

ANALYSIS OF AMENDMENT OF SECTION 154 OF CR.P.C. BY THE 2013
AMENDMENT ACT

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ABSTRACT

After the Delhi gang rape case, and after receipt of the report from the Justice Verma Committee, the Criminal law (Amendment) Act, 2013, was enacted. One of the provisions affected was Section 154. The amendment made filing of the FIR by women easier with provision relating to female police officers and is a step towards the process of initiating legal proceedings less intimidating. In the article below, the benefits to the women victims and the provision relating to videography is scrutinised. Further, the author aims to analyse the effectiveness of this particular change and give suggestions regarding the same.

Introduction

Following the public uproar after the Delhi gang rape case, and after receipt of the report from the Justice Verma Committee, THE CRIMINAL LAW (AMENDMENT) ACT, 2013, was enacted to amend the relevant criminal laws for providing stringent provisions to deal with crimes against women.²It added two provisos to sub-section (1) of Section 154 relating to ‘*Information to the police and their powers to investigate*’.The *first proviso* makes it mandatory that the FIR in case of offences mentioned (Sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code, 1860) be recorded by only a woman police officer or woman officer. The *second proviso* lays down that when information relating to the offences (Sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the IPC) committed against a mentally or physically disabled person shall be recorded by a police officer, at the residence of the reporting person or as per the person’s convenience, in the presence of an interpreter or a special educator. It is further provided that recording of such information shall be video graphed and the police officer shall get the statement of the person recorded by a Judicial Magistrate.

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²Dr. Ashok Dhamija, *Beginning of the end of the non-registration of FIRs*,TILAK MARG, (Feb 14, 2013) <http://tilakmarg.com/opinion/beginning-of-the-end-of-the-non-registration-of-firs/> .

Filing of the FIR was a major hurdle for a rape survivor. The atmosphere of a police station is unfriendly and police officers are not sensitive while recording FIRs for rape.³ Recognizing that women might be more comfortable in reporting the offence to a female police officers, it was accepted that FIRs in sexual offences should be recorded by women police officers. This would help make the process of initiating legal proceedings less intimidating and result better access to the legal system.⁴ The Verma Committee had also suggested that legal assistance, as well as assistance of a healthcare worker and/or a women's organization must be provided. But the same was not accepted in the Criminal Law (Amendment) Act, 2013.⁵

Analysis

Purpose - The Justice Verma Committee Report⁶ had stated that the equality to women is integral to the Constitution and its denial is a sacrilege and a constitutional violation. This Amendment is intended to make the law more sensitive to gender-equality. Explaining the details of the offence to a woman officer would be psychologically less painful for the victim/complainant when compared to the same being narrated to a male officer. The woman officer would also be better equipped to provide instant emotional support required in such cases.

Offences - The offences for the first proviso can be briefly stated to include acid attacks, criminal force and assault to a woman to outrage her modesty, sexual harassment, voyeurism, stalking, rape, causing death of woman in a vegetative state, sexual intercourse with wife during separation, sexual intercourse by a person in authority or staff of hospital with a woman admitted, repeating of such offences and insulting modesty of a woman. The second proviso has excluded the offences of acid attack. The rationale behind excluding the offences under Section 326A and 326B is unclear. This causes a doubt over the intelligible differentia used to segregate and exclude these offences.

Benefits for the victims –

- 1) For many hearing, speech or visually impaired people, there was no effective mechanism in place to communicate with the police. The police would record whatever they thought was relevant. This amendment help disabled rape survivors to come forward to report cases of abuse.

³Verma, J.S., Seth, L., and Subramaniam, M *Report of the Committee on Amendments to Criminal Law*, (Jan 23, 2013) <http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628/>.

⁴Nisha Amol, *Crime Against Women: Need to Empowerment*, HUMAN RIGHTS INTERNATIONAL RESEARCH JOURNAL: ISSN: 2320-6942.

⁵Satish Mrinal and Shwetasree Majumder, *A Brief Synopsis of the New Offences/Procedures Recommended by the Justice Verma Committee on Amendments to Criminal Law*, J. Nat'l LU Delhi 1 (2013): 172.

⁶*Supra* 2.

- 2) The retraction of statements by survivors is often a major reason for acquittals in rape cases. When a magistrate records the statement, it will be difficult for the person to backtrack and also make her liable to prosecution for making a false statement under oath. ⁷
- 3) The use of videography in the provision is an instrumental step as it will save the time of the court in resolving the distracted versions of the statements recorded. It also saves the victim from the trauma of going through the details of the scarring crime in the courtroom during the trial. ⁸

Ambiguity - However, the qualifications of the interpreters and special educators have not been spelt out. Also, where the complainant is not the victim herself, the position of application of the provision becomes complex defeating the purpose of the provision.⁹

Admissibility of videography - The videography to be taken as under the amended Section 154 is inadmissible as evidence. As is the nature of an FIR which can't be used for corroborating or contradicting any witness other than the person who has lodged the FIR¹⁰, the video also cannot be used. Hence, the whole point of insisting for the videography is questionable.

Mandatory in Nature - In Section 154(1), the legislature has cautiously used the word "information", unlike in Section 41(1)(a) and (g), so that the police officer should not refuse to record an information and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. This mandate was laid down in the case of *Lalita Kumari v State of Uttar Pradesh*¹¹. This judgement also heralded the changes brought about by the Amendment of 2013 to Section 154. Section 166A has also been added by the 2013 Amendment which makes punishable the failure to record information under Section 154 (1) relating to the sexual offences.

Recommendations

- The Verma Committee's suggestions that legal assistance, as well as assistance of a healthcare worker and/or a women's organization to be provided must be incorporated in the provisions as well for better protection and help to victims of such crimes.

⁷The Telegraph, *Lending a Helping Hand*, TELEGRAPH INDIA (Mar 13, 2013), https://www.telegraphindia.com/1130313/jsp/opinion/story_16666158.jsp

⁸ Shashank Mangal, *Is the Criminal (Amendment) Act, 2013 the right weapon to fight against rape?*, LAWYERSCLUBINDIA, (Feb 25, 2014), <http://www.lawyersclubindia.com/articles/Is-the-Criminal-Amendment-Act-2013-The-Right-Weapon-to-fight-against-Rape--5995.asp>.

⁹Borpatragohain, *Safeguarding the Dignity of Women under the Criminal Law Amendment Act 2013-A Critical Analysis*, Space and Culture, India 1.2 (2013): 44-52.

¹⁰ Hasib v. State of Bihar (1972) 4 SCC 773

¹¹ (2014) 2 SCC 1

- The offences of Section 326A and 326B of the IPC, 1860 which pertain to acid attacks on women should be included in the list of offences under the first proviso.
- The video recording should be given some evidentiary value to avoid miscarriage of justice.
- The position as to the working of the provision when a person other than the victim reports the crime must be made clear.
- The implementation of the provision must be carefully monitored so as to avoid its abuse.

Conclusion

These provisions try to remove barriers in the legal process and make it disabled- friendly. The freedom aggressors were enjoying vis-à-vis disabled survivors of sexual violence will hopefully be a thing of the past. Moreover, by changing the methods of filing an FIR, mentally and physically challenged people will now be treated on a par with others — making the law just and inclusive. A doubt is still cast over due to a few reasons such as ambiguity in the provision relating to qualification of interpreters and educators and unexplained exclusion of provisions. The same when overcome, can be an exponentially changing legislative development. The possibility of situation of the sexual exploitation against women in the society improving seems radical but the stringency of the provisions can make a difference.

References

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