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An In-depth Analysis of the Criminal (Amendment) Act, 2013

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For years in India, women have been subjected to violence, which has steeply increased, irrespective of the laws and punishments. Women have been suffering through all forms of social evils and atrocities such as rape, harassment, domestic violence, and prostitution, but through stringent laws and punishments, heinous crimes can be condemned and prevented. Many reported crimes of extremely gruesome nature have made us think how far a criminal can go to avenge his anger and rage on the victims. It calls for strict criminal laws against criminal offenders, which focus on delivering fair and equitable justice to the victims and their families and impose strict punishments on the accused. The Criminal (Amendment) Act, 2013 is one such criminal law in India that aims to provide speedy and enhanced justice to the victims of sexual assaults. The act has imposed the death penalty for rare cases and has given importance to the rights of the victims of sexual crime. Unfortunately, there are some flaws in the act such as no punishments against marital rape or against army personnel and police officers or politicians committing sexual offences, which has made us think about whether more strict amendments and punishments against public servants, army officers, or husband, are needed or not. Thus, it can only be said that in order to curb the sexual offences that women are dealing with on a day-to-day basis, the lawmakers and the court have to think of introducing modern laws and provisions like in western countries, that can provide quick justice to the victim and impose stringent punishment to the offenders so that people think twice before committing any kind heinous crime against women.

Keywords: *criminal, sexual offences, rape.*

INTRODUCTION

With the growing modernity, culture and moral values have drastically changed with time, and people have become more outspoken, violent, and aggressive. The modern culture has its own impact and for the sake of becoming modern, men especially have developed an attitude of being powerful in every aspect, but this behaviour has somewhere caused harm to the women in society. All of these have rapidly increased the crimes and exploitation against women and due to social embarrassment and weak legal framework, women feared fighting against the crime. Earlier in India, laws on offences committed against women were fragile and weak and proved to be ineffective in providing protection and justice to the victims of sexual offences. Even the legal enforcement agencies and the courts failed to effectively deal with crimes committed against women and many reported cases were mishandled by the police authority and the doctors, and they were not held accountable or liable for their irresponsible acts. Due to the bulk of pending cases in the courts, it often took years to get justice, and sometimes even justice was delayed due to the influential background of the accused. Appropriate laws which had the power to deter crimes by punishing the accused were required and criminal laws needed to be reformed. On 3rd February 2013, the Criminal (Amendment) Act, 2013 came into existence, which changed the perspective and definition of a crime against women. It was a very revolutionary change that happened in India and was the first to make guidelines regarding gender rights and gender justice. This act brought various amendments which were extremely important and significant to curb the sexual offences emerging in this modern era. Also, this act fairly made provisions for the irresponsible and negligent acts of police officers, army personnel, and public authorities and if they are found guilty of committing sexual crimes against women, strict actions will be taken under this act and further punishments will be imposed simultaneously.

THE CRIMINAL (AMENDMENT) ACT, 2013

It was the chilling night of December 16, 2012, when an incident took place in the southern part of New Delhi that sent shock waves across the nation and impelled the government to amend and include several provisions of the law. On 16th December, a physiotherapy intern [herein

referred to as Nirbhaya, a name given to a rape victim] and her male companion were waiting for a bus. Soon they boarded a bus at Munirka to reach Dwarka in Delhi after the culprit, a minor in the case, successfully convinced them to get on the bus by telling them that the bus was going to the same destination. There were no passengers on the bus, only six males inside, including the driver, and the bus windows were black-tinted. When the bus driver turned in that direction, it was then that Jyoti and her male companion got suspicious and repeatedly asked and requested to stop the bus. All six culprits sexually assaulted Jyoti on the moving bus and even had beaten up her friend. Jyoti was raped brutally to the extent that the perpetrators mutilated her body and private parts beyond human imagination.

The Nirbhaya incident[1] was the most gruesome and heinous crime committed in India. Unfortunately, on December 29, due to multiple organ failures and internal bleeding, she succumbed to death while undergoing treatment. The entire nation mourned the death of Jyoti, and it sparked nationwide outrage in India and was harshly condemned abroad. Protestors showed their agitation through candlelight marches, solidarity movements, and demonstrations. This incident ignited a debate in our criminal justice and the violence committed against women. The nationwide outrage demanded strict criminal laws and severe punishments for the heinous sexual crimes committed against women. Considering the intensity of the matter, a committee was formed which actually made the way for a new criminal act named the Criminal (Amendment) Act, 2013 in India. It was only because of this heinous incident, that the criminal laws against rape and many other laws were amended in India, and laws of strict nature with severe punishments were introduced and implemented in the act. The act boosted the deteriorating position of women in India and gave a new dimension to the legal structure.

THE COMMITTEE FORMED

The incident compelled the legal structure to amend strict criminal laws for the protection of women against crimes. Soon, after that vicious incident, on 22 December 2012, the government

[1] 'What is Nirbhaya case?' (*The Times of India*, 18 December 2019) <https://m.timesofindia.com/india/what-is-nirbhaya-case/amp_articleshow/72868430.cms> accessed 11 September 2022

constituted a judicial committee which was headed by Justice J.S. Verma, Justice Leila Seth, and Gopal Subramanium for making amendments and introduce new laws in the criminal law and provide quicker and enhanced punishments for committing an extreme sexual offence. The report was submitted within 30 days of its constitution and identified the lack of good governance and recognized the importance of preparing the report as a collective effort. The Committee invited the general public through a notice in the newspaper to provide recommendations for actions to be taken for crimes against women. Almost 80,000 recommendations were received in response to the notice across the globe. The Committee took the recommendations of various public functionaries and analysed the recommendations received and conducted extensive research for a statistical database to evaluate past judgements, global and social issues, and existing problems in society.

In-depth research was conducted to gather information regarding the international guidelines for gender justice and took into consideration the data-backed research to support their claims within the report. In this report, feminist ethics including equal weightage to women's interests, building on women's moral experiences, and finally establishing that there must be an agency for every woman was given importance. Only because of the inclusion of all these aspects, the report is very detailed, comprehensive, and feminist in its approach. The report rather than focusing on improving the laws, focused on introducing and implementing new laws, and the mindset of the general public that needs to be changed. The report gave importance to the rights of women in India and recommended that the idea of the death penalty should not be made accepted as the only measure of justice.

OBJECTIVE OF THE COMMITTEE

The Committee adopted a multidisciplinary approach and the report deals with sexual assault at every level. A 630-page report was made and it suggested various amendments that can impose strict punishments on rapists which includes police personnel and public servant. The main objective of the Committee was to review the criminal law and made necessary possible amendments and suggests measures that are required in order to conduct faster trials and impose strict punishments for heinous crimes committed against women. The report was

submitted on 23rd January 2013, focusing on the "lack of good governance" as the main reason behind the crime committed against women and further emphasized the change in the existing legislation and the outdated police administration structure. Recommendations made were very detailed in nature and covered a large aspect of the crimes committed against women such as recommendations on rape and sexual assault, child sexual abuse, other offences against women, gender equality, gender justice, police reforms, education reform, electoral reforms, sentencing and punishments, and many more.

RECOMMENDATIONS OF THE JUSTICE VERMA COMMITTEE

The Committee made recommendations regarding sexual offences against women, which changed the legal structure of criminal law on the protection of women against heinous crimes[2].

Rape – The Committee recommended that rape deserved a "serious punishment" and is a "highly reprehensible crime in the moral sense". The Committee viewed rape as an expression of power and any non-consensual sexual penetration to any extent and that the accused should be punished for seven years of life and if death is caused or any harm is inflicted, which leaves her in a persistent vegetative state, then the accused should be punished for minimum twenty years, which can also be extended for life imprisonment. Further, the punishment for gang rape will be twenty years and if death is caused, the accused will be awarded life imprisonment. The chemical castration was totally rejected by the Committee who opined that only in the rarest of rare cases; the death penalty will be given and also suggested making marital rape a criminal offence and any non-consensual sexual act in a marriage must be held as a sexual offence.

Sexual assault – The Committee opined that if anyone tries to harm the modesty of a woman through any kind of sexual assault, then he should be punished for two years and any non-consensual non-penetrative offences should fall under the ambit of sexual assault. Moreover, in an offence where it is proved that there is no penetration occurred, then the offence will be

[2] 'Report of the Committee on AMENDMENTS TO CRIMINAL LAW' (*Association for Democratic Reforms*, 23 January 2013)
<https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf> accessed 11 September 2022

categorized under section 354 of the IPC. Also, using words that create a threat of sexual nature to the victim will be taken as sexual assault and will be held punishable and the accused will be punished for one year.

Sexual harassment at the workplace – There were a few key recommendations made which include that every worker working in houses, should be protected and if a case arises then first attempts should be made for conciliation between the parties involved. Also, the employer should compensate the victim who suffered the sexual harassment. To adjudicate all the complaints of the victims, an Employment Tribunal should be instituted to ensure speedy disposal of the complaints so received. Lastly, the Employment Tribunal has the opportunity of choosing its procedures at the time of dealing with each case.

Make voyeurism, stalking, and intentional touching an offence – The Committee recommended that voyeurism and stalking should be made an offence and if any person is found to be involved in this, then the court will be bound to punish him for three years.

Human trafficking – The Committee observed that trafficking was not defined under the Immoral Trafficking Prevention Act, of 1956. It suggested that trafficking must be defined in the IPC with a punishment of at least seven years which can be extended to life imprisonment. If any trafficked person is employed, it must be held as an offence and the person will be punished for at least three years. In addition, protective homes for juveniles and women should be placed under the legal guardianship of the High Court.

Acid attack – The Committee suggested that an acid attack should be dealt with under the provisions of the Criminal Laws Amendment Bill, 2012 which prescribes ten years of imprisonment. The panel also emphasized creating a corpus by the central and state governments for compensating the victims.

Registering complaints and reviewing the medical examination of rape victims – The police officer should register the complaint of rape and society should take initiative in reporting the complaint of rape. A police officer will commit an offence for the failure to register a rape case reported to him. The report has also suggested the protocols to be followed for medical

examination of the victims of sexual assault for uniform practice and implementation and strongly recommended scrapping the "two-finger" test.

Review of the Armed Forces Special Powers Act – The Committee suggested that the Armed Forces Special Powers Act (AFSPC) has to be reviewed in those areas where a high number of reports of sexual offences have been reported. The panel further suggested that security forces should be governed under criminal law, and special commissioners must be deployed for women's safety in conflict areas. The Committee also suggested introducing "Breach of command responsibility" for the senior officer, if it is found that their subordinates have committed rape and they will be punished for seven years.

Police reforms – To inspire and boost public confidence, the Committee recommended that outstanding police officers be placed at high ranks in the department. The panel strongly recommended that the police force should be responsible for their duty and their duty is only to the law and no one else. The panel further suggested that CCTVs must be installed in the police stations and every police officer shall assist the victims even if it falls in a different jurisdiction. Also, the number of female police officers should be increased in patrolling. In addition, every police officer who fails or denies registering complaints or aborts an investigation should be severely punished and held accountable for his actions. To register complaints against those police officers, Police Complaints Authority at the district level must be instituted.

Political reforms – The Justice Verma Committee observed criminalisation of politics has to be strictly dealt with and reforms must be taken against it. If any record against any criminal offence is found, then the candidate will be disqualified from any electoral process. The committee suggested that the lawmakers should immediately vacate their seats if they are charged with any criminal offence.

Electoral reforms – The Committee suggested amending the Representation of People Act, 1951, and disqualifying the lawmakers charged with serious offences and will also not be allowed to contest elections. Also, the sitting parliamentarians who have criminal cases against them have to vacate their seats. Moreover, every political party should follow strict rules and every

donation received should be transparent. Also, those candidates will be disqualified if they have any criminal records.

Education reforms – The Committee recommended that schools must take initiative in imparting sex education to all the students to create awareness among them and teach them to show respect to the opposite gender. Also, to boost gender empowerment, programs like adult literacy should be conducted.

CHANGES MADE FOR THE PROTECTION OF WOMEN UNDER THE CRIMINAL (AMENDMENT) ACT, 2013[3]

INDIAN PENAL CODE, 1860[4]

Public servant disobeying direction under the law (section 166A) – Any person who is a public servant disobeys any direction of the law or fails to record any information given to him about the cognizable offence, he will be punished for at least six months, which can be extended to two years with a fine.

Punishment for non-treatment of the victim (section 166B) – Any person who is in charge of a hospital, whether it be a public or a private, tries to contravene the provisions of section 375C of the Code of Criminal Procedure, 1973, will be punished which can extend to one year.

Sexual harassment (section 354A) – If any person commits any physical contact or demands sexual favours or shows pornography against the will and consent of a woman, then he will be booked under sexual harassment offence and be punished which can be extended to three years, and if the person makes any sexually coloured remarks to the woman, then he will be punished which can extend to one year.

Assault or use of criminal force on woman with intent to disrobe (section 354B) – Any person assaulting or using any criminal force on any woman with the sole intention of disrobing her,

[3] Criminal Law (Amendment) Act 2013
[4] Indian Penal Code 1860

then that person will be punished for at least three years, which can further be extended to seven years with a fine.

Voyeurism (section 354C) – Any person who is found to be involved in an offence where he watches or tries to capture the image of a woman engaged in a private act and where she had no knowledge of being watched by that person, then that person will be punished on his first conviction for at least one year, which can be extended to three years with a fine and on his second conviction, he will be punished for at least three years, which can be extended to seven years with a fine.

Stalking (section 354D) – If any person follows and tries to contact a woman through email or any form of electronic communication, despite getting a clear rejection, then the man is said to have committed stalking.

There are exceptions to this offence which state no amount of stalking will be considered an offence if –

- Preventing or detecting the crime was the main purpose behind such stalking and the responsibility is entrusted to the person by the state.
- Any person under any law imposed any condition or requirement and to comply with the requirement stalking was committed.
- The stalking so committed was reasonable and justified in nature.

Rape (section 375) – Any person who penetrates his private part (penis) into the vagina, mouth, urethra, or anus of a woman or even if the person tries to insert any object other than his private part is said to have committed rape. Even if the person makes the woman do all these acts with him or with any other person, the person will be booked for the offence of rape. Even if the woman does not physically resist while the person is trying to penetrate his private part, that does not make the act consensual.

There are two exceptions to this offence, which state –

- If any medical procedure or intervention is conducted, that does not constitute rape.

- If the sexual act is done by a man with his wife, who is not below the age of fifteen, that will not be considered rape.

Punishment for rape (section 376) – If a person is found to have committed rape, then that person will be punished for at least seven years, which can be extended to imprisonment of life with a fine. Moreover, if the offence is committed by a person who is a public officer, public servant, member of the armed forces, staff of jail or hospital, guardian, a relative, or someone entrusted with the authority towards the woman, then that person will be punished for at least ten years, which can extend to imprisonment for life with a fine.

Punishment for causing death or resulting in a persistent vegetative state of the victim (section 376A) – Any person after committing an offence is found to inflict injury resulting in the death of the woman or causing the woman to be in a persistent vegetative state, then the person will be punished for at least twenty years, which can be extended to whole.

Sexual intercourse by the husband during separation (section 376B) – A person will be punished for at least two years, which can be extended to seven years with a fine if he has sexual intercourse with his wife who is living separately and without her consent, who is living separately.

Sexual intercourse by a person in authority (section 376C) – A person will be punished for his acts if he uses his authority and induces or seduces any woman for entering into sexual relations or having sexual intercourse. The person will face punishment for at least five years, which can extend to ten years with a fine.

Gang rape (section 376D) – If one or more persons in a group have a common intention, of raping a woman, then each of them shall be held for the offence of rape and will be punished for at least twenty years, which can be extended to imprisonment for life and with a fine that has to be paid to the victim.

Punishment for repeat offenders (section 376E) – If any person is found to be convicted previously for any of the offences under section 376, 376A, or 376D and is again convicted for

offences falling under the same sections, then the person will be punished with imprisonment for life.

CODE OF CRIMINAL PROCEDURE, 1973

Information in cognizable cases (section 154) and Examination of witnesses by police (section 161) – Both the sections were amended and include the provision which states that a woman police officer has to record the information on any offence given by a woman, which has been committed against her. In addition, section 154 also provides that the police officer has to record the information provided by the victim at her residence or at any convenient place in the presence of an interpreter or a special educator when the victim is physically or mentally disabled. Also, the information received has to be video graphed, and the police officer has to get the statement of the person which is recorded by the Judicial Magistrate.

Recording of confessions and statements (section 164) – When cases that are related to criminal offences are brought to the notice of the police, then the Judicial Magistrate must immediately record the statement of the person against whom such an offence has been committed. Also, if it is found that the victim is disabled whether physically or mentally, then the Judicial Magistrate has to take the assistance of an interpreter or a special educator for recording the statement and that recording has to be video graphed. Moreover, the statement which is recorded is considered to be a statement instead of examination-in-chief, so that the Magistrate can cross-examine the statement, without recording it at the time of trial.

Prosecution of Judges and public servants (section 197) – It includes that if any public servant is accused of any offences that he has committed, then the sanction is not required in that case.

Evidence to be taken in presence of the accused (section 273) – Where it is seen that the victims below the age of eighteen years against whom rape or sexual assault has been committed, the court can take measures against the accused keeping in mind the cross-examination right of the accused so that the accused does not confront the victim.

Power to postpone or adjourn proceedings (section 309) – The proceedings has to be continued every day until all the witnesses are examined, and also if the court finds the adjournment to be continued the next day for recording reasons necessary to be recorded. When the inquiry or trial relates to sexual offences, then it has to be completed within two months from the date when the charge sheet is filed.

Treatment of victims (section 357C) – It is the duty of all hospitals, whether public or private, to provide medical and first-aid treatment to the victims of sexual offences free of cost. They also must inform them about the incident to the police.

INDIAN EVIDENCE ACT, 1872

Evidence of character or previous sexual experience not relevant in certain cases (section 53A) – To prevent character assassination of the victim in the court, this section provides that it is not permissible to present evidence that constitutes a bad character of the victim or reveals any past sexual experience with any person, as this evidence is not relevant during the prosecution for an offence.

Presumption as to the absence of consent in certain prosecution for rape (section 114A) – Where it is proved that the accused had sexual intercourse with her, and the woman rejects that she had not consented to any such sexual intercourse with the accused, it will be presumed by the court that the woman had not consented to any such sexual intercourse.

Witness unable to communicate verbally (section 119) – This provision has allowed the victims who are not able to communicate verbally, to give their evidence in any manner that can be understood by the court and if writings are given then such writing has to be in a written form and signs must be made in the open court, and this will be taken as oral evidence. Also, in this case, the court while recording the statement given by the victim has to take the assistance of an interpreter or a special educator, and that statement has to be video graphed.

Nature of questions to be asked in cross-examination (section 146) – In cross-examining the victim, any questions to prove the consent of the victim, that is related to the immoral character or previous sexual experiences of the victim with any other person, are not permissible to ask.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Alternate punishment (section 42) – where an offence constituting sexual offences is punishable under POCSO and IPC, then the offender if found guilty of the offence, is liable to be punished under the Act, which provides for more severe punishment.

CHANGES MADE IN THE ORDINANCE PASSED BY THE GOVERNMENT

The Justice Verma Committee report recommended various suggestions in the existing criminal law to provide quick and fair justice to the victims of sexual offences. However, there were changes made in the Criminal (Amendment) Act, 2013, which the committee did not recommend:[5]

- The Justice Verma Committee thought of not imposing the death penalty on the accused. According to the Committee, the death penalty failed to act as a deterrence against sexual offences, which is why the Committee suggested imprisonment of twenty years if gang rape is committed and rape and murder are committed, then the accused will be sentenced to life imprisonment. The final Ordinance passed which stated a harsh punishment of imprisonment of at least twenty years and capital punishment if the rape victim dies or which leaves her in a persistent vegetative state.
- The Justice Verma Committee opined to criminalize marital rape but the final Ordinance passed did not criminalize marital rape, and thought that if a man is involved in sexual acts with a person who happens to be his wife, then that man will not be held liable for his acts. In addition, sexual intercourse with a wife not below the age of 15 will not be considered rape.

[5] Ashish Mukherjee, 'Rape law ordinance: Govt rejects JS Verma Panel's recommendations on marital rape, review of AFSPA' (*NDTV*, 2 February 2013) <https://www.ndtv.com/india-news/rape-law-ordinance-govt-rejecs-js-verma-panels-recommendations-on-marital-rape-review-of-afspa-512138> accessed 12 September 2022

- The final Ordinance replaced the word 'sexual offence' with the word 'rape' so that every offence of sexual nature can be included in its ambit.
- The Committee suggested that if any politician is facing charges of sexual offences, they should not be allowed to contest the election. Also, any senior police officer or army officer will be held responsible if it is found that their juniors are indulging in or committing any sexual offence, but the final Ordinance rejected the proposal of the Committee.
- The Committee observed and proposed to include sexual assaults that are committed against males, transgender, and homosexuals to ensure that they are also protected against cries, but this was rejected by the lawmakers. The Act only focused on crimes against women.
- The Committee recommended that videography should be made mandatory for every recorded statement, but the final Ordinance passed made it optional.

CONCLUSION

Rape or any sexual offence is indeed totally inhumane against human dignity. The Justice Verma Committee played a commendable role in shaping the criminal laws on crimes against women and welcomed and incorporated the feminist thoughts and approach in its amendment. The Committee was the first one to ever talk regarding gender justice and giving importance to the rights of women in India. The Criminal (Amendment) Act, of 2013, was framed with the motive of providing speedy and effective justice to the victims. In addition, the government has taken measures for boosting the development of women and encourage them to stand against any kind of violence. Despite having strict punishments, the crimes against women have continued to escalate and even the act had certain loopholes, which were overlooked by the lawmakers. In reality, the act failed to criminalise marital rape which has become a typical issue in India. In society, marriage is considered as the license for the husband to indulge in sexual intercourse with the wife against her will. This is a concerning issue, as rape is a serious crime in itself, and marriage should never be a shielding ground for this offence.

The lawmakers before finalising the Ordinance should not have overlooked the offence of marital rape just to protect the idea of the institution of marriage in society. Moreover, rules were made under this act but there was no appropriate infrastructure to deliver justice to the victims. Capital punishment was added in the Ordinance to be imposed on the rarest crimes and would act as deterrence against sexual crimes but in reality, the death penalty did not do much to control the crimes, rather it deteriorated the situation as now the accused in fear of being adjudicated in the court, would desperately kill the victim after committing the sexual assault[6]. Also, the act failed to provide directions to the central government in setting up fast-track courts for crimes against women, all over India.

It is true that in India women have been subjected to violence, torture, and discrimination which had resulted in the downfall in the growth and development of women and that is the reason why India needs more deterrent laws that will strongly prevent crimes against women and the proper infrastructure through which justice could be delivered. Thus, we can conclude that the act was a remarkable outcome that provided various safeguards for women but it is fact that crimes against women are rising and even after the Nirbhaya case, more heinous crimes like the Kathua gang rape and murder case in 2018, the burning the rape victim in Unnao district in December 2019, and the Telangana rape and murder case of a veterinarian doctor, have been committed, which shows the failure and inefficiency of the act to protect women against all sexual crimes.

[6] Rashme Sehgal, 'Death penalty, no answer to heinous crimes such as Nirbhaya' (*The Hindu Business Line*, 24 March 2020) <https://www.thehindubusinessline.com/opinion/death-penalty-no-answer-to-heinous-crimes-such-as-nirbhaya> accessed 12 September 2022