

# **Criminal Law Amendment, 2013: An Analysis**

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## **ABSTRACT**

The sad gang rape event that occurred in New Delhi on December 16, 2012, caused widespread indignation throughout India, which prompted lawmakers to bring the subject of crimes against women front and center in political debate. As a result, the Criminal Law (Amendment) Act also referred to as the Anti-rape Act was enacted in April 2013. It was believed that by guaranteeing that the nation's criminal justice system upholds women's fundamental human rights and prohibits any further offenses towards women, this Act might function as deterrence. The study aims to investigate the different aspects of crime towards women in society and the part played by law enforcement in addressing these offenses. The women's right of a dignified life cannot be protected by suitable and effective laws solely. The circumstances won't change unless and until people are prepared to advocate against it. The way society views abuse towards women has to be drastically changed in order to address it successfully. Yet, women must be empowered by providing them with adequate and effective legal aid if they are to be able to combat violence and prejudice. In regard to this, the Criminal Law (Amendment) Act of 2013 is a commendable initiative.

**Key words: Criminal Law Amendment, Rape, Acid Attack.**

## **INTRODUCTION<sup>1</sup>**

Following the horrific gang rape that occurred in New Delhi in December 2012 commonly known as the Nirbhaya gang-rape case, young people became enraged about the protection of women and lost faith in the Indian legal structure as well as the government's ability to uphold the rule of law. Consequently, the need to change law was felt. This wasn't the primary occasion; in the past too, public and women's organizations actions have pressurized the government to the revision of the law. The governing body was compelled to enact legislation prohibiting dowry-related offenses in the very beginning of the 1980s due to protests, and the Criminal Law (Second Amendment) Act of 1983 brought Section 498A<sup>2</sup> to the Indian Penal Code, 1860 rendering it illegal for husbands & family members to be cruel. In a comparable manner following the protests regarding instances of rape while in police custody, Sections 375 and 376 (part of the same Criminal Law Amendment Act of 1983) were amended in response to a very well-known case, the Mathura rape case of the beginning of the 1970s. The rape law in the country underwent numerous notable changes as a result of this Amendment Act, involving the introduction of an entirely novel class of rape offenses for attacks by police officers, the rejection of a female's consent to a sexual relationship in cases where the woman is inebriated or of unsound mind, along with a rise in the consequences for rape crimes.

Once more in the month of December 2012, an open dialogue on legal reform was sparked by the international media coverage of the gang rape of Nirbhaya in New Delhi. The Indian administration changed the Criminal Law in 2013 based on the findings of the Justice Verma Committee, which was established to present suggestions for changes to the law, deal harshly with incidents of sexual offenses, and offer immediate assistance to victims who were women.

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<sup>2</sup> 498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.Explanation.— For the purpose of this section, “cruelty” means-(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or)(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

It introduced certain new offenses as well as significant revisions to a few portions of the IPC's existing provisions. The traditional meaning of rape is being expanded, and it is now irrelevant whether or not there was physical opposition in order for the offense to qualify as rape. The committee's study concluded that police and government inefficiencies were the primary cause of crimes towards women, suggesting the need for both police and electoral changes. Though some good reforms have been implemented made to the law in an attempt to give women perpetrators verified and expedited remedy, the disparity between women's legal rights and the ongoing fundamental inequity of women's lives has made it easy to doubt the efficacy of law development.

On March 19, 2013, the Lower House of the Indian Parliament, the Lok Sabha, passed the Criminal Law Amendment Act, 2013, and on March 21, the Upper House of the Indian Parliament, the Rajya Sabha, did the same. On April 2, 2013, the Indian President gave his approval to the Bill, which became operative on February 3. Prior to drafting the ultimate proposal, the Verma Committee reviewed 80,000 comments and heard testimony; nevertheless, the government removed several of these from the new rape law." The short volume, which is divided into 11 chapters, discusses the rights of women, children, and convicts to judicial administration.

The 2013 Criminal Law (Amendment) Act<sup>3</sup> Amendment Act, also referred to as the Anti-rape Act, alters the things that follow:

- The Code of Criminal Procedure, 1973<sup>4</sup>;
- The Indian Penal Code, 1860<sup>5</sup>
- The Indian Evidence Act, 1872<sup>6</sup>
- The POCSO, or Protection of Children from Sexual Offenses Act of 2012<sup>7</sup>

**Modifications to IPC, 1860** Regarding numerous sexual offenses, the Criminal Law (Amendment) Act, 2013 added several additional sections to the IPC.

Part 354A: Sexual harassment Following a modification, the elements of the sexual harassment offense remain the same as those established in the Vishaka v. State of Rajasthan<sup>8</sup> case.

- a) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- b) A demand or request for sexual favours; or
- c) Making sexually coloured remarks; or
- d) Forcibly showing pornography; or
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

A maximum three-year prison sentence is the penalty for this. Speaking in a sexually coloured remarks is also considered sexual harassment, which carries a maximum one-year jail sentence.

**Section 354B: Assault or use of unlawful force against a woman for the purpose of disrobing** After an amendment, section 354B was added. It states that a man violates this section if he assaults, uses criminal force against a woman, or aids and abets in such an act with the intent to cause the woman to undress or force her to be in public while nude. The punishment for this offense is three to seven years in prison.

**Section 354C: Voyeurism** This Legislation has been rendered illegal following a change that states that any man who witnesses or records a woman performing a private act in a situation where she would typically anticipate to be unobserved by the perpetrator or by anyone else acting on the perpetrator's behalf, or who distributes such a recording, shall be prosecuted under Section 354C. If this person commits a second offense, they might face a sentence of three to seven years in jail as well as a fine.

**Section 354D: Stalking;** According to this, a male who stalks a woman faces a maximum sentence of three years in jail for the first offense and five years for subsequent offenses. It is possible to stalk someone in person or virtually via electronic

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<sup>3</sup> No. 13 OF 2013

<sup>4</sup> Act No. 2 of 1974

<sup>5</sup> Act No. 45 of 1860

<sup>6</sup> Act No. 1 of 1872

<sup>7</sup> Act No. 32 of 2012

<sup>8</sup> AIR 1997 SUPREME COURT 3011

media. Nonetheless, there are also circumstances in which the offense is not punishable, such as when the behavior was appropriate under the circumstances or when it was carried out in compliance with a law.

**Section 375 and 376 – Rape;** The Criminal Law (Amendment) Act, 2013<sup>9</sup>, passed by the parliament, expanded the definition of rape to include specific nonpenetrative actions. It has changed the definition of rape in Section 375. Following the amendment, a man is accused of rape if he;

- a) Penetrates his penis into vagina, urethra, mouth or anus of a woman, or makes her do so with him or any other person;
- b) Inserts any object or any body part, not being the penis into vagina, urethra or anus of a woman, or makes her do so with him or any other person;
- c) Manipulates any body part of a woman so as to cause penetration into the vagina, urethra anus or any body part of such woman or makes her do so with him or any other person;
- d) Applies his mouth to the vagina, anus, and urethra of a woman or makes her do so with him or any other person

According to Section 376, rape carries a minimum sentence of seven years in jail and a maximum sentence of life in prison plus a fine. Any male who commits rape while serving in the military, as a police officer, medical officer, jail officer, public officer, or as a public servant faces a minimum of ten years in prison. If the victim dies as a result of the rape or goes into a vegetative condition, they will be sentenced to life in jail, with the possibility of extradition. Under the recently modified sections, there is a mandatory minimum 20-year sentence for gang rape, with the possibility of an additional life sentence.

The new amendment clarifies further by defining ‘consent’ as the unambiguous decision to participate in a specific sexual act. It further states that the absence of opposition does not constitute consent.

Law pertaining to acid attacks

**a) Section 326A :** Anybody who burns, maims, disfigures, or incapacitates any part of the body in a way that results in permanent or partial injury, deformity, or disability

If someone is found to have intentionally caused or knows that he is likely to cause serious harm to another person by dousing them in acid, administering acid to them, or using any other method, they will be punished with a fine and either type of imprisonment for a minimum of ten years, with the possibility of a life sentence.

**b) 326B Section:** Anyone who throws or tries to throw acid on someone, attempts to administer acid to someone, or tries to use any other method with the intent to cause burns, deformity, disfigurement, maiming, disability, or great harm to that person will be punished with either type of imprisonment for a term that will not be less than five years but may go up to seven years, in addition to being subject to a fine.

Trafficking in persons, Under the new Section 370, it is illegal for anybody to recruit, transport, harbor, transfer, or receive someone with the intention of exploiting them. These tactics may include threats, coercion, force, fraud, deception, kidnapping, abuse of authority, or inducement.

Penalties vary from seven to ten years of hard labor combined with a fine. Anyone who solicits a kid or adult who is trafficked for sex is guilty of a crime under Section 370A.

### **Issues and Challenges:**

The legislation has faced significant disapproval due to its gender bias and provision of legal authorization for women to perpetrate the very offenses against which they seek protection against males while remaining unpunished. A few human rights and women's rights organizations have harshly criticized the Criminal Law (Amendment) Ordinance, 2013 for omitting a number of suggestions made by the Verma Committee Report<sup>10</sup>, such as provisions for marital rape, a decline in the requirement for proof of consent (failed verification), and an amendment to the Armed Forces (Special Powers) Act that would allow prosecution of armed force personnel accused of crimes against women without the need for sanctions. The Indian government responded which it has not completely discarded the recommendations, but modifications may be implemented subsequent to substantial deliberation.

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<sup>9</sup> *Supra note 2*

<sup>10</sup> Available at <https://spuwac.in/pdf/jsvermacommittereport.pdf>

Although the Amendment mandates the registration of FIRs and reports, it has no practical application for law enforcement, particularly state police forces, as instances exist in which officers disregard and refuse to file reports and initiate investigations, thereby permitting them to engage in victim scapegoating and ethical law enforcement. Critical evidence loss occurs in such circumstances, leading to unsuccessful investigations, acquittals, convictions not for rape offenses, increased confidence, or perpetrators evading punishment. In certain instances, police officials fail to investigate or intervene in a timely manner, citing jurisdictional issues or disregarding incidents that have not yet transpired. Investigations of this nature are further complicated by the Police Act of 1861<sup>11</sup>, which is still in effect in a number of states despite the fact that the Constitution of India designates policing as a state responsibility. Additionally, overtime work is mandatory for police personnel, particularly constable ranks. When the victims are members of marginalized communities, such as the Dalit or Muslim, or when the perpetrators are members of the political elite or privileged class, they are subjected to police officer humiliations and fraudulent imprisonments.

The Amendment does not require the safeguarding of those abused and crucial witnesses, excluding in the cases of the Delhi Police and Delhi State Government. The absence of witness protection has resulted in assaults and murders of rape victims and witnesses at the hands of the perpetrators' relatives or kin, as well as the perpetrators themselves if released on bail or parole. Many women's rights activists have referred to the Amendment as a 'eyewash' due to the fact that it neither deterred offenses against women, including rape, nor addressed the fundamental issues pertaining to women's safety. In spite of the Justice Verma Commission's substantial evidence that capital punishment failed to deter wrongdoing, the amendment continued to impose the death penalty in certain circumstances- including repeat offenses, victim death, vegetative state, and for minor victims under the age of 12.

Furthermore, the amendment fails to alter the prevailing perspectives regarding victims, as a significant number of individuals continue to hold the perpetrators accountable for rape rather than attributing it to women. Moreover, the modifications to the legislation have no effect on the competence of the judiciary, particularly when judges render verdicts that, notwithstanding the evidence, deprive the victims of justice. Opposition of the judicial branch regarding such decisions is regarded as disrespect of court, a practice that has persisted since independence and is rooted in a noble mentality and the belief that judges are infallible.

Critique directed at the judicial system for making such choices is regarded as abuse of court, a practice that has persisted since freedom and is rooted in a noble mentality and the presumption of judges' supremacy.

In an effort to promote female empowerment, the Amendment suggested that sex education be provided to minors in addition to adult literacy programs. Nevertheless, a number of political leaders, activists, and right-wing organizations have voiced their opposition to sex education, arguing that it is incongruous with the social customs of India and contains the potential to undermine the moral development of school children.

## **CONCLUSION & SUGGESTION**

The alarming spike in assault and harassment against women in recent years is indicative of a systemic collapse on a grand scope. It would appear that violence perpetrated against women serves the dual purpose of exerting control over them and maintaining their subordinate position. In addition, it seeks to restrict the mobility and sexuality of women and to sanction those who violate community-prescribed societal norms. The physical dominance of males in all public spaces presents numerous obstacles for women as they strive to advance their education, obtain gainful employment, or even make inroads in the public sphere.

In order to empower women to combat discrimination and maltreatment, it is critical to ensure that they have access to suitable and efficacious legal assistance. The Criminal Law (Amendment) Act of 2013 is a significant advancement in this regard; it not only amends the definition of rape but also specifies penalties for voyeurism and stalking, which are both repugnant criminal activities. However, the study unveiled that merely implementing suitable and effective legislation is inadequate in safeguarding women's right to live with dignity. Things will remain the same until and unless individuals are willing to put forth the effort to bring about change.

To effectively address crimes involving women, the perception of society must be fundamentally transformed. Despite the fact that strict law instills dread among the populace, it is unable to completely deter such behavior due to the deeply ingrained nature of male dominance and female subordination in our socioeconomic and political structure. By

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<sup>11</sup> Act No 5 of 1861

redistributing and equating the power between males and females, socialization of children on the basis of equality of sexes can modify the unequal power relations between the sexes. Social media can have a substantial impact on informing the general public about issues such as sexual violence, misogyny, and patriarchy, as well as on promoting progressive societal change.

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