



ANALYSING THE WORKING OF THE CRIMINAL LAW AMENDMENT ACT, 2013

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INTRODUCTION:

The fundamental rights guaranteed under the Part III of the Indian constitution¹ includes right to life with dignity¹, right to equality of women¹ and freedom to choose their profession¹. All these rights impliedly include the right against sexual exploitation for women. Additionally it is a fundamental duty to renounce from practices that are derogatory to the dignity of women¹. In spite of all these rights and duties the women of our country are continuously exposed to various offences like sexual harassment, dowry, domestic violence which is evident from the recent statistics i.e the total number of rapes during the year 2013 is 33,767 and kidnapping of women and children extend to 51,881 and more pathetically the offences relating to cruelty by husband and his relatives was 1,18,866¹. The widespread outrage due to the barbarous gang rape incident of a physiotherapy intern, Nirbhaya which took place on 16th December, 2012 forced the legislature to act against the crimes that affect the rights of women and children. This led to the enactment of the Criminal law amendment act of 2013¹ amending the Indian Penal Code (hereinafter referred as the Code), the Criminal Procedure code (hereinafter referred as the Cr.P.C), the Indian Evidence

Act and the Protection of Children from the Sexual Offences act.

EVOLUTION OF THE ACT:

The main provocation for passing of this act was provided by the Delhi gang rape incident which led to the setting up of the Justice Verma committee based on whose report and recommendations the Criminal Law (Amendment) Ordinance was passed by the then President of India, Pranab Mukherjee on 3rd February, 2013 and then the Criminal Law Amendment act was passed by the Lok Sabha¹ on March 19 and by the Rajya Sabha¹ on 21st March, 2013. Subsequently it got ratified by the president of India on 2nd April. As per the Gazette notification New Delhi, Tuesday, 2nd April, 2013 the word "Bill" was replaced by the word "Act".¹

2012 GANG RAPE CASE:

This heinous incident took place on the night 16th December, 2012 near Munirka, a neighbourhood located in the southern part of New Delhi when a 23 year old female physiotherapist intern was brutally gang raped while she was returning home in a private bus with her male friend by 6 other men who was travelling in the same bus including the driver. Both the victims were brutally beaten up when they raised suspicions regarding the change of route... Later the main victim i.e. Nirbhaya was brutally raped by the 6 men repeatedly and the medical report suggested that she was penetrated by a blunt object like a rod that caused extensive damages to her internal organs like intestine, uterus, vagina and abdomen. Later both of them were thrown out in a partly naked state. Then the female



victim died 6 days later on 22nd December in spite of being treated on both India and Singapore. Including the juvenile all the 6 accused were arrested by the Delhi Administration within one day of the commission of the crime. One of the accused Ram Singh was found dead in the prison and the other four victims were sentenced to capital punishment by the Special Fast track Court and the juvenile was awarded three years imprisonment on a reform home by the Juvenile Justice Board.¹

JUSTICE VERMA COMMITTEE (JVC):¹

This committee was setup by the central government to make recommendations for the amendment of the existing laws relating to offences against women. The committee was constituted under Hon'ble Justice (Rtd) J.S. Verma, former Chief Justice of India as Chairman ; Hon'ble Justice (Rtd) Leila Seth, former Chief Justice of HP and Shri Gopal Subramaniam , Former Solicitor General of India as members.

OBJECTIVES OF THE COMMITTEE:

The committee was constituted to recommend amendments to the present criminal law so as to provide speedy trial and enhanced punishment for accused of committing sexual assault against women. The methodologies adopted by the committee were inviting suggestions from all stakeholders through public notice, interactions with number of experts, social activists through their representatives. In this lieu, a public notice dated 24th December, 2012 was issued by the Ministry of Home Affairs and in response to this around 70,000 suggestions were received through e-mails, letters and interviews. Based on these

responses the committee made the following recommendations.

RECOMMENDATIONS OF THE COMMITTEE:

1. Registration of marriages should be made mandatory:

The committee recommended for the registration of all the marriages irrespective of personal laws in presence of a magistrate to make sure that it is out of free consent of the couple and without demand of dowry.¹

2. Punishment for Rape:

The committee recommended 7 years rigorous imprisonment punishment for rape and 20 years rigorous imprisonment for causing death or persistent vegetative state. For gang rape it recommends a punishment of imprisonment for 20 years which may extend to life imprisonment in case of causing death and persistent vegetative state. The committee did not recommend for death penalty in case of rape.¹

3. Punishment for other offences:

The committee recommended for increased period of imprisonment for offences like human trafficking, stalking, voyeurism, acid attacks.

4. Registering complaints and Medical Examination:

Every complaint of rape should be registered by the police and the civil society should perform its duties to report any case coming to its knowledge. And the refusal to register or failure to investigate should be made punishable.



5. A Bill of Rights for Women that entitles her a life with dignity and security.¹

6. The committee recommended for special protection of persons with disability from rape and other sexual offences and makes sure they have access to fair and speedy trial.

7. The protocols for medical examination of victims of sexual assault have been provided in the report.¹

8. Political reforms:

The committee recommended for reforms in the Representation of People's Act, 1951 so as to make true representation of people by elimination of those criminal antecedents. A certificate from the Registrar of the High Court should be made necessary to validate the nomination. Candidates who fail to disclose any charge or commission of any offence should be disqualified from contesting the election. Scrutiny and verifications of the assets of the candidates should be made by the CAG and any discrepancies should be made a ground for disqualification of the candidate. In the Parliament and the State Legislature those who have pending criminal proceedings should vacate as a token of respect to the Parliament and the Constitution.¹

PASSING OF THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013 AS AN ADMINISTRATIVE ACTION BY THE PRESIDENT:

The Criminal Law (Amendment) Ordinance, 2013¹ (hereinafter referred as the ordinance) was promulgated by the president of the 64th year of Republic of India. Further a bill in

this regard was introduced in the House of People and also referred to the department related Parliamentary Standing Committee on Home Affairs which is pending. Whereas the Parliament is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action to give effect to the provisions of the said bill with certain modifications. Therefore the President in the exercise of his powers conferred under article 123 clause (1) of the constitution of India passed this ordinance on 3rd February, 2013.

This ordinance brought about amendments to the Indian Penal Code, 1870; the Code of Criminal Procedure, 1970; and the Indian Evidence act, 1872. This ordinance was a sort of administrative action by the center in order to restore peace and to reduce the unrest caused forth by the Delhi incident. This ordinance was later repealed by the Criminal Law Amendment act, 2013.¹

THE PASSING OF THE CRIMINAL LAW AMENDMENT ACT, 2013:

The act was passed by the Parliament and received the presidential assent and was deemed to have come into force on 3rd day of February, 2013. The main objective of this act was to amend the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act and the Protection of Children from the Sexual Offences act. The key changes brought by the act are discussed below.

CHANGES TO THE INDIAN PENAL CODE, 1870:



SECTION 100: The offence of acid attack was added to section 100 of the code so as to use the right of private defense of the body so as to cause death.

SECTION 166 A: Section 166 A was inserted by this act so as to punish the public servants who disobeys the direction given by law. They shall be punished with rigorous imprisonment for a term of 6 months which may extend to one year and may include fine.

SECTION 166 B: Section 166 B was inserted to provide punishment for non-treatment of victims by hospitals under any authority with an imprisonment which may extend to one year and with fine.

SECTION 228 A: Section 228 A was amended to include the newly inserted section 376 E relating to the disclosure of identity of victims of certain offences.

SECTION 326 A AND 326 B: Sections 326 A & B was inserted to include the offences of ACID ATTACK and attempt to make an acid attack to the code with their relevant punishments i.e. imprisonment of a term of 10 years which may extend to life imprisonment and also with fine. For attempt to administer acid the punishment is imprisonment for a term of 5 years which may extend to 7 years and also fine. The key feature of this section was that the fine levied as per this section should be used for meeting the medical expenses of the victim.

SECTION 354: Section 354 was amended in order to increase the punishment for the offence of assault or use of criminal force to women with intent to outrage her modesty from 2 years to 5 years of imprisonment.

SECTION 354 A: Section 354 A was inserted to introduce the offence of sexual harassment and its relevant punishment of rigorous imprisonment for a term one year which may extend to three years along with fine.

SECTION 354 B: Section 354 B was inserted to include the crime of assaulting or compelling a women to disrobe or compelling her to be naked for which he could be punished with imprisonment for a term of three years which may extend to seven years along with fine.

SECTION 354 C: Section 354 C was inserted to introduce the offence of VOYEURISM i.e. watching or capturing image of women engaged in private act which will be punishable with imprisonment for a term of one year which may extend to three years and in case of second conviction it may extend to seven years and may include fine.

SECTION 354 D: Section 354 D deals about the offence of STALKING which means following her, monitoring the use by a women her emails or internet or any other electronic means of communication or tries to communicate with her despite of clear indication of dis interest. The offence of staling is punishable with imprisonment of a term of 5 years which may extend to seven years in case of second conviction and also liable to fine.

SECTION 370 & SECTION 370 A: Section 370 & 370 A were substituted in order to widen the definition of trafficking of person and to provide for punishments for specific offence of trafficking like trafficking of



minor, more than one person and repeated trafficking.

Section 370 A provides for punishment of exploitation of trafficked person.

SECTION 375: Section 375 was substituted to widen the ambit of the definition of RAPE. A man is said to commit the offence of rape if he penetrates or inserts or manipulates any part of the body of the women so as to cause penetration into the urethra, vagina or any part of the body of the women or applies his mouth to vagina, urethra, anus of a women or compels her to do so with him or any other person under the following circumstances.

- Against her will
- Without her consent
- With her consent which was got by fear or death or hurt
- With her consent when she believes the man to be her husband and he is not so
- With her consent, got while she was intoxicated or due to unsoundness of mind she is unable to understand the nature of act
- With or without her consent when under 18 years of age.
- When she is unable to communicate consent.

The exceptions provided in the section were medical examination and sexual intercourse by husband with his wife who is not under 16 years of age.

SECTION 376: Section 376(1) provides for punishment of offence under section 375 to be rigorous imprisonment for a term of seven years which may extend to life imprisonment and shall also be liable to fine.

Section 376(2) provides for more heinous forms of rape like rape by a police officer, public servant, member of armed forces, staff of jail or any custody place by any relative or guardian of the women and commits rape during communal or sectarian violence, raping a pregnant women, raping a women under sixteen years of age, women incapable of giving consent, women suffering from mental or physical disability, commits rape repeatedly on the same women then the punishment will be rigorous imprisonment for a term not less than 10 years which may extend to life imprisonment and shall also be liable to fine.

SECTION 376 A: Section 376 A provides for punishment of causing the death or persistent vegetative state of the victim to be rigorous imprisonment for a term of 20 years which may extend to life imprisonment and shall also be liable to fine.

SECTION 376 B: Section 376 B gives punishment for sexual intercourse by husband with his wife during separation or against her will or when she is under sixteen years of age to be punishable with a imprisonment of a term of 2 years which may extend to 7 years and shall also be liable to fine.

SECTION 376 C: Section 376 C states the punishment for the under section 375 when it is committed by persons in authority like ones in fiduciary relationship or public servant or manager of a jail or hospital to be punished with rigorous imprisonment for a term of 10 years which may extend to



life imprisonment and shall also be liable to fine.

SECTION 376 D: Section 376 D defines gang rape and fixes the punishment to be rigorous imprisonment for a term of 20 years which may extend to life imprisonment and also fine. Provided the fine is used to meet the medical expenses and rehabilitation of the victim.

SECTION 509: Section 509 was amended to increase the punishment from imprisonment of a term of one year to three years and also with fine for the offence of using act, gesture or act intended to insult the modesty of women.

CHANGES TO THE CODE OF CRIMINAL PROCEDURE, 1970: With respect to the amendments made to the INDIAN PENAL CODE, the Cr.P.C was amended so as to include the amended provisions of IPC.¹

CHANGES TO THE INDIAN EVIDENCE ACT, 1872:

Similarly the Evidence act was amended to include the amendments made to the Indian Penal Code.¹

CHANGES TO THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:

Sections 42 and 42A of this act was amended so as to include the amended sections of IPC and to give an overriding effect to this act in case of consistencies with other acts.¹

WORKING OF THE ACT:

This act made drastic changes to the Indian Criminal Legal system by including various acts as criminal offences in the Code and increasing the punishment for

some of the heinous crimes. The new offences included by the 2013 act were Acid Attack¹, penalizing the misconduct by public servants¹, penalizing the non-treatment of victims by private or government hospital¹, penalizing sexual harassment at work place, disrobing¹, stalking¹, voyeurism¹. The important change brought by the act was widening the definition of rape under section 375 of the Code. Before the amendment the definition of rape was very narrow and included only penetration of male genital organ into the female genital organ as rape. The court in the case of Madan Gopal Kakkad vs. Naval Dubey¹ held that mere or slightest penetration of male organ with that of the female genitals was sufficient to constitute sexual intercourse. It was held that the extent of penetration is also immaterial.¹ To constitute rape there is no of any injuries to be present on the private parts of ten women.¹ The act included penetration of other objects also to be included under the purview of rape. Many offences like acid attack, stalking, voyeurism etc., which were increasing due to lack to proper provisions, were curbed by this act which introduced stringent provisions and strict penalties. Provisions were made in Cr.P.C to facilitate the recording evidence in certain offences relating to women. This act was an evident move by the government to uphold its duties under the Indian Constitution and also the International obligations i.e. Universal Declaration of Human Rights, 1948¹; the International Covenant on Civil and Political Rights, 1966¹; the International Covenant on Economic, Social and Cultural Rights, 1966¹; Beijing principles of the Independence of Judiciary, 1955;



Convention on the Political Rights of Women, 1954; Convention on Elimination of all forms of Discrimination against Women, 1979¹; Declaration on Elimination of Violence against Women, 1933¹.

LACUNAS OF THE ACT:

The act respite of so many advantages had some some disadvantages too. One of the important lacunas is that Death Penalty was not included as a punishment for rape under section 376 of the Code neither in The JVC report nor the act or ordinance. Instead the court held that Death Penalty should be awarded only in “Rarest of Rarest case”.¹ Another major criticism received by this act was that the act did not include the Political Reforms Recommended by the Justice Verma Committee i.e. disqualification of persons with pending criminal proceedings to contest from election and resignation of elected members in case of criminal charge. The offence of marital rape was not included in the act which is now emerging as a serious threat in the society.

CONCLUSION:

Thus the Criminal Law Amendment Act, 2013 was a corner stone in the history of Criminal Legal system, as it fixed the emerging threats in the society by way of introducing new offences and increasing the punishments to reduce the crime rate. But the society wants the punishments to be more heinous to completely eradicate this violence against women from this society.
