

AI Index: PRE 01/146/2013
22 March 2013

India: New sexual violence law has both positive and regressive provisions

A new law passed by the Indian Parliament aimed at addressing sexual violence, while positive in some respects, has several deficiencies and also violates India's international law obligations, Amnesty International said.

The upper house of the Indian Parliament passed the Criminal Law (Amendment) Act, 2013 on 21 March 2013, meaning that the law will come into effect once it is signed by the President.

The lower house approved the law two days earlier, with less than half of its members present and voting.

"The new law does have some welcome features," said G. Ananthapadmanabhan, Chief Executive of Amnesty International India. "It commendably criminalizes several forms of violence against women including acid attacks, stalking and voyeurism. It is more sensitive to the needs of disabled persons, provides for certain victim-friendly evidentiary procedures and removes the requirement of government permission for prosecution of public servants accused of rape and some forms of sexual violence.

"However the law is disappointing in other respects. It fails to address other kinds of violence against women, sets the age of consent at 18, and reduces victims' access to health care and legal assistance. The Act sets back much of the progress made on these issues by the Justice Verma Committee. It also introduces deeply regressive provisions, like the use of the death penalty and life imprisonment without the possibility of release for certain offences.

"The Act continues to facilitate impunity for rape committed by husbands and members of security forces. It imposes harsher punishments for certain kinds of rape committed by security forces. But unless the requirements of government permission for prosecution are removed, cases will rarely even make it to the courts."

No public consultation was held on the text of the Act, and civil society groups and members of the public were not given an opportunity to respond to its provisions.

"The new law is not nearly enough to fully address the range of sexual violence that is faced every day by women in our country," said G. Ananthapadmanabhan. "It is unfortunate that consultations with the public and civil society were not held, and the shortcomings of the Act were not thoroughly discussed by MPs. The Parliament had an opportunity to radically change the way the law treats women in India, but it has failed to make full use of this chance."

In December 2012, the gang rape and death of a 23-year old woman in Delhi sparked demands for criminal law reform in India. The Government set up a three-member committee headed by former Supreme Court Chief Justice JS Verma to review laws against sexual assault. However, in February, the

President signed the Criminal Law (Amendment) Ordinance, 2013, which ignored many key recommendations of the Verma Committee.

The Criminal Law (Amendment) Act, 2013 was drafted to replace the Criminal Law (Amendment) Ordinance, 2013. Several features of the Act fall short of international human rights standards.

Background on Certain Features of the Act:

Limited recognition of rape within marriage

The Act retains the exception for rape committed by a man on his wife when she is over 15 years of age. Only rape committed within a marriage when the spouses are living separately can be punished, and then with a lower sentence than that given to rape outside a marriage. This exception violates women's rights to equality and sexual autonomy. International law requires that no exemptions be made for perpetrators of sexual violence because of their marital status. The exception that allows for the rape of married girls between the ages of 15 and 18 by their husbands also violate India's international legal obligations to protect children from abuse.

Immunity for Security Forces

The Act does not remove the effective legal immunity that security forces accused of sexual violence enjoy under special laws like the Armed Forces (Special Powers) Act. The Verma Committee had noted that these laws legitimize impunity for systematic or isolated sexual violence by making government permission necessary before security forces can be prosecuted for criminal offences. Since permission is rarely granted, these provisions in effect put security forces above the law, violating victims' rights to remedy.

Retention of the concept of 'modesty'

The Act does not amend Section 354 and 509 of the Penal Code, which define crimes based on notions of modesty and morality, and not with respect to the physical and mental integrity of the victim. These concepts perpetuate stereotypes about women's expected conduct and behaviour and can impede women's access to justice. They also violate India's international legal obligations to amend all laws containing gender discriminatory provisions.

Death Penalty

The Act introduces the death penalty for sexual assault that results in death or a persistent vegetative state for the victim, or in the case of certain repeat offenders. Amnesty International opposes the death penalty in all cases without exception as the ultimate cruel, inhuman, and degrading punishment and a violation of the right to life. The Verma Committee also chose not to recommend the death penalty for any offence. Two-thirds of all countries worldwide do not use the death penalty, reflecting a global trend towards its abolition.

Life Imprisonment without the possibility of release

For certain offences, including gang rape and rape by some persons in positions of authority, the Act prescribes punishment that may extend to "imprisonment for the remainder of that person's natural life." Denying prisoners the option to have their sentence reviewed – and possibly remitted or commuted - at a later point in time disregards the reformatory object of punishment and ability of the prison system to rehabilitate offenders. Such a sentence would also potentially violate international law prohibitions against cruel, inhuman or degrading punishments.

Age of Consent

The Verma Committee had recommended that the age of consent be reduced from 18 to 16, but the Act

retains the age of consent at 18. While it is important to criminalize sexual contact with a child or adolescent who is incapable of giving meaningful consent, the law must also recognize the growing capacity of adolescents to express their sexuality.

No recognition of rape of men

By defining rape in terms of acts committed by a man against a woman, the Act ignores the recommendations of the Verma Committee to criminalize sexual assault of men and transgender individuals. Rape committed against any person, regardless of gender, should be criminalized. India's international law obligations require it to ensure that all individuals are equally protected from violence, without distinction of any kind.

Consensual Same-Sex Relations

The Act fails to repeal section 377 of the Penal Code, which criminalizes consensual same-sex relations among adults. In 2009, the Delhi High Court ruled that criminalizing consensual same-sex relations among adults was a violation of their constitutionally guaranteed rights to equality, non-discrimination, and the right to life with dignity and privacy.