



# CRIMINAL LAW (AMENDMENT) ACT, 2013: WILL IT ENSURE WOMEN'S SAFETY IN PUBLIC SPACES?

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## INTRODUCTION

The Criminal Law (Amendment) Bill, 2013, more popularly called the Anti-Rape Bill, is now law. The Act came into force on 3<sup>rd</sup> February, 2013 following the outrage of the entire nation behind the homicidal gang rape that took place in New Delhi on the night of 16<sup>th</sup> December 2012. The protest in the Delhi after the barbarous Rape Incident indicated the whole of India, the enormity as well as the seriousness for an immediate reform in Rape Laws.

This research paper discusses the major amendments of the sections regarding sexual offences in the Indian Penal Code. The insertion of the new provisions and the amendment of the existing provisions have been dealt with in detail in the present work.

The Act recognizes the broad range of sexual crimes to which women may fall victim, and a number of ways in which gender based discrimination manifests itself. It also acknowledges that lesser crimes of bodily integrity often escalate to graver ones. It seeks to treat cases as “rarest of the rare” for which courts can award capital punishment if they decide so. The Act clarifies and extends the offense of sexual assaults or rape as a result of abuse of position of trust. As per the Act, the police will also be penalized for failing to register FIRs – this will make it easier for rape victims to report their cases.

The Act introduced unprecedented provisions in the Indian Penal Code which criminalises sexual voyeurism and stalking and amends legal provisions to protect the privacy of individuals, such as discontinuing the practice of examination of the sexual history of the victim of a sexual assault for evidence. With instances of threats to individual privacy on the rise in India, it was high time that the criminal law expands its scope to deal with offences which violate physical privacy.

The Act has also been widely criticized for not following the recommendations of the Verma Committee that had been specifically constituted to observe and recommend changes in the present penal provisions.

## CRIMINAL LAW (AMENDMENT) ACT, 2013

The Criminal Law (Amendment) Act, 2013, an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The Bill received Presidential assent on 2 April 2013 and deemed to come into force from 3 February 2013. It was originally an Ordinance promulgated by the President of India, Pranab Mukherjee, on 3 February 2013, in light of the protests in the 2012 Delhi gang rape case.

This incident generated huge international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of Women, who called up the Government of



India and Delhi “to do everything in their power to take up radical reforms and the like to make women’s lives safer and secure”.<sup>1</sup>

There had been widespread demand by the public as well as various human rights groups and women’s organisations to change or amend the existing law relating to sexual offences. A graver punishment for the accused was demanded for committing such a heinous crime.

In a meeting at UN Women, Justice Verma stated that, “to ensure its success, it is important that the Act be implemented with dedicated human and financial resources, and clarity in roles and responsibilities. A law is only as good as the systems and individuals that implement them. Mindsets and attitudes need to change so women can truly be respected equally and value in society.”<sup>2</sup>

### REASONS FOR THE ENACTMENT

The nation-wide spread outrage over the brutal gang rape and subsequent death of the physiotherapy intern in India’s very own capital city, New Delhi was the driving force behind the passing of the Criminal Law (Amendment) Act, 2013 that sought to amend the existing laws regarding sexual offences in India. The Act is deemed to be one of the most important changes that have been made in the existing criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

### NIRBAHAYA CASE / 2012 DELHI GANG RAPE CASE

The 2012 Delhi gang rape case involved a rape and fatal assault that occurred on 16 December 2012 in Munirka, a neighbourhood located in the southern part of New Delhi, when a 23-year-old female physiotherapy intern was beaten and gang raped in a private bus in which she was travelling with a male friend. The victim later died due to her injuries. The incident generated widespread national and international coverage and was widely condemned, both in India and abroad. Subsequently, public protests against the Government of India and the Government of Delhi for failing to provide adequate security for women took place in New Delhi, where thousands of protesters clashed with security forces.<sup>3</sup> Similar protests took place in major cities throughout the country demanding stricter laws and speedy justice.

### FACTS

The gang rape in Delhi took place on the night of 16<sup>th</sup> December 2012. The victim, a 23 year old physiotherapy intern took a ride home in a private bus that night, with her friend. There were six other people on the bus, including the driver.

The victim and her friend were beaten up when they raised their suspicions as to route of the bus to the destination. The woman was later raped by all the men while the bus was moving and her friend was beaten unconscious.<sup>4</sup> After the beatings and rape, both the victims were thrown out of the moving bus by their perpetrators and left on the side of the road, partially clothed. Later, a PCR van arrived at the scene after receiving a call from a passerby. The victims were taken to the Safdarjung Hospital in Delhi for treatment.

Medical investigation of the woman suggested she was penetrated by a blunt object, probably a rod-like object that had caused extensive damage to the internal organs of the victim. Two blood-stained metal rods were retrieved from the bus on police inspection, which the medical staff later confirmed to be the object used for penetration that had caused serious injuries to the



victim's uterus, genitals and the abdomen.

Within a day of the commission crime, arrests were made by the Delhi police in the case and all the six accused including a juvenile were arrested.<sup>5</sup>

### TRIAL AND VERDICT

*Trial:* There was a huge demand for speedy trial and immediate prosecution in the matter. While five of the accused were tried for the crime before the Additional Sessions Judge in the Special Fast Track Court, the sixth accused, who was a juvenile at the time of the crime, was tried before the Juvenile Justice Board. However, during the trial, one of the accused, Ram Singh was found dead in his prison cell. The remaining accuseds were booked for rape, murder, kidnapping, destruction of evidence, and the attempted murder of the woman's male companion under Sections 120-B, 365, 366, 307, 376 (2)(g), 377, 396, 302, 397, 201 and 412 of the Indian Penal Code, 1860.

### CONVICTION AND SENTENCING

The juvenile defendant was found guilty of rape and murder of the victim under the Juvenile Justice Act by the Juvenile Justice Board on the 31<sup>st</sup> of August 2013. He was sentenced to three years imprisonment in a reform facility.

The remaining four accused, after the death of Ram Singh, were found guilty of rape, murder, unnatural offences and destruction of evidence by the fast-track court. They were sentenced to death penalty by the court on 13<sup>th</sup> September 2013.

### CONSEQUENCES

Widespread protests followed after the gang rape incident occurred. There were protest movements nationally as well as internationally, all demanding stricter laws to check violence against women. This particular incident garnered huge popularity because of the heinous nature of the crime committed. As a result of the nationwide protests, the Justice Verma Committee was constituted under the notification of the Government of India to suggest changes in the existing laws.

### THE JUSTICE VERMA COMMITTEE

On December 23, 2012 a three member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court of Delhi and Gopal Subramaniam, former Solicitor General of India.

The committee urged the public in general and particularly eminent jurists, legal professionals, NGOs, women's groups and civil society to share their views, knowledge and experience suggesting possible amendments in the criminal and other relevant laws to provide for quicker investigation, prosecution and trial, and also enhanced punishment for criminals accused of committing sexual assault of an extreme nature against women.

### OBJECTIVE OF THE COMMITTEE

The key objective of the Commission was to review for possible amendments to the criminal law and suggest measures for faster trials and harsher penalties for vicious offences related to violence against women. Taking further cognizance of the strident storm of public protests in general



and a tribute to Nirbhaya in particular, on January 23, 2013, the commission submitted its recommendations by identifying ‘lack of good governance’ as the central cause of violence against women. The commission goes on to criticize the government, the abysmal and old-fashioned police system alongside public apathy in tackling violence against women, and thereby, recommends dramatic transformation in legislations. It made recommendations on laws related to rape, sexual harassment, trafficking, and child sexual abuse, medical examination of victims, police, electoral and educational reforms.

The Committee adopted a multidisciplinary approach interpreting its mandate expansively. The Report deals with sexual crimes at all levels and with the measures needed for prevention as well as punishment of all offences with sexual overtones that are on affront to human dignity.<sup>6</sup> This is on the basis that the issue of sexual assault against women is one that goes to the core of social norms and values. The Report also deals with the construct of gender justice in India and the various obstructions to this. The Committee’s approach is founded on achieving the guarantee of equality for all in the Constitution of India.

The comprehensive 630 page report, which was completed in 29 days, was appreciated both nationally and internationally. This eventually led to the passing of the Criminal Law (Amendment) Act, 2013, which was criticised as not adequately applying the Committee’s work and recommendations. The committee in its report blamed the government, police insensitivity and gender bias for the rising crimes against women in the country. It also created some offences like disrobing a woman, voyeurism, stalking and trafficking.

### RECOMMENDATIONS OF THE COMMITTEE

The following are the recommendations of the Committee with regard to sexual offences in India

- 1. Punishment for Rape:** The panel has not recommended the death penalty for rapists. It suggests that the punishment for rape should be rigorous imprisonment or RI for seven years to life. It recommends that punishment for causing death or a “persistent vegetative state” should be RI for a term not be less than 20 years, but may be for life also, which shall mean the rest of the person’s life. Gang-rape, it suggests should entail punishment of not less than 20 years, which may also extend to life and gang-rape followed by death, should be punished with life imprisonment.
- 2. Punishment for other sexual offences:** The panel recognised the need to curb all forms of sexual offences and recommended – Voyeurism be punished with upto seven years in jail; stalking or attempts to contact a person repeatedly through any means by up to three years. Acid attacks would be punished by up to seven years if imprisonment; trafficking will be punished with RI for seven to ten years.
- 3. Registering complaints and medical examination:** Every complaint of rape must be registered by the police and civil society should perform its duty to report any case of rape coming to its knowledge. “Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed,” the report says. The protocols for medical examination of victims of sexual assault have also been suggested. The panel said, “Such protocol based, professional medical examination is imperative for uniform practice and implementation.”
- 4. Bill of Rights for women:** A separate Bill of Rights for women that entitles a woman a life of





dignity and security and will ensure that a woman shall have the right to have complete sexual autonomy including with respect to her relationships.

The Justice Verma Committee (JVC) report was a landmark statement, applauded by all citizens, welcomed by all Political Parties. JVC was significant because it showed a mirror to the Constitution of India, and reflected its wise and just guarantees of women's equality. Today the women and youth of India are looking with hope and expectation towards Parliament, and towards all Political Parties. There has been an urge to all Members of Parliament to pass a law upholding the spirit and letter of the Justice Verma Committee; to pass a law that makes a step forward in our collective struggle to end sexual violence in India.

### AMENDMENT OF THE PROVISIONS OF THE INDIAN PENAL CODE, 1860

The Criminal Law (Amendment) Act, 2013 that came into force on the 3<sup>rd</sup> of February, 2013 amended as well as inserted new sections in the IPC with regard to various sexual offences. The new Act has expressly recognized certain acts as offences which were dealt under related laws. New offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code.

### SEXUAL OFFENCES

#### Sexual Harassment – Section 354A

Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors. The critical factor is the unwelcomeness of the behaviour, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator.

The essentials of the offence of sexual harassment as defined in the case of *Vishaka Vs. State of Rajasthan* are –

1. physical contact and advances involving unwelcome and explicit sexual overtures; or
2. a demand or request for sexual favours; or
3. making sexually coloured remarks; or
4. forcibly showing pornography; or
5. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

According to the Indian Constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 and her right to life and live with dignity under Article 21.

#### Existing Provisions

Before the passing of the Act, the provisions in the IPC that dealt with sexual harassment existed but there was no such provision that clearly laid down the punishment for sexually harassing a person. The provisions were–

- Section 209: Obscene acts and songs, to the annoyance of others like:
  - a) does any obscene act in any public place or
  - b) sings, recites or utters any obscene song, ballad or words in or near any public place.Punishment: Imprisonment for a term up to 3 months or fine, or both.
- Section 354: Assault or use of criminal force on a woman with intent to outrage her modesty.  
Punishment: 2 years imprisonment or fine, or both.
- Section 376: Rape  
Punishment: Imprisonment for life or 10 years and fine



- Section 509: Uttering any word or making any gesture intended to insult the modesty of a woman.

Punishment: Imprisonment for 1 year, or fine, or both. (Cognisable and bailable offense)

#### **Provisions after Amendment**

Section 354A – Sexual harassment has been made a gender neutral offence whereas earlier, a man who makes unwelcome sexual advances, forcefully shows pornography or demands/requests sexual favours from a woman commits the offence of sexual harassment *simpliciter* under section 354A; this is punishable by imprisonment of up to three years. Making sexually coloured remarks also amounts to sexual harassment, which is punishable by imprisonment for up to one year.

• Assault or Use of Criminal Force to woman with intent to disrobe – Section 354B

#### **Existing Provisions**

There was no specific provision regarding this offence. The act was dealt under Section 354. Outraging a woman's modesty was punishable with imprisonment for maximum 2 years and fine under IPC.

#### **Provisions after Amendment**

Section 354B – If a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment between three and seven years.

This section deals with a very specific offence and adds to and supplements the provision dealing with the offence of outraging the modesty of a woman. This is a welcome provision in view of the fact that many cases have been reported in the news of women being stripped in public as an instrument of punishment mostly in backward areas.

• Voyeurism – Section 354C

Voyeurism is the act of watching a person engaged in private activities. If a man watches a woman engaged in private activities, when the woman does not expect anyone to be watching, he has committed the offence of voyeurism.

#### **Existing Provisions**

There was no specific offence under IPC. However, under Information Technology Act, 2000 both men and women were protected and punishment for the act was up to 3 years and/or fine up to Rs. 2 lakh.

#### **Provisions after Amendment**

Section 354C – Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished. Under Section 354C, such a person is liable.

In case of first conviction, imprisonment is not to be less than one year, but may extend to three years, and shall also be liable to fine, and on a second or subsequent conviction, punishment with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

#### **Stalking – Section 354D**

It means following a person and making or attempting to make contact for personal interaction, despite a clear disinterest being displayed by the other person. Stalking may be committed both physically and through electronic media.



### **Existing Provisions**

No specific offence under IPC.

### **Provisions after Amendment**

Section 354D – Stalking has been made a specific offence under this new section. If a man stalks a woman, he may be punished with imprisonment of up to three years for the first time, and five years for the subsequent convictions. However, the offence is subject to certain exceptions like where a person can show that the acts done were in pursuance of some law, amounted to reasonable conduct or in order to prevention of some crime.

As per the definition in Section 354D the offence was gender-neutral offence, making the crime of stalking punishable for both the gender whether male or female. However, the Amendment Act of 2013 changed ‘Whosoever’ to ‘Any Man’ making the offence of Stalking a gender-specific offence. Section 354D of the Ordinance of 2013, was highly inspired from the definition of ‘Stalking’ in Section 2A of the Protection from Harassment Act, 1997 passed by British Parliament on 25<sup>th</sup> November 2012.

Under the Act, the offence is limited to the physical act of following or contacting a person, provided that there has been a clear sign of disinterest, or to monitoring the use by a woman of the internet, email or any other forms of electronic communication.

Rape – Section 375 and 376

Justice Krishna Iyer in the case of *Rafiq v. State of U.P.*<sup>[xxi]</sup> made a remark that, “a murderer kills the body, but a rapist kills the soul”. The Parliament by means of Amendment Act, 2013 has enlarged the ambit of rape by making certain non-penetrative act as offence amounting to rape. The Amendment Act, 2013 repealed the Ordinance (Amendment) Act, 2013 which was having wider ambit, thereby raising serious questions regarding the lacunas or loopholes that the judiciary could confront in future.

### **Existing Provisions**

Sections 375, 376 and 376 A-D of the IPC cover rape. However, medical examination was not an exception under the old provision. Rape under the IPC had been interpreted to mean only penile-vaginal intercourse.

### **Provisions after Amendment**

Section 375 – Under the new section, a man is said to commit rape if there is:

- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
- Lastly, touching the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person.

The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman’s vagina, urethra or anus.

The punishment for rape is seven years at the least, and may extend up to life imprisonment.

Any man who is a police officer, medical officer, army personnel, jail officer, public officer or



public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.

The new amendment defines 'consent', to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is key to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape.

## EXCEPTIONS TO THE SECTION

Marital rape, a contentious issue among feminist groups in India, is an exception to section 375, provided that the wife is not under 15 years of age.

An exception also has been provided for the purpose of medical examination. In April, 2013, the Supreme Court criticised present medical tests for rape survivors, and has castigated the standard two-finger test in the case of *Lillu @ Rajesh v. State of Haryana*. Justices BS Chauhan and Kalifulla have directed the centre to provide better medical tests that do not violate the dignity of rape-survivors, thus preventing a "second rape".

## GENDER-NEUTRAL OR GENDER-SPECIFIC OFFENCE

Earlier the offence of rape, i.e. 'sexual assault' was a gender neutral offence, while now this offence is women centric. Only a man is assumed to be capable of committing such offence and that too against a woman only. The aspect of gender neutrality was required in following aspects:

### 1. Neutrality with respect to the victim

Often the members of the marginalised sex like 'Transgender' are also victim of this offence and as such they cannot claim any protection because the crime of rape is not gender neutral.

### 2. Neutrality with respect to the perpetrator

During the war in Iraq it surfaced that many women officers also involved themselves in torturing the prisoners by variant sexual assaults. This strengthened the assumption that even women can be perpetrator of such crimes. There are two occasions when the need for gender neutrality arises even in India. Firstly, when during some communal or casteist violence a woman is found to be participus criminus. Secondly, when a transgender person is an offender. The recent case of Pinki Pramanik, where her partner filed a case of rape against her, shows the very real possibility of female to male transgender persons or male to female transgender persons (either pre- or post- transition) causing sexual assault on a woman.

### 3. Marital Rape

The absence of law on marital rape (sexual assault), would also fail the objective as married women cannot be protected. The law under 376-A and exception under 375 should be deleted equate marital rape and sexual assault. As the S. 3 of DVA is only applicable in grave life threatening scenario the need for consent of woman isn't important leaving her as an object of sex





## CRITICISM OF THE ACT

The Criminal Law (Amendment) Act, 2013 has been strongly criticised by several human rights and women's rights organisations for not including certain suggestions recommended by the Verma Committee Report like, marital rape, reduction of age of consent, amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman. The Government of India replied that it has not rejected the suggestions fully, but changes can be made after proper discussion.

## CONCLUSION

The Criminal Law (Amendment) Act, 2013 has been known all over as one of the most concrete steps taken by the Indian government to curb violence against women. Major amendments by the Act in the Indian Penal Code, not only widen the ambit of certain offences but also recognises new offences like acid attacks which earlier lacked a specific provision and definition in the Code.

The definition of rape has been amended to include not just peno-vaginal intercourse but the insertion of an object or any other body part into a woman's vagina, urethra or anus, and oral sex. This responds to a longstanding demand of women's rights groups. The issue of rape by different means was highlighted in the Delhi gang-rape case, where an iron rod was inserted into the young woman's body.

Despite its flaws, the Act bears a progressive insight to make an impact and fight a battle against violence against women. However, the Act by itself is not sufficient to redress and seek justice for violence against women. For this, the Government of India needs to make colossal investments in building necessary infrastructure to deal with the crimes supplemented by meaningful reforms in judiciary (building fast track women's courts, more engagement of women lawyers, women doctors to examine victims) and modernisation of the police system across whole of India.

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