

The tiger awakens justice verma committee law general essay

[Law](#)



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Abstract

In a span of three months, the Indian Penal Code has been in scrutiny through three different legislative papers first being the Criminal Amendment Bill, 2012, second being the Report of the Committee on Amendments to Criminal Law (Justice Verma Committee Report) and lastly the Criminal Law (Amendment) Ordinance, 2013 promulgated on 3rd February 2013. This series of legislative changes proposed in the Penal Code has left a food for thought as to the current state of affair. The following legislative comment shall bring out the point of differences between all three documents with regard to the Indian Penal Code alone, and the pros and cons thereof. An emphasis shall be laid with regard to " sexual assault" and " sexual harassment" and with a view of gender neutrality in offences in the Penal Code.

Introduction

A Hundred fifty year old legislation stands the test of time again. The most awaited amendment to laws relating to sexual offences to the Indian Penal Code has finally made its appearance through an Ordinance and a proposed Bill, but to one's disappointment the hurried drafting has again left some loose ends and many baffled for deviance from the Justice Verma Committee Report (hereinafter referred as " Committee Report"). The Criminal (Amendment) Ordinance, 2013 (hereinafter referred as " Ordinance") and the Criminal Amendment Bill, 2012 (hereinafter referred as " Bill") have both address the recommendations of the Committee Report at different levels, with some commonalities and disparities. These pieces of legislative works,

which have come a month apart have, has managed to silence its worst critics vis-à-vis gender neutrality regarding sexual offence. Even though the comprehensive Committee Reports struck at the very root of patriarchy, the Bill has failed to address specific offences such as voyeurism, disrobing of woman, stalking, etc., while the same were adopted by the Ordinance promulgated and which the Bill has failed to address. All the proposed changes are majorly focused on two offences categorically - offences against women and grievous hurt due to use of acid. One may argue Criminal Jurisprudence to amend in India is dependent on wake up call, that is, a series of sensationalized rape cases, and multiple reminders from the Supreme Court, before the Parliament acts upon it. This form of jurisprudence can be distinctly indentified in case of Rape Laws in India where the series started with Mathura Rape case[1], where the amendment of 1983 had been introduced, wherein custodial rape was recognized as a specific offence under Section 376A to 376D. The subsequent proposition for change was through the 172nd Law Commission Report was after the case of Sakshi v. Union of India[2]wherein under the definition penetration was proposed to be widened beyond the " biblical" form of penetration. Now, the Parliament has amended the laws relating to sexual offence, after the public outcry after the Delhi Gang Rape Case[3]and grievous hurt after Acid Burns Victim Case[4]to bring about amendments in the laws through the Bill. A comprehensive amendment was recommended by the Justice Verma Committee Report where the procedure like - sexual assault, rape, stalking, voyeurism, disrobing of women, trafficking and acid attack. The mere listing of more sexual offence will create neither deterrence nor convictions, unless

the Gordian knot of impunity and bias is slashed. The retort between the Parliament and the amendment jurisprudence to the Criminal law has lead to the following changes in law in the introduced ill and ordinance, which this comment shall be dealing with.

Rape And Sexual Assault

The usage of the term 'sexual assault' in lieu of 'rape' under Section 375 of Indian Penal Code should have covered a wider gamut of offences including both penetrative and non-penetrative sexual assaults, while the difference in gravity of the word "rape" and "sexual assault" was both the Ordinance and the Bill have failed to appreciated the Committee Report's concerns, and the ordinance more so it being a later law. On the other hand the term "rape" has been replace by "Sexual Assault" in both the Bill and Ordinance to bring about a gender neutral provision have a few points of difference with regard to the consent, punishment with regard to offence committed by armed personnel, sexual assault resulting to death or vegetated state. Sexual Assault has been defines as "...penetrates his penis, to any extent, into the vagina, mouth urethra or anus of another person or makes the person to do so with him or any other person..."[5]. The words "a woman" has been substituted by "any person" extends the protection to all women, children, hermaphrodites, from any form or sexual assault. The aspect of consent was also been defined under the Ordinance, which in not present in the Bill. "Consent" defined specifically under the Ordinance, wherein in it states - "consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act Provided that, a person who does

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not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity"[6]. This view of consent has taken in the Committee Report but not been seen in the Bill. The fact that consent is the drawing line between a sexual assault and consensual sexual relationship, the legislature must appreciate the need of defining certain parameters what shall not amount to implied consent. The codification of the same would give a level of certainty and uniformity for the courts to consider vis-à-vis " consent", even if the ordinance lapses or the bill remains pending, the courts can always fall back of this definition of consent in the Committee Report for future references in subsequent cases. The issue of sexual assault by an armed personnel, paramilitary or police personnel has been dealt as a separate offence altogether. The issue of " command responsibility", this would mean that when armed forces or police personnel commit a crime against women, then any public servant in a position of authority over them who fails to exercise his/her authority in the situation would be held liable[7], is introduced in the Committee Report and was accepted in the Ordinance. This is a leap in this direction unlike in the Bill where one can only seek remedy in form of assault by public servant. The law has been proposed to be more stringent with regard to the punishment for sexual assault. The Ordinance recognizes a separate punishment for Sexual assault resulting in death or persistent vegetative state of the victim that of imprisonment for a minimum of 20 years up which may extend to life imprisonment or with death. Even though " death penalty" was not recommended in the Committee Report, but one cannot overlook the fact that a sexual assault resulting in death or a vegetated state shall

amount to rarest of rare case. Instead of a separate offence of murder to be tried, one can be prosecuted under a single offence of Rape resulting into death or vegetated state. The provision is also peculiar with regard to repeated offender serving a life imprisonment shall be awarded death penalty, as the only punishment. The Bill and Ordinance have both failed to recognize the need of criminalizing marital rape irrespective of the age of the wife. The provision itself stands in contradiction wherein under an unmarried woman can consent to any sexual relation after the age of 18 years, while a man can rape his wife above the age of 16 years. The fear of misuse of such provision subjects a woman to assault from her husband, is a hindsight bias on the part of the legislature even after the repeated recommendations by 172nd Law Commission Report and the Justice Verma Committee Report.

Sexual Harassment

Sexual Harassment has been a major issue since Vishaka Case[8]wherein under the Supreme Court due to the grey areas in law issued guidelines regarding the Sexual Harassment at Workplace. However, one cannot overlook the fact that eve teasing is also a form of sexual harassment, the arrests for molestation and sexual harassment has drastically increased in the last decade from 23, 075 in 1992 to 32, 581 in 2011[9]. Sexual Harassment under the Ordinance reads as follows -Section 354A (1) The following acts shall constitute the offence of sexual assault:- (a) Intentional touching of another person when such act of touching is of a sexual nature and is without the recipient's consent (b) Using words, acts or gestures towards or in the presence of another person which create an unwelcome

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threat of a sexual nature or result in an unwelcome advance.[10]This construction of law recognizes mere contact or gesture, which outrages the modesty of a woman or any person, itself, amounts to crime unlike the proposed amendment under the Bill, merely enhanced punishment for the crime of outraging the modesty of a woman, leaving the courts to interpret what shall constitute the offence. Section 354A of the Ordinance has left a window open for gender neutrality. It is needless to say that the ambit of Sexual Harassment needs to be recognized in lieu of the both harassment at workplace as well as in general parlance which shall extend to children, "eunuch" or "hermaphrodite"; even though the provision has been brought in the light of "outraging the modesty of women".

Voyeurism and Stalking

A notable feature of the Ordinance is that it codifies many new sexual offences. Some crimes like stalking (Section 354D, Ordinance), stripping, disrobing and parading woman naked (Section 354B, Ordinance), voyeurism (Section 354C, Ordinance), find mention for the first time in the penal code. But the proposed Bill is silent upon these burning issues. With regard to these offences it curtailed down its legal circumference and did not include any specific provision for the same. The offences like Voyeurism and Stalking find place even in the JVC Recommendations also, but it is not being advocated in the pending Bill. As per the Committee Report Recommendation, there is an attraction of the penal provisions for the acts of capturing images of, or watching, a woman enjoying in sexual acts or when her genitals are exposed with imprisonment for 1 to 3 years and fine (Voyeurism). We can observe the supportive statement made by the

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Honorable Court by quoting: " If any act personates the mind as impure or lustful might attract punishment, if proven through circumstantial evidence or resulted through indecent association"[11]The proposed Bill is alike a toothless tiger who puts the issue of Stalking out of sight. Even the JVC Recommendations and the Ordinance make remarks to penalize the person who follow, contact, monitor emails or spies upon a person to foster personal interaction repeatedly, despite a clear indication of disinterest by the victim; the Bill does not propose for any statutory protection for the same.. This underlying provision was reiterated earlier by averting: " Evidence indicates a perverted bent of mind, that the culprit invariably lies low and awaits a suitable opportunity when they can target the victim."[12]Indian society today is no stranger to stalking, in both the physical parlance as well as in the cyber world. This provision shall act as a stepping stone towards a deterrence of such criminal activities.

Acid Attack

The Bill, Ordinance and the Committee Report have introduced a specific form of Grievous Hurt, that is, voluntarily causing grievous hurt by use of acid. The provision reads as follows - " Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt."[13]The Ordinance proposes a minimum punishment of ten years, and a maximum of life and a fine of a maximum of Rupees Ten Lakhs may be imposed, which shall be given to the victim. It is also proposed that

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the convicted person be liable to pay compensation to the victim, which should be sufficient to at least cover the medical expenses of the victim if not the rehabilitation of the same. This approach of the legislature deals with the growing number of acid attacks in India, as a specific offence, which may act as a deterrence.

Trafficking Of Person

Section 370 of Indian Penal Code has been substituted through the Ordinance where the trafficking of persons being men, women and children, that is, minor, has been introduced and the word "trafficking" has been defined at the widest amplitude, while the current provision in the Penal Code merely criminalizes trafficking for the purpose of prostitution only. The substituted provision defines "trafficking" a form of "exploitation" which includes - "prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs"[14]. This wide ambit not only deals with prostitution but also issues of bonded labour, organ trafficking, forced begging, etc. The law is also stringent on the repeated offenders and especially with the individuals charged with trafficking of minors; the provision reads as follows - "Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life"[15]. The law is more stringent for the public servant indulged in trafficking of a minor punishment is imprisonment for life, which shall mean the remainder of that person's natural life.

Conclusion

The Ordinance is a welcomed change in the criminal law of India, even though one has reservation regarding death penalty as a punishment for sexual offences. Some may recommend for the recognition of marital rape as a part of sexual assault, but nonetheless the amendment is a needed one, as it shall extend protection to children, men and hermaphrodites from sexual exploitation. With the growing numbers of cases of violence against women, stagnancy in the law shall act as a catalyst for the perpetrator, even though these changes are baby step toward the ultimate goal, nonetheless are very need step to be taken by the legislature.