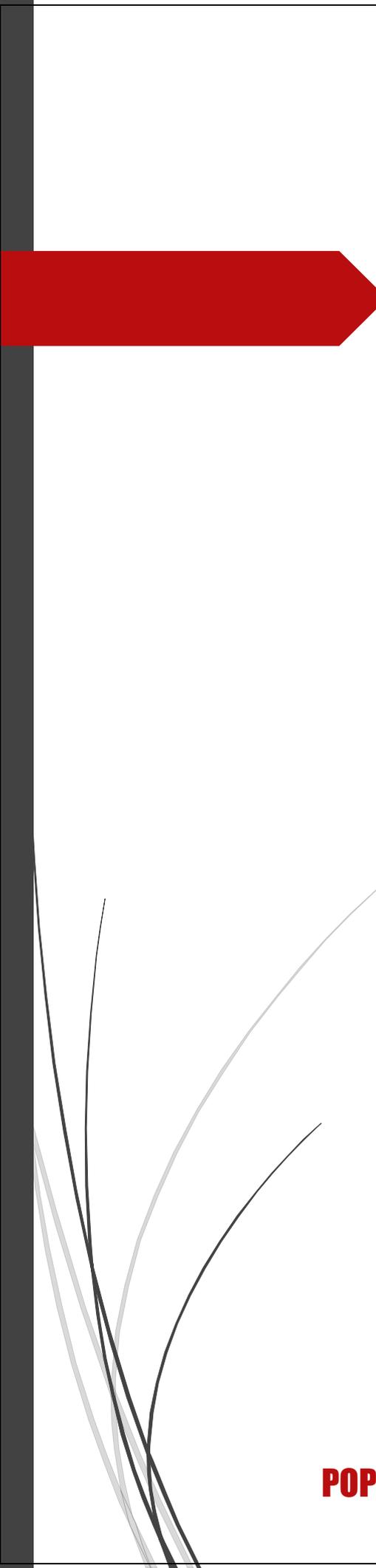




CHANGES IN GENDER LAWS

RESEARCH REPORT ON
RECOMMENDATIONS OF
THE JUSTICE VERMA
COMMITTEE



POPULAR EDUCATION & ACTION CENTRE (PEACE)

CHANGES IN GENDER LAWS

RESEARCH REPORT ON
RECOMMENDATIONS OF THE JUSTICE
VERMA COMMITTEE

**Cover Design & Layout**

Mohit Singh

Author of Report

Vipul Kumar

Research & Editorial Assistance

Mangla Verma

Abhilasha

Sanjana Srikumar

Printers

Swastik Traders,

A-10, Sector 65, Noida,

Gautam Buddha Nagar, Uttar Pradesh,

Pin Code – 201301.

Ph: 9999622034

The material published in this training manual is free from copyright restrictions. There are no restrictions on the copying, distribution, or use of this material.

For limited distribution

In public interest

Published by Popular Education and Action Center (PEACE)

March 2024

Table of contents

DEVELOPMENT OF RAPE LAWS IN INDIA	7
RAPE AND JUDICIARY.....	8
Justice Verma Committee report	12
Report	13
Rape	13
Sexual assault	14
Verbal sexual assault	14
Sexual harassment.....	15
Acid attack.....	15
Offenses against women in conflict zones.....	16
Trafficking	16
Child Sexual Abuse.....	16
Punishment for crimes against women.....	17
Medical examination of a rape victim.....	17
Police reforms.....	17
Significance of Verma committee	18
Observations	18
Practical outcomes of the Verma Committee	20
Takeaways.....	23
The absence of violence does not mean the presence of consent	23

The definition of sexual assault, while including rape should also include any other forms of assault that challenge women’s bodily integrity.....	24
Marriage is not a license to rape.	24
Acid attacks need greater focus.....	24
The presence of AFSPA should not give armed forces personnel impunity for sexual violence in conflict zones. .	25
Rape is not about “lust” or “loss of control.”	25
Imprisonment terms in sexual assault cases can be strengthened.....	25
Drop the two-finger test.....	26
Adoption of the recommendations.....	27
Juvenile justice system and Justice Verma.....	28
Relevance now	29
Conclusion.....	30

DEVELOPMENT OF RAPE LAWS IN INDIA

The case of *Tukaram vs. State of Maharashtra*, also known as the Mathura rape case, is a significant example of social transformation. It was the first case that sparked public outrage and led to reforms in existing laws. Mathura, a 16-year-old girl from a tribal community, was raped in a police station, but the Supreme Court rejected her family's criminal complaint, stating that her body showed no signs of rape. This decision triggered nationwide protests by women's groups and four law professors wrote a letter to the Chief Justice opposing the judgement. As a result, the criminal law was amended in 1983 to recognize custodial rape, introduce closed proceedings for rape trials, and ban the publication of victims' identities. Another important case, *Sakshi vs. Union of India*, saw the NGO Sakshi filing a Public Interest Litigation to redefine the term rape. The Law Commission of India was directed to respond to the issue, and in 2000, it published a report recommending that the term "rape" be replaced by "sexual assault" and that all forms of penetration be considered sexual intercourse. In 2002, an amendment to section 146 of the Indian Evidence Act was made, preventing cross-examination of rape victims about their moral character or previous sexual experiences.

Following the Delhi Gang Rape case, there were several protests by the public, both physical and virtual, and it became a topic of national importance. People all over India joined in the protest, calling for a safer and better country for women. The government then formed a committee headed by Justice Verma to recommend legal reforms and suggest ways to eliminate sexual violence. The committee received over 80,000 recommendations from all over the world and aimed to create a tough anti-rape law and make the country safer for women. After 29 days, the committee submitted its report, which recommended strong laws for crimes against women, as well as police and educational reforms, special training for boys and criminal justice system officers, and the establishment of rape crisis centres.

On 19th March 2013, the Lok Sabha passed the bill, which was then passed by the Rajya Sabha on 21st March and received the assent of the president on 2nd April 2013. Under the new act, the term "sexual assault" was replaced with "rape," and only men can commit rape. The clause dealing with the "touching of private parts" was removed from the new act. However, the criminal (amendment) act of 2013 does not consider marital rape as rape, which has been criticized by jurists, women's organizations, and NGOs.

RAPE AND JUDICIARY

Our judiciary system has played positive as well as negative role in rape cases. In our country Judiciary is known as the independent wing of government. This independent Judiciary has two roles namely the traditional role and judicial activism.

Our Indian judiciary can be regarded as a creative judiciary. Credibility of judicial process ultimately depends on the manner of doing administration of justice. Justice K. Subba Rao explains the function of the judiciary as thus:

<ul style="list-style-type: none">• It is balancing wheel of the federation;
<ul style="list-style-type: none">• It keeps equilibrium between fundamental rights and social justice; it forms all forms of authorities within the bounds;
<ul style="list-style-type: none">• It controls the Administrative Tribunals

A problem with rape trials is the interpretation of victim's consent by courts. The current law and the amended version consider non-consensual penetration for sexual purpose as sexual assault. But determination of consent is hampering justice. The core of the offence of sexual assault remains sexual intercourse without consent. The term consent has itself been subjected to numerous interpretations.

In *Mohd. Habib v. State*, Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his private part- which the High Court presumed was a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High Court. Even the eye- witnesses who witnessed this ghastly act, could not sway the High Court's judgment.

In a case in 2016, there was a case pertains to an allegation of rape by a woman in Bangalore 19 years ago. While the Sessions Court had acquitted the three men accused, the Karnataka high court later sentenced them to life imprisonment. The Supreme Court has set aside the high court judgment and set free the accused, citing reasons including inconsistencies in the woman's statements, hostile witnesses and the medical report conducted after the incident.

The woman has said she works as a domestic worker, though a witness (her roommate) said she was a sex worker – leading the judges to treat the case as one where she was not paid her dues by the men, who were her clients.

In their order, a Supreme Court bench comprising Justices Pinaki Chandra Ghosh and Amitava Roy said:

“Her conduct during the alleged ordeal is also unlike a victim of forcible rape and betrays [a] somewhat submissive and consensual disposition. From the nature of the exchanges between her and the accused persons as narrated by her, the same are not at all consistent with those of an unwilling, terrified and anguished victim of forcible intercourse, if judged by the normal human conduct.

“Her post incident conduct and movements are also noticeably unusual. Instead of hurrying back home in a distressed, humiliated and a devastated state, she stayed back in and around the place of occurrence, enquired about the same from persons whom she claims to have met in the late hours of night, returned to the spot to identify the garage and even look at the broken glass bangles, discarded litter etc. According to her, she wandered around the place and as disclosed by her in her evidence, to collect information so as to teach the accused persons a lesson. Her vengeful attitude in the facts and circumstances, as disclosed by her, if true, demonstrably evinces a conduct manifested by a feeling of frustration stoked by an intense feeling of deprivation of something expected, desired or promised. Her confident movements alone past midnight, in that state are also out of the ordinary.”

The court felt it necessary to bring up the woman’s actions and behaviour after the alleged incident, comparing them to what they see as ‘usual’ in that situation, in order to assess whether or not they think the incident occurred.

In *State V. Deepak & Ors.* which was decided by Sessions Court Judge Kaveri Baweja in 2014, the judge said that being a sex worker had nothing to do with the victim’s allegations of gang rape. “The accused had taken the plea she was a sex worker and illegally living in India (the woman was from Rwanda),” Grover said, “and wanted to implicate them in a false case so that she could stay in the country.”

Judges are applying the discretionary power to provide better justice to women in the new context of the Socio-Economic conditions. Judiciary has played an active role in enforcing and

strengthening goals towards protection of rights of the women of the land. The courts in India have tried to interpret laws in consonance with the international treaties and conventions for betterment of women, which are as follows :-

- In 1992, Vishakha Judgement, came about after the case received unprecedented media attention and for the first time the Supreme Court defined ‘Sexual harassment at work place’. And the Apex Court laid down landmark guidelines.
- In State of Punjab v. Gurmit Singh, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.
- The Supreme Court has in the case of State of Maharashtra v. Madhukar N. Mardikar, held that “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 her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore, merely because she is of easy virtue, her evidence cannot be thrown overboard.”
- *Suo Motto v. State of Rajasthan* popularly known as German Lady rape case. It is a landmark judgment laying down principles and guidelines for the protection of dignity of the women. Hon’ble Mr. Justice N.N. Mathur, who wrote the judgment, took *Suo Motto* cognizance of a rape case of a foreign tourist in Rajasthan in May 2005 which had hit the headlines of State and national newspapers. In this case, court laid down certain highly relevant guidelines for criminal investigation and trial of offences against women in rape cases. The court opined: *“In order to combat the increasing crime against women and to ensure protection and preservation of their human rights – the criminal justice system needs to be addressed from the point of view of systemic victim support service. There is need to promote proactive role of police as well as trial courts”*
- In the landmark case of *The Chairman, Railway Board v. Chandrima Das*, the Hon'ble Court held that rape is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which is involved. Rape is a crime not only against the person of a woman; it is a crime against the entire society. It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21.

- Recently in *Nipun Saxena & Ors. v. Union of India*, Supreme Court Bench headed by Justice M.B. Lokur and Justice Deepak Gupta, has accepted the National Legal Services Authority (NALSA) Scheme called Victim Compensation for Survivors of Sexual Assault and Acid Attack. The Gang Rape victims will be compensated from Rs.5 Lacs – Rs.10 Lacs, the rape victim's for Rs.4 Lacs – Rs.7 Lacs, unnatural sex assault victims from Rs.4 Lacs - Rs.7 Lacs. He victims who have loss of their foetus will be compensated from Rs.2 Lacs- Rs.3 Lacs. Victims who got their face disfigures from acid attack will be compensated from Rs.7 Lacs- Rs.8 Lacs, depending up cases.

Justice Verma Committee report

The Justice Verma Committee was formed to recommend changes to criminal laws in order to expedite trials and increase punishment for those accused of sexual assault against women. On January 23, 2013, the committee submitted a report suggesting various reforms to address different types of sexual crimes against women. While the report may not immediately improve the effectiveness of policing, crime investigation, or court trials in India, it is encouraging that the committee did not view crimes against women solely through the lens of "protecting" women. This lens often regards public spaces as a male domain and women as vulnerable beings who need to be kept away for their own good. Instead, the committee approached crimes against women from the perspective of autonomy, asserting that all women have the right to bodily integrity in all spaces and circumstances. This is a positive starting point for a country where women's "character," clothing, and "background" are often the first things examined in the event of a crime.

Why was there a need for such a report?

After the brutal gang rape of a 23-year-old paramedic student in New Delhi last December, India woke up to a hard reality about crime and safety of women. On the night of 16th December, 2012, this victim along with her male friend were allured in to a public bus which was empty except for the driver and his five companions none of whom were actual passengers.[1] This kind of incidence is not new, but the after effect of the Delhi gang rape made it different from other gang-rape cases in India. The huge range of protests by various civil society groups pressured the government to (i) review the existing laws meant for punishing the sexual assault and rape of women, (ii) set-up a separate commission for the same and (iii) review the role of the police in securing safety of women.

Resultantly, a separate committee was framed in January, 2013 to review the legal situation and propose new laws if necessary. This committee, presided over by Justice Verma presented the Verma Committee report in early February, 2013, which researched the reasons for failures

of the law to secure the safety of women and the lacunas in the existing laws and system, also proposed the inclusion of laws regulating stalking including cyber stalking and voyeurism in its agenda. It may be noted that while the Indian Penal Code had provisions to regulate sexual assaults for the purpose of outraging the modesty of women in S.354 of the Indian Penal Code , rape and punishment for rape under S.375 IPC and under various provisions in the series of S.376 (including Ss.376 A,B,C,D), and verbal gestures to harm the modesty of women and breach of her privacy under S.509 IPC, there was no provision to deal with stalking or voyeurism targeting women in any legal provision in India; including the Information technology Act, 2000(amended in 2008), which is used for regulating offences done with digital technology or against computers, computer network etc. It may be noted that in India, literature on cyber stalking is not rare, but there are fewer studies on the issue as compared to the US or UK.

Legal confusion centring on the term had been one of the main causes for this lacuna. Similarly, even though there is some research on online pornography targeting adult women, the creation of fake profiles of women etc., the issue of voyeurism also has not been properly addressed in India. Based on the Verma Committee report, the Criminal law ordinance, 2013 was created, which was very recently introduced as Criminal Law Amendment Bill, 2013 in the Indian parliament.

Report

On January 23, 2013, the Committee submitted its report. It presented proposals on rape, sexual harassment, human trafficking, child sexual abuse, victim medical examinations, police, electoral, and educational reforms, among other things.

Rape

- The Committee suggested that the grading of sexual offences in the Indian Penal Code, 1860, be kept (IPC).
- Rape and sexual assault, according to the Committee, are not just crimes of passion, but also an expression of power. Rape should be kept as a separate crime, with no

restrictions on penetration of the vaginal, oral, or anus. Any sexual penetration that is not consented to should be included in the definition of rape.

- The IPC distinguishes between rape committed within and outside of marriage.
- Sexual intercourse without consent is banned under the IPC. However, there is an exception to the crime of rape in the case of unconsented sexual contact between a husband and his wife.
- The exception for marital rape should be deleted, according to the Committee. Marriage should not be viewed as a binding agreement to engage in sexual behaviours.
- As a result, the victim's relationship with the accused should not be considered when determining whether the complaint agreed to the sexual conduct.

Sexual assault

- Currently, "attack or use of criminal force on a woman with the aim to insult her modesty" is punishable by two years in prison under Section 354 of the IPC.
- The term "outraging a woman's modesty" isn't defined in the IPC. When penetration cannot be proven, the offence is classified as a Section 354 of the IPC violation.
- Non-penetrative types of sexual touch should be considered sexual assault, according to the Committee.
- The crime of sexual assault should be defined to encompass all sorts of non-consensual, non-penetrative sexual touching.
- An act's sexual nature should be assessed based on the circumstances. The presence of sexual enjoyment as a motive for the act should not be required to prove the crime.
- The crime should be punished by five years in prison, a fine, or both.
- The use of criminal force to disrobe a woman should result in a sentence of 3 to 7 years in jail.

Verbal sexual assault

- Currently, under Section 509 of the IPC, using words or gestures to "insult a woman's modesty" is punishable by a year in prison, a fine, or both. This section should be removed from the law.

- The Committee proposes that the use of words, acts, or gestures that generate an unwanted sexual threat be classified as sexual assault and punishable by a year in prison, a fine, or both.

Sexual harassment

The Committee on the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Bill, 2012, which is now pending in Parliament, has made the following main recommendations:

- Domestic employees should be included in the Bill's scope of application.
- The bill requires the complaint and respondent to first try to reach an agreement. This is in direct contradiction to the Supreme Court's decision in Vishakha vs. State of Rajasthan, which aimed to provide women with a safe workplace.
- The woman who has been sexually harassed should be compensated by her employer.
- The bill mandates that the employer establish an internal complaints body to which all complaints must be submitted. An internal committee would negate the aim of the bill, and instead, all complaints should be received and adjudicated by an Employment Tribunal.

Acid attack

According to the Committee, the act should not be grouped with serious bodily harm, which is punishable by seven years in jail under the IPC.

- The offence was addressed in the Criminal Laws Amendment Bill, 2012, which is now pending in Parliament, according to the statement. The bill stipulates a penalty of ten years in prison or life in prison.
- It was suggested that the federal and state governments establish a corpus to pay women who had been victims of crimes against them.

Offences against women in conflict zones

- The Armed Forces (Special Powers) Act (AFSPA) should be reconsidered in conflict zones.
- Currently, the AFSPA requires the central government's approval before prosecuting members of the armed services.
- When a sexual offence is claimed, the Committee recommends that the necessity of sanction for prosecution of armed forces personnel be specifically omitted. Witness protection must be provided to victims of sexual violence.
- In combat zones, special commissioners should be formed to monitor and prosecute sexual offences. Military personnel training should be reoriented to emphasise armed personnel's absolute adherence to commands in this regard.

Trafficking

- The Committee recognised that the Immoral Trafficking Prevention Act of 1956 did not provide a broad definition of trafficking because it solely criminalised trafficking for the purpose of prostitution.
- It was suggested that the IPC's slavery laws be changed to make trafficking by threat, force, or incentive illegal.
- It also suggested that employing a trafficked individual be made illegal. Juvenile and women's protective shelters should be placed under the legal supervision of High Courts, and steps should be taken to reintegrate victims back into society.

Child Sexual Abuse

The Committee has proposed that the terms "damage" and "health" be defined in the Juvenile Justice Act of 2000 to cover mental and bodily harm, as well as the juvenile's health.

Punishment for crimes against women

- The suggestion for chemical castration was rejected by the Committee because it does not address the social basis of rape.
- It stated that the death sentence should not be applied to rape because there was substantial evidence that it was not a deterrent to major crimes. Rape should be punished with life imprisonment, according to the report.

Medical examination of a rape victim

- The Committee has suggested that the two-finger test, which is used to measure the suppleness of the vaginal muscles, be discontinued.
- The Supreme Court has ruled in several cases that the two-finger test should not be used and that the victim's previous sexual experience should not be used to determine the victim's consent or quality of consent.

Police reforms

- The Committee has made recommendations for police reform. State Security Commissions have been established to ensure that state governments do not exert control over state police.
- Such commissions should be led by the state's Chief minister or Home Minister. The Commission would establish broad policy guidelines to ensure that the Police Department follows the law.
- All transfers, postings, and promotions of officers should be decided by a Police Establishment Board. The tenure of the Director General of Police and the Inspector General of Police should be at least two years.

Significance of Verma committee

- The Justice Verma Committee's recommendations are thorough and forward-thinking.
- The Committee used a multidisciplinary approach to interpret its mission broadly.
- The Report addresses sexual crimes at all levels, as well as the measures required for prevention and punishment of all offences with sexual overtones that violate human dignity.
- This is because the issue of sexual assault on women cuts to the heart of society standards and beliefs.
- The Report also discusses the concept of gender justice in India and the different barriers to it. The Committee's approach is based on the Indian Constitution's provision of equality for everybody.
- The list of offences against women has been greatly broadened by the committee. Vogueurism, stalking, disrobing, and women trafficking have all been included to this list.
- List crimes committed against women (CAW). Vogueurism, stalking, disrobing, and women trafficking have all been included to this list.
- Furthermore, the committee has suggested a significant increase in the penalties for several offences.

Observations

It is encouraging to note that the Committee has adopted these recommendations in its report. Thus, it recommends that Section 375 of the Indian Penal Code (which defines rape) be amended to clarify that that consent is not to be presumed in the case of existing marital relationships and that it 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.’

In keeping with its objective of ‘deconstructing the paradigm of shame-honour in connection with the rape victim’, the Committee also recommends the re-enactment of Section 354 and the deletion of Section 509, doing away with references to ‘outraging the modesty of women.’ Instead, the new section is titled sexual assault and prohibits ‘intentional touching of a sexual

nature’ as well as ‘using words, acts or gestures...which create an unwelcome threat of a sexual nature or result in an unwelcome advance.’ The Committee also proposes the addition of the offences of disrobing, voyeurism and stalking.

Other major recommendations made by the Committee include changes to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2012. It criticizes the existing mechanism of Internal Complaints Committees and recommends constituting an Employment Tribunal to deal with sexual harassment complaints, although employers remain free to maintain domestic complaints mechanisms. It also recommends clarifications to the definition of ‘workplace’ to include the unorganized sector, thus ensuring that the legislation has the broadest amplitude- it ought to cover domestic workers, women in the armed forces and police, government and educational institutions.

Appendix 3 to the report also contains a draft Bill of Rights for women guaranteeing, among others, the right to ‘complete sexual autonomy’ and the right to right to secured spaces including access to public transport without fear of violation of dignity. It also imposes positive duties on the State to provide ‘effective mechanisms and accessible services for information, redressal, rehabilitation and reparation’ for women subjected to violence.

This report is the first step in a much-needed overhaul of both laws and attitudes towards sexual violence in India. It is to be hoped that it encourages meaningful debate in Parliament and that its recommendations are translated into tangible legislative and institutional change.

Practical outcomes of the Verma Committee

It may be noted that prior to the Verma committee, we had several legal provisions ensuring the equality of women and equal protection of women that were enacted in our constitution ; for example, the right to equality before law under Article 14, the right against discrimination based on gender under Article 15, Special facilities for women under Article 15(3), the right to equal opportunity for public employment under Article 16 , freedom of speech under Article 19, Right to life, liberty and dignity under Article 21. Directive principles under Article 38,39(a) and 39A, 42 by which the State can make laws for the welfare of different sects of citizens including women and right to property under Article 300A. The effects of such codified rights can be seen in three perspectives: (i) the recognition of international conventions on human rights and gender equality; (ii) the creation of several procedural laws including provisions in the IPC and CrPc prohibiting sexual and moral violence; and (iii) the birth of several other substantive laws to protect women's rights. In reality the effect and subsequent results of these codified rights can be divided into positive and negative.

The positive may include two important socio-legal improvements, which may include but are not limited to recognition of women as more than second class citizens in India and realizing the need to move further from the first wave feminist movement by the stake-holders. The negative result on the other hand, can be seen in the broken attempts to embrace second wave feminist movement by the stake holders. The Verma committee report on amendments to criminal law revealed the pitfalls of the social as well as criminal justice system which encouraged the violence against women either directly or indirectly.

The primary focus of this particular committee remained on recognising sexual offences against women in India and increasing the punishment especially for rape on demand from various civil society groups and women's groups in general. But the Committee while researching the issue of sexual harassments of women holistically also developed concepts of stalking and voyeurism, the definitions of which needed legal recognition for too long.

The Committee had rightly observed that stalking along with rape, sexual assault and even teasing are matters of grave concern and all of these are being tolerated by the society for long. Even though the report emphasised stalking majorly from offline stalking perspective, in its conceptualisation it included offline as well as online stalking as punishable offence in S.354C

(1), which the Committee recommended for insertion in the Indian Penal Code. The definition of stalking as has been introduced by the Committee runs as follows: “Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking.” It could be seen that this definition had adopted the concept of stalking which has been preferred by US lawmakers.

However, the Committee report added three exceptions to this clause when the act would not be considered as stalking. Simultaneously, the committee also introduced a formal definition of voyeurism, which runs as follows: “Whoever watches a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator, or by any other person at the behest of the perpetrator shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but may extend to three years, and with fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but may extend to seven years, and also with fine.” This definition is formulated in S.354B, which the committee proposed to insert in the Indian Penal Code. The explanations added to this clause proved to be extremely necessary in the relevant times as it lifts the burden of proof from female victim in case of consensual sexual activities when her images would have been captured in a voyeuristic manner.

The committee reports and proposals have been accepted by the Indian Parliament with some reservations. While it comes to cyber-crime against women, it can be seen that the latest Criminal Law Amendment Bill, 2013 which was passed by the Parliament in late March to bring in the actual amendments to the Indian Penal code as proposed by the Verma committee Report have accepted the definition of stalking with a major modification to make the offence more women oriented. The renewed definition and the penal provision for stalking, which was inserted in Section 354D in the Criminal Law Amendment Bill, 2013, made it non-bailable for repeat offenders making the jail term for a maximum period of five years.

Similarly, in Section 354C, voyeurism was also made non-bailable for repeat offenders; making the jail-term increased to a maximum of seven years. The Verma Committee Report on criminal

law amendment proposed to bring in necessary and thoughtful changes in the criminal law in India for the safety of women. But this committee report stands apart from other law committee reports that were made earlier in India to bring in various changes to legal clauses especially because it recognised crimes that can be done through digital media. Holistically it had provided more reliance on therapeutic jurisprudence for restituting sexual assault crimes against women.

The committee report and its outcome with reference to cyber-crimes against women should attract more research in the near future. It offered for the first time a therapeutic perspective not only for the offline sexual offences against women, but also for crimes committed through digital media by recognizing the need for more severe punishment, rectifying circumstantial issues which may aide in victimization of women, better reporting portals including e-governance for fast reporting, and a ‘women caregivers for women victims’ concept. This concept of women caregiver includes a ‘positive circle’ constituted by women professionals including police officers, lawyers, NGO personnel, doctors, women activists etc. However, it must be remembered that the amendments made on the basis of the report still need to be tested by the courts. Only when the proposals offered by the Report including those for regulating crimes done through a digital medium, are properly introduced and executed, can the aim of the Verma Committee be fulfilled

Takeaways

When a woman is raped, it does not mean that she has been shamed or ‘dishonoured.’ Nor is it a crime against her community’s ‘honour’. We believe that there is no danger and no shame or loss of honour in a victim seeking redressal by filing complaints and must in fact exercise, consistent with fundamental rights of women, the right to file complaints and bring offenders to book. We also think that it is the duty of the State to encourage such a climate and also to make available such resources that enable them to file such complaints.

We think that it is necessary for the police officers to be completely sensitised against the honour-shame theory, and to treat every woman complainant as an individual in her own right capable of asserting her grievance...We think that there has been a completely erroneous connection which is being made between a woman and a community. In other words, we feel very strongly that an assault on a woman is an assault on the person of the woman.”

The absence of violence does not mean the presence of consent

“Consent must be real... Thus, if the consent is obtained after giving the woman a threat of spreading false and scandalous rumours about her character or destruction of her property or injury to her children or parents or by holding out other threats of injury to her person, reputation or property, that consent will also not be consent under the third clause as recommended to be amended...The 84th Law Commission Report correctly said that violence was not mandatory.”

There must be consequences, if police fail to register FIRs - What is most surprising is that Parliament has ignored the recommendation of the 84th (Law Commission) Report, which calls for the punishment of a station-in charge who fails to register information of a cognisable offence given to him.

The definition of sexual assault, while including rape should also include any other forms of assault that challenge women's bodily integrity.

We are of the considered opinion that in the Indian context it is important to keep a separate offence of 'rape'. This is a widely understood term which also expresses society's strong moral condemnation. In the current context, there is a risk that a move to a generic crime of 'sexual assault' might signal a dilution of the political and social commitment to respecting, protecting and promoting women's right to integrity, agency and autonomy. However, there should also be a criminal prohibition of other, non-penetrative forms of sexual assault, which currently is not found in the IPC, aside from the inappropriate references to 'outraging the modesty' of women in Sections 354 and 509. We recommended the enactment of Section 354 in another form while we have recommended the repeal of Section 509."

Marriage is not a license to rape.

We, therefore, recommend that: i. The exception for marital rape be removed. ii. The law ought to specify that: a. A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation; b. The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity; c. The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.

Acid attacks need greater focus

The gender specificity and discriminatory nature of this offence does not allow us to ignore this offence as yet another crime against women. We recommend that acid attacks be specifically defined as an offence in the IPC, and that the victim be compensated by the accused. However, in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame a compensation fund. We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of acid attack.

The presence of AFSPA should not give armed forces personnel impunity for sexual violence in conflict zones.

At the outset, we notice that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country... Sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law.”

Rape is not about “lust” or “loss of control.”

Thus, rape and other forms of sexual assault have been found to be consistently deployed as an expression of power and must not necessarily be seen as ‘crime of passion’ only. Sexual assaults on women and children have been found to be have been used consistently by State and private persons in conflict areas including in communal violence; where by raping women, men attempt to establish their superiority over the other. The Committee is of the view that such forms of sexual assault deserve to be treated as aggravated sexual offence in law.

Imprisonment terms in sexual assault cases can be strengthened.

Capital punishment is not necessarily a deterrent, while it can be applied in the rarest of rare cases (as provided for in Indian law),

As far as term sentences are concerned, section 376 of the Indian Penal Code currently provides for punishment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years. We however recommend that in the proposed Criminal Law Amendment Bill, 2012, the minimum sentence should be enhanced to 10 years with a maximum punishment being life imprisonment... We therefore recommend a legislative clarification that life imprisonment must always mean imprisonment for ‘the entire natural life of the convict’

Drop the two-finger test.

It is crucial to underscore that the size of the vaginal introitus has no bearing on a case of sexual assault, and therefore a test to ascertain the laxity of the vaginal muscles which is commonly referred to as the two-finger test must not be conducted. On the basis of this test observations/ conclusions such as ‘habituated to sexual intercourse’ should not be made and this is forbidden by law.

Adoption of the recommendations

Whenever a committee, is formed under the instructions of the government, the Committee makes a comprehensive report with recommendations. Albeit, these recommendations are not binding on the government and it is at liberty only consider a few of the suggestions, modify the same and use the report as a guiding document. Hence, although the Justice Verma Committee report, a well-researched document, is available with the government, it is now gathering dust and the recommendations made therein which still remain relevant even after 6 years, the same have not been implemented. The price, however, is being paid by the women of this country, as the government, the administration, the executive have all failed to safeguard them despite of having a list of “things to-do”.

Maybe it's time the government realises that having a fast-track court hear the Hyderabad case is only a piece meal approach being used to pacify public furore and what it needs to do is dust off the Justice Verma Report and issue strict and time bound advisories to state governments for implementing some of the most relevant recommendations which will go a long way in ensuring women safety in India.

Juvenile justice system and Justice Verma

The Justice Verma Committee constituted in the aftermath of the Delhi gang rape case to suggest possible amendments to criminal law, also recognised that juvenile care homes in the country were “not being run in a manner consistent with the spirit of the Juvenile Justice Act” (Verma et al 2013: 419). Thus, the intent behind the formulation of a new legislation altogether was questioned for not being focused on improving the existing infrastructure and institutional capacity for reformation of children in conflict with law, and instead giving a retributive response amidst the public outcry after the Delhi gang rape. Given that children are more amenable to reforms compared to adults, they should be given a chance to re-start and re-orient their life with a clean state instead of being pushed into a potential cycle of crime and incarceration. Thus, a careful balance between punishment, deterrence and rehabilitation must be established at the core of India’s juvenile justice framework. Ultimately, as stated by the Justice Verma Committee Report.

Relevance now

A bench, comprising Chief Justice S A Bobde and Justices BR Gavai and Surya Kant, issued notices to the ministries of home, human resource development, law and others while tagging the petition with another matter on the same issue.

The apex court was hearing a plea filed by law student B Srinivas Goud seeking directions for the implementation of Justice JS Verma committee report and taking steps after considering the report “Magnitude of Substance use in India for 2019” published by Ministry of Social Justice and Empowerment.

The report was submitted to the then Prime Minister of India on January 23, 2013 on various aspects of crime against women and children. The committee was formed after the Nirbhaya rape and murder incident in the national capital in December, 2012 to suggest various measures on check increasing crimes against women.

The petition, filed through advocate Ramaswami Balaji, said that it is “unfortunate that though the report was submitted on January 23, 2013 to the Union of India, majority recommendations of the committee were not implemented even after passage of seven long years. This has resulted unrest among citizens of the country more particularly victims/parents of rape and sexual harassment”.

Conclusion

Thus, it is observed that Judiciary being the third pillar of the Constitution has played a vital role in finding the proper solution in rape cases. Sometimes through wide interpretation of provisions of various legislation and Constitution and sometimes by laying down landmark judgments where there are no specific laws, the judiciary has tried to strike a balance and equilibrium in the society.

The judiciary has tried to fulfil the gap between fast changing society and rigid laws (because of the long and time taking procedure of enactments of laws by legislature, it's not easy to amend these laws with the fast-changing society). Nirbhaya's case has once again raised the question of inadequacy and lack of proper implementation of the laws, however, Anti-rape Bill- Criminal Law (Amendment) Bill, 2013 has been passed. The laws relating to rape victims has been enacted after much public cry or through judicial intervention only. This Amendment Bill also came after losing Nirbhaya and mass protests. It has rightly been observed by the judge in Nishan Singh's case that Court can only lay down the guidelines but important role has to be played by the society in its implementation.

Popular Education and Action Centre (PEACE) is an organization represented by committed and experienced people which is endeavoring to make the process of social change stronger at local and larger levels.

In this context, the prime concern of PEACE is to enhance the awareness and knowledge of the people's groups wrestling to save their identity and democratic values, and of individuals and communities struggling for their livelihood.

For last few years, by initiating a process of dialogue between groups and peoples' organizations with a common understanding, PEACE has been trying to strengthen the process of widespread people's movements and alliances.

Other than this booklet, we had also created and published educational learning materials on the issues that have impacts on the common man's life. Given below is a short list of some important material available with us:

- ज्ञान की पूंजी पर पूंजी का शिकंजा
- पूंजी के निशाने पर पानी
- बाजारीकरण के दस साल
- नकेल कसती जा रही है
- कहीं पर निगाहें, कहीं पर निशाना : वन अधिकार अधिनियम 2006
- परमाणु ऊर्जा : सस्ती साफ बिजली या महाविनाश को बुलावा
- जिंदगी पर मंडराते परमाणु के बादल
- आर्थिक उछाल की असलियत
- भारत राष्ट्र राज्य एवं सांस्कृतिक विविधता
- पंचायती राज और जन सहभागिता : कार्यकर्ता प्रशिक्षण (मैनुअल)
- स्थानीय कार्यकर्ताओं के लिए अपील हैंडबुक
- पूर्वाग्रह मुक्त शिक्षा और अल्पसंख्यक : शिक्षकों के लिए हैंडबुक
- पेसा कानून और जन सहभागिता : गांव विकास नियोजन पर कार्यकर्ता मैनुअल
- डूंगरपुर, राजस्थान में आयोजित गांव विकास नियोजन कार्यशालाओं की रिपोर्ट
- राजस्थान के सन्दर्भ में : पेसा कानून और गांव सभा की भूमिका



**POPULAR EDUCATION & ACTION CENTRE
(PEACE)**

A-124/6, KATWARIA SARAI, NEW DELHI – 110016

PH: 011-26858940

EMAIL: peaceactdelhi@gmail.com

WEBSITE: <https://populareducation.in>