



# The Criminal Law Amendment 2013 and Gender Equality

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Criminal Law Amendment Act which came into force in the year 2013 is the most significant step as far as the protection of the women's rights is concerned. The issue of gender justice in India is incomplete without the reference to the Justice Verma Committee Report that led to the Criminal Law Amendment Act of 2013. The Report is very crucial and cannot be overlooked as it dealt with the issues related to gender justice and gender equality with such expertise that it encompasses almost every important aspects involved of the ideology. This article tries to throw light on the perspectives of gender equality and gender justice with special reference to the contribution of Justice Verma Committee Report in this regard.

The Committee was set up by the Government in response to the long standing demand from all parts of the society and triggered by nationwide protest that erupted after Nirbhaya Case that happened in Delhi, in December 2012. The Committee report in its preface itself, recognises and categorically states the reason for constituting the committee that,

*"...in response to the country-wide peaceful public outcry of civil society, led by the youth, against the failure of governance to provide a safe and dignified environment for the women of India, who are constantly exposed to sexual violence. The immediate cause was the brutal gang rape of a young woman in the heart of the nation's capital in a public transport vehicle in the late evening of December 16, 2012."*<sup>1</sup>

Women's social action groups, have been actively advocating the cause of gender justice for decades. The Government took serious steps in this regard to amend the criminal law with respect to the escalating heinous offences against women. The Committee was headed by Justice J. S. Verma as the Chairman of the Committee along with members Justice Leila

Seth and Gopal Subramaniam.

The report starts with a beautiful quote of Mahatma Gandhi, which is very appropriate to mention here,

*"Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details in the activities of man, and she has an equal right of freedom and liberty with him. She is entitled to a supreme place in her own sphere of activity as man is in his. This ought to be the natural condition of things and not as a result only of learning to read and write. By sheer force of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over woman which they do not deserve and ought not to have. Many of our movements stop half way because of the condition of our women."*<sup>2</sup>

This statement by Mahatma Gandhi explicitly explains the texture of the relationship between men and women. This perfectly fits into the Indian cultural setup but at the same time it does not lose its universality. He expressed the views that every individual fits in the natural system created by the nature. The role of every individual is equal and one should possess any position not only by the virtue of gender but by the virtue of his/her qualities and abilities. The whole movement of gender equality is based on this cardinal principle.

The 600 odd pages Report deals with variety of issues such as Constitutionalism, Republicanism, Gender Equality, Gender Justice and India's obligations under various International Conventions, Rape and Sexual Assault, Sexual Harassment at the Workplace, Other Offences against Women, Trafficking of Women and Children, Child Sexual Abuse, Khap Panchayats, Honour Killings, Sentencing and Punishment and many more ranging from Electoral reforms to Police administration etc.



The Committee report also mentions the observations of the National Human Rights Commission and the responsibilities of the Government for the violation of human rights within its jurisdiction, that:

*“...it is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.”<sup>3</sup>*

This clearly indicates the intention of the State in respect to protection of the human rights of each and every individual. If the society has to be developed every person should feel equally secure. All the fundamental rights which are provided under the Constitution would be redundant if the Government is not able to create a safe and secure social environment for living, and in this regard we have to pay special attention to the plight of women in the country. Crucial questions that require redressal are whether the women in the country are feeling secure or free while sharing the public places with their counterparts? Whether the government is adequately able to provide for the efficient protection mechanism in this regard? Unfortunately after the 65 years of independence also we have been ineffective in providing the safe and secure environment to the women in this country. This has been proved by the trail of events that happened before Nirbhaya and which continued after. This denotes that the problem of gender inequality is so deep rooted in the Indian society that it is not going away in spite of stringent laws against it. The Report while elaborating the issue of gender inequality as a hurdle to achieve greater objective of social justice which includes gender justice, very appropriately observes that,

*“India’s democracy, as well as sovereignty is contingent on the realisation of the ideal of social justice. We are therefore of the view that gender inequality is contrary to the unifying idea of a sovereign, democratic republic”.*

The Constitution envisages the concept of social justice, encompassing gender equality as tool to achieve the same, and has paid great attention towards the gender equality and provisions related with it. Article 14 of the Constitution which tells that,

*“14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”<sup>4</sup>*

The first part of Article 14 which is taken from the Irish Constitution is a declaration of equality of civil rights of all persons. This enables the Government to take affirmative action in this regard. And that is why in the Preamble there is an express reference to the character of India being a democratic republic. The basic and fundamental principle behind this is equality.

Further explaining the role of state, it has clarified that the Government cannot take the position of a mere spectator but it has to be well prepared and equipped to fight these issues. The Report says that,

*“We must note that the Constitution is a pledge of the State. The State is responsible to live and administer the Constitution. As far as the rights of women are concerned, in our opinion, the State has failed to fulfil its trust and pledge with the Constitution to create both, atmospheric climatic and ground conditions for their welfare and benefit.”*

At the outset the report does not forget to refer to the other social institutions which are having a great impact on the social life. The report while referring to the extremities of Khap Panchayats said that,

*“Have we seen a social attitude of political authority against Khap Panchayats? Have we seen an express denunciation by a collective body like Parliament against such bodies? Have we seen an express denunciation by Parliament to deal with offences against women? Have we seen the political establishment ever discuss*



*the rights of women and particularly access of women to education and such other issues over the last 60 years in Parliament? We find that over the last 60 years the space and the quantum of debates which have taken place in Parliament in respect of women's welfare has been extremely inadequate."*

And the report does not stop here,

*"Further, we have noted the sustained historical neglect of women in planning and public policy."*

While explaining the political space shared by the women the committee observed that,

*"However, as far as women are concerned, the role of women in planned economy was not adequately prioritized. It is revealed that in 1939, there was a National Standing Committee which appointed a Sub-Committee to work out the role of women in a planned economy.<sup>5</sup> The National Planning Committee was set up in 1938 by the Indian national Congress at the joint initiative of Subhash Chandra Bose and Jawaharlal Nehru under the chairmanship of the latter. We further notice that the final report (Women's Role in Planned Economy WRPE) was presented before the Plenary Session of the National Planning Committee in 1940. According to historians, the said report did clearly show that there were issues at stake, and recommended that these be put in a framework of contemporary national and international thinking. We must note that the 1939 report came to light on account of the efforts of Maitreyi Krishnaraj from the archival sources which was brought back into public notice – 'Remaking Society for Women: Visions from Past and Present'.<sup>6</sup>*

The Committee notes that even though steps were taken at an early stage, subsequent development has lagged behind and we are not been able to increase the political space shared by women in this country.

The Committee Report also give due attention to the International mechanism in this regard. It deals with the international documents relating the gender equality in length and provides a very logical platform for the discussion. It duly mentions the Universal Declaration of Human

Rights, 1948, to which India was one of the 48 countries which voted in favour of the adoption of the UDHR by the United Nations General Assembly on 10<sup>th</sup> December 1948. The UDHR is not only considered as the Magna Carta of Human Rights, and is not just a treaty in itself but defines 'fundamental freedoms' and 'human rights' for the purposes of the UN Charter. The UDHR is generally established to be the foundation of international human rights law as it stimulated the numerous human rights conventions which followed including the ICCPR and ICESCR.

The Preamble to the UDHR states as follows:

*"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,"*

Article 16 of the UDHR has also been deliberated upon in the report, with regard to the equality in other statutes while dealing with family matters. Women have full rights in every aspect.<sup>7</sup> The International Covenant on Civil and Political Rights which came into existence in the year 1966 finds a place in the report. The Preamble to which inter alia states that,

*"Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights*



*recognized in the present Covenant,*”<sup>8</sup>

Article 3 of the ICCPR is the most important and clear in voicing and promoting the equal rights to the men and women and also places an obligation on all covenanting parties to: “... undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.” Further Article 23 of the ICCPR upholds certain inherent rights of the family and of men and women to commit to a union,

*“Article 23: 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”*<sup>9</sup>

The next important event is International Covenant on Economic, Social and Cultural Rights, which came in existence in 1966. India is also a party to the ICESCR, which states in its Preamble: “Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,”<sup>10</sup>

Further the report mentions about on the Political Rights of Women, 1954 to which India is also a party. The said Convention enjoins state parties to inter alia ensure the protection of the following political rights of women:

(a) Women shall be entitled to vote in all elections on equal terms with men, without any discrimination;

(b) Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination; and

(c) Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.<sup>11</sup>

The Committee is consciously referred to the recommendations in respect of India made by the UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) in February 2007. The CEDAW Committee has recommended that the country should “widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape”<sup>12</sup>

The Committee has further added that in the Declaration on Elimination of Violence against Women 1993 which has a very important message that,

*“Violence against women is a manifestation of historically negligent poor relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared with men”*<sup>13</sup>

This discussion makes it very clear that the J. S. Verma Committee Report has dealt with the issue of gender equality with befitting vision and compassion. The Report has thrown light on almost every aspect of gender equality in detail. Therefore in the context of the issue of gender justice and gender equality we cannot overlook the contribution made by the J. Verma Committee Report. In the Indian context the problem of gender equality increases by manifold considering the complex social structure of Indian society, that no uniform policy can be said to be sufficient for every group. The social structure is prevalent since ages and it cannot be changed by any policy in a day or two. The problem of gender inequality persistent in this country is an inseparable from the social and religious structure. On this outset the Verma Committee Report plays a very important role in expanding the current legal system to accommodate new and



efficient protection mechanism for creating the safe and secure environment for women in this country. The suggestions and recommendations made by the Committee are very essential and practical to be implemented and that is why these recommendations were immediately made part of the criminal law in India.

Gender bias is fuelled by societal mindset, and legal sanction alone cannot correct this aberration. The Committee was feverently hopeful that the Constitutional pledge of gender justice would soon be in tune with the egalitarian ethos envisaged for the fulfilment of the true spirit of equality, with a merger of both *de jure* and *de facto* equality.

**(End notes)**

- 1 <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>
- 2 M. K. Gandhi, Speeches and Writings. G. A. Natesan & Company, Madras, 1933.
- 3 NHRC Order dated April 1, 2002 in Case No. 1150/6/2001-2002
- 4 Article 14 of Constitution of India.
- 5 Banerjee, N. 1998. 'Whatever Happened to the Dreams of Modernity? The Nehruvian Era and Woman's Position', Economic and Political Weekly, Volume(17).
- 6 Some of its key recommendations that have a direct bearing on a woman's economic empowerment are summed up as below: 1. The report noted that economic rights of women were contingent on each woman being recognised as a separate and an independent unit within the economic structure. 2. WRPE report dealt with equal pay for equal work and also raised the question of compensation for household labour by absolute claim on a portion of

the household income. 3. The report also accorded women the right to claim crèche facilities. (This crucial provision was not recognised till as late as 2006, in the Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS), but unfortunately this provision still remains extremely inadequate if not dysfunctional) 4. The report suggested that "there should be cessation of all work during the day - so that the mid-day meal can be conveniently taken and the house wife is released from the duties in kitchen" [NPC 1948:227, resolution I lb].<sup>24</sup> 5. It also condemned the prioritization of male workers over women, and sought equal guarantees for women at work regardless of their marital status.

- 7 "Article 16 (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."
- 8 The International Covenant on Civil and Political Rights, 1966
- 9 India acceded to the ICCPR on April 10, 1979. India has, however, not signed or ratified the optional protocols to the ICCPR (including the Second Optional Protocol, which abolishes death penalty).
- 10 India acceded to the ICESCR on April 10, 1979. India has not signed or ratified the optional protocol to the ICESCR.
- 11 India signed the Convention on the Political Rights of Women on April 29, 1953 and ratified it on November 1, 1961
- 12 Available at <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>
- 13 Available at <http://www.un.org/documents/ga/res/48/a48r104.htm>