

**PARLIAMENT OF INDIA
RAJYA SABHA**

167

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON HOME AFFAIRS**

**ONE HUNDRED AND SIXTY SEVENTH REPORT
ON**

THE CRIMINAL LAW (AMENDMENT) BILL, 2012

**(PRESENTED TO RAJYA SABHA ON 1st MARCH, 2013)
(LAID ON THE TABLE OF LOK SABHA ON 4th MARCH, 2013)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
MARCH, 2013/PHALGUNA, 1934 (SAKA)**

**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

**ONE HUNDRED AND SIXTY SEVENTH REPORT
ON**

THE CRIMINAL LAW (AMENDMENT) BILL, 2012

**(PRESENTED TO RAJYA SABHA ON 1st MARCH, 2013)
(LAID ON THE TABLE OF LOK SABHA ON 4th MARCH, 2013)**



**RAJYA SABHA SECRETARIAT
NEW DELHI**

MARCH, 2013/PHALGUNA, 1934 (SAKA)

ACRONYMS

IPC	Indian Penal Code
JVC	Justice Verma Committee
NCW	National Commission for Women
AIDWA	All India Democratic Women Association
Cr. P.C.	Criminal Procedure Code
HPC	High Powered Committee
MHA	Ministry of Home Affairs
HRD	Human Resource Development
GPS	Global Positioning System
CCTV	Close Circuit Television
MMS	Multimedia Messaging Service
FIR	First Information Report
ITPA	Immoral Traffic Prevention Act
PCSOA	Protection of Children from Sexual Offences Act
AFSPA	Armed Forces Special Powers Act
IEA	Indian Evidence Act
WCD	Women and Child Development
I&B	Information of Broadcasting
JJ	Juvenile Justice

CONTENTS

	PAGES
COMPOSITION OF THE COMMITTEE	(i)
PREFACE	(ii) - (iv)
REPORT	1- 78
CHAPTER- I	1- 6
BACKGROUND OF THE BILL	
CHAPTER - II	7 - 17
EXAMINATION OF THE BILL	
CHAPTER - III	18 - 32
FURTHER EXAMINATION OF THE BILL	
CHAPTER - IV	33 - 37
SUGGESTIONS CONTAINED IN MEMORANDA AND RESPONSE OF THE MINISTRY OF HOME AFFAIRS THEREON	
CHAPTER - V	38 - 75
FINAL DELIBERATION AND CLAUSE- BY-CLAUSE CONSIDERATION	
NOTE OF DISSENT	76 - 78

**RELEVANT MINUTES OF MEETING OF COMMITTEE

*ANNEXURES

- (i) The Criminal Law (Amendment) Bill, 2012;
- (ii) Press Release; and
- (iii) The Criminal Law (Amendment) Ordinance, 2013

* To be appended at the stage of printing

**Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2012)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri D. Raja[^]
3. Vacant^{9t}
4. Shri Janardan Dwivedi
5. Shri Rajiv Pratap Rudy
6. Shri Satish Chandra Misra
7. Shri Prasanta Chatterjee
8. Shrimati Kanimozhi
9. Vacant^{*}
10. Dr. V. Maitreyan

Lok Sabha

11. Shri Anandrao Adsul
12. Shri L.K. Advani
13. Dr. Shafiqur Rahman Barq
14. Shri E. T. Mohammed Basheer
15. Shri Avtar Singh Bhadana
16. Smt. Santosh Chowdhary
17. Dr. Kakoli Ghosh Dastidar
18. Shri Ramen Deka
19. Shri Sandeep Dikshit
20. Shri Naveen Jindal
21. Shri Aaron Rashid J.M.
22. Shri Datta Meghe
23. Shri Lalubhai Babubhai Patel
24. Shri Sanjay Dina Patil
25. Shri Lalu Prasad
26. Shri Rathod Ramesh
27. Shri Hamdulla Sayeed
28. Shri Neeraj Shekhar
29. Shri Navjot Singh Siddhu
30. Shri Ravneet Singh
31. Shri Dinesh Chandra Yadav

SECRETARIAT

Shri P.P.K. Ramacharyulu, Joint Secretary
Shri Vimal Kumar, Director
Shri D.K. Mishra, Joint Director
Shri Bhupendra Bhaskar, Assistant Director
Shri Sanjeev Khokhar, Committee Officer
Shri Anurag Ranjan, Committee Officer

^{9t} Due to the resignation of Shri Rishang Keishing, Member, Rajya Sabha from the Membership of the Committee on Home Affairs w.e.f. 22.02.2013.

^{*} Due to the Appointment of Shri Tariq Anwar as Minister of State for Agriculture and Food Processing Industries.

[^] Shri D. Raja, Member, Rajya Sabha has been nominated w.e.f. 28th December, 2012 to the Committee on Home Affairs due to the appointment of Shri K. Rahman Khan as Minister of Minority Affairs in Union Cabinet

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Sixty Seventh Report on the Criminal Law (Amendment) Bill, 2012.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, in consultation with Speaker, Lok Sabha, referred* the Criminal Law (Amendment) Bill, 2012 (**Annexure-1**) as introduced on 4th December, 2012 in Lok Sabha and pending therein, to the Committee on 28th December, 2012, for examination and report within three months.

3. The Bill seeks to substitute Sections 375, 376, 376A and 376B by replacing the existing Sections 375, 376, 376A, 376B, 376C and 376D of Indian Penal Code, 1860, and replacing the word 'rape' wherever it occurs by the word 'sexual assault' and make the offence of sexual assault gender-neutral besides widening the scope of offence of sexual assault. The Bill intends to insert new sections 326A and 326B in the IPC to make acid attack a specific offence. The Bill proposes to make offence under Section 354 and 359 of IPC more stringent and also seeks to amend Sections 154, 160, 161 of the Code of Criminal Procedure 1973 for providing protection to women and male person under the age of 18 years and above 65 years. The Bill further aims to insert a new Section 53A in the Indian Evidence Act, 1872 wherein evidence of the character of the victim or of his or her previous sexual experience shall not be relevant or questioned.

4. The Committee considered the Bill in eight sittings held on 4th, 21st, 28th January, 4th, 11th, 18th, 21st and 26th February, 2013. The Chairman in the Committee's sitting held on 4th January, 2013 apprised the Committee about the reference of the Criminal Law (Amendment) Bill, 2012 and the Committee decided to issue a Press Release soliciting views of the individuals/organizations, women organizations on various provisions of the Bill. The Committee also decided to obtain the views of the State Governments/UT Administrations on the Bill. In response to the Press Release (**Annexure-II**) issued, the Committee received 492 memoranda out of which 402 memoranda signed by individuals were found to be identical.

(ii)

* vide Rajya Sabha Parliamentary Bulletin Part II No. 50467 dated 2nd January, 2013.

The Committee considered 90 relevant memoranda and sent the same to the Ministry of Home Affairs to furnish comments thereon. The comments of the Ministry of Home Affairs on these memoranda and the suggestions of States/UTs Government and Members of the Committee were considered during the course of examination of the Bill. Views/suggestions from five State/UT Governments and four MPs were also received by the Committee which were also sent to the Ministry of Home Affairs for their comments. The Committee takes this opportunity to express its sincere thanks for the pains taken by public in giving their views on this subject. The Committee however, expresses its displeasure to note that only 5 States/UT Governments responded and other states/UTs could not send their views.

5. The Committee in its sitting held on 21st January, 2013 heard the presentation of Home Secretary on the Bill. The Committee, in its sitting held on 28th January, 2013 took cognizance of the fact that Justice J.S. Verma Committee (JVC) on Amendments to Criminal Law has submitted its report to the Government on 23rd January, 2013 and the copy of the report as received from the Ministry of Home Affairs was circulated to the Members of DRSC on Home Affairs to consider the Criminal Law (Amendment) Bill, 2012 in the light of the observations and recommendations made by JVC. The Committee in that sitting discussed the Bill viz-a-viz the recommendation of the JVC in the presence of Legislative Secretary.

6. The Committee, in its sitting held on 4th February, 2013 took cognizance of the promulgation of the Criminal Law (Amendment) Ordinance, 2013 (**Annexure-III**) on 3rd February, 2013 by the President of India and heard the explanation given by the Home Secretary of the circumstances under which the said Ordinance was promulgated. The Committee, in its next sitting held on 11th February, 2013 examined the Bill viz-a-viz JVC report and the provisions of the Ordinance, wherein the Legislative Secretary and the Additional Secretary, Ministry of Home Affairs apprised the Committee about the suggestions made in the Verma Committee report which were accepted by the Government and the provisions of the Ordinance viz-z-viz the Bill. The Committee, in its next sitting held on 18th February, 2013 further heard the Home Secretary and the Legislative Secretary on the comparative statement on the provisions of the Bill, recommendations of JVC and the Criminal Law (Amendment) Ordinance, 2013.

7. The Committee in its sitting held on 21st February, 2013 took up the clause-by-clause

(iii)

consideration of the Bill in the presence of Home Secretary. The Committee also took into consideration provisions of the ordinance while taking up clause by clause consideration of the Bill. As per practice, the officers of the Legislative Department and Department of Legal Affairs were also present in the sitting to respond to legislative/legal queries of the Members.

8. The Committee in its sitting held on 26 February, 2013 considered and adopted this Report.
9. The Committee has made use of the following documents in preparing the Report:-
 - (i) The Criminal Law (Amendment) Bill, 2012;
 - (ii) Detailed background Note on the Bill as Ministry of Home Affairs;
 - (iii) The Indian Penal Code (45 of 1860);
 - (iv) The Code of Criminal Procedure, 1973 (2 of 1974);
 - (v) The Indian Evidence Act, 1872(1 of 1872);
 - (vi) One Hundred and Seventy Second Report on Review of Rape Laws of Law Commission of India;
 - (vii) Report of Committee on Amendments to Criminal Law chaired by Justice J.S. Verma;
 - (viii) The Criminal Law (Amendment) Ordinance, 2013;
 - (ix) Comments of the Ministry of Home Affairs on the memoranda received from individuals/public suggestions of State/UTs Government and Members of Parliament and the Committee; and
 - (x) Oral evidence tendered by the representatives of Ministries of Home Affairs and Law and Justice.
10. Note of dissent given by Shri D. Raja and Shri Prasanta Chatterjee are appended to the Report.
11. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

26th February, 2013
New Delhi

M. Venkaiah Naidu
Chairman
Department-related Parliamentary
Standing Committee on Home Affairs

(iv)

REPORT

CHAPTER - I

BACKGROUND OF THE BILL

1.1 INTRODUCTION

1.1.1 According to the Statement of Objects and Reasons, the Criminal Law (Amendment) Bill, 2012 seeks to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872. On the basis of the recommendations of the Law Commission of India made in its One Hundred Seventy Second report on 'Review of Rape Laws' as well as the recommendations of the National Commission for Women for providing stringent punishment for the offence of rape, a High Power Committee (HPC) was constituted consisting of the representatives of the Ministry of Women and Child Development, Ministry of Law and Justice, National Commission for Women, Law Commission of India and the Ministry of Home Affairs to examine the matter considering the suggestions of various quarters on the subject. The High Power Committee submitted its report along with the draft Criminal Law (Amendment) Bill, 2011 and recommended to the Government for its enactment.

1.1.2 The Bill seeks to achieve the following objectives :-

- (a) Substitute Sections 375, 376, 376A and 376B by replacing the existing Sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code, and replacing the word 'rape' wherever it occurs by the words 'sexual assault', to make the offence of sexual assault gender neutral and also widening the scope of the offence of sexual assault;
- (b) Insert new Sections 326A and 326B in the Indian Penal Code to make acid attack a specific offence;
- (c) Enhance the punishment under Sections 354 and 509 of the Indian Penal Code, making the offence more stringent;
- (d) Amend Sections 154, 160 and 161 of the Code of Criminal Procedure, 1973 for providing male persons under the age of eighteen years or above the age of sixty-five years and women more protection;

- (e) Amend the Indian Evidence Act, 1872 by way of inserting a new Section 53A wherein evidence of the character of the victim or of his or her previous sexual experience shall not be relevant or questioned.

1.2 HISTORICAL BACKGROUND

1.2.1 According to the background note furnished by the Ministry of Home Affairs, in the year 1997, Sakshi (NGO), a non-governmental organization engaged in empowering women, filed a Writ Petition in the Supreme Court of India seeking, inter alia, directions concerning definition of the expression 'sexual intercourse' as contained in Section 375 of the Indian Penal Code, 1860 (hereinafter called IPC). The Supreme Court directed the Law Commission of India to file its response with respect to the issue raised in the Writ Petition. The Commission filed an affidavit in July 1998. The Supreme Court, however, directed Sakshi to draw a note containing the precise issues involved in the petition and directed the Law Commission of India to examine the said issues afresh. The Law Commission, in its 172nd Report, made recommendation for widening the scope of rape and to make it gender neutral.

1.2.2 The Ministry of Home Affairs in the background note further stated that since the Criminal Law and the Criminal Procedure are in the Concurrent List of the Seventh Schedule to the Constitution of India, the Report of the Law Commission was referred to the State Governments for their views/comments. The State Governments were consulted on the recommendations made by the Law Commission. Most of the State Governments supported the views of the Law Commission. Thereafter, on the basis of the Law Commission's Report, the Legislative Department drafted a Bill. Meanwhile, the National Commission for Women (NCW) forwarded a separate Bill on the same subject. Accordingly, the recommendations of the Law Commission of India, the draft Bill prepared by the Legislative Department and the Bill forwarded by NCW were discussed by the then Home Minister with the then Law Minister where the then Chairperson, National Commission for Women was also present. It was stated that during the discussion, the view that emerged was that various sexual offences specifically relating to males and females should be differentiated and the crime should remain gender specific, and therefore, the recommendations of the Law Commission would need a re-look taking into account the suggestions made by the National Commission for Women.

1.2.3 The Ministry further stated in the back ground note that the Legislative Department, accordingly, having regard to the sensitivity of the subject, was requested to revise the draft Bill taking into consideration the above suggestions. It was also requested that the revised Bill should address the existing inadequacies in the laws relating to sexual offences and also provide for measures to deal with the sexual abuse of children through stringent provisions. Accordingly, the Legislative Department prepared a revised Bill. The National Commission for Women recommended some changes relating to 'rape' in its Annual Report 2004-05. Since the Criminal Law and the Criminal Procedure are in the Concurrent List of the Seventh Schedule to the Constitution of India and the laws are also being administered/implemented by the State Governments/Union Territory Administrations, their views were sought on the recommendations made by the NCW in its aforesaid Report. In order to get a quicker response, a Conference of the Home Secretaries of the State Governments and Union Territory Administrations was convened on 7th July, 2008 in Delhi to discuss the matter relating to rape/sexual assault. There was no agreement as to the amendments that should be carried out in IPC, Cr.P.C. and the Indian Evidence Act.

1.2.4 The Ministry of Home Affairs mentioned in its background note on the Bill that as the subject matter relating to rape is sensitive in nature, it was decided that the Bill on rape laws may be finalized after an in depth consultation with all concerned. Therefore, a High Powered Committee (HPC) was constituted on 29th January, 2010 under the Chairmanship of the former Union Home Secretary comprising Secretary, Ministry of Women and Child Development; Secretary, Department of Legal Affairs; Secretary, Legislative Department; Member Secretary, NCW; Member Secretary, Law Commission of India; Special Secretary, MHA and Consultant (Judl.), MHA as members to examine the issue relating to the review of rape laws. The HPC discussed the matter in its meetings held on 12.2.2010 and 15.3.2010. The suggestions made by the HPC were formulated into a draft Criminal Law (Amendment) Bill, 2010 which was referred to the State Governments for their comments/views. The draft Bill was also posted on the website of the Ministry of Home Affairs for comments of the general public. The HPC after going into the comments received from the various individuals and NGOs, the State Governments and also after further consultation amongst its members on 10.08.2010, 04.10.2010 and 08.02.2011 finalized its report along with the draft Criminal Law (Amendment) Bill, 2011 and recommended to the Government for its enactment.

1.2.5 The Committee was further apprised that the provisions of the draft Criminal Law (Amendment) Bill, 2011 as formulated by the HPC were further examined in the Ministry of Home Affairs in consultation with Legislative Department, Ministry of Law and Justice. After necessary modifications, the Legislative Department provided a revised draft Criminal Law (Amendment) Bill, 2012. After consultation with other stake holders like Ministry of Law & Justice and Ministry of Women & Child Development, a Cabinet Note on “Review of legal provisions pertaining to sexual assault - Proposal to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872” was finalized and sent to the Cabinet for consideration on 02.07.2012. The Cabinet considered the note on 19.07.2012 and approved the proposal of introduction of the Bill in the Parliament. Accordingly, the Bill was introduced in the Lok Sabha on 04.12.2012.

1.3 FRESH DEVELOPMENT

1.3.1 A fresh development took place while the Committee was examining the Criminal Law (Amendment) Bill, 2012. The President promulgated the Criminal Law (Amendment) Ordinance, 2013 on 3rd February, 2013. The Committee felt surprised on this development, because the Bill was already before it for examination and report and the Parliament was to meet for the Budget Session within a fortnight. The Committee also took into account some reports coming from women organizations and other civil societies protesting against the said Ordinance on account of not accepting the recommendations of the Justice Verma Committee in toto.

1.3.2 The Committee in its sitting held on 4th February, 2013 wanted Home Secretary to explain the circumstances which necessitated the Government to issue this Criminal Law (Amendment) Ordinance, 2013.

Responding to the Committee's query, Home Secretary replied as under:-

"in the last meeting, agreed that the Committee would give holistic recommendations which take into account both the provisions in the Bill as introduced in the House as also the recommendations of the Verma Committee. Sir, there has been no departure from that stand. The Government sticks to that stand. Therefore, the Government's request would be that the Committee should go into the Bill, the Ordinance and the other recommendations of the Verma Committee which are not included in the Ordinance, or any other provision which the Committee feels

appropriate to have in a Bill of this nature. When the Committee gives its recommendations, then the Government will have the benefit of its advice over the whole gamut of issues. Then, I think, we can bring in amendments which are comprehensive in nature, covering every aspect."

1.3.3 The Committee sought to know whether the Committee could discuss the Ordinance. Responding to that the Home Secretary replied as under:

"...my submission is that this Committee is entirely within its powers to take into account any existing laws or proposed laws or any Ordinance or any other material which will have a bearing on this subject. Therefore, the Committee will be very much within its rights to go into the Ordinance as well. But, the Ordinance has two parts...the Ordinance is made up of the provisions which were there in the Criminal Law (Amendment) Bill and the provisions which are there in the Verma Committee Report. Some provisions of the Verma Committee Report are not there in the Ordinance; otherwise the Ordinance is only comprised of these two. ... if you cover the Criminal Law (Amendment) Bill and you cover the Verma Committee Report, then, I think the whole gamut in any case would be covered., as I said, the Committee will be within its rights to take into account any material which has a bearing on this subject."

1.3.4 In the meeting of the Committee held on 11th February, 2013, the Chairman informed the Members that sub rule (2) of Rule 66 of the Rules of Procedure and Conduct of Business in the Rajya Sabha envisages a situation where an Ordinance can be promulgated to enforce the provisions of a Bill which is pending before the Council. Identical rule also exists in Rules of Procedure and Conduct of Business in the Lok Sabha.

1.3.5 The Chairman further stated that he has been given to understand that there had been instances where Ordinances were issued on the Bills, which were under consideration of the respective Committees. The Electricity Law (Amendment) Bill, 1997, the Lotteries (Regulation) Bill, 1998, the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Bill, 2008 and the Central Industrial Security Force (Amendment) Bill 2008 are some of the Bills on which Ordinances were issued when they were under consideration of the respective Committees and in such cases the Committees had gone ahead with the consideration of the Bills and gave their reports thereon.

1.3.6 The Chairman then informed the Members that in the light of the above, he feels that the Committee may continue with the examination of the Criminal Law (Amendment) Bill, 2012 and present its Report thereon.

CHAPTER- II

2.0 EXAMINATION OF THE BILL

2.1 The Committee in its sitting held on 21st January, 2013 heard the presentation of Home Secretary on the provisions of the Bill. In the said meeting the Law Secretary and the representatives of the Legislative Department were also present.

2.2.1 The Home Secretary while highlighting the necessity of the Bill, informed that the Legislative Department, on the basis of recommendations of the Law Commission of India, drafted a Bill proposing amendment in Section 375 IPC (Rape) making it gender-neutral, Sections 376A to 376D, 377, 509 of IPC along with suitable changes in Cr.P.C., 1973 and the Evidence Act, 1872. The Committee asked the Home Secretary to differentiate between the recommendations of the Law Commission, the Bill forwarded by the NCW and the present Bill. The Committee also sought to know about the reasons for difference in approach on the issue of fines prescribed under different Sections as in the Section 326A IPC, a maximum fine of Rs. 10 lakh; in Sections 354 and 509, a minimum fine of Rs. 1,000 has been proposed. However, in Sections 167A, 326B, 376, 376A and 376B of IPC, neither the minimum nor the maximum fine has been indicated. The Committee wanted the Home Secretary to explain the reasons for not making mandatory, recording of the statement of a woman, against whom an offence under Sections 354, 375, 376, 376A, 376B and 509 of IPC is alleged to have been committed or attempted, by a woman police officer by leaving scope for lacunae in the proposed law by retaining the words 'as far as possible'. The Committee also wanted to know from Home Secretary whether the proposed amendments address the issues raised by social activists, women workers, NGOs, legal experts the other concerned people in the aftermath of the recent gang-rape in Delhi on 16th December, 2012.

2.2.2 The Home Secretary stated that after the brutal bus gang rape in Delhi, the Government set up a three-member Committee headed by a retired Chief Justice of India, one member being a retired Chief Justice of a High Court and another member being an ex-Solicitor General.

2.2.3 The Home Secretary further added that the terms of reference of the Justice Verma Committee were two-fold which inter-alia included that the process of justice must be made speedy so that the guilty are brought to book quickly and the punishment may be made as stringent as possible.

2.2.4 The Home Secretary pointed out that two important demands were raised by the civil society groups in the aftermath of that horrendous incident. One was for provision of death penalty and another was pertaining to the age of majority for the criminal. He further stated that as far as death penalty is concerned, as the victim of Delhi gang rape had died, is an admissible penalty, and the government would be pleading for death penalty for convicts.

2.2.5 The Chairman pointed out that the general demand of the civil society was that even if there is rape, not followed by death, still there should be death penalty and wanted to know the reaction of the government on this issue. The Home Secretary responded as under:-

"..... our view is that the death penalty is supposed to be given in very limited cases, the rarest of rare cases. We have seen from experience that, by and large, there is also a constituency against the death penalty, and either the death penalty is not given by the courts very often, or, even where it is given, in many instances, it has been commuted. So, basically, if you provide for a death penalty here, then, you will have to provide for death penalty against many other similar types of cases, which, I think, will become something which will impede rather than enhance justice. The next best provision is punishment for life, which is already provided for. what we are doing in the proposed amendment is, we are taking away the provisos which give the courts the discretion to award lesser punishment.so that the courts do not have the discretion to award lesser punishments under some sections."

2.3 A Member of the Committee wanted to know the compelling circumstances for the Government to commute death penalty into life imprisonment. Another Member added that there is a view against capital punishment and India needs to take a categorical stand on capital punishment.

2.3.1 The Committee in its sitting held on 21st February, 2013 had a detailed discussion on the issue of death penalty enshrined under section 376A which provides "Punishment for causing death or resulting in persistent vegetative state of victim". The said provision states that such an accused will be punished with a rigorous imprisonment for a term which shall not be less than twenty years, but may be extended for imprisonment for life, which shall mean the remainder part of his life or death. A Member of the Committee pointed out that as for death penalty, the State will have to take a decision. Many countries have abolished it but India is still having death penalty in the law. The Chairman of the Committee pointed out it is allowed as

per the existing laws. It is a general feeling that if somebody causes death he/she has to be given death sentence.

2.3.2 Another Member added that any act which results in death comes under the purview of section 302 of IPC. It is a heinous crime, which calls for death penalty. The accused in a gang-rape, not resulting in death, will get away without any capital punishment.

2.3.3 Other Member viewed that under section 376A, life imprisonment may be made the maximum punishment. Death sentence need not be included because capital punishment does not deter anybody from murdering someone, it does not stop someone from raping someone. It does not actually stop many things which law prohibits. The Chairman of the Committee pointed out that even if provision of death penalty is not there in Section 376A but rape followed by murder would automatically attract Section 302 of IPC. The Government has already issued an Ordinance. The Committee should send a proper message of giving extreme penalty only in case of death or the victim becoming vegetative for the rest of his life.

2.4 Regarding the attendance of the witnesses for investigation, the Home Secretary informed that the proposed amendment provides that any person below the age of 18 would not be called to assist the investigation, etc. The investigating officer will have to go to his residence. However, the Home Secretary viewed that under the mentioned provision, no woman should be called to the police station to assist investigation. But for males, who are not victims, who are accused, their attendance will need to be there at the police station rather than the police officer going their homes.

2.4.1 Clarifying further on the issue whether the victim would be called to the police station or woman officer would record the statement at her residence, the Home Secretary added that the proposed law says that, as far as possible, the statement would be recorded by a woman police officer. He pointed out that the provision says, 'as far as possible', because in every police station, at a particular time, a woman officer may not readily be available, though the Central Government have been pressing the State Governments to recruit more women in police. He also stated that the Central Government is of the view that at least 33 per cent of the police force should be women. In fact, in the last Conference of the Chief Secretaries and the DGPs, it was also urged upon State Government to consider and examine whether any reservation can be made for women in recruitment of police. But despite the requests made by the Central Government, the percentage of women in police throughout the country is

quite low. So, there would be many instances where women police officers are not available.

2.5 As regards whether there was any departure between this proposed amendment and the recommendations of the Law Commission, the Home Secretary stated that there is a departure because the recommendation of the Law Commission has said that if a woman police officer is not available, then, a woman Government officer should be there and if a woman Government officer is also not available, then, another woman who may be a member of an NGO or something else.

2.5.1 The Home Secretary opined that where a woman police officer is not available, then, a female Government servant in the vicinity, should have been included, in the proposed amendment and assured the Committee that while considering the recommendations of the Justice Verma Committee the Government would again examine this aspect, and the Government would bring amendment in the light of the recommendations made by the Committee. In case there is any legal angle involved in that, she could have assistance of male police officer standing by.

2.5.2 In regard to the gender neutral nature of the Bill, responding to the query of the Chairman of the Committee regarding the difference between the recommendations made by the NCW and this Bill as stated as under:-

"...the main focus of the recommendations of the NCW was that the offence of rape should not be made 'gender neutral'. In fact, that is the stand which most of the women groups still hold on to. the Amendment makes the offence of rape 'gender neutral'. That is the key difference between the two. And, whether it should be 'gender neutral or not', is, I think, a question which we will have to address."

2.5.3 Responding to the query of a Member, the Home Secretary replied that outraging the modesty of women is a gender specific offence because outraging the modesty applies only to women.

2.6 Indian Panel Code, 1860

2.6.1 The Home Secretary initiated the discussion with the new Section, namely, Section 166A. The existing Section 166 of IPC spells a provision about a public servant disobeying the law with intent to cause injury to any person. The Home Secretary pointed out that Government proposes to add specific provisions which will provide for enhanced punishment in case investigating officer asks for the attendance of any person when that officer is not supposed to ask for the attendance of that person.

That means, if a police officer is not supposed to call for the attendance of a woman at the police station and if he does so, then there will be a provision for punishment.

2.6.2 Differentiating between the existing Section 166 and the proposed Section 166A, the Home Secretary clarified that the proposed Section 166A is more specific and does away with the intent while in the first part, the intent is manifest meaning that the public servant will be punished only when he does a particular act knowing that it will cause injury or damage to another person or wanting that such injury or damage is caused so that *mens rea* is there. The Home Secretary further added that in Section 166A if a public servant calls a woman witness or a woman victim to the police station for the purpose of investigation, though his intention may not be *mala fide* but still he would be punished. However, the Home Secretary admitted that the provision appears to be slightly draconian but the purpose of the proposed amendment is to ensure that the police officer does not unnecessarily call the women victims to the Police Station. The Home Secretary further clarified that if a woman voluntarily goes to the police station to make the complaint, the proposed amendment would not be invoked. The proposed provision relates to procuring attendance while registration of an offence is dealt in a separate law. The Law Secretary clarified that the proposed provision is for the purpose of investigation.

2.6.3 The Home Secretary apprised the Committee that the Government is proposing to insert Section 326A and 326B along with a proviso to Section 326A and explanation to 326B, after Section 326 of IPC. Section 326 relates to voluntarily causing grievous hurt by dangerous weapons or means. Section 326A provides for punishment for acid attacks. The proposed Section 326A states that whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables any part or parts of the body of a person or causes grievous hurt by throwing acid on or administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may be for life and with fine which may extend to ten lakh rupees. Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

2.6.4 A Member of the Committee desired that if the economic position of the accused under Section 326A is strong, he must be liable to be punished with more than rupees ten lakh as the cost of medical treatment and rehabilitation of victim of acid attacks require considerable amount of money besides mental agony.

2.6.5 The Home Secretary then explained that under Section 354, whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

2.6.6 Clarifying the necessity for proposed amendment in Section 354, the Home Secretary clarified that the Government is not bringing forth any substantial change in the said Section but proposing only a change in the operative part of the section which defines the crime. He clarified that, whoever assaults or uses criminal force to any woman, is gender specific. He also stated that they increased the upper limit for punishment from two years to five years.

2.6.7 The Committee further sought clarification with regard to the word 'outraging the modesty' and whether removing the *saree* or touching a person considered to be outraging the modesty or whether there is any physical assault outraging the modesty. The Home Secretary clarified that if a person forcibly catches hold of the hand of any girl, it will come under the ambit of this section, because he has used criminal force and that criminal force has outraged her modesty. If a person removes the *dupatta* of any lady, that will come under this Section.

2.6.8 Responding to a query relating to false accusation in view of special provision for woman only, the Home Secretary stated that there is specific provision for dealing with false and malicious accusation in IPC.

2.6.9 The Committee, thereafter, took up Section 375 of IPC, which defines 'sexual assault. The Home Secretary pointed out that the amendment widens the definition of 'sexual assault', which is comprehensive and, in his opinion, there is agreement of almost all parties on the issue. He clarified that, by and large, the provision is the same as the previous provisions. The change has been made in the first part. Another change has been made in the age of consent which has been raised to 18 years.

2.6.10 A Member of the Committee felt that even though the age of wife has been increased from 15 years to 16 years, it is still below the stipulated age of 18 years for the girl to marry under the Prohibition of Child Marriage Act, before which the marriage is considered to be a child marriage and can be declared void at the instance of any of the couple. Even in the case of Prohibition of Child Marriage Act, if the groom is below 21 years of age and the bride is below 18 years, the marriage is voidable at the option of either of these two who were children at that time. He viewed

that there is also a need to have consistency in law and wanted to know as to why it is 16 years and not 18 years.

2.6.11 The Home Secretary conceded that the provision indicates the practical reality. He mentioned that the marriage of a girl below 18 years of age is voidable and not void *ab initio*. There are numerous marriages where the girl has been below 18 years of age. Therefore, unless there is a provision all those marriage would become illegal and punishable.

2.6.12 Another Member raised the issue relating to Section 375 which spells out about a person who is said to commit 'sexual assault'. He sought to be apprised about the wordings along with its implications as stated in sub-Section(a) (ii), "...except where such penetration is carried out for proper hygienic or medical purposes." The Home Secretary explained that such provision has become necessary because it has been stated that penetration is not necessarily by penis but by any object manipulated by such person. This is to clarify instances where a doctor is examining a person for medical purposes. There should be an exception provided for this.

2.6.13 The Home Secretary further explained the provision enshrined in Section 376 (1) regarding punishment for sexual assault. The Home Secretary clarified that the idea of sub-Section (2) is to include whoever, being in a position of authority, committing a sexual assault. It includes anybody in a position of authority. This also includes sexual assault on a woman knowing that she is pregnant or is under 18 years of age or being a member of group of persons having a common intention and in furtherance of that intention commits sexual assault. The Home Secretary added that all cases, where there is a gang activity involved, come under aggravated offence.

2.6.14 The Committee, thereafter, took up Section 509 of IPC for discussion. The Home Secretary pointed out that the amendment intends to increase the punishment from one year to three years of imprisonment with fine ,which may not be less than one thousand rupees. Any lewd remark, any sound or gesture also is included. A Member wanted to know whether the said provision includes eve-teasing, the Chairman of the Committee clarified that eve-teasing is a general phrase.

2.7 Code of Criminal Procedure, 1973

2.7.1 The Committee was apprised by the Home Secretary that Section 154 of Cr. P.C. provides for registration of offences and the proposed amendment makes a

proviso that if the information is given by the woman against whom an offence under Section 354, Section 375, Section 376, Section 376A, Section 376B and Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer. The Home Secretary further added that the Ministry of Home Affairs had a discussion on this provision where the Law Commission suggested that it should be recorded, as far as possible, by a woman police officer, failing which by a woman Government servant or by a woman from one of the organisations interested in the welfare of women, etc. The Home Secretary agreed that Government has to apply its mind to the said provision because in his opinion attempt should be to ensure that as far as possible such statements are recorded by women.

2.7.2 Some Members of the Committee felt that the words ‘as far as possible’ may give a scope for escape to hold that there is no woman officer in any specific police station. However, the Home Secretary pointed out the stand taken by the Law Commission that a woman police officer or an officer should be there. The Committee observed that to enforce the proposed amendment, Government needs to pursue with all the State Governments asking them at the earliest to have at least 33 per cent women police force because in the police stations in rural areas there are women constables but there are no women officers as such.

2.7.3 The Chairman of the Committee wanted to know whether under Section 154 of Cr.P.C., it is mandatory to reduce in writing every information relating to the commission of a cognizable offence and should be signed by the person giving it. The Home Secretary replied in affirmative. The Chairman further queried if a police officer fails to record the First Information Report whether one has to inform the District Police Superintendent. The Home Secretary again replied in affirmative stating that any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

2.7.4 Some Members observed that the registration of FIR must be made mandatory as the responsibility of the station House officer who must first register it and in case of his inability to register it, then he must inform the Superintendent of Police in writing that, “I received a complaint like this and I did not register for this reason.”

The Home Secretary, subscribing to the view of the Committee, added further that, apart from the Superintendent of Police, some authority outside the police hierarchy should also be involved meaning thereby that it should be made mandatory for them to report also to the Sub-Divisional Magistrate and the District Magistrate about complaints which they have not registered and the complainant should also have the freedom to complain not only to the Superintendent of Police but also to the District Magistrate. The Chairman further desired to know whether the judicial or subordinate court could be involved in this process. The Home Secretary pointed that could be possible, but the problem could be that the subordinate courts are very over-worked.

2.7.5 The Committee then discussed the proposed amendment in Section 160 of the Cr. P.C., which provides for police officer's power to require attendance of witnesses. Proviso to the Section 160 stipulates that no male person under the age of 15 years or woman shall be required to attend any place other than that place in which such male person or woman resides. The proposed amendment adds to the proviso to Section 160 that no male person under the age of 18 years or above the age of 65 years or a woman would be required to attend at any place other than the place in which such male person or woman resides.

2.7.6 The Committee, thereafter took up Section 161 Cr.P.C, which relates to examination of witnesses by police. Government is proposing amendments by inserting a proviso after sub-Section (3) that the statement of a woman against whom an offence under Section 354, Section 375, Section 376, Section 376A, Section 376B and Section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, as far as possible, by a woman police officer. The Home Secretary underlined the fact that the instant provision relates to investigation. The Committee may consider keeping it as 'as far as possible by a woman police officer or making it mandatory.

2.7.7 The Home Secretary thereafter apprised the Committee about the proposed amendment in Section 273 of Cr. P.C. which relates to evidence to be taken in the presence of accused. In section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely:-

“Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused”.

2.7.8 The Home Secretary acquainted the Committee that, under the existing provision, the normal procedure is that evidence is to be recorded in the presence of the accused. He pointed out that the proposed amendment provides that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

2.7.9 Coming to Section 327 of Cr.P.C. relating to Court to be open, the Home Secretary stated that, as per the existing provision, the place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same, can conveniently contain them.

2.8 INDIAN EVIDENCE ACT, 1872

2.8.1 The Chairman of the Committee pointed out at the Statement of Objectives and Reasons – Para 2(e), which says, ‘amend the Indian Evidence Act, 1872 by way of inserting a new section 53A wherein evidence of the character of the victim or of his or her previous sexual experience shall not be relevant or questioned.’ The Law Secretary apprised that the proposed provision is in pursuance to court ruling whereupon a specific amendment is being brought.

2.8.2 The Home Secretary clarified that the present Section 53 of the Evidence Act says, “In criminal cases, previous good character is relevant. In criminal proceedings, the fact that the person accused is of a good character is relevant.” He further stated that they want to add Section 53A in the Evidence Act. The people were making use of this provision to attack the character of the victim. Therefore, Section 53A is proposed to be added so that one cannot go to the issue of question of character of a person.

2.8.3 Enlightening the Committee about the proposed amendment in Section 114A, which relates to presumption as to absence of consent in certain prosecutions for sexual assault, the Home Secretary apprised the Members about changes, which are consequential in nature and the word ‘rape’ has been substituted with the words ‘sexual assault’.

2.8.4 Responding to the Committee's query regarding the implications of Section 146, the Home Secretary stated that the implications are that while in a normal criminal proceeding, a witness may be tested by questioning his veracity. An attempt may be made to question his veracity or to shake his credit by injuring his character. In this case, this territory shall not be entered into as to what the person's previous sexual history has been. After the amendment, the spirit of the law would be that a man and a woman may be having sexual relations, without marriage, for the past five years. If, at any point of time, even after five years or six years or whatever, she says that any intercourse has happened without her consent, then, this question shall not be put to her that you have been having sexual relations with him for the past five years. So, the thing becomes slightly, to that extent, dangerous. At any point of time, a woman can say that the consent was not there.

CHAPTER - III

FURTHER EXAMINATION OF THE BILL

3.0 The Committee, in its sitting held on the 4th February, 2013, held further discussions on the provisions of the Criminal Law (Amendment) Bill, 2012 in comparison with the Criminal Law (Amendment) Ordinance, 2013 promulgated on the 3rd of February, 2013.

3.1 The Additional Secretary, Ministry of Home Affairs apprised the Committee that after the horrendous rape case of 16th December, 2012, a Committee comprising of Justice J.S. Verma, former Chief Justice of the Supreme Court with Justice (Retd.) Leila Seth, former Chief Justice of the Himachal Pradesh High Court and Shri Gopal Subramanian, former Solicitor General of India was set up on 23rd December to give recommendations on amending laws, to provide for speedy justice and enhance punishment for criminals in sexual assault cases of extreme nature. The Committee submitted its report on 23rd January, 2013. Justice Verma Committee made a number of recommendations relating to their terms of reference as well as outside it. The recommendations made by the Committee can be grouped into two parts – (a) general policy matters and administrative issues and (b) recommendations regarding the amendments to the Criminal Laws as per their terms of reference.

3.1.1 As far as the general policy matters and administrative issues are concerned, the Verma Committee has devoted a chapter to police reforms and a chapter on electoral reforms. The Verma Committee has given a draft Bill of Rights for women and have also made recommendations regarding education. They have also made a number of recommendations on administration such as police stations being required to have CCTVs to ensure that proper procedures are being followed in handling, recording and filing complaints; provision of adequate safety measures and amenities in all public transport vehicles with security guard, GPS and CCTVs; a public emergency response system for putting in place medico-legal guidelines on how to perform a medical examination of a victim of sexual assault, etc. The set of recommendations are being referred to the concerned Ministries to examine and take actions.

3.1.2 He further stated that as regards the recommendations regarding amendments to Criminal Law, Justice Verma Committee has agreed to most of the provisions of the Criminal Law (Amendment) Bill, 2012 which is pending before the Parliamentary Standing Committee. Hence, there is a broad convergence between the provisions in the pending Criminal Law (Amendment) Bill and recommendations of Justice Verma

Committee. The Committee had not made any suggestions regarding amendments to be made for expeditious trial.

3.2 AMENDMENT TO THE INDIAN PANEL CODE

3.2.1 The Additional Secretary stated some of the major recommendations made by the Verma Committee in addition to the provisions contained in the Criminal Law (Amendment) Bill relate to right to private defence of body in case of acid attack, which may extend to the causing of death. This recommendation has been accepted and incorporated in the Ordinance. Further, the Verma Committee recommended for increase in punishment from one year to five years, imprisonment for a public servant knowingly disobeying any direction of law, including not recording information given to him about sexual offences against women. This recommendation has been accepted subject to the punishment remaining to be for one year or with fine or with both. In any case, public servant faces Departmental action in addition to above punishment.

3.2.2 The Chairman of the Committee pointed out that the Verma Committee recommended imprisonment of five years but the Ministry of Home Affairs agreed to imprisonment for one year only. The Additional Secretary stated that the provision of Criminal Law (Amendment) Bill have been kept intact.

3.2.3 As regards, the offence of voluntarily causing grievous hurt by use of acid under the new Section 326A, the Additional Secretary apprised the Committee that the JVC recommended that the compensation to be paid to the victim of acid attack should be adequate to meet, at least, the medical expenses incurred by the victim. The provision of fine of Rs.10 lakhs to be paid to the victim, as provided in the Bill and Ordinance, is considered better and adequate.

3.2.4 The Legislative Secretary clarified that the provision of the Bill, as it exists, very clearly stipulates, “Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.” So far as the legislation is concerned, there seems to be no ambiguity. Under the proviso to the Section 326A, clearly stipulates that whatever is being paid as a fine has to be given to the victim.

3.2.5 As regards, Section 326B, the Legislative Secretary stated that there is no such provision so far as the existing IPC is concerned. The provision, as it exists, in the Ordinance almost captures the existing provision of the Bill as well as major portion of the recommendations given by the Verma Committee.

3.2.6 The Additional Secretary, Ministry of Home Affairs, underlined the fact that the provision of compensation has not been given in case of attempt to throw acid under Section 326B, since there will not be any injury and medical expenses in an attempt and, therefore, the recommendation of Justice Verma Committee in this regard is redundant.

3.2.7 The Committee, thereafter, took up consideration of Section 354. The Legislative Secretary pointed out that the Verma Committee suggested that the provisions of the original Bill should be replaced with an offence of sexual assault and punishment for sexual assault. In fact, what the Verma Committee wanted was that the offence of rape under Section 375 should be retained. After examining the Verma Committee Report, the original Section 354 has been retained as it is. Only the punishment has been increased from one year to five years. In addition, new offences, which were recommended by the Verma Committee with regard to sexual harassment, voyeurism, stalking and disrobing of women, have been created, which were earlier not there in the Bill, have been incorporated in the Ordinance.

3.2.8 Responding to the query of the Chairman of the Committee about the exact meaning of voyeurism, the Legislative Secretary submitted as under:-

"in fact, ...the content of the section itself explains what exactly 'voyeurism' means. Whoever 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 shall be punished." some lady has gone to buy a dress and she goes to the room to see whether it is properly fitting or not. Nobody is supposed to see her in that room. If somebody has put a false camera or a hidden camera there, and he watches that lady, he will commit an offence under 354C. It has been specifically provided now. If you look at the general definition of 'modesty', as it already existed, probably, it could have been covered, but now, it has been made more explicit."

3.2.9 Clarifying a hypothetical situation that a lady is in a private act with her husband and somebody shoots the film and then put it on the video or through MMS, wanted to know whether the said provision would cover the offence, the Legislative Secretary answered in the affirmative.

3.2.10 The Legislative Secretary submitted, with reference to Section 354D, that stalking is again a new offence, which has been recommended by the Verma Committee and which the Ministry of Home Affairs and the Government have accepted it and the same has been incorporated in the Ordinance.

3.2.11 Explaining 'stalking' under Section 354D, the Legislative Secretary pointed out that the first part of sub-Section (a) of 354D defines offence of stalking which reads as under:-

"Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, 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."

3.2.12 The Legislative Secretary added that there was no such provision and stalking is a new offence which is being created on the basis of the recommendation made by the Verma Committee. Responding to a query of a Member, Legislative Secretary pointed out that offence under Section 354D is gender neutral, and if a woman takes a photograph of a man, that is also an offence.

3.2.13 Another Member felt that, in actual practice, it is clearly in respect of offences committed against women. Generally speaking, in society, there may be similar practices which are obnoxious, reprehensible, committed in respect of boys and the approach, in this context, of law should be gender neutral. He further stated that instead of the word "rape" using the word "sexual assault" is in order to cover everything. Otherwise, rape is confined to an offence committed by a man against a woman, by a boy against a girl.

3.2.14 Differentiating between the offence of 'sexual harassment' and 'sexual assault' the Legislative Secretary submitted before the Committee as under:-

"Precisely that is the reason..... If you look at the Bill, you will find we have created two types of offences. One is sexual harassment which is of a lower level. Then, sexual assault is a substitute for the existing rape. The intention was, as per the recommendations made by the Verma Committee and as per whatever inputs we got from the Ministry of Home affairs, when we drafted the law, the sexual harassment and sexual assault, both should be separately

defined. Sexual assault is a serious offence as compared to the sexual harassment because earlier, it was only modest thing. Now it is a sexual harassment which covers a wider compass. Similarly, sexual assault also covers a wider compass. And also it is gender neutral. This is the provision we have tried to incorporate."

3.2.15 On the issue of making the offence gender neutral, Additional Secretary, Ministry of Home Affairs submitted as under:-

"... when an assault takes place between two individuals, be it man against woman, or, man against man, or, boy against boy, or, woman against woman, when it is a sexual assault with the intention either to rape or bodily harm which covers under the definition of rape, etc., to an equal kind of thing. There is a sexual assault on an individual. So, that is why it is gender neutral. It doesn't exclude man against woman. It includes man against woman mostly. Most of the rape cases which come to us are men against women. But that doesn't mean that reverse should not be taken care of, or, boy against boy should not be taken care of."

3.2.16 The Legislative Secretary, thereafter, pointed out that in regard to Section 370, the existing provision under IPC relates to buying or disposing of any person as a slave which is a very, very restricted provision, which exist since 1860. The proposal now is substitution of new Section 370 and Section 370A to deal with trafficking of persons as such and not only the slavery.

3.2.17 The Legislative Secretary further pointed out that the recommendation of the Verma Committee has been accepted and incorporated in the Ordinance but the same was not part of the Bill. He clarified that the provision is basically covering human trafficking which is gender neutral.

3.2.18 The Chairman of the Committee viewed that the Government is unnecessarily complicating the issue. The basic idea is to stop the flesh trade. If anybody exploits somebody and then uses them for flesh trade, it should be punishable.

3.2.19 A Member of the Committee opined that slave is the original concept. The original Section 370 dealt with only slavery and the amendment now is comprehensive, which includes slavery, other forms of sexual exploitation.

3.2.20 The Joint Secretary, Ministry of Home Affairs added that India is a signatory to the U.N. Convention on Organised Crime, which is actually universal definition of 'human trafficking'. This is actually a supplementary protocol to the UN Convention on

Trafficking and Organised Crime. This definition is used world over and it has been just brought in here.

3.2.21 The Legislative Secretary stated that the new offence being created under Section 370A is neither in the existing law nor in the pending Bill before the Parliament. This Section relates to employing of a trafficked person.

3.2.22 He added that the said provision under Section 370A is on the recommendation of the Verma Committee, which has been accepted by the Government and incorporated in the Ordinance.

3.2.23 The Chairman of the Committee, expressing his reservation on the provision under Section 370A, felt that it might be misused in the rural areas. Government should understand the consequences of what is being done. He cited agricultural sector, in rural areas, where farmers go and pay amount to somebody, hire some 10 or 30 people and if somebody files a complaint, the said provision would automatically cover the farmer. The Chairman felt that the Government should reconsider its decision to propose such amendment and definition of 'trafficking' should confine to 'sexual exploitation'.

3.2.24 Another Member of the Committee subscribing to the view opined as under:

"...fact that there are many agencies which employ maids and workers. These kinds of sexual offences are camouflaged. But that doesn't mean that to kill a rat we have to burn the Fort. That is something which we will have to go through because this can be tried separately in the labour laws. This can be tried separately in various other laws, not necessary that we have to try it under IPC or the Evidence Act which is a separate criminal law which deals with criminal offences."

3.2.25 Responding to this, the Joint Secretary, Ministry of Home Affairs, stated as under:

"Trafficking, as such, is a large scale phenomenon happening in the country, which is completely masked. There are two dimensions to it. It happens in all types of forms, in all forms of deception and deceiving. Now, within this, what, in fact, found was that it is completely mutated itself in different forms. Today, it may be of some nature. Tomorrow, it may be domestic servants. Some other day, it could be something else. It could be bride. For example, now we are seeing in Haryana the brides are being imported at a particular cost, and so on and so forth. How it goes is something which we do not know. Probably, trafficking is the

generic word, which we need to use, and under that, we have to definitely attract any possible interaction in future. That is the reason we thought of this."

3.2.26 One Member was of the view that the ambiguity in this clause could entail many of the people who are brought as domestic helpers across the country who are paid well. This provision could also be used against those people who get employed, which is a different debate all together. He felt that this is possibly a larger ambit going beyond the concept of trafficking for the purpose of prostitution. He also felt that in making the amendment in the original provision in the IPC relating to slavery more comprehensive and covering sexual exploitation, the Government have brought in the concept of bonded labour also, which may be a law by itself. It can be a law for bonded labour. But that deserves a specific law by itself. He was of the further opinion that while the Committee is examining the issue in terms of sexual exploitation of women particularly because of rape etc., the comprehensive amendment that Government has made under Section 370 or Section 370A, be confined to sexual exploitation.

3.2.27 The Additional Secretary, Ministry of Home Affairs, stated that the Government have taken note of the comments the Committee. The Legislative Secretary endorsing to the view of the Ministry of Home Affairs also took note of the concerns expressed by the Committee on this issue and maintained that the Government would reexamine the issue and the observation and recommendation of the Committee would be looked into from drafting angle and whatever changes are needed Government would look into it.

3.2.28 The Committee then took up Section 375 for examination. The Legislative Secretary informed that Government is adding Sections 375, 376, 376A. Existing Sections are being replaced because they deal with the offence of rape which was not considered to be gender neutral. Now, instead of 'rape', the definition of 'sexual assault' is given in Section 375 and other Sections. The Verma Committee had, in fact, recommended that the definition of 'rape' should be retained. But as the scheme of the Act originally introduced in the Bill was that the offence of sexual assault should be gender neutral, therefore, the recommendation of the Verma Committee has not been accepted by the Government to that extent that the offence of rape should be retained. Instead of the term 'rape', the term 'sexual assault' has been defined, which include the offence of rape. The definition has been made much wider.

3.2.29 Section 376 deals with punishment for sexual assault. Under existing provision in IPC, there was punishment for rape but it is now punishment for sexual assault. The Legislative Secretary pointed out that in the Verma Committee recommendation there is no suggestion for death penalty. It is an addition made by the Government at two places where either it leads to the death or it leads the victim to a vegetative stage or for repeat offence.

3.2.30 Section 376A deals with sexual assault by husband upon his wife during separation, which is again based on the provision of the Bill. The Verma Committee has not made any recommendation on this issue.

3.2.31 Clarifying the position relating to sexual assault during separation, the Legislative Secretary pointed out that this is a stage when divorce has not been granted, but they are living separately under judicial separation.

3.2.32 Switching over to Section 376B, intercourse by public servant with a woman in his custody, the Legislative Secretary pointed out that there is enhancement of punishment. The existing punishment is for five years. Now it is being enhanced to ten years. The Chairman of the Committee viewed that if a public servant indulges in a custodial rape, then, there has to be a severe punishment. Another Member, subscribing to the view of the Chairman, felt that when a woman is in custody, he is much more responsible for her well-being. If he indulges in raping that woman, then the punishment of ten years is not enough and the punishment should be enhanced to life imprisonment in such cases or death penalty.

3.2.33 The Chairman of the Committee added that use of the term intercourse in Section 376B is also wrong and the same should be read as "Rape by public servant against the woman in his custody" because when it is "intercourse", it has to be with consent. Responding to the query, the Additional Secretary, Ministry of Home Affairs clarified that the Verma Committee have also used the word "intercourse". The punishment is less than five years but it may exceed to ten years. However, the same has been enhanced in the Ordinance.

3.2.34 The Additional Secretary, Ministry of Home Affairs pointed out that the person in position of authority, may be a public servant or a superintendent or a manager of a jail, remand home or other place of custody or under any law, for the time being, in force, or a women's or children's institution or the management of a hospital or the staff of a hospital. If they take advantage of the position in which they are placed in a superior position and seduce or induce a person and have sexual intercourse, then it is

punishable. The Legislative Secretary, clarifying the issue, stated that the doubt, which is being expressed, may be resolved while paying attention to the explanation given just to Section 376B, which says 'sexual intercourse shall mean any of the act mentioned in sub-clauses (a) to (d) of Section 375'.

3.2.35 Another Member, referring to Section 376 C, wanted to know about the safety of a woman working in private places like corporate sector, construction work and farming sector because it could happen there also. The Joint Secretary, Ministry of Home Affairs, replied that the provision of "Being in a position of authority or in a fiduciary relationship" under the Section, covers all this in private sector also.

3.2.36 Another Member pointed out that Section 376B includes the situation in hospitals. One member drew attention to the two-finger test by a doctor of a rape victim and felt that, as far as gynecological diagnosis is concerned, with the advent of the Transience Sonography, it is much superior to the two-finger test. The Member suggested that the provision for doing away with the two-finger test has to be included in the Bill.

3.2.37 The Joint Secretary of the Ministry of Home Affairs stated that the issue has been referred to the Ministry of Health and Family Welfare.

3.2.38 The Committee took up Section 376D, which specifically deals with sexual assault by gang. The Legislative Secretary informed that the Verma Committee used the word gang rape. Instead of 'rape', the Government is using the words 'sexual assault' in the Bill, and, therefore, it is sexual assault by gang. The punishment prescribed here is not less than 20 years, but which may extend to life and, in addition, compensation also.

3.2.39 The Legislative Secretary apprised the Committee that Section 376E deals with punishment for repeat offenders. He pointed out that the Verma Committee did not say about death sentence but Government has added it in the Bill. The Chairman sought to know the purpose of giving life imprisonment for repeat offence instead of death penalty. The Legislative Secretary replied that there are two places where death penalty has been added. One is, repeat of offences, and the other is, where the victim goes into vegetative state or it leads to the death of the victim.

3.2.40 The Legislative Secretary pointed out that Section 509 of IPC, deals with insult of modesty of a woman. Here again, basically the punishment is being increased from

one year under the existing provision to a term, which may extend to three years and also with fine.

3.2.41 The Chairman of the Committee wanted to know the safeguards against misuse of this Section. The Legislative Secretary clarified that when a group of students in a college itself or while travelling in a bus or travelling in a train or walking in a park, pass certain remarks against a woman, those will be covered under Section 509. Another Member wanted to know as to when the Justice Verma Committee has recommended this Section for being repealed, then why the Government is retaining it. The Additional Secretary, responding to the query, clarified as under:-

"basically we retained because of the increasing eve-easing and other things that are taking place in a college. It should be a deterrent against eve-teasing because today eve teasing can take place in many ways by gesture, by sound, by showing pornography, by attracting into that. We agree that the Justice Verma Committee did not give it. They said that it could be repealed. We retained it because the provision was already there."

3.2.42 The Chairman of the Committee sought to know whether Section 509 has been applied against anybody at any time and sought to be apprised of the experience of the Delhi Police. The representatives of Delhi Police submitted before the Committee as under:-

"This is the Section we use for eve teasing principally. Previously it was not a cognizable offence. Now, we made it a cognizable offence. Previously you would have to go through a lot of difficulty in trying to convert a non-cognizable offence into a case triable by a Magistrate also. This is a summary procedure which the court has to take and permission has to be sought from the Magistrate. In fact in the last DGs' conference which we had on 4th January, they said that if you want to have zero tolerance society with respect to crime against women; and this is the starting point of all crimes against women. They said that you make this cognizable, come what may."

3.2.43 The Chairman of the Committee suggested that Government should bring ragging also under Section 509 of IPC since most inhuman things are done, including sexual assault, sexual intercourse, and other things. Boys are asked to remove their clothes and then walk naked.

3.3 Code of Criminal Procedure, 1973

3.3.1 The Committee then took up consideration of the amendments of Sections relating to Criminal Procedure Code. The Legislative Secretary pointed out that existing Section 54A of Cr.PC is being modified. The modified form, as provided in the Ordinance and as recommended by the Verma Committee, is a procedural aspect making it more convenient for identification of the person.

3.3.2 The Chairman of the Committee suggested that the word "may" should be substituted by the word "shall". Responding to that, the Legislative Secretary pointed out that the Government has intentionally put the word "may" because, at many of the places, the facility of the video graphing may not be available. The Chairman of the Committee stated that, nowadays, in every *taluk*, in every village, marriages, birthdays, etc., are videographed. Therefore, there should not be any problem in making videograph mandatory.

3.3.3 The Committee, thereafter, took up the proposed amendments in the Code of Criminal Procedure. In Section 154 Cr.P.C., in respect of the new offences, which have been created, with regard to procedure one proviso has been added, "provided that the information is given by a woman..." This is with regard to registering the FIR. The Legislative Secretary stated that the Verma Committee has also made a similar recommendation. The Chairman of the Committee pointed out that the words "as far as possible" need to be deleted to ensure that the recording of the statement must be made alternatively by a woman Government officer in the absence of a woman police officer.

3.3.4 The Committee then took up section 160 Cr.P.C. The existing provision is also captured here. The Legislative Secretary stated that the Government is giving certain protection to the physically disabled person or persons who are below the age of 18 years or above the age of 65 years or women. The proviso specifically provides "that no male person under the age of 18 years or above the age of 65 years, a woman or a physically or a mentally disabled person shall be required to attend at any place other than the place in which such male person or woman resides". This is the protection being given to them so that they are not summoned unnecessarily.

3.3.5 The Committee took up Section 161 of the Cr.P.C., which deals with examination of the witnesses by the police officer. The Legislative Secretary pointed out that the Verma Committee makes no recommendation. But, in the Bill, which is pending before the Parliament, certain amendments were made, adding the new sections, which are being created as new offences, under the existing Bill.

Accordingly, a proviso is being added to Section 161 where assistance of a woman police officer will be available. The Chairman of the Committee suggested that the words “as far as possible” should be deleted and in the absence of woman police officer, other woman Government officer should be deputed.

3.3.6 The Committee then took up section 164 of Cr.P.C., which relates to recording of the confessions and the statements. The Legislative Secretary pointed out that the said provision is a new section being added with regard to the offences specifically being created under this Ordinance. The Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-Section (5) as soon as the commission of the offence is brought to the notice of the police. The Legislative Secretary added that this is a safeguard, as being built-in, that if a person is disabled, then the assistance of an interpreter or a special educator is to be provided when the statement is recorded and the same shall be videographed.

3.3.7 The Legislative Secretary informed the Committee that Section 198B of the Cr.P.C. has been included in the Ordinance on the basis of the recommendation of the Verma Committee. He added that Section 198B is relatable to Section 376B, which deals with sexual assault by husband upon his wife during separation. It is said that, in such cases, cognizance shall be taken only if the wife is making a complaint and not otherwise. Any third person making a complaint cannot be taken cognizance.

3.3.8 The Committee took up Section 273, which is with regard to evidence to be taken in presence of the accused. An exception is being carved out that his statement should not be recorded in the presence of the accused person.

3.3.9 The Legislative Secretary pointed out that Section 327 of the Cr.P.C. is a proviso being added for in camera proceedings with regard to the offences which are being created. Otherwise Section 327 provides that the proceedings have to be in open court. Here, it shall be *in camera*. The Chairman of the Committee viewed that it must not be left to the discretion of the Magistrate, rather be made mandatory.

3.3.10 The Legislative Secretary further pointed out that there are certain amendments made in the Schedule to the Cr.P.C. with reference to the new offences, which have been created afresh. The Government has categorized those offences as cognizable or non-cognizable or bailable or non-bailable with reference to the period of sentence prescribed in each of the offences. Generally where the sentence is less than three years the offence is bailable and non-cognizable. He added that the procedure laid is

the general practice and there is no bar even to make the offence cognizable where the punishment is less than three years. But normal principle is followed in this Schedule.

3.4 Indian Evidence Act, 1872

3.4.1 There are certain related amendments in the Indian Evidence Act. Section 53A of the Indian Evidence Act is a new addition, which was there in the Bill and the Ordinance also. It was stated that this exception has become necessary because, in many cases, normally, on behalf of the accused, they say this is the character of the victim. That is why, this exception has been made.

3.4.2 The Committee took up Section 114A of Indian Evidence Act, which deals with certain presumptions. The Legislative Secretary pointed out that the offences, which have been created under Section 376(2) where sexual intercourse by the accused is proved, and the question is whether it was without the consent of the other person alleged to have been sexually assaulted, and such other person's state in that person's evidence before the court that such person did not consent. The court shall presume that such person did not consent, meaning thereby the burden of proof is being shifted on to the accused person.

3.4.3 The Committee took up the examination of Section 119 of Indian Evidence Act which is being amended. At present, it deals with only the dumb witnesses. Its scope is being widened. If the witness is unable to communicate verbally, the provision provides as to how his evidence is to be recorded and statement is to be videographed. That provision again is being made here. The Chairman wanted to know the recommendations of the Verma Committee. The Legislative Secretary read out the recommendation of the Verma Committee, which reads as under:-

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

3.4.4 The Chairman of the Committee pointed out that the word 'writing' has not been included. Communicate verbally means only through the mouth. If he communicates through writing that should also be permissible.

3.4.5 The Joint Secretary, Ministry of Home Affairs, pointed out that the whole process of examination and cross-examination relies entirely on the oral examination, and there is no system of taking affidavits at all.

3.4.6 The Legislative Secretary then pointed out that in Section 146 of the Evidence Act, which relates to questions lawful in cross-examination, there is a proviso in the existing provision, which stipulates "Provided that in a prosecution for a rape, for attempt to rape, it shall not be permissible to put questions in the cross-examination as to her general immoral character". Now, this is being substituted by a new proviso.

3.4.7 A Member of the Committee desired to know, in the context of the proposed amendment in the Ordinance, the legal stand on prostitution and whether prostitution is legal or illegal in India. The representative of the Ministry of Home Affairs stated that the law relating to sex workers is covered under the Immoral Traffic (Prevention) Act, 1986. It was stated that prostitution is not illegal. However, India has not outlawed prostitution but outlawed solicitation. India has outlawed running a brothel and keeping the earnings of running a brothel with some one.

CHAPTER- IV

SUGGESTIONS CONTAINED IN MEMORANDA

4.0 The Committee in its sitting held on 4th January, 2013 decided to issue a Press Release soliciting views of the individuals/organizations, women organizations on various provisions of the Bill. The Committee also decided to obtain the views of the State Governments/UT Administrations on the Bill. In response to the Press Release issued, the Committee received 492 memoranda out of which 402 memoranda signed by individuals were similar in content. The Committee considered 90 relevant memoranda received which were sent to the Ministry of Home Affairs to furnish comments thereon. The comments of the Ministry of Home Affairs on these memoranda and the suggestions of States/UTs Government and Members of the Committee were considered during the course of examination of the Bill. Views/suggestions from five State/UT Governments and four MPs who are Members of the Committee, were also received by the Committee which were also sent to the Ministry of Home Affairs for their comments.

4.1.1 The summary of the suggestions as received from the public and states/UTs Government are enumerated below:-

- Rape and other sex related offences should have a separate law and not be a part of IPC.
- Include attack by any liquid apart acid that can have a debilitating affect on the victim.
- The amendment of point no. 5(3)(k) in Chapter II of the ‘Juvenile Justice Act, 2000’ by reducing the age accepted for “juvenile” or “child” from a person who has not completed eighteen years of age to a person who has not completed fourteen years of age. Other memoranda contained suggestions for reduction of age in male juvenile from 18 to 15-16 years and in another memoranda suggestion for age limit for juvenile was 12 years of age.
- Make judiciary accountable for delay.
- Amend laws to prevent misinterpretation by unscrupulous lawyers to delay court proceedings.
- Enhancement of infrastructure for courts.

- Create complaint boxes in each district and town, villages and conduct awareness programme.
- Install GPS system in police vehicles and Surveillance Cameras at strategic locations to be monitored by the senior Committee Members from public and government.
- Amendments in Section 375 of IPC, Section 16 of Juvenile Justice Act, Sections 53(A), 160, 164, 273, 302 of CrP.C so as to establish a procedure for providing effective justice to the victim of a heinous crime as well as a deterrent so that commission of such offence be reduced.
- Reforms in education system imparting cultural values and effective measures to be enforced to prohibit film industry from showing item songs parallel to pornography and denigrating women folks.
- Strict criminal action against media which showcases women in poor light.
- Suitable provisions may be inserted into the bill for regulating the media.
- Provision to issue automatic gag order to the media to prevent conducting a media trial and needlessly tarnishing a person's reputation in a subjudice case.
- Provision for Punishment of hang to death even for simple rape, chemical castration to men.
- Victims privacy and dignity must be maintained throughout the medical examination and must not be subjected to archaic and degrading method of examination.
- Waiver of medical test for filing rape cases;
- Live-in relation should not be rape.
- Only any physical relation under threat or force should be termed as rape or sexual assault.
- Investigation should be time bound and also be entrusted to senior police officials.
- Time limit for investigation to maximum 60 days and trail should be completed within 1 year.
- Compulsory women cells within all police stations throughout India.
- Strict action for dereliction of duty against police officers who refuse to file Rape/Sexual violence complaints.
- Recruitment of women force with 48% quota on SC/OBC.
- Police force must act free from the influence of local politicians having feudal ideology.

- Amendment in Section 34(A) and 34(B) of Indian Penal Code for making provision for punishment for life imprisonment to criminals who disturb the life of others by causing disturbance in social life and governmental spheres.
- District Police/Inspector General of Police must send report of incident to Law Ministry and Home Ministry.
- Prohibition on physical exposure by women in visual and printing advertisements for commercial purpose,
- Introduction and practice of Islamic Law in IPC to stop/minimize crimes such as rape, kidnapping, murder, robbery, etc.
- There should be mandatory safeguards to prevent the misuse/abuse of the proposed law.
- Compensation to falsely accused in sexual assault cases.
- Judicial reforms should be undertaken with priority.
- The age limit for juveniles should be 12 years.
- The phrase 'outraging the modesty of a woman' must be removed and replaced with 'violation of dignity and/or bodily integrity'.
- Investigation of sexual assault cases should be under the guidance of a team including Gynecologist, Sexologist, Neurologist, IPS Officer and Sociologist and all should be female.
- Section 357A of Cr PC should also be amended to ensure that in all acid attack cases, the woman, have the right to claim ad-interim compensation, separate from any compensation the victim may receive under any other legal provision.
- Amendment to section 6 of the Armed Forces (Special Powers) Act, 1958 so that for offences of rape and sexual assault committed by the armed forces there shall be no need for prior sanction to initiate criminal proceedings and for bringing the case within the purview of the criminal court.
- Deletion of requirement of prior sanction for prosecution of a member of the Armed Force for Central Armed Police Forces under Section 197 (2) (3) and (2A) Cr.P.C and similar provisions under special laws such as AFSPA for all cases of rape or any other form of sexual violence.
- Sexual assault by security forces, Sexual assault at the instigation of or with the consent or acquiescence of a public official, Sexual assault at the time of caste, ethnic or communal violence, sexual assault against physically disabled and mentally unwell women, Public stripping and parading of women must be included as aggravated form of sexual assault.

- If law is harsher against rape, parameter of establishing proof should also be stricter.
- There should be protection to sr. citizens and whistle blowers.
- Drugging the victim and raping should be included .In Section 375, the definition of “without her consent” be clarified to include cases of “passive submission.”
- 'Informed consent' as per Section 164 of Cr.P.C be operationalised. Informed consent for examination, evidence collection, treatment and informing the police be specifically be taken.
- The right to health care including psycho-social support must be included as part of the CrPC as this is more than often violated. CrPC must include the key elements of the details regarding sexual assault to be noted by the doctor such as: type of assault – whether and what kind of penetration occurred. If there was non-penetrative assault in terms of fondling, kissing, sucking, licking of body parts, forced masturbation, place, time lapse between the incident and reporting to doctor, activities undertaken since the assault, use of threats/weapons/intoxication.
- A copy of the medical report must be handed over to the survivor free of charge.
- The Bill increases the age of consent for sexual intercourse outside of marriage to 18 years. The Bill amends the exception to increase the age of the wife for non-criminal sexual intercourse and other sexual activities within marriage to 16 years from 15 years. This is at variance with the age of consent under the Protection of Children from Sexual Offences Act, 2012 (PCSO Act). Under the PCSO act, the age of consent for sexual acts is 18 years. It does not create an exception in favour of sexual acts between a husband and a wife, when the wife is over 16 years of age.
- The doctrine of command/superior responsibility be incorporated in the law against sexual assault of persons.
- A national protocol be developed for the dignified treatment and medical examination of survivors of sexual assault, particularly prohibiting the finger test.
- Making the offence of rape and sexual assault gender neutral only in so far as the victim is concerned, but making the perpetrator male.

- An explanation 'any of the act committed against a sex workers fall within the offence of sexual assault for the purpose of the Section 375 of IPC must be added as a explanation.
- Complaint of sexual assault on sex workers should be registered.
- Pri-trial familiarisation visit to court by the victim must be undertaken and the date and time for recording the evidence of the women should be fixed in advance and be communicated at least two week prior to the date so fixed.
- Rape and sexual assault committed on Dalit women as caste crime/violence be recognized as a category of aggravated sexual assault under law.
- Sections 114A of Indian Evidence Act (IEA) should be completely dispensed away with as it is being misused heavily to convert consensual sex into rape cases.
- Courts should be allowed some discretion in trying juveniles as adults, under the Code of Criminal Procedure, after considering the circumstances relating to heinous crimes like rape, acid attack, homicide etc.
- If marital rape is included in the proposed Bill it should be reflected in section 376A of the Bill, which should not be restricted to the status of separation and the punishment should not be an imprisonment of 2-7 years, but should comply with the punishment suggested under section 376 respecting clause 376 (2)(e).

CHAPTER- V

Final Deliberations and Clause-by-Clause consideration and Recommendations

5.1 Final Deliberations

5.1.1 The Committee, in its meeting held on 21 February, 2013, held the clause-by-clause consideration of the Bill. The Committee decided to consider the Bill clause-by-clause in the light of the provisions of the Ordinance promulgated by the Government. Some of the important decisions are dealt hereunder before giving the recommendations clause-wise.

5.2 Section 100 of IPC

5.2.1 The Committee took up the Section 100 of the Indian Penal Code (IPC), which is provided in the Ordinance and not there in the Bill. The Home Secretary informed the Committee that they had discussed with the Ministry of law and came with a slightly better formulation, which reads as under:

“After sixthly, the following shall be inserted:

An act of throwing or administering acid, which may reasonably call apprehension that grievous hurt will otherwise be the consequence of such act.”

The Committee decided to go ahead with the new formulation of the Ministry.

5.3 Section 166 of IPC

5.3.1 The Committee took up Section 166 A of the IPC. The Chairman informed the Committee that the Committee may accept the Section 166A as provided in the Ordinance. However, he suggested that the punishment may be made rigorous imprisonment. The Home Secretary agreed to the proposition and assured to change it accordingly. Then, some Members expressed doubt as to whether this imprisonment would be cognizable and non-bailable. They strongly felt that it should be made cognizable and non-bailable. The Home Secretary and the Law Secretary stated that it can be made cognizable and non-bailable. **The Committee felt that the Ministry may consider this.**

5.4 Section 326B of IPC

5.4.1 In Section 326B, some Members suggested that instead of the words 'attempts to administer', there should be the words 'administers or attempts to administer'. **The Home Secretary agreed with the view of the Members.**

5.5 Section 354B of IPC

5.5.1 The Chairman informed the Members that Section 354 B provides for punishment of imprisonment which is not less than three years and that may be extended to seven years. However, some Members felt that this punishment is insufficient and should be increased. They also suggested that it could be made life imprisonment. The Committee, however, decided to increase it to five years and ten years. Some Members suggested that it should be perpetrator or aggrieved or perpetrator or complainant instead of perpetrator or any other person. However, the Committee felt that the victim has to be a woman and the perpetrator can be anybody. By simply saying perpetrator or complainant, no justice would be done to women.

5.5.2 Some Members felt that in certain occasions there may be crowd which cheers and applaud the disrobing of a woman publicly, and in such cases, entire crowd should be held responsible. The Committee, however, felt that only those who cooperate can be held. But holding the entire crowd watching is stretching too far.

5.6 Section 354C of IPC

5.6.1 While discussing about Section 354C, which provides for voyeurism, some Members felt that the punishment of one year for the first offence is not sufficient; it should be increased. The Committee, however, felt that it is already one year to three years and three to seven years for second offence. The punishment cannot be increased more than one year at one go for the first offence. Some Members again raised the issue of making accused or perpetrator gender specific. The Committee, however, decided to go with the present proposition as provided in the Bill and Ordinance.

5.7 Section 354D of IPC

5.7.1 While discussing about Section 354D, some Members expressed doubts regarding the words 'watches' or 'spies' on a person and their implication. It was felt that though the word 'spies' on a person can be understood but the word 'watches' may have wider ramification. The Home Secretary stated that 'watches' or 'spies' is directly on the person who is being stalked; it is not the internet or any other electronic communication. He also stated that casual watching by accident would not attract this

Section. Watching has to be designed and it must result in a fear of violence or serious alarm or distress in mind of such person or interferes with the mental peace of the person. **The Committee, however, felt that Home Secretary should discuss with Law Ministry and take a view in the matter.**

5.8 Sections 370 and 370A of IPC

5.8.1 While discussing about trafficking in Section 370 and Section 370A, some Members expressed the doubt about the use of the words 'forced labour' or 'services' in the present law. It was felt that since the law specifically belonged to criminal assault, all provisions relating to labour, forced labour, etc., should appropriately be dealt in different laws. **The Home Secretary agreed with the view of the Committee and stated that the words 'forced labour' or 'services' can be removed and that can be separately dealt under the relevant Act. However, the Committee felt that while removing these provisions, the Government should not give an impression that these provisions and the related crimes are not being taken care of. They are also equally important and they should be appropriately dealt in the concerned law.**

5.9 Section 375 of IPC

5.9.1 While discussing about Section 375, some Members felt that the word 'rape' should also be kept within the scope of sexual assault. The Home Secretary clarified that there is a change of terminology and the offence of 'rape' has been made wider. Some Members also suggested that somewhere there should be some room for wife to take up the issue of marital rape. It was also felt that no woman takes marriage so simple that she will just go and complain blindly. Consent in marriage cannot be consent forever. However, several Members felt that the marital rape has the potential of destroying the institution of marriage. The Committee felt that if a woman is aggrieved by the acts of her husband, there are other means of approaching the court. In India, for ages, the family system has evolved and it is moving forward. Family is able to resolve the problems and there is also a provision under the law for cruelty against women. It was, therefore, felt that if the marital rape is brought under the law, the entire family system will be under great stress and the Committee may perhaps be doing more injustice. Some Members also suggested that the age mentioned in the exception to the Section may be raised to 18 years from 16 years. The exception provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 16 years of age, is not sexual assault. The Home Secretary,

responding to this suggestion, stated that by doing so by one stroke, the marriages in thousands in different States would be outlawed. One Member again suggested that for the words ‘with or without the other person’s consent, the words ‘with or without the complainant’s consent’ may be used. The Committee, however, felt that by using complainant, a proper message will not go and existing formulation may continue.

5.10 Section 376 of IPC

5.10.1 While discussing Section 376, the Committee felt that in sub-Section (1) of Section 376, the liability of the accused to pay compensation to the victim, which shall be adequate to meet at least medical expenses incurred by the victim should also be included. The Committee, accordingly, decided to add this in sub-Section (1) of Section 376. Some Members also mentioned that the State needs to take care of the medical expenditure, treatment, etc. of the victim. Responding to this, the Home Secretary mentioned that there is a scheme for providing this. The Committee, however, felt that first the accused should be asked to pay victim’s medical expenses by way of fine. In case, the accused is not in a position to pay if he is a labourer, or if he is a poor person, then the State may step in to take care of the medical expenses and the treatment of the woman, who is a victim. The Home Secretary was, accordingly, directed to do needful in the matter.

5.10.2 In Sub-Section 2 of Section 376, the Chairman brought to the notice of the Home Secretary that in item (j) of sub-Section 2 of Section 376, the word ‘political’ has been deleted in the Ordinance where it is there in the Bill. The Committee decided to include the word ‘political’. One Member felt that there should be a clause providing for punishment when a person has a medical condition that can be transmitted through sexual intercourse and that person knowingly commits such intercourse without use of protection and that act should also be brought under aggravated crime. The Home Secretary, however, stated that this does not come under the category of ‘sexual assault’; it has to be differentiated. He stated that Section 270 of the IPC provides for punishment for this though it is slightly less. The Committee felt that the punishment should be increased and sought to know whether that can be amended suitably. **The Home Secretary agreed to the suggestion of the Committee. The Committee, accordingly, recommends that punishment under Section 270 may be increased suitably.**

5.11 Section 376A of IPC

5.11.1 While discussing Section 376 A, some Members felt that the Government will have to take a decision regarding death penalty. It was stated that several countries have abolished the death penalty whereas India is continuing with it. However, the majority of the Members felt that the issue of abolishing death penalty is totally a different matter and needs to be discussed and decided separately. Since, as on date, death penalty exists in the law, the Committee cannot recommend for abolishing death penalty. The Committee also takes note of the fact that the death penalty being proposed in Section 376A is only in the extreme case where the victim has died or goes in a vegetative state and in Section 376E in the case of a repeat offender. The Committee was of the view that extreme penalty of death will be given only in case of death or the victim being in vegetative state for the rest of his or her life. Normally, the death sentence is not given for just rape. Accordingly, majority of the Members agreed to the view of accepting present provision for death.

5.12 Section 509 of IPC

5.12.1 The Committee then discussed about Section 509. The Bill originally provides for a fine of Rs.1,000/- besides simple imprisonment for a term up to three years but the Ordinance does not contain the amount of fine. The Committee, however, decided that the amount should be included in the provision and it should be increased to Rs.2,000/-.

5.13 Section 54A of Cr.PC

5.13.1 The Committee then took up Section 54A of the Cr.PC. This provision is in the Ordinance whereas the Bill does not contain this. The Section, originally, as in the Ordinance, provides that if a person identifying the person, arrested, is mentally or physically disabled, the identification process may be videographed. The Committee felt that the word 'may' should be changed to 'shall' and decided to make recommendation accordingly.

5.14 Section 154 of Cr.PC

5.14.1 Some Members felt that the use of words 'as far as possible' should not be there because whenever a statement is taken from a woman, a woman officer should always be there. The Committee, accordingly, decided to delete the words 'as far as possible'. The Committee also felt that whenever a woman police officer is not available, any woman Government officer could be made available to record the statement. The Committee decided to make an appropriate amendment in the Section. Similarly, in

Clause (b) of the Second Proviso, the words ‘may be recorded’ may be changed to ‘shall be recorded’. The Committee, accordingly, decided to make an appropriate amendment in the Bill.

5.14.2 The Committee makes specific recommendations in the succeeding paragraphs on each clause of the Bill.

5.15 Clause-by-Clause consideration

5.15.1 Clause 1(A) (Section 100 IPC) (Insertion of new Clause in the Bill)

5.15.1.1 The Committee notes that Ordinance contains an amendment to Section 100 of IPC. However, such an amendment is not there in the Bill, which is under consideration of the Committee. The Home Secretary, during the course of discussion, stated that they have got better formulation after consulting the Law Ministry. Now they want to insert a new description after sixthly. The Committee agrees with the view point of the Home Secretary. Accordingly, the following Clause may be inserted in the Bill before Clause 2:-

"Clause 1 (A) In the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), in Section 100, after the clause sixthly, the following shall be inserted:

Seventhly- An act of throwing or administering acid which may reasonably cause apprehension that grievous hurt will otherwise be the consequence of such act."

The Clause 1(A) is inserted.

5.15.2 Clause 2 (Section 166A)

5.15.2.1 This clause seeks to insert a new section 166A in the Indian Penal Code regarding public servant disobeying direction under law.

5.15.2.2 The Committee took note that a similar provision is there in the Ordinance with some additional amendment which needs to be added in the Bill. The Committee also felt that the provision of simple imprisonment is not sufficient in view of the gravity of the crimes committed under Sections 354, 354A, 354B, 354C, sub-Section (2) of Section 354D, Sections 376, 376A, 376B, 376C, 376D and 376E. The Committee, therefore, recommends that the word “rigorous” may be inserted after the

words “shall be punished with” in the Section. Accordingly, the text of Section 166A of the Bill may be substituted by the following:-

“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 and in particular in relation to cognizable offence punishable under Section 354, Section 354A, Section 354B, Section 354C, sub-Section (2) of Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E,

shall be punished with rigorous imprisonment for a term, which may extend to one year or with fine or with both.

5.15.2.3 The Committee also felt that the punishment for the offence of failure to record any information in relation to Sections mentioned above, should be made cognizable and non-bailable. The Committee, therefore, recommends that the Government may consider this.

Subject to the above observation, the Clause is adopted, as amended.

5.15.3 Clause 3 (Sections 326A and 326B)

5.15.3.1 This clause seeks to insert new Sections 326 A and 326B to make acid attack or attempt to throw acid specific offense. The Committee took note of the amendments made in these Sections 326A and 326B in the ordinance which widened the nature of the crime and also added two explanations in Section 326B. The Committee felt that the changes made in the Ordinance are required to be brought in the Bill. The Committee, accordingly, makes the following recommendations.

(i) Section 326A the following amendments may be made:

Add the word “by” before the word “administering”.

Add the words “or by using any other means” before the words “with the intention of”.

Substitute the words "which may extend to imprisonment" for the words "which may be".

(ii) Section 326B:

Add the word "administers" before the words "attempts to administer".

Add the words “or attempts to use any other means” before the words “with the intention of”.

Read the word "Punishable" as "Punished"

Read the “Explanation” as “Explanation 1”.

In Explanation 1, Substitute "326B" by "this Section".

After Explanation 1, add the following explanations:-

Explanation 2.— “Permanent or partial damage” includes deformity, or maiming, or burning, or disfiguring, or disabling any part or parts of the body of a person.

Explanation 3.— For the purposes of Section 326A and this Section, permanent or partial damage or deformity shall not be required to be irreversible."

5.15.3.2 The Committee takes note of the fact that highly concentrated acid are sold freely in open market which are used by the perpetrators in committing the offence of acid attack. The Committee feels that the sale of concentrated acid should be regulated and should be sold to the people only on the production of a certificate issued by a competent authority so as to ensure that it is sold to the genuine end-users.

Subject to the above observation, the Clause is adopted, as amended.

5.15.4 Clause 4 (Section 354 IPC)

5.15.4.1 This clause seeks to amend section 354 to enhance the punishment for assault or criminal force to women with intent to outrage her modesty.

5.15.4.2 The Committee feels that the minimum fine of one thousand rupees needs to be increased to five thousand rupees. The Committee, therefore,

recommends that the word ‘one’ be substituted by the word ‘five’ before the word ‘thousand’.

The Clause is adopted, as amended.

5.15.5 Clause 4A (Sections, i.e., 354A, 354B, 354C and 354D of IPC) (Insertion of new clauses)

5.15.5.1 The Committee noted that new Sections, i.e., 354A, 354B, 354C and 354D have been added in the Ordinance to cover various aspects pertaining to sexual harassment and related matters and felt that they need to be incorporated in the Bill as well.

5.15.5.2 Section 354A of the Ordinance provides for sexual harassment and punishment therefor. Section 354B provides for assault or use of criminal force to woman with intent to disrobe. In this section, the punishment provided is not less than three years but which may extend to seven years and with fine. **The Committee feels that the punishment is not sufficient for the crime and should be increased to five years, extendable to ten years with fine.**

5.15.5.3 Section 354D deals with stalking. The Committee is of the view that all the crimes mentioned in this Section and punishment provided therefor, also need to be incorporated in the Bill. Accordingly, the Committee recommends that the following clause may be inserted after Clause 4:-

“4A. After Section 354 of the Indian Penal Code, the following sections shall be inserted, namely:—

‘354A. (1) The following acts or behaviour shall constitute the offence of sexual harassment—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or*
- (ii) a demand or request for sexual favours; or*
- (iii) making sexually coloured remarks; or*
- (iv) forcibly showing pornography; or*
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

(2) Any person who commits the offence specified in clause (i) or clause (ii) of sub-Section (1) shall be punished with rigorous imprisonment which may extend to five years, or with fine, or with both.

(3) Any person who commits the offence specified in clause (iii) or clause (iv) or clause (v) of sub-Section (1) shall be punishable with imprisonment of either description that may extend to one year, or with fine, or with both.

“354B. Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to ten years and with fine”.

New Section, Section 354C: Voyeurism:

"354C. Whoever 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 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 purposes 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, 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.

Explanation 2.— Where the victim consents to the capture of 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.

New Section, Section 354D: Stalking:

“354D. (1) Whoever follows a person and contacts, or attempts to contact

such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, 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:

Provided that the course of conduct will not amount to stalking if the person, who pursued it, shows—

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

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

(iii) that in the particular circumstances the pursuit of the course of conduct was reasonable.

(2) Whoever commits the offence of stalking shall be punished 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.

The Clause is inserted.

5.16 Clause 4B (Sections 370 and 370A of IPC) (Insertion of new Clause)

5.16.1 This new clause seeks to deal with trafficking of person and employing them for exploitation by substituting Section 370 of IPC (buying or disposing of any person as a slave) with Sections 370 and 370A. These new Sections are provided in the Ordinance, which are not there in the Bill. The Committee feels that these new Sections need to be brought in the Bill also. The Committee accordingly recommends that the following new clause may be inserted before clause 5.

"4B. For Section 370 of the Penal Code, the following Sections shall be substituted, namely:-

Section 370: Trafficking of a Person. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.— The expression “exploitation” shall include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term, which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person’s natural life.

(7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.

Section 370A: Employing of a Trafficked person

“370A. (1) Whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labour, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine.

(2) Whoever, despite knowing or having reason to believe that an adult has been trafficked, employs such adult for labour, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.”

5.16.2 The Committee finds that labour-related issues have been included in both the Sections 370 and 370A of the Ordinance, which are equally important. The Committee feels that since this law being exclusively for sexual assault and related issues, labour and other related issues should be dealt in a separate law.

5.16.3 The Home Secretary during the discussion agreed with the view point of the Committee and assured to look into the matter. The Committee desires that both Sections 370 and 370 A may be relooked in the light of the above observations.

5.16.4 The Committee also notes that forced prostitution and induced prostitution should be brought under the ambit of the expression 'exploitation' and 'sexual exploitation'. The Committee recommends that the Ministry of Home Affairs may look into the matter and bring both forced prostitution and induced prostitution under the ambit of 'exploitation' and 'sexual exploitation'.

Subject to the above observation, the Clause 4B is inserted.

5.17 Clause 5 (Sections 375, 376, 376A, 376B, 376C 376D and 376E of IPC)

5.17.1 This clause seeks to substitute Sections 375, 376, 376A and 376B by Sections 375, 376, 376A, 376B, 376C and 376D of the Indian Penal Code replacing the offence “rape” by “sexual assault” to make the offence gender neutral and also to widen the

scope of the offence. The age for consent has been raised from 16 years to 18 years in sexual assault. It was also proposed in the Bill to raise age of wife from fifteen to sixteen years in the exception for sexual assault. The Committee took note that the Ordinance made further amendments to the provisions as contained in the Bill and also brought in some new Sections. The new Sections in Ordinance provide for punishment for causing death or resulting in persistent vegetative state of the victim, punishment for sexual assault by gang, and punishment of deaths for repeat offenders.

5.17.2 The Committee finds that the definition of ‘sexual assault’ has been revised drastically in the Ordinance to widen the ambit of sexual assaults of various nature, which has more implications than envisaged in Section 375 of the Bill. The Committee feels that the provisions contained in Section 375 in the Ordinance need to be incorporated in the Bill. The Committee therefore, recommends that the following text of Section 375 contained in the Ordinance may be substituted for the text of section 375 of the Bill.

"375. Sexual assault — A person is said to commit “sexual assault” if that person—

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of another person or makes the person to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of another person or makes the person to do so with him or any other person; or

(c) manipulates any part of the body of another person so as to cause penetration into the vagina, urethra, anus or any part of body of such person or makes the person to do so with him or any other person; or

(d) applies his mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;

(e) touches the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person,

except where such penetration or touching is carried out for proper hygienic or medical purposes under the circumstances falling under any of the following seven descriptions.

First.— Against the other person’s will.

Secondly. — Without the other person’s consent.

Thirdly. — With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or of hurt.

Fourthly. — When the person assaulted is a female, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

Fifthly.— With the consent of the other person when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by that person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that action to which such other person gives consent.

Sixthly. — With or without the other person's consent, when such other person is under eighteen years of age.

Seventhly. — When the person is unable to communicate consent.

Explanation 1.— Penetration to any extent is "penetration" for the purposes of this section.

Explanation 2.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 3.— Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that, a person who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault."

5.17.3 The Committee, however, notes that in the Exception provided after clause (e) appears to be covering all the sub-sections whereas clauses (a) & (d) should not be covered under the Exception. The Committee recommends that this may be looked into while bringing the new Bill.

5.18.1 Section 376. Section 376 provides punishment for sexual assault. Sub-Section (1) of Section 376 provides punishment for sexual assault with not less than 7 years imprisonment, extendable up to life with fine. The Committee is not in agreement

with the imposition of fine without mentioning about the intricacies involved in attending to the medical needs of the victim.

5.18.2 Similarly, Ordinance contains 'rigorous imprisonment' whereas in the Bill, it is only 'imprisonment'. **The Committee recommends that the word 'rigorous' may be added before the word 'imprisonment'.**

5.18.3 The Committee, therefore, recommends that the word “to pay compensation to the victim, which shall be adequate to meet at least the medical expenses incurred by the victim” may be substituted for the word “fine” at the end of sub-Section(1).

5.18.4 With regard to punishment for aggravated sexual assault under sub-Section (2), the Committee notes that there is an item relating to armed forces in the Ordinance, which is not there in the Bill.

5.18.5 The Committee feels that this provision needs to be incorporated in the Bill, and recommends that the following item may be inserted before item (c):

(bb) being a member of the armed forces is in the area by virtue of deployment by the Central or a State Government, commits sexual assault; or

5.18.6 The Committee also notes the inclusion of the words “guardian or teacher” in Section 376(2) (e) of the ordinance. These are also necessary and need to be incorporated in the Bill. The Committee, accordingly, recommends that the words "guardian or teacher” may be inserted after the word "relative".

5.18.7 The Committee further notes that the Ordinance has dealt the issue of gang rape in a separate Section comprehensively. The Committee also would like to deal with gang rape separately and recommends that the following provision mentioned in Section 376(2) may be omitted:

(h) being a member of a group of persons having a common intention and in furtherance of that intention commits sexual assault; or

5.18.8 The Committee also notes that in the Ordinance, a new clause has been added regarding sexual assault on a person incapable of giving consent. The following text may, accordingly, be inserted at clause (h):

"(h) commits sexual assault, where the person assaulted is incapable of giving consent; or"

5.18.9 The Committee is in agreement with the existing provision in the Bill in respect of clause (i) of sub-Section (2). The Committee is not making any amendment to this clause, though the Ordinance has deleted the word 'political'. However, for clarity, the clause is reproduced as under:

"(i) being in a position of economic or social or political dominance, commits sexual assault on a person under such dominance; or"

5.18.10 The Committee further notes that the definitions of "police officer" and "armed forces" have been provided at Clause (c) and (d) under the Explanation 1 of the Section 376(2) in the Ordinance which are not there in the Bill. The Committee recommends that the following clauses may be added after clause (b) of Explanation 1:-

"(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

(d) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Act for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government."

5.18.11 The Committee also notes that the Explanation 2 at the end of the Section 376 (2) is redundant in view of the new Section 376D dealing with sexual assault by gang. The Home Secretary agreed with the view. The Committee, accordingly, recommends that the Explanation 2 to Section 376 (2) may be deleted.

5.18.12 Section 376A. Section 376 A is a new Section in the Ordinance which is not there in the Bill. This Section prescribes punishment of rigorous imprisonment not less than 20 years, extendable up to remainder of natural life or death for causing death or resulting in persistent vegetative state of the victim. The Committee feels that this Section is necessary to meet the contingency mentioned therein. The Committee accordingly recommends that the following Section may be inserted in the Bill before the present Section 376A:-

"376A Punishment for causing death or resulting in persistent vegetative state of the victim.

"Whoever, commits an offence punishable under sub-Section (1) or sub-Section (2) of Section 376 and in the course of such commission inflicts an injury which causes the death of the person or causes the person

to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death."

5.18.13 The attention of the Committee was also drawn to the issue of clemency given by the President of India. The Committee noted that some persons convicted for rape and murder were given clemency by the President. The Committee also noted a case wherein the accused died well before the clemency was given. The Committee feels that application for clemency should not be considered in rape and murder cases. The Committee also feels that mercy petitions should be disposed of within three months. The Committee would also like to suggest that reasons for granting clemency should also be made public.

5.18.14 Present Sections 376A and 376B of the Bill may be re-numbered as 376 B and 376C.

5.18.15 Section 376 B. The re-numbered Section 376B of the Bill deals with sexual assault by husband upon his wife during separation. The original Section 376A of IPC is proposed to be changed by replacing the word "sexual assault" in place of sexual intercourse" besides prescribing imprisonment of two years, extendable up to seven years along with fine in place of maximum imprisonment of two years along with fine.

5.18.16 Section 376 C. The re-numbered Section 376C of the Bill deals with sexual intercourse by a person in authority. The Committee notes certain changes made in the Ordinance which also need to be incorporated in the Bill.

5.18.17 The Committee recommends the following amendments:-

The words "or in a fiduciary relationship" may added in clause (a) of the Section after the word "authority".

The words "and abuses such position or fiduciary relationship" may be substituted for the words "takes advantage of the position and".

The word "rigorous" may be added before the word "imprisonment".

5.18.18 Sections 376D and 376E. These Sections are provided in the Ordinance which are not there in the Bill. Section 376D deals with punishment for sexual assault by gang and 376E deals with punishment for repeat offender. The Committee feels that

these offences also need to be addressed in the Bill. The Committee recommends that the following Sections may be added after the re-numbered Section 376 C:-

"Section 376D. Sexual assault by gang.

376D. Where a person is sexually assaulted 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 sexual assault, regardless of gender and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.

Explanation.— For the purposes of this Section, imprisonment for life shall mean imprisonment for the remainder of that person's natural life."

Section 376E: Punishment for repeat offenders.

376 E. Whoever has been previously convicted of an offence punishable under Section 376 or Section 376A or Section 376C or Section 376D and is subsequently convicted of an offence punishable under any of the said Sections shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life or with death."

Subject to above observations and recommendations, the Clause is adopted, as amended.

5.19 Clause 6 (Section 509 IPC)

5.19.1 This Clause seeks to amend Section 509 of IPC to enhance the punishment from one year to three years and fine not less than rupees one thousand for using words, gestures, acts, etc. to insult the modesty of a woman.

5.19.2 The Committee notes that while the fine prescribed under the Bill was not less than one thousand rupees, the Ordinance does not mention only amount of the fine. The Committee is of the view that fine for eve teasing should be increased from one thousand rupees to two thousand rupees to effectively tackle the problem. The words 'One thousand' be replaced with the words 'two thousand'.

The clause is adopted, as amended.

5.20 Clause 6-A (Section 54A Cr. P.C.) (Insertion of a new Clause)

5.20.1 This Clause seeks to insert two provisos to the Section 54 A of Cr. P.C which deals with the identification of the person arrested. This amendment is there in the Ordinance and not there in the Bill. The Committee feels that the facility of Videography is available in every part of the country. Therefore, the Committee recommends that the word 'may' be replaced with the word 'shall' in the second proviso after the word 'process'. The following new Clause may, accordingly, be inserted in the Bill:

"6A. In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Code of Criminal Procedure), in Section 54A, the following proviso shall be inserted, namely:-

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that the person is comfortable with:

Provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed."

The clause is inserted, as amended.

5.21 Clause 7 (Section 154 Cr. P.C)

5.21.1 This Clause seeks to insert a proviso at the end of Section 154 of Code of Criminal Procedure, 1970 to provide that as far as possible information given by a woman for offence under Sections 354, 375, 376, 376A, 376B and 509 shall be recorded by a woman police officer.

5.21.2 The Committee notes that the proviso made under Section 154 of Cr. P.C. has been changed substantially in the Ordinance by including Sections 326A, 326B, 376C, 376D, 376E along with Sections 354, 375, 376, 376A, 376B, 376C, 376D, 376E and 509 of IPC to ensure wider application of this Section. Besides, a new proviso has also been added. **The Committee feels that the words 'as far as possible' would frustrate the very purpose of this provision, and need to be omitted. Further, the Committee is of the view that in the absence of woman police officer, other woman government officer may be deputed for recording the information.**

5.21.3 The Committee, accordingly, recommends that Clause 7 may be substituted by the following:

"7.In Section 154 of the Code of Criminal Procedure, in sub-Section (1), the following provisos shall be inserted, namely:-

“Provided that if the information is given by the woman against whom an offence under Section 326A, Section 326B, Section 354, Section 375, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E and Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or in her absence by other woman government officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker or women’s organisation or both:

Provided further that—

(a) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, sub-Section (1) or sub-Section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E of the Indian Penal Code alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person’s choice, in the presence of a special educator or an interpreter, as the case may be;

(b) the recording of such information shall be videographed.

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-Section (5A) of Section 164 as soon as possible.”

The Clause is adopted, as amended.

5.22 Clause 8 (Section 160 Cr. P.C.)

5.22.1 In this clause, Section 160 of the Cr. P.C. is proposed to be amended by providing that no male person under the age of 18 years and above the age of 65 years or a woman shall be required to give personal attendance. As of now, a male person below 15 years and a woman is not required to give attendance to a police man. The Ordinance includes physically or mentally disabled person also. This needs to be brought in the Bill.

5.22.2 The Committee also feels that the words 'fifteen years' as prescribed in the proviso of the Section 160 of Cr. P.C. may be retained.

5.22.3 The Committee, therefore, recommends that the word 'eighteen' may be substituted by the word 'fifteen' and the words 'or a physically or mentally disabled person' may be added after the word 'woman'.

The clause is adopted, as amended.

5.23 Clause 9 (Section 161 Cr. P.C.)

5.23.1 This Clause seeks to amend Section 161 of Cr. P.C. regarding the statement by a woman about alleged offence under Sections 354, 375, 376, 376A, 376B and 509 shall be recorded as far as possible by a woman officer.

5.23.2 The Committee notes that the Ordinance includes certain new Sections, viz., Sections 354A, 354B, 354C, 354D, 376C, 376D, 376E along with Sections 354, 375, 376, 376A, 376B and 509 of IPC. The proviso in the Bill and the Ordinance also contain the words 'as far as possible'. The Committee recommends that the words 'as far as possible' may be omitted and the words 'or in her absence other woman Government officer' may be added at the end. The proviso may, accordingly, be substituted by the following:-

“Provided further that the statement of a woman against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 375, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded by a woman police officer or in her absence other woman Government officer.”

The clause is adopted, as amended.

5.24 Clause 9A (Section 164 Cr. P.C.) (Insertion of a new Clause)

5.24.1 The Ordinance has an amendment to Section 164 of the Criminal Procedure Code proposing to insert a new Sub-section (5A) after Sub-section 5. This provides recording of statement of the victim for crime committed against victim under certain Sections of the IPC along with provisos. The Committee feels that this new Sub-section is necessary for the procedural purpose and should be brought in the Bill. The Committee also recommends that the words "may be videographed" may be replaced by "shall be videographed" in the second proviso. The Committee, accordingly, recommends that the following new Clause may be inserted in the Bill before Clause 10:

"9A. Insertion 164 of the Code of Criminal Procedure, after sub-Section (5), the following sub-Section shall be inserted, namely:-

"(5A) (a) In cases punishable under Section 354, Section 354A, Section 354B, sub-Section (2) of Section 354C, sub-Section (1) or sub-Section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-Section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently physically or mentally disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently physically or mentally disabled, the statement made by the person, with the assistance of an interpreter or special educator, shall be videographed;

(b) a statement recorded under clause (a) of a person who is temporarily or permanently physically or mentally disabled shall be considered a statement in lieu of examination-in-chief, as specified in Section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."

The Clause is inserted.

5.25 Clause 9B (Section 198 B Cr. P.C.) (Insertion of a new Clause)

5.25.1 The Ordinance also provides for insertion of a new Section, viz., Section 198B which is not there in the Bill. This Section provides for making the offence, as provided in Section 376B of Indian Penal Code, cognizable. The Committee feels that this Section is necessary and needs to be brought in the Bill. This Committee, therefore, recommends that the following new Clause may be inserted after Clause 9A:-

"9B. After Section 198A of the Criminal Law Procedure Code, the following Section shall be inserted, namely-

"198B. No Court shall take cognizance of an offence under Section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon prima facie satisfaction of the facts, which constitute the offence

upon a complaint having been filed or made by the wife against the accused husband.”

The Clause is inserted.

5.26 Clause 10 (Section 273 of Cr. P.C.)

5.26.1 This Clause seeks to insert a new proviso to Section 273 of Cr. P.C. so that court would be required to make appropriate measures to ensure that a person below the age of 18 years and who is alleged to have been subjected to sexual assault etc. is not confronted by the accused although the right of cross examination would still be there.

The Clause is adopted.

5.27 Clause 11 (Section 327 of Cr. P.C.)

5.27.1 This Clause 11 seeks to amend Section 327 of Cr. P.C. substituting the words, figures or letters "trial of rape or an offence under Sections 376, 376A, 376B, 376C and 376D of the Indian Penal Code", by the words, figures or letters "trial of sexual assault or an offence under Sections 354, 376A and 376B of the Indian penal Code". However, the Ordinance contains three additional Sections, viz., 376C, 376D and 376E of the IPC.

5.27.2 The Committee recommends that words "Section 376C, 376D and 376E' may be inserted after "Section 376B".

The Clause is adopted, as amended.

5.28 Clause 12

5.28.1 First Schedule to the Cr. P.C. also needs to be amended to incorporate the above changes, especially in the light of the enhanced punishment under various Sections. This Clause seeks to carry out the consequential changes at the appropriate places in the First Schedule to the Cr. P.C. under the heading "1-OFFENCES UNDER THE INDIAN PENAL CODE".

5.28.2 The amended Schedule is reproduced as below:-

(a) after the entries relating to section 166, the following entries shall be inserted, namely:—

1	2	3	4	5	6
166A	<i>Public servant disobeying direction under law</i>	<i>Rigorous Imprisonment for one year or fine or with both</i>	<i>cognizable</i>	<i>Non-Bailable</i>	<i>Magistrate of the first class</i>

(b) after the entries relating to section 326, the following entries shall be inserted, namely:—

1	2	3	4	5	6
326A	<i>Voluntarily causing grievous hurt by use of acid, etc.</i>	<i>Imprisonment for not less than ten years but which may extend to imprisonment for life and maximum fine of 10 lakh rupees.</i>	<i>cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
326B	<i>Voluntarily throwing or attempting to throw acid.</i>	<i>Imprisonment for five years but which may extend to seven years and fine.</i>	<i>cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>

(c) for the entries relating to section 354, the following entries shall be substituted, namely:—

1	2	3	4	5	6
354	<i>Assault or use of criminal force to woman with intent to outrage her modesty.</i>	<i>Imprisonment of 1 year which may extend to years, and with fine not less than five thousand rupees.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Any Magistrate</i>
354A	<i>(1) Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours.</i>	<i>Imprisonment which may extend to 5 years or with fine or with both.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Any Magistrate</i>

	<i>(2) Sexual harassment of the nature of making sexually coloured remark or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.</i>	<i>Imprisonment which may extend to 1 year or with fine or with both.</i>	<i>Cognizable</i>	<i>Bailable</i>	<i>Any Magistrate</i>
<i>354B</i>	<i>Assault or use of criminal force to woman with intent to disrobe.</i>	<i>Imprisonment of not less than 5 years but which may extend to 10 years and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Any Magistrate</i>
<i>354C</i>	<i>Voyeurism</i>	<i>Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction.</i>	<i>Non-cognizable</i>	<i>Bailable</i>	<i>Any Magistrate</i>
		<i>Imprisonment of not less than 3 year but which may extend to 7 years and with fine for second or subsequent conviction.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Any Magistrate</i>
<i>354D</i>	<i>Stalking</i>	<i>Imprisonment of not less than 1 year but which may extend to 3 years and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Any Magistrate</i>

(d) for the entries relating to Sections 370, the following entries shall be substituted, namely:—

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>370</i>	<i>(1) Trafficking of person.</i>	<i>Imprisonment of not less than 7 years but which</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>

		<i>may extend to 10 years and with fine.</i>			
	<i>(2) Trafficking of more than one person.</i>	<i>Imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
	<i>(3) Trafficking of a minor.</i>	<i>Imprisonment of not less than 10 years but which may extend to imprisonment for life.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
	<i>(4) Trafficking of more than one minor.</i>	<i>Imprisonment of not less than 14 years but which may extend to imprisonment for life.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
	<i>(5) Public servant or a police officer involved in trafficking of minor.</i>	<i>Imprisonment for life which shall mean the remainder of that person's natural life.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
	<i>(6) Person convicted of offence of trafficking of minor on more than one occasion.</i>	<i>Imprisonment for life which shall mean the remainder of that person's natural life.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
370A	<i>(1) Employing of a trafficked child.</i>	<i>Imprisonment of not less than 5 years but which may extend to 7 years and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
	<i>(2) Employing of a trafficked adult person.</i>	<i>Imprisonment of not less than 3 years but which may extend to 7 years and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>

(e) for the entries relating to Sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely:—

1	2	3	4	5	6
376	<i>(1) Sexual assault</i>	<i>Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and shall also be liable to pay compensation to meet expenses of the victim</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
	<i>(2) Sexual assault by a police officer or a public servant or Member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on the staff of a hospital, and sexual assault committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted.</i>	<i>Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
376A	<i>Person committing an offence of sexual assault and inflicting injury which causes death or causes the person to be in a persistent vegetative state.</i>	<i>Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life or with death.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>

376B	<i>Sexual assault by the husband upon his wife during separation.</i>	<i>Imprisonment for not less than 2 years but which may extend to 7 years and with fine.</i>	<i>Cognizable (but only on the complaint of the victim)</i>	<i>Non-bailable</i>	<i>Court of Session</i>
376C	<i>Sexual intercourse by a person in authority.</i>	<i>Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
376D	<i>Sexual assault by gang.</i>	<i>Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and compensation to the victim.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>
376E	<i>Repeat offenders</i>	<i>Imprisonment for life which shall mean the remainder of that person's natural life or with death.</i>	<i>Cognizable</i>	<i>Non-bailable</i>	<i>Court of Session</i>

(f) Entry relating to Section 509, in column 3, for the words, "Simple imprisonment for one year, or fine, or both", the words "Simple imprisonment for 3 years and with minimum fine of Rs. 2,000" shall be substituted."

The Clause is adopted, as amended.

5.29 Clause 13 (Section 53A of the Indian Evidence Act)

5.29.1 This Clause seeks to insert new Section namely, Section 53A after Section 53 of the Indian Evidence Act, 1872 regarding evidence of conduct or character of the victim or previous sexual experience with any person. The Ordinance contains some additional Sections incorporated in this Section which are not there originally in the Bill.

5.29.2 The Committee recommends that the text in Section 53A in this Clause may be substituted by the following:-

“53A. In a prosecution for an offence under Section 354, Section 354A, Section 354B, Section 354C, sub-Section (1) or sub-Section (2) of Section 376, Section 376A, Section 376B, Section 376C, Section 376D or Section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”

The Clause is adopted, as amended.

5.30 Clause 14 (Section 114A of the Indian Evidence Act)

5.30.1 This Clause seeks to substitute Section 114A of the Indian Evidence Act, 1872 which provides for presumption as to absence of consent in certain prosecution for sexual assault. Ordinance includes additional Clause (m) and has the words 'such person' in the place of the words 'he or she'.

5.30.2 The Committee recommends that after the words 'Clause (l)', the words 'or clause (m)' may be inserted and the words 'she or he' may be substituted by the words 'such person' wherever they occur.

The following text may be substituted for Section 114 A:-

"Substitution of new section for section 114A–

‘114A. In a prosecution for sexual assault 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) or clause (m) 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 other person alleged to have been sexually assaulted and such other person states in that person’s evidence before the court that such person did not consent, the court shall presume that such person did not consent.

Explanation.— In this section “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (c) of Section 375 of the Indian Penal Code.”

The Clause is adopted, as amended.

5.31 Clause 14A (Section 119 of the Indian Evidence Act) (Insertion of a new Clause)

5.31.1 The Ordinance provides for substitution of Section 119 of the Indian Evidence Act which is not there in the Bill. This replacing Section deals with witness who is unable to communicate verbally. The Ordinance contains the words 'may be video graphed' but the Committee feels that it may be changed to 'shall be video graphed'. The Committee recommends that the following new Clause may be inserted before Clause 15:-

"14A. 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 a special educator or interpreter in recording the statement, and such statement shall be videographed."

The Clause is inserted.

5.32 Clause 15 (Section 146 of the Indian Evidence Act)

5.32.1 This Clause seeks to substitute the proviso under Section 146 of the Indian Evidence regarding questions not to be put during the cross-examination of the victim, in the case of sexual offence.

5.32.2 The Committee takes note of the text of the new proviso, as drafted in the Ordinance includes consequential changes due to addition of new Sections in IPC connected with sexual assault. The Ordinance also replaces the words 'his or her' by 'such victim'.

5.32.3 The Committee recommends that the text of the proviso may be substituted by the following:-

“Provided that in a prosecution for an offence under sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”

The Clause is adopted, as amended.

5.33 Clause 1, the Enacting Formula and the Title

5.33.1 Clause 1, the Enacting Formula and the Title are adopted with some changes which are of consequential/drafting nature, namely, "2012" and 'Sixty-third' to be substituted by "2013" and 'Sixty-Fourth' year, respectively.

The Committee adopts the Bill, as amended, and commends for being passed.

5.34 GENERAL RECOMMENDATIONS

5.34.1 Besides the specific recommendations made on the clauses of the Bill in the preceding paragraphs, the Committees also makes some general observations and recommendations in the following paragraphs.

5.35 Compensation to the Victim of acid attack

5.35.1 The Committee is of the view that in case the convict is not in a position to pay fine to the victim, both the Government of India and state governments should take steps to rescue the victim. In this regard, the Committee is given to understand that the issue is already under consideration of the Ministry and Women and Child Development. The Central Government, through the Ministry of Women and Child Development may evolve a scheme to ensure that the compensation amount is taken care of and given to the victim. Moreover, the Committee feels that the treatment of victim cannot wait till the final disposal of

the case. The Government should take necessary steps to ensure medical treatment of victim.

5.36 Better Policing System

5.36.1 The Committee is of the view that the Ministry of Home Affairs should impress upon the State Governments to set up women cells compulsorily in all the police stations throughout the country so that victim woman could be able to have free and easy access to lodge complaints against the perpetrators. Women cell in each police station would further enhance the participation of women in the policing system. The Committee also took note of the fact that women police in over all police strength in the country is only about 6% which is very inadequate. The Committee is of the view that the strength of the women police force should be at least be 33 per cent of total strength, and therefore recommends that Union Ministry of Home Affairs may impress upon the State Governments to take suitable measures in this regard.

5.36.2 The Committee feels that registration of FIRs should be made mandatory. The Committee is of the strong view that strict action should be taken for dereliction of duty against the officer, who refuses to receive complaints on Sexual violence. The Committee also recommends that once the FIR is lodged, it must be passed on to the higher police officer for information and necessary direction in the matter to ensure time bound investigation. The Committee further recommends that investigation should be done within a period of 60 days, and charge sheet should be filed in time so that justice is not denied.

5.36.3 The Committee is also of the view that the Ministry of Home Affairs may impress upon the State/ UT Governments to make suitable arrangements for installation and enforcement of Global Positioning System (GPS) along with tracking system in police vehicles and Surveillance Cameras at all strategic locations. The GPS and tracking system would not only enhance the functional and operational efficiency of the Police but would also inject transparency in the system besides smooth and easy tracking of crimes in the country.

5.37 Better portrayal of woman

5.37.1 The Committee is concerned about increasing commodification of women in the society. Women are portrayed in poor light through obscene, vulgar pictures/scenes. It is in this context that the Committee feels that the content of

entertainment programmes should be without obscenity, vulgarity and violence, which is also in the interest of a healthy, moral and ethical well being of the Society.

5.37.2 The Committee would appreciate if air-time on different channels of electronic media is allocated for programmes for sensitization of viewers about cultural and human values, traditions and customs and also portraying woman in high esteem. Programmes on family values, respect for women culture and traditions can go a long way in strengthening the moral fabric of the society. The Committee recommends that the Ministry of Home Affairs may take up the matter with the Ministry of Information & Broadcasting to address the issue with all concerned stakeholders and issue necessary guidelines in this regard.

5.38 Judicial Reforms

5.38.1 The Committee is of the view that our judiciary is woefully short of infrastructure which results in huge pendency of cases. There are a number of instances where cases come for first hearing in the courts after years of wait. Such long delays shake the faith of citizens in the system and breeds cynicism and hopelessness. The age old saying that justice delayed is justice denied is particularly true for women victims of sexual assault who have to face day-to-day trauma of re-living the painful experience for years during the trial.

5.38.2 It is in this light that establishment of fast track courts for speedy trial of sexual assault cases becomes extremely important. The Committee recommends that adequate funds should be dedicated for the establishment of fast track courts so that trials can take place on a day-to-day basis. Government may consider setting up of fast-track courts in every district wherever the pendency is very high. The Committee would like to impress upon the Department of Justice to take up the matter with the Chief Justice of India and Chief Justices of High Courts on the need of speedy trial of cases. The Judiciary must take steps to see that the trial is completed within two months of filing of the charge-sheet.

5.38.3 The Committee was informed that in the light of the recent incident of gang rape of a young women in the national capital, the Minister of Law and Justice has written to the Chief Ministers of all States and Chief Justices of all High Courts to set up Fast Track Courts for concluding trial in rape cases. The Committee recommends that the decision of the Government to create 10% additional position of judges for creation of permanent fast track courts, as

directed by the Supreme Court in its judgment given in the case of Brij Mohan Lal and others versus Union of India and others given on 19.04.2012 may be implemented.

5.38.4 The Committee was also informed that Rs. 5000 crores have been given as grants to the States for the years 2010 to 2015 in order to undertake various initiatives such as increasing court working hours, enhancing support to lok Adalats and providing additional funds to State Legal Service Authorities etc. The Committee feels that the amount of Rs. 5000 crores for five years is not sufficient for the purpose in view of the huge pendency of cases in courts. The Committee, therefore, recommends that the amount of Rs. 5000 crores may be enhanced to Rs.10,000 crores. The Committee is of the view that more such initiatives are required for providing sufficient infrastructure for the existing and the new courts and for appointment of judges and recruitment of administrative staff.

5.39 Moral Education

5.39.1 The Committee is of the opinion that school curriculum plays an important role in early socialization of children. A healthy school curriculum can lay foundation for an all round development of adult personality. Several psychological studies indicate that values imparted by agencies of early socialization such as schools and parents have lifelong impact on the individual.

5.39.2 The Committee, therefore, feels that school curriculum should include values which encourage children to respect their fellow human being specially women, poor and the needy. School curriculum should reflect the best elements of our age old cultural values, customs, traditions along with universal human values. The Committee recommends that the Government may take necessary steps for promoting Gender sensitization among teachers, parents and children so that gender bias may be removed. The Government should also ensure that enough emphasis is laid on removing gender bias, strengthening family system and inculcating moral and family values while preparing text books and modules teacher training.

5.40 Ragging

5.40.1 The practice of ragging in educational institutions in the country is on the rise. Every year several cases are reported in the media wherein innocent young

students are subjected to immense physical and psychological trauma which leaves deep scars on the psyche of the students for the rest of their lives.

5.40.2 Though the act of ragging often starts with bullying of freshers by the seniors, at times, it acquires sexual overtones causing deep embarrassment to students of both the sexes, even leading to the extreme step of committing suicide. The Committee is of the opinion that limiting punishment for ragging to rustication and other disciplinary acts by educational institutions will not be enough to obliterate this menace. Therefore, it should be made a cognizable offence with punishment attracting provisions Criminal Law, particularly for the instances where ragging takes the overtones of sexual harassment/assault.

5.41 Responsibility of Higher Officers

5.41.1 In case the crime committed by the subordinate is in the knowledge of the higher officer and he does not take timely action, such superior officer should be held responsible and omission of such acts on the part of superior officer must be recorded in his official dossiers/ACR.

5.42 Repeat Offenders

5.42.1 The Committee has been given to understand that in our country, there is no system of keeping a watch on repeat sex offenders. The Committee has also been given to understand that, according to a study conducted on the sex offenders, majority of the offenders had committed a sex crime earlier and escaped notice of the police authorities and were roaming freely. The Committee has also been given to understand that Western European countries and the US have developed a mechanism for tracking such type of sex offenders and are maintaining a data base in this regard. The Committee recommends that a suitable mechanism may be evolved to keep a watch on habitual and repeat sex offenders. The Committee also recommends that after the conviction on first offence, the names of the convicted persons should be publicized for information of the public. The Central Crime Records Bureau should include the data in their records. The State and UT Governments also should set up crime records bureaus and the data, including the names of convicted people must be maintained and updated, from time to time.

NOTE OF DISSENT ON THE 167th REPORT OF THE DRPS COMMITTEE ON HOME AFFAIRS ON THE CRIMINAL LAW AMENDMENT BILL, 2012, GIVEN BY SHRI D. RAJA, MEMBER, RAJYA SABHA AND SHRI PRASANTA CHATTERJEE, MEMBER RAJYA SABHA

We express our dissatisfaction with the way in which the Verma Committee recommendations have been diluted and we express the opinion that the Committee should recommend to the Government to include those recommendations before placing the Bill in Parliament.

As far as the present Bill is concerned

1. Clause 5 adopts a gender neutral definition of sexual assault as has been done in Section 8 of the Ordinance. This is totally unacceptable, unjust and trivializes the large increase in the number of rapes by men. This clause is against the recommendation of the Verma Committee which had suggested that the perpetrator of the Crime should be defined as a man. The clause is also against the earlier proposed government Bill in 2010 which rightly made the law gender specific as far as adults were concerned and the accused persons could only be men while the complainants/victims were women.
2. The definition of rape in the Verma Committee report should be the definition used in the Bill. The present Clause 5.24 dealing with Sec 375 of the IPC accepts the flawed definition. We disagree with this.
3. Both the Ordinance and the Standing Committee exempt marital rape from being considered a crime under Section 375 of the Indian Penal Code. This is contrary to the provisions of the Indian Constitution which considers all women as equal human beings who have a right to live with dignity and free from violence within and outside marriage. This is also contrary to the Verma Committee report which had pointed out that the “exemption for marital rape stems from a long outdated notion of marriage which regarded wives as no more than the property of their husbands”..... “whereas marriage is in modern times regarded as a partnership of equals”.
4. Clause 5 raises the age of consent from 16 to 18 years in cases of sexual assault under Section 375 IPC. However, the social reality is that there are many instances of consensual sexual activity between adolescents between the ages of 16 and 18 and it would lead to injustice if in these cases there was prosecution for rape. The Law Commission in its 205th report has made a recommendation which may form the basis of this amendment we suggest. By way of a proviso to clause ‘sixthly’ to Section 375 IPC to exempt such consensual activity from the purview of statutory rape provided the accused person is not more than 5 years older.
5. While the proposed government Bill of 2010 had added that if rape is committed by a person in a position of social, economic and political dominance this would be considered an aggravated form of the offence, the Ordinance (3 of 2013) removes the word ‘political’ from this definition. The Standing Committee has also agreed with this

76

change in definition. We totally disagree with the word “political” being deleted. The word ‘political’ should be added to Section 376 Clause (j) as this was meant to address rape which is often committed with impunity on the most vulnerable sections of women in our society. Several instances

81

of these forms of rape by those in positions of political power have been highlighted in the past few years.

6. The Standing Committee echoes the Ordinance in making sexual assault on a legally separated wife under Section 376B IPC punishable with a minimum imprisonment of two years and a maximum of seven years. We completely disagree with this and see no reason why sexual assault on any separated wife should be punishable with less imprisonment and should not be considered as ordinary sexual assault.

7. In Clause 4A, the Standing Committee does not suggest any amendment of Section 354 of the IPC that deals with non-penetrative sexual assault but only suggests enhancement of the punishment. The wording of Section 354 which states that assault or use of criminal force to any woman “intending tooutrage her modesty” is archaic and inappropriate and should be changed according to the suggestion of the Verma Committee.

8. The Verma Committee had suggested that the definition of sexual assault in Section 354 of the Indian Penal Code should be replaced by the following words:

“(a) Intentional touching of another person when such act of touching is of a sexual nature and is without the recipient’s consent.

(b) Using words, acts or gestures towards or in the presence of another person which create an unwelcome threat of a sexual nature or result in an unwelcome advance.

Explanation: For the purposes of this section, ‘acts’ shall include the display and dissemination of pornographic material.....”

It had prescribed a punishment of imprisonment upto 5 years for the offence under the suggested sub-clause (a) and upto 1 year for the offence under sub-clause (b). Since this clause also replaced Section 509 of the IPC the Verma Committee had suggested repeal of Section 509 of the IPC. However, though Clause 4A in Section 354A defines Sexual Harassment it still retains Section 509 IPC which again uses archaic language which is insulting to women. We object to this.

9. In Clause 2, the Standing Committee had suggested that in Section 166 A if a public servant ‘knowingly’ disobeys any direction of law he should be punished with rigorous imprisonment for a term which may extend to one year. The term of rigorous imprisonment should extend to two years and a minimum should be fixed. The word ‘knowingly’ should be deleted as lack of knowledge of law cannot be allowed to be a defence and will always be used as a convenient defence in these cases.

10. At present under Section 160 of the Code of Criminal Procedure, no woman or person above 65 years of age or a male person below 15 years of age is required to attend at a Police station and should be questioned in their residence. Though it had been suggested that the age of the male person should be increased to 18 years the standing Committee in Clause 8 has not accepted this. Anyone upto 18 years should ordinarily be questioned at his residence.

11. In point 5.47 on responsibility of higher official, the Committee report only recommends a recording in his official Dossier – ACR. We disagree with this. The Higher officer must be held responsible and also punished for this.

12. Death Penalty: Since there are many issues which have been raised about Death Penalty, it is not necessary to include this in the present Bill.

13. Section 376 (2)

- Being a man, commits rape on a person in the course of communal or sectarian violence;
- Being a man, who is not a member of a Scheduled Caste or a Scheduled Tribe, commits rape on a person belonging to a Scheduled Caste or Scheduled Tribe, knowing that the person is a member of the Scheduled Caste or Scheduled Tribes;

14. On Trafficking: Government must consider to bring a Comprehensive Bill in human trafficking which is a process leading to commercial sexual exploitation and labour exploitation.
