

LOSING THE PLOT ON WOMEN'S SAFETY

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

Most governments, when faced with the question of improving women's safety, inevitably turn to enacting new laws rather than ensuring a more effective legal system. The Maha Vikas Aghadi government in Maharashtra seems no different, however well-meaning it may be.

The Maharashtra Shakti Criminal Law (Maharashtra Amendment) Bill, 2020, and the accompanying Special Courts and Machinery for Implementation of Maharashtra Shakti Criminal Law follow the same cliché of harsher punishment, more authorities, and wider definitions. The Bills' content reflects the absence of a larger consultative process and lack of understanding of existing criminal laws.

For any criminal justice system to be effective, fair and just laws, a robust investigative mechanism, a dynamic judiciary and adequate infrastructure are indispensable. The criminal law amendments post the Nirbhaya case and the recommendations of the Verma Committee brought in several progressive amendments to curb violence against women and children. What is currently lacking is the infrastructure required for effective implementation. The Maharashtra government should hence focus on improving infrastructure, rather than bringing in harsher and unreasonable provisions in the guise of securing women's safety. Contrary to the government's stated intention of curbing violence against women, the Bills are draconian and threaten the lives of sexual assault victims.

The Bill proposes punishment in cases of false complaints and acts of providing false information regarding sexual and other offences against women with the intention to humiliate, extort and defame. The only other law which has a similar provision is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act), 2013. The provision only points to the patriarchal conception that women are manipulative liars and unworthy of being trusted. Even as most laws are indeed susceptible to misuse by individuals and authorities, no other legislation has such a provision.

Offences against women often occur behind closed doors or at desolate places, making finding eyewitnesses difficult. Investigation and prosecution are often shabby and negligent. This results in unfair acquittals, and the victims, in turn, may be accused of having filed false complaints. A provision for punishing false complaints would result in counter cases being filed against victims, and may thus dissuade many victims of sexual assault and acid attacks from filing complaints, thereby muffling women's voices. In a country where courts have directed women to marry their abuser, the possibility of a counter case would only make it more difficult for a woman to say 'No' to such a proposition.

The other aspect of the Bill is the introduction of the death penalty for rape, acid attacks, and for rape of a minor. The amendment to the relevant sections adds that in cases where "the characteristic of the offence is heinous in nature and where adequate conclusive evidence is there and the circumstances warrant exemplary punishment", the offence shall be punishable with death. However, it does not define what cases would qualify as being "heinous in nature", thus leaving it open to the interpretation of courts. To date, courts have held cases of varying standards to be "heinous" and there is no uniform benchmark to identify what circumstances make an offence "heinous". Further, the death penalty has been in the statute books for a long time, but there is no evidence affirming its potency as a deterrent in preventing crimes. It is time legislators realise that death penalty is not the absolute answer to the issue of rape — only the

certainty that there will be effective investigation, trial, and therefore punishment, can act as an effective deterrent. Contrary to the State's understanding, the death penalty will only mean that an accused may not stop at just rape and may murder the victim to get rid of the only witness, as the punishment for both will be the same. Importantly, studies have shown that often, the accused in sexual assault crimes are relatives or persons known to the victims. If the punishment for the crime is death, then not only the family of the victim, but the victim herself may choose not to report the crime or may turn hostile during the trial. Research has also indicated that judges are unlikely to convict a person when the punishment is death.

Another provision stipulating that investigation should be completed within 15 days, the trial in 30 days and the appeal in 45 days, even if well-intentioned, will only result in improper investigation and trial. This timeline is glaringly insufficient for gathering all evidence or conducting a just trial and would result in hasty functioning and miscarriage of justice. Similar existing mechanisms for speedy and effective investigation and trial under the Juvenile Justice Act and the POCSO Act are rarely adhered to as neither the police nor the courts have the infrastructure to comply with these timeframes. Further, the Bill does not state what happens if the investigation, trial, or appeal is not completed within the prescribed time. In the current system, police officers are saddled with a large number of cases at the same time. There are not enough prosecutors at trial courts and in high courts; most of them are assigned three-four courts at a time and they prosecute hundreds of cases simultaneously. Unless these systemic problems are solved, new laws will only be a facade.

Lastly, the proposed amendments seem to have been recommended without considering similar, already-existing provisions in the criminal laws. For instance, the Bill seeks to introduce Section 354E (Harassment of Women by any mode of communication) into the IPC, aiming to punish intimidation of women through social media and electronic platforms. Similar provisions exist under the IPC and the Information Technology Act, 2000, which comprehensively cover all the offences mentioned under the new section. Similarly, the provision to punish public servants for failing to assist in investigation or perform their assigned duties is also sufficiently covered under the IPC, in terms of contravention of law or disobedience of orders and duties. Hence, in effect, these proposed amendments are of little significance. It would be more pragmatic if the government focused on improving the implementation of existing laws and infrastructure.

The Bill was opposed by several women's rights organisations and lawyers from Maharashtra, which seems to have led the State government to refer it to a joint select committee. This is a welcome move and it would be in the interest of women, and justice itself, if the committee has a larger consultative process, engages with stakeholders and experts to understand the existing criminal laws, and reconsiders passing this regressive legislation.

Veena Gowda and Vijay Hiremath are lawyers practising in Mumbai

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