

Justice J. S. Verma Committee Recommendations and Criminal Law (Amendment) Act, 2013



Justice Verma Committee Report recommendations and Criminal Law (Amendment) Act, 2013

Introduction

Against the backdrop of the nation-wide outrage over the tragic Delhi gang-rape, Nirbhaya (Fearless) incident of December 16, 2012, propelled the Government of India (GOI) to drive the issue of violence against women (VAW) to the centre-stage of political discourse. Consequently, on December 22, 2012, GOI appointed a three member judicial committee headed by the former Chief Justice of India, Justice J.S. Verma, who passed away on April 22, 2013, Justice Leila Seth and Gopal Subramaniam requesting them to submit a report within 30 days. 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 VAW. On January 23, 2013, the commission submitted its recommendations by identifying 'lack of good governance' as the central cause of VAW. The recommendations are based on more than 70,000 suggestions received from stakeholders, social activists and public comprising eminent jurists, legal professionals, NGOs, women's groups and civil society through varied methods: emails, posts and fax. A 631-page report consisting of 14 chapters include recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms. Based on some of the recommendations of the Justice Verma Committee (JVC) report, an anti rape Ordinance was enacted and signed by the Honourable President of India, Mr Pranab Mukherjee on February 03, 2013. The Criminal Law (Amendment) Bill, 2013, passed in the Parliament (Lok Sabha¹ and Rajya Sabha² respectively on March 19 and 21, 2013) replaced the promulgated Ordinance, which lapsed on April 04, 2013.

We summarise the key recommendations of the Committee.

Rape: The Committee recommended that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC).

The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape.



The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant.

Sexual assault: Currently, “assault or use of criminal force to a woman with the intent to outrage her modesty” is punishable under Section 354 of the IPC with 2 years imprisonment. The term outraging the modesty of a woman is not defined in the IPC. Thus, where penetration cannot be proved, the offence is categorized as defined under Section 354 of the IPC.

The Committee recommended that non-penetrative forms of sexual contact should be regarded as sexual assault. The offence of sexual assault should be defined so as to include all forms of non-consensual non-penetrative touching of a sexual nature. The sexual nature of an act should be determined on the basis of the circumstances. Sexual gratification as a motive for the act should not be prerequisite for proving the offence. The

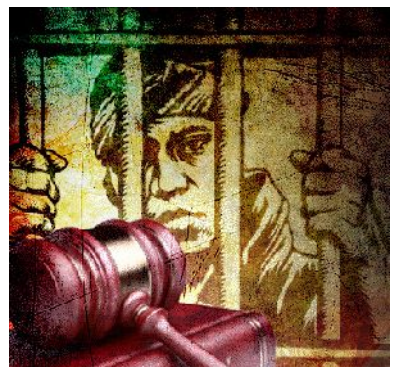


Photo :MapsofIndia.com

offence should be punishable with 5 years of imprisonment, or fine, or both. Use of criminal force to disrobe a woman should be punishable with 3 to 7 years of imprisonment.

Verbal sexual assault: At present, use of words or gestures to “insult a woman’s modesty” is punishable with 1 year of imprisonment or fine or both under Section 509 of the IPC. This section should be repealed. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 1 year imprisonment or fine or both.

Sexual harassment: Some of the key recommendations made by the Committee on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 that is pending in Parliament are provided below:

- Domestic workers should be included within the purview of the Bill.
- Under the Bill the complainant and the respondent are first required to attempt conciliation. This is contrary to the Supreme Court judgment in Vishakha vs. State of Rajasthan which aimed to secure a safe workplace to women.
- The employer should pay compensation to the woman who has suffered sexual harassment.
- The Bill requires the employer to institute an internal complaints committee to which complaints must be filed. Such an internal committee defeats the purpose of the Bill and instead, there should be an Employment Tribunal to receive and adjudicate all complaints.

Acid attack: The Committee opined that the offence should not be clubbed under the provisions of grievous hurt which is punishable with 7 years imprisonment under the IPC. It noted that the offence was addressed in the Criminal Laws Amendment Bill, 2012 which is currently pending in Parliament. The Bill prescribes a punishment of imprisonment for 10 years or life. It recommended that the central and state government create a corpus to compensate victims of crimes against women.

Offences against women in conflict areas: The continuance of Armed Forces (Special Powers) Act (AFSPA) in conflict areas needs to be revisited. At present, the AFSPA requires a sanction by the central government for initiating prosecution

against armed forces personnel. The Committee has recommended that the requirement of sanction for prosecution of armed forces personnel should be specifically excluded when a sexual offence is alleged. Complainants of sexual violence must be afforded witness protection. Special commissioners should be appointed in conflict areas to monitor and prosecute for sexual offences. Training of armed personnel should be reoriented to emphasise strict observance of orders in this regard by armed personnel.

Trafficking: The Committee noted that the Immoral Trafficking Prevention Act, 1956 did not define trafficking comprehensively since it only criminalised trafficking for the purpose of prostitution. It recommended that the provisions of the IPC on slavery be amended to criminalise trafficking by threat, force or inducement. It also recommended criminalising employment of a trafficked person. The juvenile and women protective homes should be placed under the legal guardianship of High Courts and steps should be taken to reintegrate the victims into society.

Child sexual abuse: The Committee has recommended that the terms ‘harm’ and ‘health’ be defined under the Juvenile Justice Act, 2000 to include mental and physical harm and health, respectively, of the juvenile.

Punishment for crimes against women: The Committee rejected the proposal for chemical castration as it fails to treat the social foundations of rape. It opined that death penalty should not be awarded for the offence of rape as there was considerable evidence that death penalty was not deterrence to serious crimes. It recommended life imprisonment for rape.

Medical examination of a rape victim: The Committee has recommended the discontinuation of the two-finger test which is conducted to determine the laxity of the



vaginal muscles. The Supreme Court has through various judgments held that the two-finger test must not be conducted and that the previous sexual experience of the victim should not be relied upon for determining the consent or quality of consent given by the victim.

Police reforms: The Committee has recommended certain steps to reform the police. These include establishment of State Security Commissions to ensure that state governments do not exercise influence on the state police. Such Commissions should be headed by the Chief Minister or the Home Minister of the state. The Commission would lay down broad policy guidelines so that the Police act according to the law. A Police Establishment Board should be established to decide all transfers, postings and promotions of officers. Director General of Police and Inspector General of Police should have a minimum tenure of 2 years.

Reforms in management of cases related to crime against women:

- A Rape Crisis Cell should be set up. The Cell should be immediately notified when an FIR in relation to sexual assault is made. The Cell must provide legal assistance to the victim.
- All police stations should have CCTVs at the entrance and in the questioning room.
- A complainant should be able to file FIRs online.
- Police officers should be duty bound to assist victims of sexual offences irrespective of the crime's jurisdiction.
- Members of the public who help the victims should not be treated as wrong doers.
- The police should be trained to deal with sexual offences appropriately.
- Number of police personnel should be increased. Community policing should be developed by providing training to volunteers.

Electoral reforms: The Committee recommended the amendment of the Representation of People Act, 1951. Currently, the Act provides for disqualification of candidates for crimes related to terrorism, untouchability, secularism, fairness of elections, sati and dowry. The Committee was of the opinion that filing of charge sheet and cognizance by the Court was sufficient for disqualification of a candidate

under the Act. It further recommended that candidates should be disqualified for committing sexual offences.

Education reforms: The Committee has recommended that children’s experiences should not be gendered. It has recommended that sexuality education should be imparted to children. Adult literacy programs are necessary for gender empowerment.

 <p>NORTHEAST INDIA WOMEN AGAINST RAPE / SEXUAL ASSAULT STOP NOW</p> <p>MANIPUR WOMEN GUN SURVIVOR NETWORK</p>	 <p>NO IMPUNITY TO ANY ONE IN RAPE/ SEXUAL ASSAULT INCLUDING MEN IN UNIFORM</p> <p>MANIPUR WOMEN GUN SURVIVOR NETWORK</p>
<p>NO MORE RAPE CULTURE STOP RAPE NOW !!!</p> <p>MANIPUR WOMEN GUN SURVIVOR NETWORK</p>	<p>WOMEN WILL NOT BE SILENT ANY MORE INDIA STOP RAPE NOW</p> <p>MANIPUR WOMEN GUN SURVIVOR NETWORK</p>

**Justice Verma Committee Report recommendation and Criminal Law
(Amendment) Act, 2013**

Offence/ Issue	Definition	Existing Laws	JVC report recommendation	Criminal Law (Amendment) Act, 2013
Disobedience of law by a public servant	Failure to record information in sexual offences cases; knowingly disobeying laws on investigation	No specific provision, IPC, 1860	Failure of a public servant to record information in relation to sexual offences should be specifically penalised under the Bill.	Punishable with rigorous imprisonment for six months to 2 years and fine. (Section 166A)
Rape resulting in death or vegetative state	Causing death or persistent vegetative state when committing rape.	Rape and murder dealt with as two separate offences. Rape: 7 years to life imprisonment, Murder: imprisonment for life	Punishment 20 years up to life imprisonment. In case of gang rape resulting in death or persistent vegetative state punishment	Specific offence. Punishment 20 years to life imprisonment (rigorous imprisonment) or death. (Section 376-A)

		or	should extend to life imprisonment	
Punishment for gang rape	Where a person is raped by one or more in a group of persons acting in furtherance of a common intention, each of these persons shall be deemed to have committed the offence of gang rape, regardless of their gender	10 years to life imprisonment and fine, IPC, 1860	Imprisonment for life shall mean imprisonment for the rest of that person's natural life.	20 years to life imprisonment (rigorous imprisonment) and fine payable to the victim, that is reasonable to meet medical expenses. (Section 376-D)

<p>Rape by armed personnel</p>	<p>“Armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government</p>	<p>No specific provision. Public servant includes armed personnel. Punishment : 10 years to life imprisonment and fine, IPC, 1860</p>	<p>Specifically penalises rape by armed personnel within the area they are deployed in. Armed personnel should be penalised with imprisonment for 7 to 10 years if they knew that sexual offences were being committed by their subordinates. The requirement for sanction to prosecute armed personnel should be removed in relation to sexual</p>	<p>Specific offence. Shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life</p> <p>(Section 376-C)</p>
---------------------------------------	---	---	---	--

			offences.	
Responsibility of Hospital	Failure of hospitals and doctors to provide medical treatment to victims of sexual offences.	No specific provision, IPC, 1860 and CCP, 1973	The victim must be taken to the nearest hospital. Medical examination report must be prepared, preferably immediately after the examination, but most certainly on the same date as the examination and must be forwarded to the investigating agency	Punishable with 1 year and/or fine. In cases of acid attacks or rape, all hospitals (Section 166B)

			forth with immediatel y. All hospitals should co-operate with the police and preserve the samples likely to putrefy in their pathologica l facility till such time the police are able to complete their paper work for despatch to forensic lab test including DNA.	
Acid Attacks	Throwing of acid on women for a multitude of reasons, including alleged adultery,	No specific provision. Covered under grievous hurt. Punishment : up to 7	Whoever attempts to throw acid or corrosive or any burning substances	Specific offence. Punishable with 10 years or life imprisonment and reasonable fine amount to meet medical

	<p>turning down advances from men, and also as a form of domestic violence. Causing permanent or partial deformity or burns on any person by throwing or administering acid.</p>	<p>years imprisonment, IPC, 1860.</p>	<p>on any person, or attempts to administer acid to any person, or attempts to use any other means to achieve the purpose of causing permanent or partial damage to any part or parts of the body of a person, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also</p>	<p>expenses. (Section 326-A & 326-B)</p>
--	--	---------------------------------------	--	---

			be liable to pay compensation to the victim adequate to meet at least the medical expenses incurred by the victim.	
Punishment for repeat offenders	Punishments for persons previously convicted of an offence of rape, custodial rape, and gang rape.	No specific provision, IPC, 1860	Shall be punished with imprisonment for life, which means imprisonment for the rest of that person's natural life.	Specific offence. Life imprisonment (rigorous imprisonment) or death. (Section 376-E)
Age of Consent	Legal age at which a person is considered competent to give sexual consent (sexual	Specific provision, since the 1983 amendments in the rape law in the IPC,	16 years	18 years

	intercourse)	1860		
Touching	Physical contact involving unwelcome and explicit sexual overtures.	Outraging a woman's modesty. Punishment : imprisonment for maximum 2 years and fine, IPC, 1860	Existing provisions of the IPC should be deleted. Intentional touching of a sexual nature, without the person's consent should be penalised with 5 years rigorous imprisonment.	Outraging a woman's modesty: 1 to 5 years imprisonment and fine. Physical contact involving unwelcome and explicit sexual overtures: up to 3 years imprisonment and/or fine. (Section 354A)
Stalking	Following a woman, attempting to foster personal interaction despite indication of victim's disinterest, spying, monitoring electronic	No specific provision.	Whoever commits the offence shall be punished with imprisonment of either description for a term which shall not be less	Specific offence. 1st offence punishable with 1 to 3 years imprisonment (Bailable). 2nd offence punishable with up to 5 years imprisonment (Non-bailable). (Section 354D)

	communications		than one year but which may extend to three years, and shall also be liable to fine.	
Sexually coloured remarks/Use of words or gestures to insult a woman's modesty	Making of sexually coloured remarks by a man.	No specific provision for this offence. Verbally assaulting a woman's modesty is punishable with one year imprisonment and/or fine, IPC, 1860.	Use of words or gestures towards a person, or in his presence, which create an unwelcome threat of a sexual nature, should be punishable with imprisonment for one year and/or fine.	Specific offence. Punishable with imprisonment for up to one year and/or fine. Non Bailable (Section 354A)
Demand for Sexual Flavour	Demand or request by a man for sexual	No specific provision for this offence.	Those who demand or request for sexual	Specific offence. Punishable with up to 3 years' rigorous

	favours.	Verbally assaulting a woman's modesty is punishable with one year imprisonment and/or fine, IPC, 1860	favour should be punishable with imprisonment for one year and/or fine.	imprisonment and/or fine. (Section 354A)
Assault to disrobe a woman	Forcing a woman to undress and lie in naked condition.	No specific offence. Outraging a woman's modesty is punishable with imprisonment for maximum 2 years and fine, IPC, 1860	Whoever 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, shall be punished with imprisonment of either	Specific offence. Punishable with 3 to 7 years imprisonment and fine. (Section 354B)

			description for a term which shall not be less than three years but which may extend to seven years and shall be liable to fine.	
Voyeurism	Watching a woman when she is engaging in a private act including sexual acts, use of lavatory, or when private parts are exposed.	No specific offence, IPC, 1860. Information Technology Act, 2000 protects both men and women. Punishment : up to 3 years and/or fine up to ₹2 lakh.	Penalise the act of capturing images of, or watching, a woman engaging in sexual acts or when her genitals are exposed with imprisonment for 1 to 3 years and fine.	Specific offence. Only protects women. 1st offence punishable with 1 to 3 years imprisonment and fine. 2nd offence punishable with 3 to 7 years. (Section 354C)
Other forms of rape	Rape includes un-consented penetration	In the absence of penile-vaginal		Specific offence. Punishable with 7 years to life imprisonment

	of the mouth, anus, urethra or vagina with the penis or other object; un-consented oral sex.	penetration offence of outraging modesty of a woman punishable with maximum 2 years and fine, IPC, 1860		(rigorous imprisonment). (Section 376A, 376B, 376C, 376D, 376E)
Marital rape	Forceful sexual acts committed without the consent of the partner.		Should be an offence regardless of the age of the wife.	Is not an offence if the wife is over 16 years of age. (Section 376-B)
Forcibly showing pornography	Forcibly showing pornography by a man to a woman.	No specific provision, IPC, 1860		Punishable with rigorous imprisonment for up to 3 years imprisonment and/or fine. (Section 354A)
Protection against disclosure of identity of victim		Provided in case of rape, custodial rape, rape of a judicially separated		Protection extended to victims of repeat offenders as well. (228A Sub

		wife, abuse of power to obtain consent. Punishable with imprisonment for up to 2 years, CCP, 1973		section-1)
Identification of accused		No specific provision for special procedures to assist differentially abled persons in identification of accused, CCP, 1973.		Judicial magistrate to undertake special procedures to assist differently abled persons in identification of the accused. Identification process to be video graphed.
Recording of information by woman officer		No special requirement for woman officers to record information about sexual offence cases, CCP,		In case of acid attack, sexual harassment, disrobing, voyeurism, outraging a woman's modesty, rape (of all kinds) information would be

		1973		recorded by woman officer.
Recording of information in case victim is physically/mentally disabled		No special requirement, CCP, 1973		In case of VAW like acid attack, sexual harassment, disrobing, voyeurism, outraging a woman's modesty, rape information would be recorded by woman officer at a place of the victim's choice, in the presence of special educators. Required to be video graphed.
Exception to police's power to require attendance by witnesses		Men below 15 years of age and women are not required to give evidence at a police station. Evidence to		Applies to men below 15 or above 65 years of age; women and physically and mentally disabled persons.

		be taken from home, CCP, 1973		
Judicial Magistrate to record statement		No special requirement in case of sexual offences, CCP, 1973		Judicial Magistrate to record statement of the victim immediately after the police is informed in case of acid attack, rape, sexual harassment, disrobing, voyeurism etc. In case the victim is differently abled, the assistance of interpreters has to be taken and has to be video graphed.
Examination of victim at trial stage		No special protections to victims of sexual offences, CCP, 1973		The statement recorded by the Judicial Magistrate will be treated as the evidence of the victim presented by the prosecutor. Protects the right to be cross-

				examined.
Protection against confrontation of victim by accused		No special protections to victims of sexual offences, CCP, 1973		In case the victim of rape or a sexual offence is less than 18 years of age care has to be taken that she is not confronted by the accused.
Requirement of sanction to prosecute public servant		Sanction is required to prosecute public servants in all cases, including cases of rape, outraging a woman's modesty, CCP, 1973		Requirement of sanction removed under the CCP, 1973. Such requirement may continue under other laws.
Requirement of satisfaction of prima facie facts in case of rape		No such requirement, CCP, 1973		In case of rape of a judicially separated wife by her husband, the court has to be prima facie satisfied of the facts constituting the offence

				before it takes cognizance.
Requirement to fast track		No requirement to fast track sexual offence cases, CCP, 1973		Trial to be held on day- to-day basis. In case of rape cases, trial to be completed in 2 months of filing of charge sheet.
Compensation		The State government has to prepare a compensation scheme for rehabilitation of victims. The state or district legal service authority is to make compensation awards, CCP, 1973		Compensation awarded by the State is in addition to what is payable by the accused.
Previous sexual history		No specific provision barring the		Bars the use of past sexual history in

		use of previous sexual history in rape cases, IEA, 1872		determining consent of the victim. Bars evidence or questions in the cross-examination of the victim as to the general immoral character of the victim or past sexual history with any person.
Presumption of consent		Required the victim of rape to prove that she did not consent, IEA, 1872		Shifts the onus on to the accused to prove that consent was given.
Special provisions for evidence by differently abled persons		No special provision, IEA, 1872		Court to use the assistance of interpreters to take evidence of differently abled persons. Such evidence to be considered oral evidence when given in open court. Statement to be video

				recorded.
Punishment for rape		7 years to life imprisonment and fine, PCSO, 2012		10 years to life imprisonment and fine.
Gang rape of child		10 years to life imprisonment and fine, PCSO, 2012		20 years to life imprisonment and fine.
Disrobing		3 years and fine, PCSO, 2012		3 to 7 years imprisonment and fine.

"Deepening Diversity, Women Rights and Democracy in India" programme contributes towards addressing the issues namely increasing violence against women and girls in conflict zones and the rise in case of growing intolerance and racial violence in India. We aim to work with committed stakeholders to address the issue of deepening diversity, racial discrimination and sexual violence in conflict zones of India through improved and strengthened civil society responses and initiatives, engaging local authorities and government structures & international efforts to address the issue. This will help in ensuring inclusive, sustainable growth in India.

Implemented by



Control Arms Foundation of India (CAFI) founded 10th September 2004 in New Delhi by a group of concerned citizens to address rising armed violence and weaponisation in India. Every year 5000 Indians are shot dead due to weapons misuse. CAFI leads work in India on humanitarian disarmament and gender.

CAFI conducts research, writing, and advocacy relief work to ensure safety and security for all. CAFI efforts have been awarded Best Humanitarian Initiative of the Year Award 2010, Sean Macbride Peace Prize 2010, CNN IBN Real Heroes Award 2011 and CNN IBN Indian of the year Award. In 2013, London-based Action on Armed Violence named us on list of 100 most influential people in the world in armed violence reduction.

CAFI Delhi Office: B 5 / 146, First Floor, Safdarjung Enclave,
New Delhi - 110 029, India. Phone: 91-11-46018541, Fax: 91-11-26166234

Email: cafi.communicue@gmail.com, Website: www.cafi-online.org

CAFI Northeast India Office: Langthabal Mantrikhong, Thong Ahanbi, Behind Manipur University
Campus, Imphal West-795003, Manipur, India. Website: www.womensurvivorsnetwork.org,
www.neiwiip.blogspot.com

Multiple Action Research Group (MARG)



Since 1985 MARG has been engaged in the legal empowerment of disadvantaged and marginalized groups through legal awareness, socio-legal research, advocacy initiatives and legal aid. MARG has extensive experience in conducting legal literacy workshops on laws relating to constitutional rights, livelihood, protection of women from violence, personal laws, political participation through panchayats and discrimination.

205-206, 2nd Floor, ShahpurJat, New Delhi – 110049, Tel: 91-11-26497483/6925

Fax: 91-11-26495371, Email: marg@ngo-marg.org

Project Supported By:



European Union is a unique partnership of 28 independent nations or Member States in a political and economic union that facilitates development within the region and enhances its influence at the global level. EU has received the Nobel Peace Prize for six decades of work in advancing peace in 2012.

Delegation of the European Union to India:

5/5, Shantiniketan, New Delhi - 110 021, India, Phone: +91-11-4949 6565, Fax: +91-11-4949 6555,

Email: delegation-india@eeas.europa.eu, Website: <http://eeas.europa.eu/delegations/india>

DISCLAIMER: This document has been furnished for your information. Control Arms Foundation of India (CAFI) makes every effort to use reliable and comprehensive information. The information in this document is collected from reliable resources. Every effort has been made to make this as accurate as possible. This document is meant to serve only as a general guide and not as the ultimate source of subject information.