

WEST BENGAL HUMAN RIGHTS COMMISSION

File No. 81/WBHRC/COM/2012-13

P r e s e n t

1. Mr. Justice Asok Kumar Ganguly - Chairperson
2. Mr. Justice N.C. Sil - Member
3. Mr. S.N. Roy - Member

(1) The Commission notices that unfortunately the recent trend is of escalation of the number of offences against women in West Bengal which is widely reported in the print and electronic media. The statistics about crime against women under Section 354 IPC in West Bengal as published by NCRB, New Delhi demonstrate it clearly. The relevant figures are :

Statistics of Molestation Cases (U/S 354 IPC)

Year	West Bengal (including Kolkata)
2011	3320
2010	2465
2009	1942
2008	2396
2007	2281
2006	1837
2005	1572
2004	1566
2003	1186
2002	964
2001	954
2000	1057
1999	1200
1998	1243
1997	1277
1996	1486
1995	1314
1994	1295
1993	1074
1992	384
1991	353
1990	357

Source: Crime in India, published by NCRB, New Delhi

- (2) It is clear from those figures that from 1990, crime against women has gone up ten times. This is alarming.
- (3) The Commission is aware that Bengal has a glorious tradition of protecting women's honour and dignity. The social movement against the burning of Sati and in favour of remarriage of widows started in Bengal much before our Constitution enshrined individual dignity as one of its core values. Such social movements in Bengal led to better protection of women's right all over the country.
- (4) Section 354 of the IPC which deals with assault or use of criminal force on a woman with intent to outrage her modesty is an offence punishable with two years of imprisonment of either description or fine or both. The offence is cognizable but is bailable under the First Schedule to the Cr.P.C.
- (5) The Commission is of the opinion that this spate of violence against women in recent times calls for a review of present state of law in Section 354 IPC as the same is not an effective deterrent in respect of offence against women. The Commission feels so for the following reasons :

(a) Considering the state of Law in Section 354 IPC, State of Andha Pradesh and the State of Orissa have already introduced, in 1991 and 1995 respectively, state amendments to Section 354 IPC and to first schedule of the Code of Criminal Procedure 1993 thereby mandating higher punishment and

making the offence non-bailable. The texts of the same amendments are enclosed and marked 'A' and 'B'.

- (b) The Commission firmly is of the view that the State of West Bengal, having regard to its glorious tradition of protecting women's honour, should bring about, amendments to make Section 354 of IPC more compatible with Human Rights norms.
- (c) The Law Commission of India in its 84th Report (1980) and 156th report (1997) recommended redrafting of the said law by adding words "to commit sexual assault on her" to the definition of the offence of outraging of modesty and recommended enhancing the sentence from two years to five years.
- (d) The recommendations of the Law Commission in its 156th report (1997) about amending Section 354 IPC are as under :
- Section 354. Assault or criminal force to woman with intent to outrage her modesty. - whoever assaults or uses criminal force to any woman, intending to outrage her modesty or to commit sexual assault to her or knowing it to be likely that he will thereby outrage her modesty or commit sexual assault to her, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.
- (e) In England for the almost similar offence of "indecent assault" under Section 14 of Sexual offences Act.1956, the punishment is two years. Glanville Williams, the noted jurist in his Text book of Criminal Law (Section Edition) criticized the inadequacy of this provision as follows:

“ By the Sexual offences Act.Sec.14(1) and Section (2) as amended, an indecent assault” by any person (man or woman) on a woman is an indictable offence and is punishable with two years imprisonment (be raised to five years) if the offence is committed against a girl under thirteen

The maximum is fully adequate for consensual acts but inadequate for free sexual assaults when the act is of a serious kind and the offender presents a considerable danger to the public”.

(f) In our country also in many cases where ‘rape’ as defined under Section 375 IPC is not proved, but sexual assault or outraging of modesty is proved, the Court, even if it convicts the perpetrator under Section 354 of IPC has to let him off with a very minor punishment. This is causing a great social imbalance and injustice to the victim.

6. Therefore, the Commission, in view of compelling reasons, discussed above, recommends as follows :-

In exercise of its power under Sec. 12(d) of the Protection of Human Rights Act, 1993 the Commission recommends that the State Government may amend the provision of Section 354 of Indian Penal Code and the first schedule of the Code of Criminal Procedure 1973 as follows:

“For section 354, the following section shall be substituted, namely –

354. Assault or criminal force to woman with intent to outrage her modesty. – 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 shall not be less than five years but which may extend to seven years 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 which may be less than five years.

In the First Schedule to the Code of Criminal Procedure, 1973 in the entry under column 5 relating to section 354 of the Indian Penal Code 1880 for the word ‘bailable’ the word ‘non-bailable’ shall be substituted.”

7. The Commission feels that such amendments will result in effective implementation of the protection of human rights of women.

8. The Commission is also of the opinion that by carrying out the aforesaid amendments the State Government will pay befitting tributes to the memory and teachings of Rabindra Nath Tagore and Swami Vivekananda whose sesquicentennial celebrations are now observed all over the world.

sd/-	sd/-	sd/-
(S.N. Roy) Member	(Justice N.C. Sil) Member	(Asok Kumar Ganguly) Chairperson

Dated : Kolkata, the 20th April, 2012

Amendment by the State of Andhra Pradesh vide Andhra Pradesh Act 6 of 1991.

354. Assault or criminal force to woman with intent to outrage her modesty. – 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 shall not be less than five years but which may extend to seven 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 of either description for a term which may be less than five years but which shall not be less than two years.

Amendment by the State of Orissa vide Orissa Act 6 1995,Sec. 3 (w.e.f. 10-3-1995)

In the First Schedule to the Code of Criminal Procedure, 1973 in the entry under column 5 relating to section 354 of the Indian Penal Code 1880 for the word 'bailable' the word 'non-bailable' shall be substituted.

Comments of the State Government will be uploaded as and when received.

Sd/- (20/04/2012)
(J. Sundara Sekhar)
Secretary & CEO