



Maharshi Karve Stree Shikshan Samstha's

SCHOOL OF FASHION TECHNOLOGY

Institute of Fashion Design Management and Technology

## **CRIMES UNDER NIRBHAYA ACT, 2013: AN OVERVIEW**

Introduction: The Criminal Law (Amendment) Bill, 2013 commonly known as the Anti-Rape Bill came into force on Wednesday, April 3 after President Pranab Mukherjee put his signature into the Bill. Thereafter this Bill called as The Nirbhaya Act, 2013. The need for a strict law to deal with sex crimes against women was felt after the brutal gang-rape and murder of a 23-year-old Paramedical student in a moving bus in the national capital on December 16, last year. The victim died 13 days after the incident in a Singapore hospital on December 29, last year. The brutality of the crime shocked the nation. Indians protested on the streets to demand better safety measures for women and strict laws to punish the culprits. Under public pressure, Congress-led UPA government at the Centre formed Justice JS Verma panel to come up with strict laws to arrest crime against women. In order to bring a strong law, which is pro-women and will act as a deterrent, it will create a revolution in the country. Some of the key points in The Nirbhaya Act, 2013-

1. The law maintains life imprisonment for rape as the maximum sentence, yet sets down the death penalty for repeat offenders and those whose victims are left in a "vegetative state".
2. It also expands the meaning of rape to include penetration of the mouth, anus, urethra or vagina with the penis or any other object without consent.
3. It also defines stalking and voyeurism as crimes with punishments up to seven years.
4. Gang rape has been recognized as an offence, while sexual harassment has been redefined to include unwelcome advances with sexual overtures and showing pornography without consent.
5. The age of consent of sex has been kept at 18.
6. The law also punishes police and hospital authorities with imprisonment of up to two years if they fail to register a complaint or treat a victim.

# The Criminal Law (Amendment) Ordinance, 2013

## New offences

This new Act has expressly recognized certain acts as offences which were dealt under related laws. These new offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code:

| Section | Offence                            | Punishment   | Notes   |
|---------|------------------------------------|--|---|
| 326A    | Acid attack                        | Imprisonment not less than ten years but which may extend to imprisonment for life and with fine which shall be just and reasonable to meet the medical expenses and it shall be paid to the victim          | Gender neutral  |
| 326B    | Attempt to Acid attack             | Imprisonment not less than five years but which may extend to seven years, and shall also be liable to fine  | Gender neutral  |
| 354A    | Sexual harassment                  | Rigorous imprisonment up to three years, or with fine, or with both in case of offence described in clauses (i), (ii) or (iii)<br><br>Imprisonment up to one year, or with fine, or with both in other cases | Only protects women. Provisions are: <ul style="list-style-type: none"> <li>i. physical contact and advances involving unwelcome and explicit sexual overtures; or</li> <li>ii. a demand or request for sexual favours; or</li> <li>iii. making sexually coloured remarks; or</li> <li>iv. forcibly showing pornography; or</li> <li>v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.</li> </ul> |
| 354B    | Act with intent to disrobe a woman | Imprisonment not less than three years but which may extend to seven years and with fine.  | Only protects women against anyone who "Assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked."  |
| 354C    | Voyeurism                          | In case of first conviction, imprisonment not less than one year, but which may extend to three years, and shall also be   | Only protects women. By implication, women may prey voyeuristically upon men with impunity. The prohibited action is defines thus: "Watching or capturing a woman in "private   |

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|      |          | 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. | act”, which 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, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public."  |
| 354D | Stalking | Imprisonment not less than one year but which may extend to three years, and shall also be liable to fine   | Only protects women from being stalked by men. By implication, women may stalk men with impunity. The prohibited action is defined thus: "To follow a woman and contact, or attempt to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitor the use by a woman of the internet, email or any other form of electronic communication. There are exceptions to this section which include such act being in course of preventing or detecting a crime authorised by State or in compliance of certain law or was reasonable and justified." |

## The Criminal Law (Amendment) Act, 2013

The Bill was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, making certain changes from the provisions in the Ordinance. The Bill received Presidential assent on 2 April 2013 and came into force from 3 April 2013. The changes made in the Act in comparison with the Ordinance are listed as follows:

| Offence           | Changes   |
|-------------------|---|
| Acid attack       | Fine shall be just and reasonable to meet medical expenses for treatment of victim, while in the Ordinance it was fine up to Rupees 10 lakhs.   |
| Sexual harassment | "Clause (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature" has been removed. Punishment for offence under clause (i) and (ii) has been reduced from five years of imprisonment to three years. The offence is no longer gender-neutral, only a man can commit the offence on a woman. |

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|-----------------------|---|
| Voyeurism             | The offence is no longer gender-neutral, only a man can commit the offence on a woman.  |
| Stalking              | The offence is no longer gender-neutral, only a man can commit the offence on a woman. The definition has been reworded and broken down into clauses, The exclusion clause and the following sentence has been removed "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". Punishment for the offence has been changed; A man committing the offence of stalking would be liable for imprisonment up to three years for the first offence, and shall also be liable to fine and for any subsequent conviction would be liable for imprisonment up to five years and with fine. |
| Trafficking of person | "Prostitution" has been removed from the explanation clause   |