



## A critical analysis: The criminal law amendment act, 2013

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### Abstract

This paper will critically analyze the criminal law amendment Act 2013 which has been brought to the law after a horrific incident that shaken the soul of the nation.

The vicious Delhi gang rape shook the conscience of the whole nation which lead the nation to demand change in the existing law of sexual offense. Keeping in mind the rate of sexual offence against women this amendment was need of time in order to provide safety to women. But parliament missed to bring some genuine change which was much needed.

According to NCRB data, there is a 7% rise in crime against women i.e., 62.4% per lakh in 2019 in comparison with 58.8% in 2018<sup>[1]</sup>.

However, it one of the most progressive changes that have been brought to criminal law. This paper will be discussing the amendment made to sexual offences in the Indian penal code. In this paper the insertion of new provisions and the amendment to the existing provisions will be discussed in detail.

**Keywords:** critical analysis, gang rape, missed opportunity, gender-neutral, crime rate

### Introduction

The Criminal Law (Amendment) Bill, 2013 is also called the Anti-Rape Bill. The Act came into force on 3rd February 2013 after the gang rape took place in New Delhi on 16th December 2012. Taking place of such an Incident indicated that there is a need to reform laws related to sexual offences against women.

The Act includes the insertion of new provisions and the amendment to the existing provisions brought to IPC in order to provide a sense of safety to women of India.

#### 1. Criminal Law (Amendment) Act, 2013

The Criminal Law Amendment, Act, 2013 was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013. On 2 April 2013, the president of India gave his assent to this bill and it shall be deemed to have come into force on the 3rd day of February 2013.

#### 2. Reasons for the Enactment

The gang rape that led to the death of the victim was the reason behind the enactment of this act. The act is one of the important changes that has been brought to the law.

#### The Fact of Nirbahaya Case/2012 Delhi Gang Rape Case

A country-shaking incident, gang rape happened in Delhi on the dark and cold night of 16th December 2012. The victim was traveling in a private bus with her friend. And there were 6 more people on the bus, including the bus driver who raped the woman in the moving bus and beaten and tortured her and her friend. After that, the rapist threw both of the victims out of the bus to die who was partially clothed.

After an investigation by the Medical investigator, it was cleared that the victim was inserted an iron rod inside her private parts and it caused huge damage and infection to her internal organ.

#### Trial, Verdict, and conviction

After the death of the victim, the whole nation was demanding speedy trial and justice for the sake of the dead

victim.

After getting arrested within one day of the commission of the crime, five accused were tried in special fast-tracked court by an additional session judge while the sixth accused was tried by the Juvenile Justice Board because of being juvenile at the time of the commission of offence.

One of the accused named Ram Singh committed suicide in lock up during the trial. The other accused were charged under 13 section of IPC, some of them are: murder (section 302), attempt to murder (section 307) gang rape (section 376 (2)(g)), unnatural offence (section 377), 34 (common intention), destruction of evidence (section 201) etc.

The accused who was juvenile at the time of the crime was punished for rape and murder under the juvenile justice act and given imprisonment of three years with a reform facility.

The other 4 accused were punished with the death penalty who was hanged in Tihar jail in the early morning of 20th March 2020.

#### The justice Verma committee<sup>[2]</sup>

A committee of three members headed by justice J S Verma was constituted to recommend amendments to criminal law to bring effective change to law related to sexual offences against women and enhance punishment for accused of sexual offenses.

The key objective of the committee was to recommend possible amendments for quicker trials and harsher punishment for a vicious offense against women. It recommends the amendment related to provisions of rape, marital rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, etc.

The report of recommendation consisted of 630 pages which were framed in 29 days and it was appreciated, applauds, and welcomed by National and international human rights organizations, citizens and political parties. But the parliament overlooked the progressive recommendation of

the committee and this failure of parliament is the reason behind the criticism of the criminal law amendment act, 2013.

### **Recommendation of the committee <sup>[3]</sup>**

#### **▪ In case of rape**

The committee had not recommended the death penalty for rapists. It recommended rigorous imprisonment for seven years that may extend to life.

It suggested that rape causing death or a 'persistent vegetative state' should be punishable with rigorous imprisonment of 20 years that may extend to life, for gang rape it suggested rigorous imprisonment of 20 years that may extend to life and gang rape causing death should be punished with life imprisonment.

#### **▪ In case of other sexual offenses**

Keeping in mind all the offenses against women, the committee recommended punishment with imprisonment up to seven years for voyeurism, Imprisonment up to three years for stalking, imprisonment up to seven years for acid attack, rigorous imprisonment of seven years that may extend to 10 years for trafficking.

#### **▪ In case of Registering complaints and medical examination**

Committee recommended that registry of every single FIR of rape must be done by the police and if any civil society discovers the taking place of any rape case then he must report the case of rape to the nearest police station. If any officer denies registering an FIR of rape or attempts to terminate its investigation, shall be punished as prescribed in law.

#### **▪ Bill of rights of women**

Committee recommended that A separate bill for the right of women should be framed that provides a life with dignity and security to women.

### **4. Amendment made to the existing Provisions of the Indian Penal Code, 1860**

The Criminal Law (Amendment) Act, 2013, amended as well as inserted new sections in the IPC regarding various sexual offences like acid attacks, sexual harassment, voyeurism, stalking has been inserted into the Indian Penal Code.

### **Changes to the Indian penal code, 1860 (The criminal law amendment ACT 2013) <sup>[4]</sup>**

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

**Section 166A:** Section 166 A was inserted by this act so as to punish the public servants who disobey 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 the 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 an 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 of 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 woman 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 woman her emails or internet or any other electronic means of communication or tries to communicate with her despite a clear indication of disinterest. 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 a person and to provide for punishments for specific offence of trafficking like trafficking of a minor, more than one person and repeated trafficking. Section 370 A provides for punishment of exploitation of a 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 the 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 the husband with his wife who is not under 18 years of age.

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

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

**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 the husband with his wife during separation or against her will or when she is under sixteen years of age to be punishable with an 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 the 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.

**Conclusion**

The criminal law amendment act 2013, is one of the progressive steps that has been taken by the Indian government to control or reduce violence against women.

Despite having some flaws, it is one of the major amendments that not only broaden the ambit of rape but also inserted certain offenses in the ambit of sexual offenses, acid attack is one of them. The 2013 Act also expanded the ambit of rape by including oral sex and the insertion of any object or any other body part into a woman's vagina, urethra, or anus.

The 2013 Act is an appreciable step taken to control or reduce the rate of crime against women. But yet there is some major amendment that needs to be brought under the ambit of sexual offense in order to provide a life with dignity to the women of India. And keeping in mind the rate of sexual offenses irrespective of gender, the sexual offence must be made a gender-neutral offence in India.

After introducing the act, the most essential thing which is required is proper implementation of this act.

**References**

1. Data provided by NCRB in 2020.
2. The justice Verma committee report, 2013.
3. Recommendation of the committee by the report in, 2013.
4. Changes in the IPC, 1860 through (The Criminal Law Amendment ACT 2013.