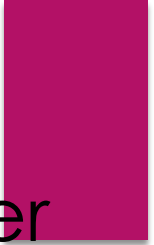


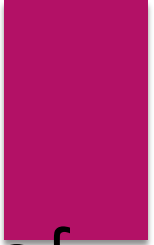


Some ideas from Justice
Verma Committee
Report.

22. We are of the firm opinion that substantive equality and women's rights as human rights have been established both in domestic and international legal regimes. We are of the opinion that, having regard to the exposition of the law in **Ashok Kumar Thakur v. Union of India** that the Constitution embraces the substantive equality approach as provided in Article 15(1) and Article 15(3). We are also convinced that the concept of formative action under sub-article (3) of Article 15 is not merely an enabling provision but, in the context of Article 14, may be a mandatory obligation. **(Page 64)**



23. We are further of the opinion that merely facial gender neutral laws and policies cannot deny what has perceptively called “.....differential access to justice faced by women seeking to engage with the legal system.....” (41 –Handbook on law of Domestic Violence produced by lawyers collective)



25. We must also note that the concepts of equality, the rule of law, justice, social, economic and political, liberty of thought and expression are all ultimately engendered to the exercise of individual autonomy and fulfilment of the optimum potential. We are further of the opinion that if constitutional obligations towards women are not fulfilled there would be a declaration against the State that right to equality and dignity have been denied.

30. In our tradition bound society, structured on the basis of conservative values, when a woman is subjected to sexual assault in any form, it translates into a multiple crime. She is raped at home (literally and figuratively) and in public, followed by demeaning medical examination, examination and cross-examination by the police and in court, in salacious media reports, and in the insensitive response of society, including family and acquaintances. In sum, the victim suffers intermittent rape in full public glare. **(Justice Verma Committee Report-page 14)...**

31. We are therefore of the opinion that failure to frame a domestic law, which is requisite for dealing with violence against women, will constitute a breach of the international Convention. Secondly, the law must be implemented in a manner that satisfies the criteria of impartial administration of justice, which is the fundamental cornerstone of the rule of law. **We also need to add that while physical violence is an offence, it also constitutes deprivation of human rights and liberty, and is a form of sex discrimination. Thus, violence against women has a dual characteristic. It is an offence under the principles of penology but, more importantly, it is a direct constitutional violation. The number of constitutional violations in India assume great importance as they have a bearing upon the true meaning of democracy, the true meaning of republic, and the true meaning of social justice.** We therefore wish to caution the State and suggest to the Legislature that it must keep aside all other business and first correct this aberration of the Constitution which

39. To achieve this reality, stages of change do not have to be, in the Darwinian sense, mere steps in evolution but can be fast forwarded by fundamental changes of attitude. We are glad to note that the voices of protest raised post the December 16, 2012 incident have symbolized the potential of the youth of the nation, and, perhaps, their need to disregard past perceptions in relation to women. In the view of the Committee, the protests are clearly a call to modern India to renounce old ways of looking, thinking and acting towards women and are a strong, positive move towards true empowerment. (JVCR-page 17)



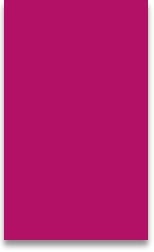
“166A. Whoever, being a public servant,-

(a) Knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or


(b) Knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) Fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509

Shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be



166B. Whoever, being in charge of a hospital , public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provision of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.”



357C. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident."

Section 376(2)...

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

45 of 1860.

'114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

45 of 1860.

Explanation.— In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.'

27. For section 119 of the Evidence Act, the following section shall be substituted, namely:—

"119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed."

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Sexual harassment

'354A. (1) A man committing any of the following acts-

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of a woman; or
- (iv) Making sexually coloured remarks,



Shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Assault with intent to disrobe

354B. Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

354C. Any man who watches, or captures the image of 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 or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to 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 which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Stalking

354D. (1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.’.

Gang rape.

376D. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.