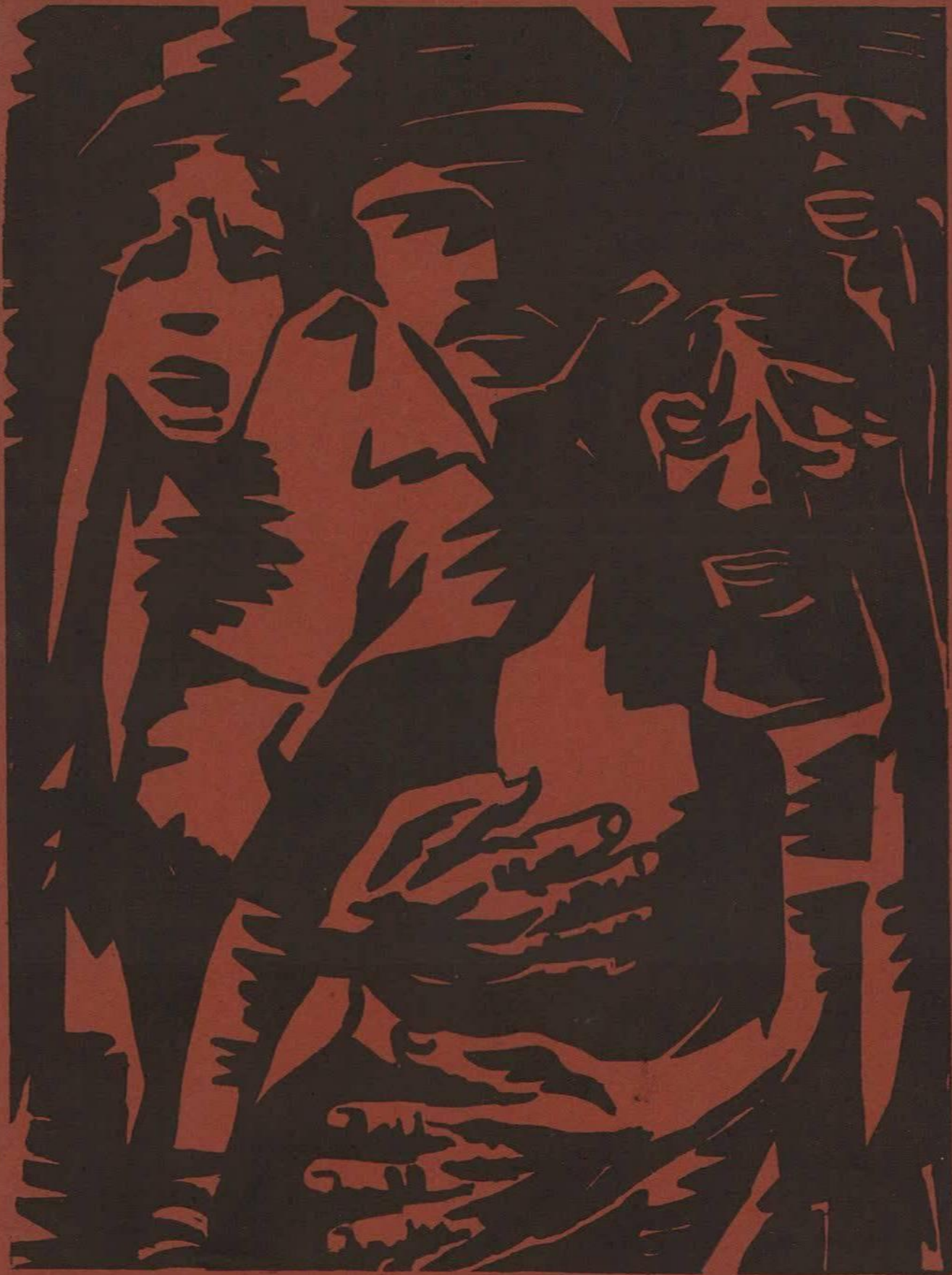


RAPE

PROPOSED CHANGES
IN THE LAW



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INTRODUCTION

The occasion for the production of this leaflet is the publication of the Law Commission Recommendations on the proposed amendments to the Rape Law and the Bill to be introduced in Parliament for that purpose. At the cost of repetition, it needs to be pointed out that Mathura, a sixteen year old agricultural worker had alleged that she had been raped by two policemen in a police station in Maharashtra when she went there in response to a police complaint that she had been kidnapped. The two policemen were acquitted by the Supreme Court on the grounds that the prosecution had not proved that she did not consent. The decision shocked the conscience of the women's movement all over the country and thus started a national campaign for a reform of the law relating to rape.

The question has often been asked, why the Mathura case sparked off such a controversy when rape has been taking place for so long. The answer is very simple. Mathura was raped, not by just another man, but by two policemen, guardians of law and order, whilst on duty in a police station. And that is the key to an understanding of the Law Commission Recommendations.

Police misconduct has been alarmingly on the increase, reaching its most extreme manifestation in the rape of innocent women in their custody. It was time for the law to recognise this trend and to provide positive protection for women against police misconduct. The popular demand for such laws led to the appointment of the Law Commission to suggest amendments in the law.

The Law Commission in its report provided for safeguards for a woman while she was being arrested, interrogated, detained in custody or tried in court. Thus she would have the right to be accompanied by a relative to a police station. She could not be interrogated anywhere except at her dwelling place. She would not be arrested between sunset and sunrise. She could not be detained except in a place of custody meant exclusively

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for the detention of women. It should be obvious to anyone that these recommendations would have gone a long way in *preventing* police misconduct. It is unfortunate that these recommendations have not been well publicized. The press has chosen either to ignore these recommendations or to distort their true meaning. A typical uninformed male chauvinist reaction has been to say that henceforth no respectable man will be safe in taking a woman out. And 'how do you expect a man to prove that the woman consented?' Needless to say, it did not occur to these champions of civil liberties all these years, how a woman was expected to prove that she did not consent. Be that as it may, what is truly shocking is the fact that the Government has come out with a Bill which can only be described as an eye-wash. Gone are all the protections against police misconduct. When compared with the Law Commission Recommendations, the Bill appears to protect the police rather than women.

There is no reason why the Recommendations which would have gone a long way in preventing police abuse of powers should not be passed into law. Almost everyday brings news of police misconduct — rape of innocent women, death in police custody due to the use of third degree methods, the use of hired witnesses to obtain convictions and so on. All this, it would seem, has not stirred the conscience of the Government. One can only conclude that the Recommendations have been dropped to keep up the morale of the police.

In this pamphlet we have commented on the Recommendations of the Law Commission and contrasted them with the inadequate provisions of the Bill. Readers are invited to judge for themselves whether the Bill fulfills the demands of the women's movement or not. For the benefit of the more interested reader, we have appended the Recommendations of the Law Commission and the text of the Bill.

It is our opinion that the recommendations of the Law Commission should be accepted in toto and we hope that the campaign for reform will continue until the Government accepts this. We also take the opportunity to thank 'Navjot' who designed the cover for us.

C O M M E N T

THE DEFINITION OF RAPE

The question of consent is the cardinal element in the definition of rape as an offence. The Bill has by and large accepted the Law Commission's (LC) recommendation that consent will have to be free and voluntary. Passive submission, therefore, is not tantamount to consent.

As the law stands, if consent is obtained by putting the woman in fear of death or hurt then it is no consent. It is now proposed that consent will also be negated if it is obtained by putting the woman in fear of injury, either to body, mind, reputation or property. The L. C. had recommended that putting the woman in fear of death, hurt or injury of a third party should also vitiate (negate) consent, and it proposed a special provision to that effect. However the Bill covers this under the clause dealing with criminal intimidation so that consent obtained through criminal intimidation will be no consent. Criminal intimidation, defined elsewhere, refers to putting the victim in fear of injury or danger either to herself or to a third party who may be involved.

Consent is also vitiated if the woman is of unsound mind; if she is intoxicated because she has been given some substance so that she does not understand the consequences of giving her consent; if she is unable to offer effective resistance; if it is given under a misconception of fact when the man knows or has reason to believe that consent is given because of that misconception.

Under the present law the statutory age for lawful sexual intercourse is sixteen, unless the woman happened to be the man's wife in which case the critical age is fifteen. In other words if a man has sexual intercourse with any one who is below the age of sixteen (fifteen in case she is his wife) he automatically commits rape and the

having sexual intercourse with women who are either in their custody or under their control or over whom they exercise authority. In these cases he is liable to imprisonment of upto five years. But the Government has gone further and proposed that the public servants etc. should be given enhanced minimum punishment in cases where public servants have committed rape. Thus the Bill proposes that where a police man, public servant, jail or hostel superintendent, staff member of a hospital, etc., commits rape on a woman under his charge, custody or care, he should be liable to a minimum imprisonment of ten years. In other words, the minimum is raised from seven years in ordinary cases of rape to ten years in cases where public servants etc are involved. And in cases of sexual intercourse not amounting to rape by public servants etc., upto five years imprisonment is proposed.

OUTRAGING THE MODESTY OF A WOMAN.

There are a number of cases where rape (or more strictly offences involving vaginal penetration) may not be committed but an equally heinous offence may be perpetrated on a woman. In that case the offence may be covered under Sec. 354 (indecent assault or outraging the modesty of a woman). The L.C. has recommended that in the light of the decisions of the Supreme Court, even a baby girl should be deemed to have modesty and this should be incorporated to the statute. In addition the L.C. had recommended that modesty should be deemed to be outraged despite the woman consenting, if she happened to be below sixteen years, of age. The Government has rejected both of these proposals.

As for indecent gestures or eve-teasing the L.C. was of the opinion that this was already covered under Sec. 509 of the I.P.C. But for indecent phone calls the L.C. recommended the insertion of a clause (c) to Sec. 294. The Government however has not accepted this.

ARREST AND INVESTIGATION

The L.C. recognised that a woman when in a police station, feels insecure and is always worried that the police

might hurt, harrass and even rape her. In any case, the very fact that the feeling exists is, in itself, a sad commentary on the lack of trust towards the police.

In this context the L. C. in its recommendations had provided positive safeguards in favour of women. It has been a common complaint of women's organizations that police refuse to record a complaint in cases when a cognisable offence is reported. The L.C. had recommended that non-recording should become a substantive offence attracting a penalty of imprisonment of upto one year or fine or both.

Sec. 46 of the Criminal Procedure Code (Cr P C) allows the police officer touch the person of a woman who is being arrested if she does not submit. The L.C. had proposed an amendment allowing for submission to be presumed when told of her arrest. In other words there would be no need for the police officer to touch the woman in order to arrest her unless it was quite clear that the woman would not submit. However a woman police officer could touch the person of the woman being arrested. The Government, however, has rejected this proposal also.

The L.C. had also proposed by addition of Sec. 46(4) to the Cr P.C. that no woman should be arrested between sunset and sunrise. But he would have to make a written report and obtain the permission of a superior officer before doing so. In the case of an extreme urgency, prior permission could be dispensed with but the written report to the superior officer would have to be made immediately after the arrest. This would have had to record the reasons for not taking prior permission. The Government has not seen fit to include this recommendation in the Bill either. The L. C. had also recommended that once a woman had been arrested she should not be detained in a police station but should be kept in a women's detention centre. If there are no women's detention centres then she could be kept in a women's or children's institution meant for their protection and welfare. This procedure need not be adhered to if the woman had been charged with an offence under a law which requires her to be sent a protective home. Again this remommendation has not been accepted by the Government.

The L. C. had reacted favourably to the suggestion that a male relative should be allowed to stay close to the woman in the lock up although for practical reasons it did not like this to be given statutory effect. Needless to say the Government also rejected this recommendation.

In cases where the police officer is the accused the L.C. had commended (not recommended) that the investigation should be carried out by a police officer from another district. In our opinion this is not adequate. Things will remain the same as they are. In other words, police officers of the same police station (or the same district) to which the accused belongs will continue to investigate the charge. Since offences committed by the Police are not an insubstantial part of the total, the failure of the L.C. to recommend serious alternatives is disturbing. Although we cannot agree with the suggestion that social works should partake in the investigation process one has to admit that there is a crying need for an independent agency to investigate cases where police officers happen to be the accused. In this context we consider the L.C.'s failure to recommend this a grave defect which should be corrected. The Government has also not given thought to the problem. We are strongly of the opinion that the commendation of the L.C. should be given statutory effect.

INTERROGATION

Although the L.C. was in favour of interrogation of women by women police officers it did not consider this practicable because of the dearth of women police officers in the rural areas. However it stated that in the urban areas the practice should be adopted as soon as possible. It is not known whether the Government has considered this proposal favourably, or not, for there is not mention of it in the Bill.

In the case of victims of sexual offences who are under the age of twelve the L.C. preferred a statutory provision insisting on interrogation by woman police officers. Should a woman police officer not be available, the interrogation should be conducted by qualified woman (a social worker

belonging to a recognised social organisation). In this case a list of questions would be provided by a police officer and the statement recorded by the woman social worker. This statement recorded by the woman social worker would be deemed to have been recorded by a police officer. The Government has not incorporated this recommendation into the Bill.

Sec. 160(i) Cr PC provides that a female or a male below the age of fifteen should be interrogated at their place of 'residence'. However since 'residence' seems to have assumed a very wide meaning the L.C. had recommended the substitute 'dwelling place' for residence'.

The L.C. also recommended that a male under the age of fifteen or a woman should be allowed to have a male relative, friend, or a female social worker from a recognised women's organisation to be present during an interrogation by a male police officer. This has also been rejected by the Government. In addition violation of procedure relating to investigation by a police officer would attract a penalty under the new section 166(A) of the I.P.C. (recommended by the L. C.) of imprisonment upto a year or a fine or both. Again the Government has rejected this recommendation.

MEDICAL REPORT

It is well known that for sexual intercourse to be established the medical report is quite crucial. The L.C. had argued that the medical report to be of any real use should include the medical history of both the victim and the accused.

Sec. 53 of the Cr. P.C. provides for the medical examination of the accused. In practice, however, this tends to be cursory. The L. C. had therefore recommended that apart from the usual formal particulars, it should include, the age of the accused, the injuries to the body of the accused and any other relevant details. The precise time of the commencement and the termination of the examination should be noted. The conclusions arrived at by the doctor should be adequately supported by reasons. The report should then be sent promptly to the Magistrate.

The Medical report of the victim also tends to be cursory. The L.C. had admitted that since it is not sent promptly to the Magistrate there was always the possibility of tampering. The report therefore should be sent promptly to the investigating officer who should in turn send it to the Magistrate. It should include apart from the usual formalities the age of the victim, injuries to the body, the general mental condition of the victim, whether or not she was used to sexual intercourse, and the time of commencement and termination of the medical examination and the reasons for the conclusions reached.

The L.C. had recommended that the above procedure should not be left as executive instructions but should be incorporated into the statute. The Government has not accepted the view of the L.C. In any case it is difficult to understand why the medical examination should record whether the rape victim was used to sexual intercourse or not. The L.C. had itself recommended that sexual history of the victim in general should not be brought on to the record in a trial concerning rape. Thus one cannot help concluding that there was an inconsistency in the two suggestions. This had to be straightened out. However since the Government has not considered it necessary that evidence of the sexual history of the victim should be brought on the statute books the question to that extent becomes academic.

The Medical Examination would of course be conducted by a registered medical practitioner. In the case of the examination of the rape victim the L.C. had recommended that it should only take place after consent has been obtained from the victim or from somebody on her behalf. If the consent has not been obtained, the medical examination itself would be unlawful. The Government has not accepted this recommendation either.

Under Sec. 53(2) of the Cr. P.C. a woman has to be examined by a female medical practitioner. However since that is the usual practice the L.C. did not consider that any additional statutory protection was needed. We would recommend that an addition to S. 53(2) should be made to allow the victim to be examined by a registered Medical practitioner of her choice.

PROCEDURE FOR THE TRIAL :

Public and open trials are meant to ensure justice, Secrecy, it is argued, invites abuse. However the L.C. had argued that an open trial is not necessarily the best form in cases of rape and allied offences and that such cases should be held in camera. With this procedure the L.C. argued that both the victim and the accused are protected against the stigma that is likely to be attached to them.

While the L.C. had recommended that the judge should have the discretion, to decide, whether the trial should be held in camera or not (giving reasons if it was not going to be held in camera) the Bill makes it compulsory for the trial of rape and allied offences to be held in camera. The *check* The Bill also accepts that publication of proceedings during the trial stage should only be done with permission of the Court. But, whereas the L.C. recommended a penalty of a fine upto one thousand rupees for such publication, the Bill has proposed a penalty of a minimum imprisonment of one month extending upto two years.

In the pretrial stage the LC did not consider that, in this respect, any amendments need be made to the present law. Although it was generally opposed to publicity being given to the victim or accused at the pretrial stage, it was of the opinion that the professional ethics of journalists would act as a reasonable restraint. Again at the posttrial stage it was not opposed to publicity being given to the case although it thought, given the prevalence of reformatory penology, in India today, that it should be discouraged.

The Government has, however, cast aside this cautious approach of the LC and in both the pretrial and post-trial stages, it has proposed that whosoever prints or publishes any matter **which may make known the identity** of the victim of any of the sexual offences, shall be liable for a minimum imprisonment of one month extending upto two years and which may include a fine. Moreover this offence could be tried summarily.

The provision, to say the least, smacks of press censorship. Today it may be confined to rape but this

dangerous principle may tomorrow be applied to "communal incidents" and who knows even anti-price-rise movements. No doubt the press is not always motivated by the best of intentions controlled as it is by a minority elite. Accepted also that sensationalism has become the stock-in-trade of a section of the press. But it would be foolish to deny or even minimize the role the press has played in highlighting the issue of rape.

Moreover, the expression "publishing any matter which may make known the identity of the victim" can cover any number of situations. Women and social organisations which seek to highlight atrocities on women, can be prevented from publishing hand bills, posters, reporting to the press etc. all of which are the essential methods for raising the issue. It is advisable that this amendment be rejected. As the LC has suggested we should leave it to the "professional ethics" of journalists to exercise restraint in this matter, for, the disadvantages of introducing censorship of this kind outweigh whatever little advantage that can be gained from it.

EVIDENCE

The LC recognised the difficulties which the rape victim faces in bringing the accused to book viz. firstly convincing the police to register a complaint, then undergoing the humiliating medical examination and finally the embarrassing cross-examination in the Court.

The general rule about complaints viz. that delay in lodging the complaint with the police would cast doubt on the story of the victim while promptness on her part would lend credibility, had been supported by the LC. As noted earlier the LC had recommended that the non-recording of complaints should attract a penalty. This recommendation was not accepted by the Government.

The LC has also noted that the prosecution in a rape case must prove lack of consent by the victim, although this is precisely what is difficult to do given the type of crime rape is. The LC pointed out that one of the major reasons why it is difficult for the woman to prove rape is that allegations and the evidence of the victim is not

given sufficient credibility by the Court. Therefore the trend has been for the Courts to rely on indirect evidence such as marks of violence or resistance. In this context the LC had recommended that once sexual intercourse is proved and the woman states in her evidence in Court that it was without her consent then the Court will presume that she did not consent.

Considerable controversy has been generated over this particular recommendation of the LC. The newspapers in particular have been guilty of distorting the implications of this recommendation. It has been made out that this would shift the general burden of proof to the accused neglecting the fundamental principle of presumption of innocence. The accused, it is argued, will have to prove his innocence and in consequence will even have to step into the witness box.

There are two aspects to what is generally referred to as 'burden of proof'. On the one hand there is what is called the burden of proof as regards pleadings. On the other there is what is called the burden of proof as regards admissibility of evidence. The latter is sometimes called evidential burden. While the former is clearly linked up with the principle of presumption of innocence, the latter is linked to a fact or issue (there may be more than one) which is in dispute in a trial. With regard to one fact or issue, the burden of proof may be on the prosecution and with regard to another fact or issue it may be on the accused. In respect of a particular fact or issue the burden of proof may be discharged by one party and shifted on to the other by admitting evidence in favour of the first party. In other words evidential burden keeps shifting according to the evidence presented. Burden of proof with regard to pleadings, however, never shifts. In other words, the accused is at all times presumed innocent until otherwise proved guilty. Despite the introduction of the proposed recommendation the prosecution would have had to prove beyond reasonable doubt that the accused was guilty of rape.

The Bills has not accepted this recommendation as it stands. It has proposed that in all cases of alleged rape

where the accused is a police officer, public servant, superintendent or manager of a jail etc., staff member of a hospital; or in the case of gang rape, or when the woman is pregnant and sexual intercourse has been proved and the woman makes a statement that she did not consent then the court shall presume that the victim did not consent.

PAST SEXUAL HISTORY

Past sexual history of the woman in a rape case may refer to sexual relations either with the accused or with a third party. So far as the past sexual history with the accused is concerned, as the law stands today it is admissible in evidence under S. 8, S. 9, S. 11 and S. 14 of the Evidence Act. S. 155(4) allows the accused to give evidence on the general "immoral character" of the victim.

Women's organisations have argued quite effectively that the past sexual history of the woman should not be brought on record. The LC had agreed to this suggestion, arguing that even the sexual history of a prostitute should not be brought on record. It therefore recommended that past sexual history, apart from that with the accused, should be excluded from evidence. Unfortunately the government has not accepted this recommendation. This is a grave defect of the Bill, smacking of a sexist bias. It assumes that if a woman consents to having sexual intercourse with A, B and C, she will probably consent to D. This implicit bias denies that women have a basic freedom of choice and suggests that they are sexual machines. The Bill tries to impose a certain sexual morality. A woman who is not inhibited would be seen by the proponents of the Bill as 'immoral'. There is no justification for this. The proponents of the Bill would be well advised to keep moralizing a private occupation and perhaps apply it to themselves in the first instance. In any case it is difficult to understand why double standards are being allowed to prevail. In the case of a male victim of a sexual offence the general immoral character of the victim is not admissible as evidence. The sooner we adopt a uniform approach the better. We would therefore strongly urge that the LC recommendations be accepted.

APPENDIX I

Recommendations made by the Law Commission in its 84th Report on Rape and Allied Offences for amending the Indian Penal Code, the Code of Criminal Procedure and Indian Evidence Act-Text of amendments

AMENDMENTS TO INDIAN PENAL CODE

1. Insertion of new section 166A in the IPC (para 3.20)

166A. Whoever being a public servant—

- (a) knowingly disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or
- (b) knowingly disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

2. Insertion of new section 167A in the IPC (para 3.32)

167A. Whoever, being an officer incharge of a police station and required by law to record any information relating to the commission of a cognisable offence reported to him, refuses or without reasonable cause fails to record such information shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

3. Insertion of new section 228A in the IPC (para 5.13)

228 A. Where, by any enactment for the time being in force, the printing or publication of any matter in relation to a proceeding held in a Court in camera is declared to be unlawful, any person who prints or publishes any matter in violation of such prohibition

shall be punished with fine which may extend to rupees one thousand.

4. Insertion of the following new clause in section 294 IPC (para 2.36)

(c) sings, recites or utters on the telephone any obscene song, ballad or words or any abusive words.

5. Insertion of new saction 354A in the IPC (para 2.28 & 2.31)

354A. Indecent assault on a minor-Whoever assaults any minor under sixteen years of age in an indecent, lascivious or obscene manner, with or without the consent of the minor shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

6. Section 375 IPC to be revised as follows :-(para 2.24)

375. A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions :—

Firstly : Against her will.

Secondly : Without her free and voluntary consent.

Thirdly : With her consent, when her consent has been obtained by putting her in fear of death or of hurt or of any injury either to herself or to any other person or by criminal intimidation as defined in section 503.

Fourthly : With her consent,

(a) 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 herself to be lawfully married, or

(b) When her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception.

Fifthly : With her consent, if the consent is given by a woman who, from unsoundness of mind or intoxication

or by reason of the consumption or administration or any stupefying or unwholesome substance, is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance:

Sixthly : With or without her consent, when she is under eighteen years of age.

Exception : Sexual intercourse by a man with his own wife, the wife not being under eighteen years age, is not rape.

Explanation : 1. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation : 2. A woman living separately from husband under a decree of judicial separation or by mutual agreement shall be deemed not to be his wife for the purposes of this section.

7. Insertion of new section 376C, 376D, 376E in the IPC (para 2.23)

376C. Illicit intercourse of public servant with woman in his custody :—Whoever, being a public servant, compels or seduces to illicit intercourse any woman who is in his custody as such public servant shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

376D. Illicit intercourse of superintendent etc. with inmate of women's or children's institution :—Whoever, being the superintendent or manager of a women's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates, compels or seduces to illicit sexual intercourse any female inmate of the institution shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation : In this section 'women's or children's institution' means an institution whether called an orphanage, home for neglected women or children, widow's home or by any other name, which is established

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and maintained for the reception and care of women or children, but does not include—

- (a) any hostel or boarding house attached to, or controlled or recognised by, an educational institution, or
- (b) any reformatory, certified or other school, or any home or workhouse, governed by any enactment for the time being in force.

376E. Illicit intercourse of manager etc. of a hospital with mentally disordered patient :—Whoever, being concerned with the management of a hospital or being on the staff a hospital, has illicit sexual intercourse with a woman who is receiving treatment for a mental disorder in that hospital, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation :—It shall be a defence to a charge under this section for the accused to prove that he did not know, and had no reason to believe, that the woman was a mentally disordered patient.

AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE

1. Insertion of proviso to sub-section (1) of section 46 Cr. P. C. (para 3.6)

Provided that where a woman is to be arrested, then unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed, and unless the circumstances otherwise require or unless the police officer arresting is a female, the police officer shall not actually touch the person of the woman for making her arrest.

2. Insertion of new sub-section (4) to section 46 Cr. P. C. (para 3.8)

(4) Except in unavoidable circumstances, no woman shall be arrested after sunset and before sunrise, and where such unavoidable circumstances exist, the police officer shall by making a written report, obtain the prior permission of his immediate superior officer for effecting such arrest or, if the case is one of extreme urgency, he shall, after making the arrest, forthwith

report the matter in writing to his immediate superior officer with the reasons for arrest and the reasons for not taking prior permission as aforesaid.

3. Insertion of new sub-section (1A), (1B), (1C), and (1D) in Section 53 Cr. P. C. (para 4.7)

(1A) When a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made under this section, he shall be forwarded without delay to the registered medical practitioner by whom he is to be examined.

(1B) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars:-

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused, and

(iv) other material particulars in reasonable detail.

(1C) The Report shall state precisely the reasons for each conclusion arrived at.

(1D) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

4. Proviso to sub-section (1) of section 160 Cr. P. C. to be amended (para 3.18)

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than his or her dwelling place.

5. Insertion of new sub-section (3) to (7) in section 160 Cr. P.C, (Para 3.15)

(3) Where, under this Chapter, the statement of a girl under the age of twelve years is to be recorded, either as first

information of an offence or in the course of an investigation into an offence, and the girl is a person against whom an offence under section 354, 354A or 375 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded either by a female police officer or by a person authorised by such organisation interested in the welfare of women or children as is recognised in this behalf by the State Government by notification in the official gazette.

- (4) Where the case is one to which the provisions of sub-section (3) apply, and a female police officer is not available, the officer in charge of the police station shall, in order to facilitate the recording of the statement, forward to the person referred to in that sub-section a written request setting out the points on which information is required to be elicited from the girl.
- (5) The person to whom such a written request is forwarded shall, after recording the statement of the girl, transmit the record to the officer in charge of the police station.
- (6) Where the statement recorded by such person as forwarded under sub-section (5) appears in any respect to require clarification or amplification, the officer in charge of the police station shall return the papers to the person by whom it was forwarded, with a request for clarification or amplification on specified matters; and such person shall thereupon record the further statement of the girl in conformity with the request and return the papers to the officer in charge of the police station.
- (7) The statement of the girl recorded and forwarded under sub-sections (3) to (6) shall, for the purpose of the law relating to the admissibility in evidence of statements made by any person, be deemed to be a statement recorded by a police officer.

6. Insertion of new sub-section (8) in section 160 Cr. P. C. (para 3.25)

- (8) Where, under this Chapter, the statement of a male person under the age of fifteen years or of a woman is


recorded by a male police officer, either as first information of an offence or in the course of an investigation into an offence, a relative or friend of such male person or woman, and also a person authorised by such organisation interested in the welfare of women or children as is recognised in this behalf by the State Government by notification in the official gazette, shall be allowed to remain present throughout the period during which the statement is being recorded.

7. Insertion of new section 164A (para 4.10)

164A. (1) Where, during the stage when an offence of rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the woman or of some person competent to give such consent on her behalf and the woman shall be forwarded to the registered medical practitioner without delay.

(2) The registered medical practitioner to whom such woman is forwarded shall without delay examine her person and prepare a report specifically recording the result of his examination and giving the following detail :

- (i) the name and address of the woman and of the person by whom she was brought,
 - (ii) the age of the woman,
 - (iii) whether the victim was previously used to sexual intercourse,
 - (iv) marks of injuries, if any, on the person of the woman,
 - (v) general mental condition of the woman, and
 - (vi) other material particulars, in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The report shall specifically record that the consent of the woman or of some person competent to give such consent on her behalf to such examination had been obtained.

- (5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- (6) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person competent to give such consent on her behalf.
- 8. Sub-section (5) of section 173 Cr. P.C. be amended as follows (para 3.4)**
- (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely including the report of medical examination of the arrested person accused of rape or attempt to commit rape forwarded to the police officer under section 53, and the report of medical examination of the victim of such an offence forwarded to the police officer under section 164A other than those already sent to the Magistrate during investigation;
- (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.
- 9. Sub-section (6) of section 198 be amended as follows :- (para 5.2)**
- (6) No Court shall take cognisance of an offence under section 376 of the Indian Penal Code, where such offence consists of sexual intercourse by a man with his own wife,....if more than than one year has elapsed from the date of the commission of the offence.
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10. Insertion of Second Proviso to section 327 Cr. P. C. (para 5.7)

Provided further that unless the presiding judge or magistrate, for reasons to be recorded directs otherwise, the inquiry into and trial of rape or allied offence shall be conducted in camera.

Explanation :— In this sub-section, the expression 'rape or allied offence' applies to

- (a) an offence punishable under section 354A of the Indian Penal Code;
- (b) an offence punishable under section 376, section 376A, section 376B or section 376C of that Code;
- (c) an attempt to commit, abetment of or conspiracy to commit any such offence as is mentioned in clause (a) (b) of this Explanation.

11. Insertion of new sub-section (2) to section 327 Cr. P. C. (para 5.7)

(2) Where any proceedings are held in camera, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the Court.

12. Insertion of new section 417A in the Cr. P.C. (para 3.9)

417A. Where a woman is arrested and there are no suitable arrangements in the locality for keeping her in custody in a place of detention exclusively meant for women, she shall be sent to an institution established and maintained for the reception, care, protection and welfare of women, or children, licensed under the Women's or Children's Institutions (Licensing) Act, 1956 or an institution recognised by the State Government, except in cases where any special law requires that she should be sent to a protective home or other place of detention authorised for the purposes of such special law.

AMENDMENTS TO INDIAN EVIDENCE ACT**1. Insertion of new section 53A in the Evidence Act.
(para 7.28)**

53A. In a prosecution for rape or attempt to commit rape, where the question of consent to sexual intercourse or attempted sexual intercourse is at issue, evidence of the character of the prosecutrix or of her previous sexual experience with any person other than the accused shall not be relevant on the issue of such consent or the quality of consent.

**2. Insertion of new section 111A in the Evidence Act.
(para 7.11)**

111A. In a prosecution for rape or attempt to commit rape, where sexual intercourse is proved and the question is whether it was without the consent of the woman and the woman with whom rape is alleged to have been committed or attempted, states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

3. Insertion of sub-section (4) to section 146 Evidence Act (para 7.27)

(4) In a prosecution for rape or attempt to commit rape, where the question of consent to sexual intercourse or attempted sexual intercourse is at issue, it shall not be permissible to adduce evidence or to put questions in the cross examination of the prosecutrix as to her general immoral character, or as to her previous sexual experience with any person other than the accused for proving such consent or the quality of consent.

4. Section 150 be revised as follows (para 7.30)

150. If the Court is of the opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate report the circumstances of the case to the State Bar Council.

5. Sub-section (4) of section 155 of Evidence Act to be amended (para 7.25)

Draft not furnished.

APPENDIX II

Bill No. 162 of 1980

THE CRIMINAL LAW (AMENDMENT) BILL, 1980

A

BILL

further to amend the Indian Penal Code, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872.

BE is enacted by Parliament in the Thirty-first Year of the Republic of India as follows :—

1. This Act may be called the Criminal Law (Amendment) Act, 1980.

2. In the Indian Penal Code (hereinafter referred to as the Penal Code), after Section 228, the following section shall be inserted, namely :—

“228A. (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 354, section 376, section 376A, section 376B, or section 376C is alleged or found to have been committed shall be punished with imprisonment for a term which shall not be less than one month but which may extend to two years and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one month.

(2) Where, by any enactment for the time being in force, the printing or publication of,—

(a) the name, or any matter which may make known the identity, of any person against whom an offence specified in such enactment is alleged or found to have been committed,

(b) any matter in relation to a proceeding held in a court *in camera*,

is prohibited, any person who prints or publishes any such name or matter shall be punished with imprisonment for a term which shall not be less than one month but which may extend to two years and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one month.

Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.”.

3. In the Penal Code, for the heading “*Of rape*” occurring immediately before section 375 and for section 375 and 376, the following heading and sections shall be substituted, namely :—

‘*Sexual offences*’

375. A man is said to commit “rape” who, except in the case hereinafter except, has sexual intercourse with a woman under circumstances falling under any of the seven following descriptions :—

First.—Against her will.

Secondly.—Without her free and voluntary consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt or of any injury or by criminal intimidation as defined in section 503.

Fourthly.—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 herself to be lawfully married.

Fifthly.—With her consent, when her consent is given under a misconception of fact, when the man knows or has reason to believe that the consent was given in consequence of such misconception.

Sixthly.—With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent, or is unable to offer effective resistance.

Seventhly.—With or without her consent, when she is under sixteen years of age.

Explanation 1.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation 2.—A woman living separately from her husband under a decree of judicial separation shall be deemed not to be his wife for the purposes of this section.

Exception.—Sexual offence by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376. (1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine :

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer, commits rape in the local area to which he is appointed, or in any police station whether or not situated in such local area; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of the institution; or

(d) being concerned with the management or being on the staff of a hospital commits rape on a woman who is receiving treatment in that hospital; or

(c) commits rape on a woman knowing her to be a pregnant; or

(f) commits gang rape,
shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine :

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.—Where a woman is raped by three or more persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.—“Superintendent” in relation to a jail, remand home or other place of custody or a women’s or children’s institution includes a person holding any other office in such institution by virtue of which he can exercise any authority or control over its inmates.

Explanation 3.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or by any other name, which is established and maintained for the reception and care of women or children.

376A. Whoever, being a public servant, takes undue advantage of his official authority and seduces any woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

376B. Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution or holding any other office in such institution by virtue of which he can exercise any authority or control over its inmate takes undue advantage of his official position and seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Explanation.—The expressions “superintendent” and “women's or children's institution” shall have the same meanings as in *Explanations 2 and 3* of sub-section (2) of section 376.

376C. Whoever, being concerned with the management of a hospital or being on the staff of a hospital, has sexual intercourse with a woman who is receiving treatment in that hospital, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation.—“Hospital” includes any institution for the reception and treatment of persons suffering from illness, or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

4. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Criminal Procedure Code), section 327 shall be numbered as sub-section (1) of that section and—

(a) in sub-section (1) as so numbered, the following proviso and *Explanation* shall be inserted at the end, namely:—

‘Provided further that the inquiry into and trial of rape or allied offence shall be conducted *in camera*.

Explanation.—In this sub-section, the expression “rape or allied offence” denotes

(a) an offence punishable under section 354 of the the Indian Penal Code;

(b) an offence punishable under section 376, section 376A, section 376B, or section 376C of that Code;

(c) an attempt to commit abetment of or conspiracy to commit any such offence as is mentioned in clause (a) or clause (b) of this Explanation.”;

(b) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely :—

“(2) Where any proceedings are held *in camera*, it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except with the previous permission of the court.”

5. In the Criminal Procedure Code, after section 350, the following section shall be inserted, namely :—

“350A. (1) Where any such offence as is described in sub-section (2) of section 228A of the Indian Penal Code is committed in relation to the proceedings of any Court, such Court may, if satisfied that it is expedient in the interests of justice that such offence should be tried summarily, take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to imprisonment which may extend to three months and also to fine.

(2) In every such case, the Court shall follow as nearly as may be practicable the procedure prescribed for summary trials.”

6. In section 351 of the Criminal Procedure Code, in sub-section (1), for the word, and figures “or section 350”, the words, figures and letter “section 350, or section 350A” shall be substituted.

7. In the First Schedule to the Criminal Procedure Code, under the heading “1.—*Offences under the Indian Penal Code*”,—

(a) after the entries relating to section 228, the following entries shall be inserted, namely :—

	2	3	4	5	6
8A	Disclosure of the identity of the victim of certain offences, etc.	Imprisonment for two years of fine or both.	Cognizable	Non-bailable	Any Magistrate
	Printing or publication of a proceeding held <i>in camera</i> in contravention of any law.	Ditto	Ditto	Ditto	Ditto

(b) for the entries relating to section 376, the following entries shall be substituted, namely :—

	2	3	4	5	6
B	Rape	Imprisonment for life or imprisonment for ten years and fine.	Cognizable	Non-bailable	Court of Session.
A	Intercourse by public servant with woman in his custody.	imprisonment for five years and fine.	Ditto	Ditto	Magistrate of the first class.
B	Intercourse by superendent of jail, remand home, etc.	Ditto	Ditto	Ditto	Ditto
C	Intercourse by manager, etc., of a hospital with patient.	Ditto	Ditto	Ditto	Ditto

8. After section 111 of the Indian Evidence Act, 1872, the following section shall be inserted, namely :—

“111A. In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (2) of section 376 of the Indian Penal Code, where sexual intercourse is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”.

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