

CRIMINAL LAW AMENDMENT ACT-2013 : CAN IT STOP SEXUAL ASSAULT ?



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Introduction

Sexual assault is defined as any form of sexual act committed against another person without his or her consent or against individuals who cannot give valid consent [1]. It includes a group of heinous crimes like indecent assault, rape, sodomy, bestiality, etc. Crime related to sex is one among the most rapidly increasing violent crimes [2]. It is prevalent worldwide and leads to serious health problems among the victims including Post Traumatic Stress Disorder (PTSD) and increased suicidal risk [1]. In India, sexual violence, particularly rape, received extensive media coverage following a fatal gang rape of a physiotherapy student in New Delhi on 16 December 2012. She died after 13 days of intensive hospital care. The incident led outrage and anguish throughout the country. There was lots of debate regarding the weaknesses of existing legislation to prevent the sexual offences. It was emphasized to make the punishment for sexual offences more rigorous and some activists even suggested considering death penalty as a punishment of rape. However, many opposed the idea

of considering death penalty for rape anticipating the risk of abuse of law in India. However, the demands to change or reinforce law related to sexual offences, led to passing of the Criminal Law (amendment) Act, 2013 a year later.

Amendments in existing laws

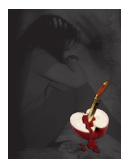
Criminal Law (amendment) Act, 2013 popularly

known as anti-rape act amended certain sections as well as inserted new laws in Indian Penal Code (IPC), Criminal Procedure Code (CrPC), Indian Evidence Act (IEA), and Protection of Children from Sexual Offences (POCSO) Act-2012. Followings are comparison between existing laws and changes made in Criminal Law (amendment) Act, 2013 [3].

Offence/Issue	Definitions	Existing Laws	Criminal Law (Amendment) Act, 2013
Definition of Rape		Against the consent and will Peno-vaginal intercourse only	Against the consent and will Penetration of the mouth, anus, urethra or vagina with the penis or other object
Disobedience of law by a public servant	Failure to record information given to him in sexual offences cases; knowingly disobeying any direction of laws on investigation	No specific provision	Punishable with rigorous imprisonment for six months to 2 years and fine
Punishment for non-treatment of victim	Whoever, being in charge of hospital (Govt./private/local bodies) should treat the victim first	No specific provision	Punishable with imprisonment for a term which may extend to one year with or without fine
Rape resulting in death or vegetative state	Rape causing death or persistent vegetative state of the victim	Rape and murder dealt with two separate offences (376 & 302 IPC) Rape: 7 years to life imprisonment Murder: Imprisonment for life or capital punishment	Punishable with rigorous imprisonment for 20 years to life or death
Rape by armed personnel	“Armed Forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government	No specific provision Public servant includes armed personnel	Punished with rigorous imprisonment of either description 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



Punishment for repeat offenders	Punishments for persons previously convicted of an offence punishable under sec 376 IPC	No specific provision	Life imprisonment or with death
Age of Consent	Legal age at which a person is considered competent to give consent for sexual intercourse	16 years	18 years
Sexual harassment and punishment	Physical contact involving unwelcome and explicit sexual overtures, request for sexual favours, showing pornography against the will of a woman, making sexually coloured remarks	Outraging a woman's modesty Punishment: Imprisonment for maximum 2 years and fine	Rigorous imprisonment for a term of 3 years and/or fine
Stalking	Follows a woman/attempt to contact to foster personal interaction repeatedly despite a clear indication of disinterest. Monitoring electronic communications	No specific provision	Specific offence. 1st offence: Punishable up to 3 years imprisonment and fine (Bailable) 2nd offence : Punishable with up to 5 years imprisonment and fine (Non-bailable)
Disrobing	Use of criminal force to a woman to undress and lie in naked condition	No specific offence Punished as an offence of outraging modesty of a woman	Specific offence. Punishable with 3 to 7 years imprisonment and fine
Voyeurism	Watching or capturing the images of a woman when she is engaging in a private act including sexual acts, use of lavatory, or when private parts are exposed	No specific offence as per IPC	Specific offence. Only protects women. 1st offence: Punishable with 1 to 3 years imprisonment and fine 2nd offence: Punishable with 3 to 7 years imprisonment and fine
Recording of information by woman officer		No special requirement for woman officers to record information about sexual offence cases	All information related to sexual offences would be recorded by woman officer



Protection against confrontation of victim by accused		No special protections to victims of sexual offences	Proper care has to be taken so that victim is not confronted by the accused
Examination of victim at trial stage		No special protections to victims of sexual offences	The statement recorded by the Judicial Magistrate will be treated as the evidence of the victim presented by the prosecutor Protects the right to be cross- examined
Requirement to fast track		No requirement to fast track sexual offence cases	Trial to be held on day- to-day basis In case of rape cases, trial to be completed in 2 months of filing of charge sheet
Previous sexual history		No specific provision barring the use of previous sexual history in rape cases	Bars the use of past sexual history in determining consent of the victim Bars evidence or questions in connection to the general immoral character of the victim or past sexual history with any person
Presumption of consent		Lies with the victim to prove that she did not consent	Shifts the burden on to the accused to prove that consent was given
Punishment for rape		7 years to life imprisonment and fine	10 years to life imprisonment and fine
Punishment for gang rape		10 years to life imprisonment and fine	20 years to life imprisonment and fine
Special provisions for evidence by differently abled persons		No special provision	Court take the assistance of an interpreters to take evidence of differently abled persons Statement to be video recorded



Conclusion

The legislations are framed in any country or state in order to protect the rights of individuals. With time there occurs change in social as well as cultural perception. Hence there is need of revision of the legislation to protect the rights of individuals. In countries like India, the need to

protect the rights of individuals, particularly when it is intended to prevent the sexual offences, is much more than just the amendment of law. The emphasis should be to evaluate that the law is working in the way it is designed and intended and implemented at the grass root level. Otherwise, the tug of war between claim and blame will continue forever.

References

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