

## **REVISITING THE LAW REGARDING PROHIBITION OF VIOLENCE AGAINST WOMEN IN INDIA**

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### **ABSTRACT**

The death of an unnamed young woman “*Nirbhaya*”, a female physiotherapy intern ,following a brutal gang rape in the last month of 2012 in Delhi, India, prompted the world to recognize the degree of violence against women and it has been noticed that sexual harassment is not only an Indian problem but it’s a global one. This article looks back into the law existing in India regarding prohibition of violence against women in India. Brought against the backdrop of *Nirbhaya’s* case, the new ordinance, 2013 changes various clauses in existing criminal law by amending Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Evidence Act. There are already ample laws prescribing deterrent punishment for offences against women. What is actually required is an ordinance, of course if it can be made, to infuse sensitivity, understanding and more significantly, the mindset among police, executives to implement the laws more in spirit than in letter. Only then deterrent punishment can be awarded in crimes against women.

### **INTRODUCTION**

The death of an unnamed young woman “*Nirbhaya*” , a female physiotherapy intern , following a brutal gang rape in last month of 2012 in Delhi, India, prompted the world to recognize the degree of violence against women and it has been noticed that sexual harassment is not only an Indian problem but it’s a global one. *Nirbhaya* was brutally gang-raped and battered before being thrown out of a moving bus in Delhi, India. Her death sparked unprecedented anger among people who protested vehemently to convey a

loud “enough is enough” message. As a result of this, Indian democracy and governance are being tested. It took a strong protest to remind us that women in India are in grave danger domestically, at the workplace and on the streets. This is not a female problem of India coming to terms with its masculinity.

Women throughout the world have been awarded lower status than men. In the last couple of decades, violence against women, (gender-based violence) has manifested as the most burning and obstinate social problem across regional, social and cultural boundaries. Violence against women is construed as a grave human rights violation and a pervasive public health problem that concerns all sectors of society. An overwhelming majority of judgements from across the world gives a singular message- ‘rapists deserve no sympathy’. Seldom in legislative history has a law been amended so quickly, bowing to public sentiment, as was done by the Govt. of India through an Ordinance on anti-rape laws. This article looks back into the law existing in India regarding prohibition of violence against women.

### **Violence against Women in India– facts**

The statistics are alarming for under reporting. Over the last five years, 1,09,979 rapes were reported. The national conviction rate was 26 per cent. In some north-east states with close communities conviction was over 80 per cent. From 2002-2012, Delhi reported 5337 rapes, 5245 (98 per cent) completed trials and 1385 convicted (26 per cent).

According to the NCRB statistics 2010, there has been a 4.8% increase in crime against women as compared to 2009. 22,172 cases of rape were recorded in 2010. 8.9% of the total victims of Rape were girls under 14 years of age, while 16.1% were teenaged girls (14-18 years) and 57.4% were women in the age-group 18-30 years. 94,041 cases have been reported under Section 498A IPC in 2010, showing an increase of 5% over 2009. According to the UNDP Human Development Report 2011, India ranks 134 in the Human Development Index. India ranks 129 out of 187 countries in the Gender

Inequality Index. Gender Inequality Index is a composite measure reflecting inequality in achievements between women and men in three dimensions: reproductive health (Maternal Mortality Ratio & Adolescent Fertility Rate), empowerment (Female and male population with at least secondary education & Female and male shares of parliamentary seats) and the labor market (Female and male labor force participation rates).

### **Constitutional Guarantees**

The Constitution of India under Article 14, guarantees “equality before the law” and “equal protection of the law”. It empowers the State to take affirmative measure for women under Article 15 (3). All gender specific laws find their genesis under this Clause. Article 21 guarantees the right to life to every citizen, which includes a life with dignity and without violence. Directive Principles of State Policy, under Article 39 enjoins the State to provide adequate means of livelihood for men and women, equal pay for equal work for both men and women, and ensure just and humane conditions of work and maternity relief for women.

### **Laws Relating To Violence Against Women (VAW):**

Laws relating to Violence against Women can be broadly classified into two categories:

- 1) Crimes under IPC – Rape, Kidnapping and abduction, Dowry Deaths, Torture-both mental and physical, Molestation, Sexual Harassment etc.
- 2) Gender Specific Laws – Pre-conception & Prenatal Diagnostic Techniques Act, 1994, Medical Termination of Pregnancy Act, 1971, Dowry Prohibition Act, 1961, Protection of Women from Domestic Violence Act, 2005.

### **Rape Laws in India**

Section 375, 376, 376 A-D of IPC deal with rape. Section 375 provides that a man is said to commit rape if the woman is less than 16 years of age, with or without her consent. Marital Rape is an exception under the IPC if the wife is under 15 years of age.

### **Amendments to Rape Laws**

The most important change that has been made is the change in definition of rape under IPC. The word *rape* has been replaced with *sexual assault* in Section 375, and has added penetrations other than penile penetration an offence. The definition is broadly worded and gender neutral in some aspect, with acts like penetration of penis, or any object or any part of body to any extent, into the vagina, mouth, urethra or anus of another person or making another person do so, apply of mouth or touching private parts constitutes the offence of sexual assault. The section has also clarified that penetration means "penetration to any extent", and lack of physical resistance is immaterial for constituting an offence. Except in certain aggravated situation the punishment will be imprisonment not less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine. A new section, 376A has been added which states that if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death." In case of "gang rape", persons involved regardless of their gender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

Certain changes has been introduced in the CrPC and Evidence Act, like the recording of statement of the victim, more friendly and easy, character of the victim is irrelevant, presumption of no consent where sexual intercourse is proved and the victim states in the court that there has been no consent, etc.

### **Sexual violence in marriage**

Rape is an offence, which is committed on the absence of consent of the woman. It is imperative to realize that the absence of consent does not have to be only in the form of the word. It should be assumed from the perspective of the situation. Within a marriage, if a woman gives consent to sexual intercourse because of threat of injury to children or herself, depriving the woman of the right to stay in the house or receive maintenance, it is not valid consent. It is still rape. The offence of marital rape has not been sufficiently accounted for in the law. The law does not punish rape within marriage if the woman is above fifteen years of age. Forced sexual intercourse is an offence only when the woman is living separately from her husband under judicial separation/custom. It must also be remembered that situations of marital rape occur within the confines of the home, and therefore there are often no witnesses to the crime. Till now the concept of Marital rape has not been recognized. We have been lobbying for a law in order to make it an offence but for this we firstly need to collect statistics of rape within marriage.

With President's nod, the Criminal Law (Amendment) Ordinance, 2013, came into law, but women's right activists expressed unhappiness over the provisions of sexual violence in marriage. They were upset over the government's refusal to recognize marital rape as an offence.

**A Comparison of Several Laws in Sexual Violence in Marriage**

Indian Penal Code,1860	Criminal Law Amendment Bill,2012	Justice Verma Committee Recommendation	Criminal Law(Amendment) Ordinance,2013
Punishment for marital sex when wife is between 12-15 yrs of age: Imprisonment upto 2 yrs or fine or both. Age of consent is 16, however marital sex when wife is between 15yrs and 16 yrs of age is not rape, as per the exception to sec.375.	Punishment for rape of wife who is below 16 yrs of age is given by sec.376(2). Age of consent is 18, however marital sex when wife is between 16yrs and 18 yrs of age is not sexual assault, as per the exception to sec.375.	Recognized marital rape by deleting marital rape exemption. Age of consent is 16, however marital sex with wife of 16-18 yrs is not punishable. Punishment for marital sex when wife is 16 yrs of age or below has been given under sec.376B.	Punishment for marital sex when wife is under 16 yrs is given under sec.376(2). Age of consent is 18, however marital sex when wife is between 16yrs and 18 yrs of age is not sexual assault, as per the exception to sec.375.

**Sources: Criminal Laws Amendment Bill, 2012; Report of the Committee on Amendments to Criminal Laws, 2013; Criminal Laws Amendment Ordinance, 2013; Indian Penal Code, 1860**

The Criminal Law (Amendment) Ordinance, 2013 discriminates against women based on their marital status and denies them equal protection before the law. Under section 375 of the amended Penal Code, wives cannot bring a charge of “sexual assault” against husbands except under extremely narrow grounds: where she is “living separately under a decree of separation or under any custom or usage.” India has ratified treaties and supported declarations that uphold the right to sexual autonomy as a matter of women’s equality, including the right to decide freely whether to

have sex free of coercion, discrimination and violence. It is expected that criminal law must provide protection from marital rape under all circumstances.

Amendment in the Indian Evidence Act section 114(A) providing that in cases of custodial rape, rape of a pregnant woman, and gang rape if the woman states before the court that she did not consent, the court shall presume that she did not consent. The Indian Evidence (Amendment) Act of 2002 deleted section 155(4) of IEA and amended section 146 stating that it is not permissible to put questions in cross examination of the prosecutrix about her general moral character.

In 1980, in India, in the Raffique case, Justice Krishna Iyer said, "When a woman is raped, what is inflicted is not mere physical injury but a deep sense of some deathless shame". He added that the judiciary's response could not be muted to such grave human rights violations. Justice Iyer's view marked a watershed.

In the trial courts, the counsel for the rape accused invariably attempts to question the victim's chastity to brand her a person of easy virtue and tries convincing the judge that the rape was condonable. This did not escape the apex court's scanner.

In 1991, in State of Maharashtra vs Madhukar N Mirdikar, the Supreme Court said: "The unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect herself if there is an attempt to violate her person against her wish. She is equally entitled to protection of law. Therefore, merely because she is of easy virtue, her evidence cannot be thrown out".

The Criminal Procedure Code (Amendment) Act, 2005 introduced section 164(A) CrPC for medical examination of victims of rape, section 53 (A) CrPC for medical examination of accused of rape and section 176(1A)(a)(b)CrPC for investigation by judicial magistrates of custodial rape and deaths. The Code of Criminal Procedure (Amendment) Act, 2008 inserted a section 357(A) CrPC providing for victim compensation scheme.

### **Rape Compensation Scheme**

The Hon'ble Supreme Court in Delhi Domestic Working Women's Forum vs. Union of India and others had directed the NCW to devise a scheme for compensation to rape victims. The Scheme provides financial aid upto a maximum amount of Rs 2 lakhs as well as support services depending upon the needs of the victim. It establishes Criminal Injuries Relief and Rehabilitation Boards at the District, State and National Level. The District Board shall order interim financial assistance of Rs.20, 000/-to the affected woman within fifteen days and not later than three weeks from the date of receipt of the application.

### **Criminal Law Amendment Bill, 2010**

Key provisions of the Bill:

- (i) Amending the title of the section 375 IPC from "Rape" to "Sexual Assault".
- (ii) Scope of section 375 increased from peno-vaginal penetration to penetration of any other kind including penetration by object.
- (iii) Amend Section 376 of the IPC to make it gender neutral and to include prosecution of sexual assault on minor boys.
- (iv) Liability on a person committing sexual assault, holding a position of trust or authority
- (v) Provision for rape of women with mental and/ or physical disability
- (vi) Increases the age of consent to 18 years
- (vii) Marital rape continues to be an exception in the Bill. It also fails to define "consent". It does not cover sexual assault of any other kind like touching, stripping etc. There has been much debate over the increase in the age of consent since the same covers consensual relationship of teenagers of 16 to 18 years and such relationships would be penalized.

However, 172nd Law Commission Report on the Review of Rape Laws, 2000 includes certain recommendations. Most recommendations of the Report have been incorporated



into the Criminal Law Amendment Bill 2010 namely: Changing the focus from rape to `sexual assault; making the law gender neutral.

(i)Suggested for a screen to be put in between the victim and the accused in cases of child sexual abuse and rape to enable the witnesses and victims to give evidence in an uninhibited manner

(Sakshi vs. UOI)

(ii)Inserting Section 376(E) IPC, to include sexual harassment at the workplace

Drawbacks of the Report:

(i)Did not delete the exception of marital rape

(ii)Continues to provide a window for Judges to reduce the sentence in case of convictions below the minimum sentence specified

### **Practice of Dowry**

Legislative Framework:

-The Dowry Prohibition Act, 1961.

-Sec 304B IPC - addresses the particular offence of dowry death;

-Sec 498A IPC - addresses the wide-scale violence against married women for dowry.

Proposed Amendments to The Dowry Prohibition Act 1961 includes the following:

Section 3 of the Act penalizes the acts of both giving and taking dowry. Giving of dowry should not be penalized. Section 3(2)(b) and Proviso to Section 3(2) of Dowry Prohibition Act 1961 which allows giving presents to the bridegroom should be deleted to ensure that nothing is given to the bridegroom under the garb of presents. “Stridhan” to be defined under the Act and proviso for recovery of stridhan to be mentioned in the Act. Under Section 4A of DPA, 1961, banks and other Financial Institutions should be banned from advertising schemes on savings and other investments meant categorically for the purpose of payment of “Dowry”.

### **Honour Killing in India**

If a woman or girl is accused or suspected of engaging in behavior that could taint male and/or family status, she may face brutal revenge from her relatives that often results in violent death.

In cases of “choice marriages” the parents of the girl often allege that she is a minor, and file charges against her husband for kidnapping/abduction, wrongful confinement and often rape.

### **Trafficking**

Section 370 of Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deal with trafficking of person for exploitation. If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to imprisonment for the remainder of that person’s natural life depending on the number or category of persons trafficked. Employment of a trafficked person will attract penal provision as well.

### **Legal Framework on Trafficking**

Provisions under the Indian Penal Code, 1860 (IPC): Kidnapping, Abduction, Procuration of a minor girl, Importation of girl from a foreign country, Selling & Buying minors for prostitution.

Parliament enacted the Suppression of Immoral Traffic Act (“SITA”) in 1956 pursuant to the International Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949. It has been amended twice in 1978 and 1986, renamed Immoral Traffic (Prevention) Act (“ITPA”).

Scheme of existing Act includes:

Prostitution: sexual exploitation or abuse of persons for commercial purposes (Section 2(f))

Brothel: includes any house, room, conveyance or place used for sexual exploitation or abuse for gain of any other person or for mutual gain of two or more prostitutes (Section 2(a)). Sex work *per se* is not an offence under ITPA. Keeping, running, sub-letting & occupying a brothel; Prostitution in or in the vicinity of public places; Seducing or soliciting for prostitution from a street or conspicuous site and living off the earnings of prostitution are offences under the Act.

### **Protection of Children from Sexual Offence Bill, 2011**

#### **Key Provisions**

Any person below the age of 18 years is defined as a “child”. The Bill punishes acts of “sexual harassment”, “sexual assault”, “penetrative sexual assault” and “aggravated penetrative sexual assault”. “Aggravated penetrative sexual assault” is committed when a police officer, a member of the armed forces or a public servant commits penetrative sexual assault on a child. It also covers assault by staff of private hospital and staff of an educational institution if the child is in that institution and where the offender is a relative of the child through blood or adoption or marriage or foster care or is living in the same household. Each district shall designate a Sessions Court to be a Special Court and appoint a Special Public Prosecutor for every Special Court. The trial shall be held in camera and in the presence of the child’s parents or any person trusted by the child.

#### **Dealing with Juveniles in other countries**

##### **France**

Upto 10years of age: No criminal charges.

10 years to 13 years: Educational penalties such as placing in a home or specialized centre.

13 years to 16 years: Minors will get only half the adult sentence.

16 years to 18 years: can be remanded and plea of juvenility can be set aside.

##### **United Kingdom**

In England and Wales, those below 10 years cannot be charged with crime.

10 years to 18 years: Juveniles tried in youth court without jury. For serious crimes like murder or rape, case starts in youth court but will be passed to adults court.

### **United States**

Juveniles can be tried as adults in criminal court by being ‘transferred’ to adult court from juvenile justice system. The age at which this can be done differs from state to state. Once transferred to adult court, juvenile’s defendants lose status as minor.

### **Australia**

Upto 10years: No criminal charges.

10years to 12 years: Can be criminally prosecuted if proved that the child understood that what he has done was wrong. In most states, age of juveniles is 17 years. In Queensland, it is 16 years.

In India, the demand for lowering the age of juveniles or to have a graded approach to crimes by juveniles received an impetus when the Supreme Court agreed to examine whether juveniles should be allowed to escape stringent punishment even when they are convicted of heinous offences like rape and murder.

Taking cognizance of the outrage over the likelihood of ‘Nirbhaya’s most brutal tormentor getting away with a light punishment because of being a juvenile, a bench of justices issued notice to the Centre and said it would examine ‘the correlation between grave offences on the one side and the age of the juveniles on the other’ and ‘ whether there is a need to revisit the age limit for juveniles’.Government of India is now considering to reduce age ceiling to 16 to treat one as juveniles.

### **The Criminal Law (Amendment) Ordinance, 2013**

Criminal Law (Amendment) Ordinance, 2013 is an Ordinance promulgated by the President of India, Pranab Mukherjee, on 3 February 2013 which provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences

In December, 2012, Government of India had introduced the Criminal Law Amendment Bill, 2012 in the Lok Sabha. The Bill sought to redefine the offenses of rape and amend the penal laws in line with recommendations of the Law Commission and the National Commission for Women. Following the Delhi gang rape incidents, the Government constituted a three member Committee headed by former chief justice Verma to suggest amendments to the criminal laws to ensure speedier justice and enhanced punishments in case of extreme sexual assault. Upon the submission of the Verma Committee report, the government notified the Criminal Law Amendment Ordinance on February, 3, 2013.

### **Background behind introducing Criminal Law (Amendment) Ordinance, 2013**

On 16 December 2012 a female physiotherapy intern was beaten and gang raped in Delhi. She died from her injuries thirteen days later, despite receiving treatment in India and Singapore. The incident generated international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of Women, who called on the Government of India and the Government of Delhi "to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure". Public protests took place in Delhi, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country.

On 22 December 2012, a judicial committee headed by J. S. Verma, a former Chief Justice of India, was appointed by the Central government to submit a report, within 30 days, to suggest amendments to criminal law to sternly deal with sexual assault cases. The Committee submitted its report after 29 days on 23 January 2013, after considering 80,000 suggestions received by them during the period from public in general and particularly eminent jurists, legal professionals, NGOs, women's groups and civil society. The report indicated that failures on the part of the Government and Police were the root cause behind crimes against women. Major suggestions of the report included the need to

review AFSPA in conflict areas, maximum punishment for rape as life imprisonment and not death penalty, clear ambiguity over control of Delhi Police etc.

The Cabinet Ministers on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in law as suggested by the Verma Committee Report. According to Minister of Law and Justice, Ashwani Kumar, 90 percent of the suggestions given by the Verma Committee Report have been incorporated into the Ordinance.

A comparison of some of the key offences covered under the Bill, the Committee report and the Criminal Law Amendment Ordinance, 2013 are provided in the following table:

**Comparison of Criminal Law (Amendment) Bill, 2012; Verma Committee Report on Amendment to Criminal Laws and the Criminal Law (Amendment) Ordinance, 2013**

Issue	Criminal Law (Amendment) Bill, 2012	Justice Verma Committee Report, 2012	Criminal Law (Amendment) Ordinance, 2013
Disobedience of law by a public servant	Knowingly disobeying laws that prohibit a public servant from investigating a person in a certain manner is punishable with imprisonment for one year and /or fine.	The Committee had recommended that failure of a public servant to record information in relation to sexual offences should be specifically penalized under the Bill.	Specifically penalizes failure to record information in relation to sexual offences including the use of criminal forces to 'outrage a woman's modesty' and the new offences of : 'sexual assault', 'sexual harassment', 'Voyeurism', 'Stalking', and assault on a woman to disrobe her.
Meaning of sexual assault(Rape)	(a)Un-consented penetration of the mouth, anus, Urethra, or Vagina of a person with the penis or any other object; (b) Un-consented cunnilingus and fellatio.	Same as the provisions of the Bill, excluding penetration of the mouth by an object other than the penis.	Also includes the un-consented touching of the vagina, penis, anus, or breast of the person.
Requirement for proving physical	Not specified	Absence of physical resistance is not to be	Recommendations accepted

resistance		treated as consent	
Age of consent	18 years	16 years	18 years
Marital rape	Is not an offence if the wife is over 16 years of age.	Should be an offence regardless of the age of the wife	Is not an offence if the wife is over 16 years of age
Punishment for sexual assault or rape	7 years to life imprisonment and fine.	7 years to life imprisonment and compensation to victim to at least meet medical expenses	7 years to life imprisonment and fine.
Sexual assault/Rape upon judicially separated wife	Punishable with 2 to seven years imprisonment	Punishable with 7 years to life imprisonment and compensation to victim to at least meet medical expenses.	Punishable with 2 to seven years imprisonment
Rape by armed personnel	Penalised as custodial sexual	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 offences.	Accepts recommendation to specifically penalise sexual assault by armed personnel within the area they are deployed in.
Sexual assault resulting in death or persistent vegetative state of the victim	This Bill has no specific provision for this offence	Punishment 20 years up to life imprisonment In case of gang rape resulting in death or persistent vegetative state punishment should extend to life imprisonment.	Punishment 20 years up to life imprisonment or with death.

Gang sexual assault	Punishable with imprisonment for 10 years or up to life.	Punishable with: (a) 10 years or up to life; or (b) 20 years or up to life.	Recommendations accepted. Reasonable compensation will have to be paid to the victim to meet medical expenses and rehabilitation of the victim.
Sexual Harassment	The Bill does not have a specific provision for this offence. Sexual harassment that involves use of criminal force to outrage a woman's modesty is punishable with a maximum of 2 years imprisonment under the IPC. Use of words or gestures to insult a woman's modesty is punishable with one year's imprisonment.	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. 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.	The Ordinance increases the punishment for the existing offence to maximum 5 years imprisonment. It also penalises the following acts with imprisonment for up to five years: (a) physical contact and advances involving unwelcome and explicit sexual overtures; (b) demand or request for sexual favours; (c) making sexually coloured remarks; (d) forcibly showing pornography; (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
Assault with the aim of disrobing a woman	The Bill does not have a specific provision for this offence.	Recommends penalising assault on a woman with the intention to disrobe her in any public place is punishable with imprisonment of 3 to 7 years and fine.	Recommendations accepted.
Voyeurism	The Bill does not have a specific provision for this offence.	New S. 354B: Voyeurism - Watching a woman engaging in a private	New S. 354C: Voyeurism- Retained as in the JVC.



		<p>act when she does not expect to be observed.</p> <p><b>Punishment</b>                  On first conviction, punishable with imprisonment of either description for 1yr to 3 yrs and Fine.                  On subsequent conviction, punishable with imprisonment of either description for 3yrs to 7 yrs and Fine.</p>	
Stalking	The Bill does not have a specific provision for this offence.	<p>S. 354C(1): Stalking-Following or contacting or attempting to contact a person or monitoring the person digitally or spying on the person in a manner, which interferes with the mental peace of the person.                  Punishment: 1 to 3 years imprisonment and fine.</p>	S.354D: Stalking-Retained as in the JVC.
Repeat offenders	The Bill does not have a specific provision for this offence.	<p>Person's previously convicted for sexual assault will be punishable with life imprisonment for second offences.</p>	<p>Recommendations accepted. Second offenders may also be liable for death penalty.</p>
Employing of a trafficked person	-	<p>S. 370A: Employing of a trafficked person - Ss.(1)Knowingly employing a trafficked child.  <b>Punishment:</b> RI for 5 yrs to 7</p>	<p>S. 370A: Employing of a trafficked person. Retained as in the JVC.</p>

		yrs and Fine. Ss.(2) Knowingly employing a trafficked adult. <b>Punishment:</b> RI for 3 yrs to 5 yrs and Fine	
			Sec.326A:Acid attack: Imprisonment not less than ten years but which may extend to imprisonment for life and with fine which may extend to ten lakh rupees

Sources: Criminal Laws Amendment Bill, 2012; Report of the Committee on Amendments to Criminal Laws, 2013; Criminal Laws Amendment Ordinance, 2013; Indian Penal Code, 1860 as cited in PRS Legislative Research, February,16,2013.

## CONCLUSION

After issuance of ‘The Criminal Law(Amendment )Ordinance,2013’, by Government of India ,on sexual crime against women , President of India gave his assent to the Ordinance sharpening laws against sexual assault, mandating harsher punishment like death penalty for offenders in cases where the victims dies or pushed into a persistent vegetative state. It seeks to treat such cases as “rarest of the rare” for which courts can award capital punishment if they decide so. For such cases, the Ordinance prescribes a minimum sentence of 20 years, which can be extended to imprisonment until the natural life of the convict or death. The amended law comes into force immediately. Assent comes amid protests by women’s groups who demanded inclusion of marital rape as an offence and trial of armed forces personnel accused of rape in courts. Coming in aftermath of Nirbhoya’s case, law includes provision of death penalty in rapes leading to victim’s death or pushing her into a persistent vegetative state. In a nut shell, with President’s nod, Criminal Law (Amendment) Ordinance, 2013 becomes a law. Governmnet will have to get it approved by Parliament in 6 months.

Brought against the backdrop of *Nirbhaya’s* case, the ordinance changes various clauses in existing criminal law by amending Indian Penal Code (IPC), Code of Criminal

Procedure (CrPC) and the Evidence Act. The ordinance falls short of international human rights standards in several ways. It fails to criminalize the full range of sexual violence with appropriate punishments in accordance with international human rights law. It includes vague and discriminatory provisions, and introduces capital punishment in some cases of sexual assault. The ordinance also retains effective legal immunity for members of state security forces accused of sexual violence, harms rather than helps teenagers by increasing the age of consent to sex, and defines “trafficking” in a way that might conflate it with adult consensual sex work.

The Criminal Law (Amendment) Ordinance, 2013 has been strongly criticized by several human rights and women Rights organisations for not including certain suggestions recommended by the Verma Committee Report like, marital rape, reduction of age of consent, amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman. The Government of India, replied that it has not rejected the suggestions fully, but changes can be made after proper discussion.

*‘Nirbhaya’* will no longer return to this materialistic universe where brutal rape killings are happening and increasing day by day. The rule of law stands between populist vengeance and just punishment. Life for life could not be answer and it could not stop rape/criminal assault on women. The real punishment is the process. Laxity in the criminal system ensures rapists do not confront the process or their crime. According to Justice Balakrishnan, NHRC Chairman, the death penalty will make rapists kill their prey to destroy evidence. Mandatory death sentence without discretion is unconstitutional and would lead to acquittals. There are already ample laws prescribing deterrent punishment for offences against women. What is needed is an ordinance, of course if it can be made, to infuse sensitivity, understanding and more importantly, the mindset among police, executives to implement the laws more in spirit than in letter. Only then deterrent punishment can be awarded in crimes against women.

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