to kill their victims. "The death penalty is not really the answer" said Kavita Krishnan, secretary of AIPWA (Daily Regional Times, 2013). After several debates, on the 19<sup>th</sup> of March 2013 a new Bill passed by the Lok Sabha (the lower house of India's Bicameral-Parliament) and on the 21<sup>st</sup> of March 2013 by the Rajya Sabha (upper house), making certain changes compared to the previous Ordinance. On the 3<sup>rd</sup> of April 2013 the new Bill was signed by the president of India, coming into force with the name of Criminal Law (Amendment) Act, 2013, also known as "anti-rape Act", with the aim of curbing sexual violence against women in the country. The Act provided for amendment of the Indian Penal Code (IPC), 1860, the Indian Evidence Act (IEA), 1872, the Code of Criminal Procedure (CCP), 1973 and the Protection of Children from Sexual Offences Act (PCSO), 2012 on laws related to sexual offences (Bhattacharyya, 2013). Based on the recommendations of the judicial committee headed by Justice J.S. Verma, the purpose of the law was the expansion of the definition of rape and the increase of punishments for crimes of a sexual nature. Moreover the Act criticized the old-fashioned police system and proposed to condemn officers who fail or refuse to register complaints of sexual assault. Even if the Act has been perceived as an important achievement by the general opinion, significant problems remained. For instance, as Ranjana Kumari, director of the Center for Social Research (CSR), a non-profit, women's rights NGO based in New Delhi, pointed out, the Government of India still refused to criminalize marital rape (India Blooms, 2013).

Political actors in India tried to promote it as an innovative law in matter of sexual harassment, seen the worldwide attention on the crime of rape after the heinous incident of December 2012. For instance, the minister of home affairs, Sushil Kumar Shinde declared that "such legislation has come to India for the first time and the Parliament has given its approval. It will create a revolution in the country" (Reuters, 2013). It is undeniable that the Act presented, at least on paper, some attempts to refine the concept of rape, compared to the existing laws and, therefore, it was perceived as a big achievement when it was firstly proposed, as it promised to take into account the suggestions made not only by jurists and legal professionals, but also by human rights' activists, NGOs, women's groups and civil society (Bhattacharyya, 2013). However, it was still to be seen if the Act was, also in practice, such an innovation as depicted.

In a nutshell, the Criminal Law (Amendment) Act 2013 presented the following major differences compared to previous legislations. It considered rape resulting in death or vegetative state as a specific offence, and hence punishable with twenty years up to life imprisonment or death. Before, rape and murder were considered as two different offences and presupposed different punishments.

The crime of gang-rape, that before was punishable with a minimum of ten years of imprisonment, with the Act was punishable with a minimum to twenty years up to life imprisonment and a fine. Moreover, the Act considered rape by armed personnel, acid attacks, stalking, demand for sexual favors and voyeurism as specific offences as well and it increased the punishments for those who committed the aforementioned crimes. According to the Act, the legal age at which a person is considered competent to give sexual consent is 18 years of age. However, the Act does still not consider marital rape an offence if the wife is over fifteen years of age (Gazette of India, 2013). This represented a controversial and criticized point, as the Justice Verma Committee (JVC) report recommendation explicitly proposed to consider it an offence regardless the age of the wife (Bhattacharyya, 2013).

Even if, at the beginning, the idea of the new legislation was embraced with enthusiasm by a large part of the general public, a critical attitude still persisted among several human rights and women's rights organizations, condemning the new law for leaving unaddressed several important issues contained in the recommendations of the JV Committee. Ananth Guruswamy, Chief Executive of Amnesty International India, admitted some strong points of the new law, such as the recognition of acid attacks, stalking and voyeurism as specific offences, but it failed to meet India's international law obligations and international human rights standards in many respects (Amnesty International, March 2013, A). He furthermore commented several disappointed aspects: "It fails to address other kinds of violence against women, sets the age of consent at 18, and reduces victims' access to health care and legal assistance. The law sets back much of the progress made on these issues by the Justice Verma Committee. It also introduces deeply regressive provisions, like the use of the death penalty and life imprisonment without the possibility of release for certain offences [...]. The law continues to facilitate impunity for rape committed by husbands and members of security forces. It imposes harsher punishments for certain kinds of rape committed by security forces. But unless the requirements of government permission for prosecution are removed, cases will rarely even make it to the courts" (Pressenza, 2013). On the 11<sup>th</sup> of March 2013, Amnesty International India voted for a new law on violence against women in India (Amnesty International, March 2013, B).

Therefore, another wave of protests spread among activists against the Indian Government's decisions, asking for the complete implementation of the recommendations into the new law. Protesters believed that public attention and debate on the problem of rape and gender equality were still of primary importance in India. For this reason, members of the National Alliance of Women (NAWO) carried on a campaign against gang-rape, murder and slavery, with the aim of keeping the general public up-to-date on women's condition in the country. Kavita Krishnan, secretary of All India Progressive Women Association (AIPWA) described the Act as "an eyewash"

that diluted the suggestions of the JVC and Sehba Farooqui, secretary of All India Democratic Women's Association (AIDWA) pointed out how marital rape was still not criminalized by the Government of India (DNA, 2013). Nirmala Sitharaman, the national spokeswoman for the opposition BJP said that the Indian Government could have done more to make the new legislation stronger. In response to these accusations, finance minister Palaniappan Chidambaram declared that any recommendation have been rejected: "The correct position is that some recommendations of the Justice Verma Committee have not been incorporated in the ordinance because of divergence of opinion on the issues. These issues require more consultations and deliberations" he stated (Live Mint, 2013).

Meanwhile, a special court convicted four men involved in the scandal of Delhi gang-rape case of December 2012. They were found guilty of gang-raping and murdering a "helpless victim", committing unnatural offences, destructing the evidence and hence they could even face the death penalty. They had pleaded not guilty to all the charges (BBC News, 2013, B). The issue of death penalty represented a controversial point of discussion. Many are those who were persuaded that it shouldn't be considered as a deterrent to the problem of violence against women in India. For instance, Suhas Chakma, director of the Asian Centre for Human Rights (ACHR), stated that the capital punishment would have increased the number of murdered victims in order to destroy evidence (The Hindu, 2013).

The day of the sentence the nation erupted once again in outrage. Streets of major cities were crowded of people asking a radical change of the situation (BBC News, 2013, B). The protests spread online as well. Human rights activists' websites tried to keep the worldwide attention on the topic alive, underlining how the lack of awareness towards the crime of rape in India represented a big part of the problem. Indiatogether.org, an Indian news and human rights agency, openly condemned the sexism of the Indian society and stressed the attitude of the police to shrug off complaints of rape and other forms of sexual harassment (India Together, 2013). In this atmosphere of general outcry, Avaaz.org took once again the chance to call for the Government of India to start a Government-led education campaign to eradicate sexism from Indian society. According to activists, in India many women have learned to accept being victims of sexual harassment. The discrimination of women in public places is still a cultural reality in the country, especially in rural areas. For this reason, a change of the legislation could be effective only if combined with a raising mass awareness of the topic among the society. Therefore, "widespread cultural change requires a concerted and society-wide effort, led and funded by the Government" (Avaaz.org, 2013, B). The educational project proposed by Avaaz.org, which gained large approval among the general public, required an investment of at least 50 rupees (\$1 US) a year for every Indian citizen to have a significant impact on

the reduction of sexual assault. The largest part of the funding must come from the Government, but the cost of the campaign could be covered by the contribution of private companies (Avaaz.org, 2013, B).

The idea has been welcomed with enthusiasm by several local NGOs and human rights groups and numerous projects of mass awareness towards rape have been started. Among examples of activism, it has to be mentioned the work of Blank Noise<sup>7</sup>, a community/public art project that, after the rape in Delhi, started an initiative called *Safe City Pledge* to stop street sexual harassment in cities and to make citizens more aware of the issue, making use of posters, spray painting anti-harassment messages and public demonstrations across the Indian cities. Jhatkaa.org<sup>8</sup>, a campaigning organization which collaborates with civil society, collected signatures, inviting the Indian population to speak out against rape. Members of Jagori, a women's rights group, were persuaded that, apart from the legislation, "Indian society has to change its mindset about women" (Global News, 2013).

Seen the general attention that Avaaz petition have gathered, minister of communications and information technology, Shri Milind Deora, promised to support the mass public education campaign to stop anti-women attitudes across the country, calling on the minister for women to do the same (CNN, 2013, A). In this occasion, also the president of the leading Congress Party, Sonia Gandhi, expressed her support to people demonstrating in the streets: "As a woman, and a mother, I understand how protesters feel. [...] We pledge that the victim will get justice" she stated (New York Times, 2012, B). However, despite the effort, no announcement regarding budget and timetable for what concerns the campaign has been done so far.

Beside the reformulation of the existing legislation, the Government of India has issued other initiatives to improve the condition of women in the country, for instance, the creation of fast-track courts for rape cases, the proposal to increase the number of judges, the circulation of women-only buses (Live Mint, 2013). Moreover, the Government established a helpline for women victims of abuses, a project headed by Khadijah Faruqi, a veteran women's rights activist. The main purpose of the helpline was giving assistance to abused women, informing the police or a women's group in case the caller needed immediate help. It furthermore provided legal advice (Global News, 2013). According to the activists involved in the project, the helpline helped the victims to feel more confident because, since the creation of the service, the number of reported rapes has considerably increased. The tables available on the official website of the National Crime Records Bureau show

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<sup>7</sup> See <http://blog.blanknoise.org/2013/01/blog-post.html>

<sup>8</sup> See <https://www.jhatkaa.org/speak-out-unitedagainstrape/>

that in 2013 the number of reported rape cases was 33764, while in 2012 it was 24519 (NCRB, 2012-2013).

Violence against women even became a key issue during India's state elections in 2013, seen the huge impact of the topic on the general public opinion. In that occasion, Avaaz.org conducted a survey which clearly showed that more than 90% of Indian voters in Delhi saw the improvement of women's condition as a priority (Avaaz, 2013, C). Moreover, a six-point plan, named *Womanifesto*, was created and proposed by Avaaz and other different NGOs, women's rights groups, economists, journalists, scholars, researchers and lawyers<sup>9</sup> and contained ideas on how to improve women's conditions in India within five years (Avaaz, 2013, C and CNN, 2014, B). Both the ruling Indian National Congress party and the main opposition, BJP, embraced the ideas promoted in the manifesto and promised to make women's safety a major goal of their political activity. Furthermore, Sonia Gandhi proposed to keep 25% of female staff at the police stations (CNN, 2014 A). The idea was an additional attempt to improve sensitivity by police officers and make easier to report a sexual crime. Despite the law enforcement proposed by the Indian Government, women's rights activists underlined how police represented a huge part of the problem of sexual violence against women in India. Most of the time, when victims try to report a sexual abuse, they are harassed by male police officers who ask them to strip to prove the rape, demand bribes or make obscene comments.

The state elections of 2013 brought a change in the capital's Government. After 15 years in Delhi, the Indian National Congress was defeated by the Bharatiya Janata Party<sup>10</sup>, even if no single political party gained an absolute majority of seats of the capital (The New York Times, 2013, C).

#### ***4.3.1-Theoretical Reflection on the "Law Making" Stage***

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The second stage of the case study under investigation in this thesis is devoted to the attempts made by the Government of India to improve the existing legislation regarding rape and crimes of a sexual nature of different nature, and to other directives intended to change the condition of women in the country. The most remarkable outcome of the law making process is the Criminal Law (Amendment) Act, 2013. Both theoretical frameworks could provide interesting explanations for the events at this stage. A closer look to the hypotheses will clarify which approach accounts for a better one.

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<sup>9</sup> See the list of initial signatories on [http://avaaz.org/en/delhi\\_womanifesto\\_full\\_bl\\_ch\\_1/](http://avaaz.org/en/delhi_womanifesto_full_bl_ch_1/).

<sup>10</sup> See <http://www.elections.in/delhi/assembly-constituencies/2013-election-results.html>.

As ascertained at the first stage, the wave of reforms started after the general outcry that followed the gang-rape of December 2012 in Delhi. The reported data showed a passive and rather reactive attitude of the Indian Government in the first place. The promise to act came as a consequence of the strong transnational pressure exercised by societal actors. The first hypothesis of the English School theory argues that, when gross human rights violations are globally scandalized, policy change will mainly be motivated by the fear of reputational losses among state actors. However, once again, the data collected at this stage does not show explicit reactions by other state actors and the statements of the public officials are the response to the general protests. The concern for reputational losses cannot be excluded, but it cannot either provide a satisfying explanation to the motivation for the policy change, since there is no evidence that the Government took action spontaneously. Under these circumstances, the concern for reputation seems rather a consequence of the active transnational pressure exercised by societal actors. On the contrary, a large involvement of TANs has already been proved at the previous stage. Therefore, the expectations towards the motivation for the policy change of the English School theorists are disproved in favor of the TAN's approach. The Indian Government decided to take action as a reaction to transnational pressure.

Concerning the crucial actors in the policy change, data at this stage shows a decent engagement of the Indian political actors. The English School theory would expect the policy change to be mainly initiated by the Government of India. The events described at the "law making" stage seem to match this expectation since the process of law reformulation was initiated by the Government. First, the judicial panel headed by Justice Verma was set up as requested by the Government, then, after few steps, the Criminal Law (Amendment) Act, 2013 was signed off by the president Pranab Mukherjee. The fact that the new law did not contain some relevant recommendations proposed by the JVC (for instance the one regarding the criminalization of marital rape, an issue largely debated also in the UN context) underlines how the final decision depended on the Indian Government itself. TANs approach theorists, on the contrary, would expect the policy change to be mainly initiated by TANs. After the initial promise of the Government to take action, the pressure exercised by societal actors has shifted from the transnational to the domestic level (as expected by the "tactical concessions" phase of the spiral model of Risse-Kappen, Ropp and Sikkink, 1999). Some international societal actors (such as Avaaz and the Asian Centre for Human Rights for instance) kept their attention on India, however, the cooperation between domestic and international level has strongly decreased. This lack of synergy between national and international societal actors has given the Government more freedom over the reforms. The activity of societal actors seems to be more effective in increasing the awareness of Indian society towards the problem of rape, rather than in affecting the decision-making process of the Government of India. Since the creation of the helpline for victims of

sexual abuses, for instance, the NCRB has noticed a significant increase in the number of reported rape cases. Previous considerations confirm the second English School hypothesis and disprove the TANS' one.

The "law making" stage allows considerations on the purposes for the policy change. The third hypothesis of the English School theory argues that, if gross human rights violations are globally scandalized, policy change would mainly be limited to the avoidance of reputational losses. This means that English School theorists would expect the Government of India to start minimal reforms but without a real effort to implement them. In favor of this claim speaks the fact that the Criminal Law (Amendment) Act, 2013 in the end does not address several important issues that were contained in the recommendations to the JV Committee (for instance marital rape). Moreover, the attitude of the minister of home affairs, Sushil Kumar Shinde, of promoting the Act as an important achievement despite the numerous critiques and protests of human rights activists at the domestic level, shows that the Indian Government is mainly aiming at the avoidance of reputational losses at the international level, rather than at a concrete change of the situation on the ground. Argumentative behavior is what matters most and it does not need to be followed by a practical change at the domestic level, as long as the international status of the country is not at stake. On the contrary, the TANS approach would argue that the policy change would mainly aim at the internalization of internationally agreed norms. Data collected at this stage reveals the incontrovertible efforts made by local NGOs and different activist groups in keeping the general public attention focused on the issue of rape, by promoting several projects and awareness campaigns. However, the range of the reforms shows that the attempt of the Government to change the situation in the country is limited, since it remains rather in the scope of the initial international demand and it also leaves some requests unaddressed. This shows how the law enforcement is in reality justifiable more as a window-dressing exercise to avoid or limit possible international reputational losses. This adds credibility to the third hypothesis of the English School theory and disproves the third one of the TANS approach. There is no evidence for the occurrence of an intrinsic change in the attitude of the Indian Government towards the crime of rape.

To conclude, based on these theoretical reflections, the English School theory seems to have more explanatory power than the TANS approach at the "law making" stage. Even if the policy change seems mainly motivated by the reaction of the Indian Government to transnational pressure (H<sub>(1) TANS</sub> confirmed), all major reforms have been initiated by the Government (H<sub>(2) ES</sub> confirmed) and they seem to be limited to the avoidance of reputational losses (H<sub>(3) ES</sub> confirmed). The next and last stage will allow the reader to draw conclusions regarding the overall explanatory power of the two approaches.

#### *4.4-Stage 3: "Implementation"*

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The third and last stage of the case study under investigation has been named "implementation" and it has to do with the results "on the ground" of the new law as it is.

Almost three years after, despite the new legislation, it seems that in India for many women, especially the poor, abuse and discrimination continue to be a reality, as a countless number of rape cases is still reported every year. Most of them do not see justice through the Indian judicial system. Ranjana Kumari, director of the Centre for Social Research (CSR) think tank, pointed out how sexism and patriarchal traditions are difficult to be eradicated from Indian society, as, despite the widespread attention after the gang-rape case of December 2012 and the consequent new legislation, brutal rape cases are still frequently occurring in the country (Global News, 2014).

For what concerns the trial to the aggressors of the Delhi gang-rape case of 2012, four men have been convicted of rape, murder and kidnap and have hence been sentenced to death in September 2013, while the fifth man was found dead in his prison cell in March 2013. Another aggressor, that at the time of the incident was a minor, was found guilty of rape and murder in August 2013 and was sentenced to three years in a juvenile detention (BBC News, 2013, B). The Delhi High Court had confirmed the death penalty for the four convicted. The sentence has triggered another public discourse on law reforms and on the legitimacy of death penalty. Many, among the protesters were asking the convicted men to be hung publicly. Once again, it could be argued that a cultural change was needed. Kavita Krishnan, secretary of the All India Progressive Women Association (AIPWA) and national leader of the Communist Party of India (CPIML), stressed the need to shift the focus of the public outcry: "Among the protesters there was still a large number that demanded the death penalty for rapists and little else - and it is this sentiment that parties tend to play to, pushing patriarchal protectionism rather than women's equality and rights" she stated (CNN, 2014 B). Amnesty International condemned death penalty in all cases, without exception, pointing out that even the JV Committee report did not contain recommendations in favor of the capital punishment (Pressenza, 2013).

In 2013, Delhi recorded a surge in the number of reported rape cases, the highest in the country. 1636 cases compared to 706 reported in 2012, according to data provided by the National Crime Records Bureau (NCRB, 2013)<sup>11</sup>. These numbers showed that the wave of protests and public outcry after the Delhi gang-rape case have encouraged more women to report a sexual abuse to the police stations. However, even if this attitude can be considered as an achievement due to the new

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<sup>11</sup> See <http://ncrb.gov.in/index.htm>

legislation, the same data also showed that, in 2012, the famous gang-rape case of December was the only one of 706 cases that ended in conviction, and the situation of 2013 is not better in terms of pursuit of justice (The Guardian, 2013). This happened because in India police officers often still refuse to file rape cases and the judicial system remains slow, despite the improvements on paper. “The problem with India is not that we have bad laws, I mean, the laws aren’t perfect at all, but the problem is that they aren’t implemented” stated Karuna Nundy, a Supreme Court lawyer (CNN, 2014 B).

What seems to have changed in India after December 2012 is the attitude of national media, which, in 2013 has maintained the focus on stories of crimes of a sexual nature and other crimes against women, and this has certainly played a huge role in the increase of the awareness of the problem of rape among the Indian population, but national media attention alone is not certainly enough to solve the problem of violence against women. In spite of the massive outrage caused by the gang-rape case under analysis, similar heinous cases have frequently occurred during the following years (and are still occurring nowadays), underlining the deep-rooted misogyny that still characterized the society in India. Among other examples, a 17-year-old girl was brutally raped by two men in the Punjab region and when she tried to report the incident, police officers refused to file the crime. The girl consequently killed herself in sign of protest (The Times, 2012). Again, in Kolkata, a 16-year-old girl was gang raped and set on fire by her aggressors. Local protests erupted in the cities where rapes took place (The Guardian, 2013).

Foreigners have also been targets of sexual harassment. Three months after the gang-rape case of December 2012, a Swiss woman has been gang-raped in the central Indian state of Madhya Pradesh, while she was camping with her husband (BBC News, 2013, A). At the beginning of 2014, a Danish female tourist was victim of a gang-rape in New Delhi, after she had asked for directions (The Wire, 2014). The aforementioned cases are just few examples of episodes of violence against foreign women in India often reported by the national and international news, even after the law reformulation. These incidents damaged India’s reputation among tourists. India’s Associated Chambers of Commerce and Industry noticed a drop of 25% in the visits by foreign tourists and, in particular, a drop of 35% in women’s tourist visits, in the three months following the gang-rape case of December 2012 (The Guardian, 2014). For this reason, safety of all women in the country became, once again, a priority on the Indian Government’s agenda. In 2013, in order to reassure travelers, the National Tourism Advisory Council (NTAC), which serves as a think tank for the Ministry of Tourism, launched a mass awareness campaign called “*I Respect Women*”. The initiative consisted in encouraging people involved in the tourism sector to wear badges with the slogan “*I Respect Women*”, with the aim of inspiring confidence among foreign tourists (NDTV, 2013).

Despite this other attempt, in 2014, a large number of news regarding rape cases and unsafe women's condition in India were still often reported. One among other underlines how much India needs to change its mindset towards crimes of a sexual nature against women and how ineffective the new legislation is. A woman was allegedly drugged and raped by her husband in a village near Delhi. The man was acquitted, as the judge confirmed that the Criminal Law (Amendment) Act, 2013 did not apply to married couples. The woman declared that she had been sedated, forced to sign marriage papers and consequently raped by her husband. However, the judge who was following the trial stated that there was no evidence to condemn the man and that, anyway, marital rape was not criminalized by the Indian rape law. "The sexual intercourse between the two, even if forcible, is not rape and no culpability can be fastened upon the accused" the court ruled (The Telegraph, 2014). The case reopened once again the debate over the legitimacy of forced sexual intercourse inside marriage. Women's rights groups highlighted the weakness of the Criminal Law (Amendment) Act, 2013 and its failure in protecting for real women in India. "Rape within marriage is not illegal in India, which says everything about the position of women. We are donated for marriage rather than enter it as a partner. The ownership is with the man and whatever he does after marriage is acceptable" stated Ranjana Kumari, director of the Center for Social Research (CSR), (The Guardian, 2014).

Meanwhile, another horrific gang-rape, murder and hanging of two girls in the Indian state of Uttar Pradesh in May 2014 shocked the international public opinion and Amnesty International intervened, asking a full-scale inquiry. On the case took position also the United Nations Secretary-General Ban Ki-moon that, in occasion of the launch of a video campaign on ending sexual violence through gender equality in New York urged to take action in India to improve women's condition. "I am here to declare with all of you: it is time to act. In just the last two weeks, we have seen despicable attacks against women and girls around the world – from Nigeria to Pakistan and from California to India. I was especially appalled by the brutal rape and gruesome murder of two teenaged women in India who had ventured out because they did not have access to a toilet. Violence against women is a peace and security issue. It is a human rights issue. It is a development issue. We must respond on all fronts and achieve full equality for all women. I am doing everything possible to reach this urgent goal" (Ban Ki-moon, 2014).

As a response to the incident, Maneka Sanjay Gandhi, Minister for Women and Child Development, promised that, by the end of 2014, One Stop Crisis Centers (OSCC) for Women would have been opened in every district of India. The aim of the project was, once again, to provide victims of sexual harassment with medical and legal support, in order to help them to physically and mentally recover after traumatic events. The centers would have been located in hospitals and independent buildings, according to the state government's preference. The first OSCC was set up in a hospital in Bhopal, the

capital of Madhya Pradesh, with the support of the NGO ActionAid that trained judiciary and police on feminist jurisprudence and social justice (ActionAid). The OSCC program was funded by *Nirbhaya Fund*, a fund created in 2013 by the Government of India, aiming at the financial support of women-oriented projects and activities. “Nirbhaya”, which literally means “fearless”, was a pseudonym given to the victim of the gang-rape case of December 2012.

Since that heinous event, India has been struggling to overcome its reputation for what concerns sexual violence, particularly against women, young girls and children. The brutal death of the two girls in Uttar Pradesh has reopened the international debate of women’s condition in India. The age of the victims (12 and 14 years old) triggered the attention of the UN Committee on the Rights of the Child (CRC), a body of eighteen independent experts that monitors the implementation of international treaties on children’s rights. In July 2014, the Committee reported the widespread violence in the concluding observations on the combined third and fourth periodic reports of India, focusing on the sexual abuse of children and young girls despite the new legislation. The Committee condemned the Criminal Law (Amendment) Act, 2013 because it failed to criminalize marital rape, if the wife is over the age of fifteen. They underlined how this was in contradiction with the UN Protection of Children from Sexual Offences Act that India signed in 2012, which even criminalized sexual intercourse between people below the age of eighteen (CRC/C/IND/CO/3-4, 2014).

The lack of coherence of the new legislation regarding crimes of a sexual nature in India has been denounced also by Amnesty International in its report of May 2013 to the CEDAW Committee. In this written statement Amnesty International reiterated how gender discrimination and violence against women still persisted in the country and how the Criminal Law (Amendment) Act, 2013 fell short of the recommendations of the JV Committee. Gopika Bashi, women’s rights researcher at Amnesty International India, stated that violence against women remained “widespread and pervasive” and that, despite the positive steps made after December 2012, very little has been done. The problem was that the law enforcement, that already on paper presented several weaknesses, was not followed by adequate police and judicial reforms, making the implementation rather ineffective. Amnesty, together with the Special Rapporteur on Violence against Women, called the Government of India to sign and ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discriminations against Women and to define marital rape as a criminal offence (Amnesty International, June 2014). The Indian Government took no action.

The challenge of the implementation of the new law has been discussed in the frame of CEDAW. In the list of issues and questions in relation to the combined fourth and fifth periodic reports of India of the 28<sup>th</sup> of October 2013, the CEDAW Committee, asked the State party to provide detailed

information on all measures taken or envisaged to tackle the problem of violence against women in the public and private spheres. The Committee furthermore asked India to provide detailed information “on other measures taken to adequately respond to the needs of women victims of violence, other than the establishment of short-stay homes for women at risk” (CEDAW/C/IND/Q/4-5/Add.1, 2013, p.3). In the reply of India to the list of issues of the 23<sup>rd</sup> of January 2014, the State party provided the salient features of the Criminal Law (Amendment) Act, 2013. The issues contained in the list are addressed, however, the report did not always provide practical solutions for the implementation of the Act. In the concluding observations on the combined fourth and fifth periodic reports of India of the 24<sup>th</sup> of July 2014, the Committee expressed its appreciation for the State party’s written reply to the list of issues and for the efforts to enact a legal framework that could prevent and respond to violence against women. However, the Committee underlined its concern for the high number of rape cases reported by the NCRB and for the ongoing impunity for such crimes, despite the new legislation and it urged the State party to amend the Criminal Law (Amendment) Act, 2013 by implementing the missing recommendations of the JV Committee. The Committee furthermore urged the State party to strengthen the efficiency of the police, in order to guarantee the protection of women and girls against violence, pushed the State party to establish the promised one stop crisis centers, where victims of sexual abuses could be sheltered and helped and to allocate sufficient resources for the establishment of special courts, complaints procedures and support services, already envisaged under the new law (CEDAW/C/IND/CO/4-5, 2014).

To conclude, it is still unclear whether the adoption of the Criminal Law (Amendment) Act, 2013 has been followed by practical and effective political practices on the ground. The tables available in the official NCDB website revealed an increase in the number of reported rape cases in all India: from 24923 in 2012, 33707 in 2013, to 37413 in 2014 (NCDB). Higher reporting of rape could entail that the social stigma against sexual violence might have decreased, and that more citizens (particularly women) are becoming more confident in reporting an abuse. However, the conviction rates remained quite low (IndiaSpend, 2015). Some one stop crisis centers were opened around the country, but there is no evidence that the promise of the Government to place them in every district before the end of 2014 was successful, since the process is still ongoing. For what concerns the fast-track courts, according to law ministry sources, 164 of them have been set up across the country in the aftermath of the Delhi gang-rape case (The Times of India, 2013). The efficacy of the fast-track court system is debatable. A study conducted in August 2013 on special fast-track courts in Karnataka has revealed that in these courts, compared with the rest of the criminal justice system, the case pendency remains high and the conviction rate is extremely low (Centre for Law and Policy Research, 2013). The study reflects the effectiveness of the fast-track courts in the whole country.

#### 4.4.1-Theoretical Reflection on the “Implementation” Stage

The third and last stage of the case study under investigation has been named “implementation” and it deals with the assessment of possible improvements brought by the policy change. The time frame is too short to observe whether the Criminal Law (Amendment) Act, 2013 is effective in tackling the problem of rape, however, the analysis of the data collected at this stage allows considerations regarding the situation in India nowadays, regarding the different attempts of the Government and societal actors to undertake the problem of violence against women and regarding the (non) application of the new law, as it is, on the ground. A closer look at the hypotheses is needed to assess which of the two theoretical approaches can provide the most suitable explanation for the conclusive stage of the case study.

English School theorists would expect the facts collected above to be mainly motivated by the fear of reputational losses. The “implementation” stage sees the Government of India rather involved in activities devoted to the preservation of a certain international status. Particularly, the Government took action in two occasions. First, when India’s Associated Chambers of Commerce and Industry noticed a significant drop in the number of foreign tourists, due to women’s safety issues in the country, the Indian Government launched and promoted the mass awareness campaign “*I Respect Women*”, aiming at showing to members of the international society India’s interest towards the problem of violence against women. (Re) building the trust in foreign tourists has been perceived as a fundamental goal in order to protect the international reputation of India. Second, when another gang-rape case attracted the attention of the United Nations on India, the Government promised to open One Stop Crisis Centers (OSCC) for Women in every district of the country, in order to reassure the international community about its involvement in the cause of women’s safety. On the other hand, the TANs approach would expect the events at this stage to be mainly motivated by India’s reaction to transnational pressure. The empirical evidence at this stage assesses a large involvement of domestic societal actors, with international societal actors have been active only in few occasions. However, there is no proof that TANs have been able to effectively influence the India Government, since several concerns and requests of the TANs have been left unaddressed by the Government. These considerations speak in favor of the first hypothesis of the English School theory.

Concerning the crucial actors in the policy change, the “implementation” stage adds credibility to the expectations of the English School theory. Data shows a major engagement of domestic political actors, aiming at changing the international perception of India. Apart from the two aforementioned occasions where the Government took actions, the empirical analysis reveals other examples of its involvement, for instance, the promise of the Minister for Women and Child Development to open

One Stop Crisis Centers in every district of the country, funded by *Nirbhaya Fund*, or the idea of setting up fast-track courts. As hypothesized by English School theorists, the policy change is mainly initiated by a state actor. Several societal actors have publicly condemned the ongoing women's condition in India despite the new law, however, at this stage, there is less cooperation between domestic and international societal actors. Therefore, the second TANS hypothesis is disproved.

Regarding the purposes for the policy change, the English School theory would expect the policy change to be mainly limited to the avoidance of reputational losses. The "implementation" stage proves that the reforms initiated by the Indian Government are rather minimal and they remain in the scope of the international demands. In favor of the English School hypothesis speaks the fact that there is little evidence that the new law, as it is, is effective on the ground, since the number of conviction for rape cases remains low and the fast-track courts are not successful as expected. On the other hand, the TANS approach would predict the policy change to be mainly aimed at the internalization of internationally agreed norms. However, the action of the Government of India does not go beyond the international demand. The attempts of the Government to implement the Criminal Law (Amendment) Act, 2013 are limited and more rhetorical than practical ("prescriptive status" phase of the spiral model of Risse-Kappen, Ropp and Sikkink, 1999). Moreover, it seems to be no urgency by the Government to address the requests of different societal actors to criminalize marital rape and comply to the optional protocol of the CEDAW. The empirical analysis does not allow the assessment of the long-term implications of the investigated policy change, therefore no consideration can be done regarding the "rule-consistent behavior" phase of the spiral model (Risse-Kappen, Ropp and Sikkink, 1999). Anyway, given these circumstances, the occurrence of an "intrinsic change" in the behavior of India towards the issue at stake does not seem plausible in a foreseeable future. The "implementation" stage hence confirms the third hypothesis of the English School theory and disproved the TANS' one.

The last stage of the case study confers more explanatory power to the English School theory.

#### **4.5-Findings**

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Recalling the research question, the empirical analysis of the case study revealed that the English School theory has more explanatory power regarding the motivations for the policy change that occurred in India after the Delhi gang-rape of December 2012, even though some elements that speak in favor of the TANS approach were found, particularly at the first and second stage. In this section, a concise overview regarding the hypotheses is provided.

As argued above, the outcome of the “agenda setting” stage conferred more explanatory power to the TANS approach for what concerned the main motivation for and the crucial actors in the policy change. The data showed that, at the first stage, the policy change was motivated mainly by Indian Government’s reaction to the transnational pressure exercised by societal actors and that the TANS were therefore the crucial actors in the policy change. At this stage, the empirical evidence collected did not allow considerations of the purposes for the policy change. The “law making” stage showed that the law enforcement (policy change) was motivated mainly by Indian Government’s reaction to transnational pressure, that it was initiated by the Government of India, and that it was aiming mainly at the avoidance of reputational losses. At the “implementation” stage, the lack of effectiveness on the ground of the Criminal Law (Amendment) Act, 2013 was assessed. The empirical data showed that the policy change was motivated mainly by the fear of reputational losses that it was initiated by the Government, and that it, essentially, was a window-dressing exercise, the primary goal of which was the preservation of India’s international reputation.

The following table (Table 2) summarizes the outcomes of the hypotheses tests.

	<b>Agenda Setting</b>	<b>Law Making</b>	<b>Implementation</b>
<b>H<sub>(1) ES</sub></b>	DISPROVED	DISPROVED	CONFIRMED
<b>H<sub>(1) TANS</sub></b>	CONFIRMED	CONFIRMED	DISPROVED
<b>H<sub>(2) ES</sub></b>	DISPROVED	CONFIRMED	CONFIRMED
<b>H<sub>(2) TANS</sub></b>	CONFIRMED	DISPROVED	DISPROVED
<b>H<sub>(3) ES</sub></b>	NOT APPLICABLE	CONFIRMED	CONFIRMED
<b>H<sub>(3) TANS</sub></b>	NOT APPLICABLE	DISPROVED	DISPROVED

*Table 2: Hypotheses tests: Outcome of each stage*

## 5-Conclusion

### *5.1-Answer to the Research Question*

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This chapter is devoted to the conclusion of this master's thesis, where an answer to the research question is provided. In the following paragraphs, considerations regarding the explanatory power of both theoretical frameworks and their implications are discussed. Following, some reflections on the limitations of this qualitative research are presented. To conclude, suggestions for future research are proposed.

In the introductory chapter of this master's thesis, the research question that guides the analysis has been formulated as follows:

*“What were the motivations for the policy change that occurred in India after the Delhi gang-rape case of December 2012?”*

The empirical data collected was organized into three stages, stipulated by the researcher as “agenda setting”, “law making” and “implementation”. These data were used to test the six hypotheses. The analysis showed that the English School of International Relations (IR) theory, overall, has more explanatory power than the Transnational Advocacy Networks (TANs) approach with regard to the motivations that led to the policy change in India after the gang-rape that occurred in Delhi in December 2012. Chapter 4 showed that the resultant policy change could be explained as a “window-dressing” exercise initiated by the Indian Government in order to protect its reputation vis-à-vis other state actors in the international arena.

On the one hand, as would be predicted by English School theorists, the policy change under investigation, particularly the law enforcement in the matter of rape and other crimes of a sexual nature, overall was initiated by the Indian Government for reputational reasons and was aimed mainly at the avoidance of reputational losses at the international level. The lack of effectiveness on the ground of the Criminal Law (Amendment) Act, 2013 speaks to a laxity in the attitude of the Indian Government towards the ongoing domestic situation and the data therefore confirm the premises of the English School theory concerning reputational reasons as the primary motivations for the policy change.

On the other hand, data that speak in favour of the TANs approach were found at the “agenda setting” stage and at the “law making” stage, where the empirical analysis showed a major engagement of both domestic and international societal actors which played a substantial role in gathering international attention to the issue at stake and in increasing the awareness of Indian

society towards the problem of violence against women. The action of TANs, as hypothesized by the TANs approach, was shown to be effective in pressuring the Indian Government to act in the immediate aftermath of the incident. However, the premises of the TANs approach were not supported by the analysis, since the importance of the role of societal actors was not observable at all stages. To conclude, even if considerations concerning the long-term implications of the policy change were not possible, the intrinsic change in the attitude of the Indian Government, predicted by the TANs approach, seemed unlikely. In the next paragraph, the implications for theory of these findings are discussed.

### *5.2-Implications for Theory*

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As previously stated, the empirical research showed overall that the English School theory had more explanatory power than the TANs approach. However, the findings brought to light dynamics that could have relevant consequences for the adjustment and development of the English School theory and the TANs approach. Aspects of the two approaches, which were previously presented as competing perspectives, could be used to enrich the other and, thus, make both approaches more effective.

On the one hand, given the findings, one might argue that TANs scholars tend to underestimate the role of state actors. The TANs approach is strongly focused on the power to act of non-state actors, leaving behind completely the entire argument concerning the primary importance of state actors in the international arena. The case study under investigation showed how international reputation and self-interest of a state actor are factors that should not be neglected in the analysis of the motivations that lead to a policy change. From this, the TANs approach can benefit from some amalgamation with aspects of the English School theory. Knowing that state officials can be concerned about reputational losses, TANs should find an effective way to shape the mindset of decision makers. On the other hand, the fundamental propositions of the English School theory did not lack for weakness. Besides the overall outcome, the empirical evidence showed that TANs, by exercising pressure, were successful in speeding up the Indian Government's reaction to the gang-rape. However, the theory leaves rather uncovered the role played by non-state actors in the international arena, since, as is well-known, the concept of "world society" has still to be developed (see theoretical chapter). As shown by the first and second stages, TANs were able to gather international attention to the matter at issue, to increase the awareness of the general public and, consequently, to force the Indian Government to take action. Also English School scholars can learn

something from the TANs approach, for instance, by admitting the possibility that the advocacy of TANs could be successful in altering the costs calculation of state actors.

These considerations suggest that both approaches had relevant premises that were confirmed by the empirical evidence used in this case study. It would be interesting to amalgamate the English School theory and the TANs approach to create a meta-theoretical approach that could include the aforementioned aspects of each. The resultant approach would, hence, consider state actors as the primary actors in the international arena, yet did not neglect the role of non-state actors, particularly for what concerns their ability to influence the behavior of state actors. More concretely, TANs could provide state actors with information about possible reputational losses at the international level and, consequently, induce them to take action regarding certain issues (particularly human rights).

The approach could be useful in assessing the dynamics related to human rights changes in BRICS countries. The case study under investigation revealed that India was concerned about its international prestige and, hence, the Government considered the possibility of a change in policies surrounding violence against women for reputational reasons. By using the approach for analyzing comparable policy changes in other BRICS countries, the outcome could be the existence of a behavioural pattern concerning human rights; namely these countries would be likely to change their human rights policies for reputational reasons. Once this pattern would be acknowledged, it would be easier for societal actors to successfully exercise their advocacy.

### *5.3-Research Limitations*

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As previously stated in the methodological chapter, in this master's thesis the empirical research is conducted by using the qualitative research technique of process tracing. This method, even though it allows the researcher to collect a broad array of information on the case study under investigation, does not lack for limitation. For instance, the success of any research employing this method largely depends on the existence and accessibility of empirical sources (Della Porta and Keating, 2008). For this case study, the fact that the researcher can neither read nor speak Hindi entails a limitation in the collection of empirical sources that could have been useful in explaining the policy change that occurred in India after the Delhi gang-rape of December 2012. The language barrier surely represented a significant limitation for this research.

Another limitation of this master's thesis has to do with the nature of the sources employed, i.e. the large use of 'institutional documents' is made (Corbetta, 2003). The empirical analysis of this

research is hence based mostly on newspaper articles and official websites (in English). This means that, even if an effort is made to avoid bias, the nature of these kinds of sources implies an intrinsic lack of objectivity. The researcher has to be conscious that the information provided by sources such as newspaper articles could be incomplete and/or biased (Corbetta, 2003). The impossibility of accessing the information in the original language (Hindi) and, consequently, the use of translated sources can cause, at best, inaccuracy, and at worst, bias since some elements of the original text may have been overlooked, incorrectly altered, intentionally omitted, or misunderstood in the translation process. As previously argued, another limitation of this research lies in the shortness of the time frame available for the investigation. Consequently, the assessment of long-term implications of the policy change was not possible.

The reader has to be aware that the way the research was structured is just one of the several possible ways of analyzing the case study under investigation. It is therefore important to keep these considerations in mind in order to fully understand the conclusions drawn on the basis of this research. In the next paragraph, some suggestions for further research are provided.

#### *5.4-Recommendation for Further Research*

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As stated in the previous paragraph, a limitation that this work had to face was the lack of knowledge of Hindi by the researcher. Language proficiency in future studies could allow a broader range of data to be taken into account. Researchers with a knowledge of Hindi would have the chance to access primary or original sources which would reflect a truer picture of the processes. Consequently, a researcher would be able to garner a more complete and accurate view of the dynamics in such a case study. Interviews with members of local NGOs, or even with common people might be an interesting way to clarify aspects of the domestic situation, unavoidably left unaddressed in the development of this research.

Future research, also, could focus on the lack of implementation of the aforementioned Criminal Law (Amendment) Act, 2013. The empirical analysis showed that, particularly in the “implementation” stage of the case study, the Government of India did not put much effort into improving women’s condition in the country. Hence, the project of law enforcement resulted in a “window-dressing exercise” undertaken to avoid reputational losses instead of a real attempt to face the problem of rape (English School perspective). However, the apparent ineffectiveness of the Criminal Law (Amendment) Act, 2013 could depend not only on the laxity of effort and commitment to actual change of the Indian Government, but also on the state capacity of India itself. A suggestion for an

alternative explanation of the case study could hence be to employ a different theoretical framework to tackle the puzzling situation shown in the sweeping reforms that offered few results measured in change to women's overall condition in the society. State capacity could be a suitable option.

“State capacity is one of the defining characteristics of any political system” (Almond and Powell 1966, Katzenstein 1978, Zysman 1983, Migdal 1988, Ikenberry 1988, Organski and Kugler 1980 in Wang, 1995). Skocpol defines ‘state capacity’ as “the ability of a government to administer its territory effectively” (Evans, Rueschemeyer and Skocpol 1985). Persson refers to state capacity as the ability of a state “to implement a range of policies” (Parsson, 2009, p. 2) and he furthermore distinguishes between strong and weak states depending on state capacity.

It would be interesting to analyze the state capacity of India in order to assess whether the lack of implementation of the Criminal Law (Amendment) Act, 2013 could be explained as a result of low state capacity. Krasnes argues that societal resistance can be a primary obstacle to the effectiveness of state actions (Krasner, 1978). Therefore, a possible outcome could be that India is actually a weak state in terms of state capacity since it is incapable of successfully influencing its society, by creating consensus on, for instance, the issue of violence against women. This would explain why the new law remains rather ineffective. Further research could be developed starting from these considerations.

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