

DE JURE NEXUS LAW JOURNAL

Author:

Ananya

Symbiosis Law School, Noida

2nd Year, BA; LL.B.**BRIEF ANALYSIS OF CRIMINAL AMENDMENT ACT, 2013 AND ITS
EFFECT ON THE INDIAN CRIMINAL SYSTEM AT PRESENT****Abstract:**

This article brings forth the significant modifications to the sections of the Indian Penal Code dealing with sexual offences. The current effort goes over the insertion of new provisions as well as the amendment of existing sections in great detail. The Criminal Law (Amendment) Bill, 2013, often known as the Anti-Rape Bill, has been signed into law.

Introduction:

The Act went into effect on the 3rd of February, 2013, in response to the national indignation over the deadly gang rape that occurred in New Delhi on the night of December 16, 2012 popularly known as the Nirbhaya Rape Case.¹ The Act recognizes the wide spectrum of sexual crimes to which women may be subjected, as well as the various forms of gender discrimination. It also recognizes that minor breaches of bodily integrity frequently evolve into more serious offences. It aims to regard situations as the "rarest of the rare," with judges having the authority to impose capital punishment if they so choose. The Act defines and broadens the definition of sexual assault or rape committed as a result of a breach of trust. According to the Act, police officers would be fined if they fail to file FIRs, making it simpler for rape victims to submit their cases. The Act made significant changes to the Indian Penal Code, including criminalizing sexual voyeurism and stalking and amending legal measures to preserve individuals' privacy, such as ending the practice of examining the sexual history of a sexual

¹Available at: <https://indiankanoon.org/doc/68696327/> (last visited on 24th July 2021 at 11:32am)

assault victim for evidence. With dangers to individual privacy on the rise in India, it's past time for the criminal law to be expanded to include crimes that breach physical privacy.

The Act has also been criticized for failing to implement the recommendations of the Verma Committee, which was set up to examine and recommend improvements to the current punitive provisions.

The Criminal Law (Amendment) Act, 2013, approved by the Lok Sabha on March 19, 2013, and the Rajya Sabha on March 21, 2013, amends the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973, to address laws relating to sexual offences. The Bill was signed by the President on April 2, 2013, and it was deemed to take effect on February 3, 2013. It was originally an Ordinance signed by India's President, Pranab Mukherjee, on 3 February 2013, in response to the 2012 Delhi gang rape case protests.

This incident received widespread international attention and was condemned by the United Nations Entity for Gender Equality and Women. The public, as well as different human rights organizations and women's organizations, had been calling for changes to the existing law dealing to sexual offences. For committed such a horrific crime, the accused deserved a harsher sentence.

Reason behind the amendment

The nation-wide shocking Nirbhaya rape case was an alarming sign to amend the existing laws with respect to sexual offences in India.

A 23-year-old female physiotherapy intern was attacked and gang raped in a private bus in which she was travelling with a male acquaintance on December 16, 2012 in Munirka, a neighborhood located in the southern portion of New Delhi. The victim died as a result of her injuries. The episode received enormous national and international attention, as well as strong condemnation, both in India and beyond. Following that, public protests in New Delhi against the Indian government and the Delhi government for failing to provide proper security for women erupted, with thousands of protestors clashing with security personnel.

After the group rape event, there were widespread demonstrations. There were protest movements both at home and abroad, all calling for tighter laws to prevent violence against women. Because of the awful nature of the crime committed, this occurrence gained a lot of attention. As a result of the statewide demonstrations, the Government of India established the Justice Verma Committee to recommend modifications to the existing legislation.

Amendment

The Criminal Law (Amendment) Act, 2013, which took effect on February 3, 2013, updated and added new provisions to the IPC relating to numerous sexual offences. New offences such as acid attack, sexual harassment, voyeurism, and stalking have been included into the Indian Penal Code as a result of the new Act.

Existing provision:

There were provisions in the IPC that dealt with sexual harassment prior to the Act's passage, but no such provision that clearly lay out the penalties for sexually harassing someone. The provisions were as follows:

“Section 294²: Obscene acts and songs, to the annoyance of others like:

a) does any obscene act in any public place or

b) sings, recites or utters any obscene song, ballad or words in or near any public place.

Punishment: Imprisonment for a term up to 3 months or fine, or both.”

“Section 354³: Assault or use of criminal force on a woman with intent to outrage her modesty.

Punishment: 2 years imprisonment or fine, or both.”

“Section 376⁴: Rape

Punishment: Imprisonment for life or 10 years and fine”

“Section 509⁵: Uttering any word or making any gesture intended to insult the modesty of a woman.

Punishment: Imprisonment for 1 year, or fine, or both. (Cognisable and bailable offense)”

² Available at: <https://indiankanoon.org/doc/594493/> (last visited on 24th July 2021 at 5:06pm)

³ Available at: <https://indiankanoon.org/doc/203036/> (last visited on 24th July 2021 at 5:10pm)

⁴ Available at: <https://indiankanoon.org/doc/1279834/> (last visited on 24th July 2021 at 5:31pm)

⁵ Available at:

<https://indiankanoon.org/doc/68146/#:~:text=%E2%80%94%94Whoever%2C%20intending%20to%20insult%20the,shall%20be%20punished%20with%20simple> (last visited on 24th July 2021 at 5:44pm)

Provision post amendment:

“Section 354A⁶ mentions that sexual harassment has been made a gender-neutral offence, whereas previously, a man who makes unwanted sexual advances, forcefully shows pornography, or demands/requests sexual favours from a woman committed the offence of sexual harassment simpliciter, which is punishable by up to three years in prison. Making sexually tinged remarks is also considered sexual harassment, which is punishable by up to a year in prison.”

“Section 354B⁷ talks about assault or use of criminal force on a woman with the intent to disrobe.”

Existing provision:

There was no specific provision for this offence in the law. Section 354 was used to deal with the act. Under the IPC, insulting a woman's modesty was punishable by a maximum of two years in prison and a fine.

Provisions post amendment:

“Section 354B says that if a male assaults or uses unlawful force against a woman, or aids or abets such an act with the goal of disrobing or compelling her to remain naked in a public place, he commits an offence under section 354B, which carries a sentence of three to seven years in prison.”

“This section deals with a fairly specific offence, and it complements and adds to the clause dealing with outraging a woman's modesty. This is a good provision, given the numerous examples of women being stripped in public as a kind of punishment, mostly in impoverished communities, as reported in the news.”

“Section 354C⁸ says that the act of observing someone participate in private actions is known as voyeurism. When a male observes a woman engaging in private acts when she is unaware that she is being observed, he has committed the crime of voyeurism.”

Existing provision:

⁶Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 24th July 2021 at 10:12pm)

⁷Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 24th July 2021 at 10:15pm)

⁸Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 24th July 2021 at 11pm)

Under the IPC, there was no specific offence. However, under the Information Technology Act of 2000, both men and women were protected, and the act might result in a sentence of up to three years in prison and/or a fine of up to Rs. 2 lakhs.

Provisions post amendment:

“Section 354C mentions that any man who views or takes the image of a woman engaged in a private act in circumstances where she would normally expect not to be viewed either by the perpetrator or by any other person at the perpetrator's command, and then disseminates such image is guilty. Such a person is liable under Section 354C. A first conviction carries a sentence of imprisonment of not less than one year, but not more than three years, and a fine, while a second or subsequent conviction carries a sentence of imprisonment of either description for a term of not less than three years, but not more than seven years, and a fine.”

“Section 345D⁹ talks about stalking. It entails following someone and trying or attempting to make contact for personal interaction despite the other person's obvious lack of interest. Stalking can be done in person or through the use of electronic media.”

LAW JOURNAL

Existing Provisions

No specific offence under IPC.

Provisions post amendment:

“Section 354D¹⁰ says mentions that under this new section, stalking has been designated as a particular offence. If a male stalks a woman, he could face a sentence of up to three years in jail for the first offence and up to five years for consecutive offences. However, there are certain exceptions, such as if a person can prove that the actions were taken in accordance with the law, were reasonable, or were necessary to avoid a crime.”

“According to Section 354D, the crime of stalking was a gender-neutral offence, meaning that it may be committed by either a man or a woman. The Amendment Act of 2013 altered the word

⁹ Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 25th July 2021 at 8:02am)

¹⁰ Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 25th July 2021 at 8:16am)

"Whosoever" to "Any Man," making stalking a gender-specific offence. Section 354D of the Ordinance of 2013 was heavily influenced by Section 2A of the Protection from Harassment Act, 1997, which was approved by British Parliament on November 25, 2012. "

"The crime is confined by the Act to the actual act of following or contacting a person if there is a clear evidence of indifference, or to monitoring a woman's use of the internet, email, or any other kind of electronic communication. "

Section 375¹¹ and 376¹² talks about Rape:

In the case of Rafiq v. State of U.P.¹³, Justice Krishna Iyer said, *"A murderer destroys the body, but a rapist kills the spirit."* The Amendment Act of 2013 broadened the definition of rape by designating some non-penetrative acts as acts amounting to rape. The Ordinance (Amendment) Act, 2013, which had a broader scope, was abolished by the Amendment Act, 2013, raising major concerns about the lacunas or gaps that the courts may face in the future.

Existing provisions:

The IPC covers rape in sections 375, 376, and 376 A-D. Medical examination, on the other hand, was not an exemption under the previous rule. Only penile-vaginal intercourse was interpreted as rape under the IPC.

Provisions post amendment:

"Provision 375¹⁴ – Under the new section, a man is considered to have committed rape if:

- *Manipulation of any bodily part to produce penetration of the vagina, urethra, mouth, anus, or any other body part of such a person, or compelling such a person to do so with him or another person.*
- *Application of the mouth to another person's penis, vagina, anus, or urethra, or causing another person to do so with him or another person*

¹¹ Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 25th July 2021 at 8:36am)

¹² Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 25th July 2021 at 8:54am)

¹³ Available at: <https://indiankanoon.org/doc/915673/> (last visited on 25th July 2021 at 9:34am)

¹⁴ Available at: <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 25th July 2021 at 9:58am)

- *Penis penetration into a person's vagina, urethra, mouth, or anus, or inducing another person to do so with him or another person*
- *Insertion of any item or bodily part, other than a penis, into a person's vagina, urethra, mouth, or anus, or causing another person to do so with him or her.*
- *Touching the person's vagina, penis, anus, or breast, or forcing the person to touch the person's vagina, penis, anus, or breast, or forcing the person to touch the person's vagina, penis, anus, or breast.”*



The 2013 Act broadens the definition of rape to include oral sex and the insertion of an instrument or other bodily part into a woman's vagina, urethra, or anus.

Rape carries a minimum sentence of seven years in jail and a maximum sentence of life in prison. If a police officer, medical officer, army member, jail officer, public official, or public worker commits rape, he faces a minimum sentence of 10 years in prison.

If the victim dies or goes into a vegetative condition as a result of the rape, the victim is sentenced to life in prison, with the possibility of death. Under the newly modified provisions, gang rape now carries a minimum sentence of 20 years in prison.

The new amendment defines consent as an unambiguous agreement to engage in a specific sexual act, while also emphasising that the lack of opposition does not constitute permission. Non-consent is a crucial component in the act of rape. As a result, the concept of consent is crucial to the outcome of a rape trial, and it has been used to denigrate and discredit rape victims.

Conclusion:

The Criminal Law (Amendment) Act, 2013, is widely regarded as one of the most significant moves made by the Indian government to address violence against women. The Act's major modifications to the Indian Penal Code not only broaden the scope of some offences, but also recognise new offences such as acid assaults that previously lacked a particular provision and description in the Code.

The concept of rape has been expanded to encompass the insertion of an instrument or any other bodily part into a woman's vagina, urethra, or anus, as well as oral sex. This satisfies a long-standing demand from women's rights organisations. In the Delhi gang-rape case, when an iron rod was put into the young woman's body, the subject of rape by various ways was emphasised.

Despite its shortcomings, the Act offers a progressive perspective on how to make a difference and prevent violence against women. However, the Act is insufficient in and of itself to provide restitution and seek justice for women who have been victims of abuse. For this, the Indian government must invest massively in the necessary infrastructure to combat crime, as well as meaningful reforms in the judiciary (such as building fast-track women's courts, involving more women lawyers, and allowing women doctors to examine victims) and modernization of the police system across the country.

The 2013 Act should be seen as a stopgap measure in India's continuous fight against sexual and gender-based violence. The most daunting possibility is a shift in existing attitudes about rape and sexual assaults in a population allegedly beset by moral "confusion," as economic modernity requires far-reaching changes in gender roles while social attitudes remain rooted in moral conservatism and sexism.

There are currently a number of regulations in place that provide deterrent penalties for crimes against women. What is necessary is specific legislation, which was largely achieved with the passage of the Criminal Law (Amendment) Act, 2013; to instil sensitivity, awareness, and, more importantly, the attitude among police and executives to enforce the laws in spirit rather than text. Only then deterrent punishment can be awarded in crimes against women.