

State Legislative Brief

MAHARASHTRA

The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020

Key Features

- The Bill introduces death penalty for certain offences against women and children such as rape.
- Punishment for certain offences such as providing false information and throwing acid has been enhanced.
- The Bill proposes a shorter timeline for the investigation, trial, and disposal of appeal of certain offences.

Issues to Consider

- The Bill provides for mandatory death penalty, which has been held to be unconstitutional.
- Shorter timeline for investigation and trial may not be sufficient to complete the relevant procedures.
- Obligations have been placed on data intermediaries and custodians to share data for investigation, without any safeguards.

Criminal law, including matters covered by the Indian Penal Code, 1860 (IPC) falls under the Concurrent List of the Constitution.¹ This implies that both centre and states can pass criminal laws. In the last decade, Parliament has amended the IPC to enhance the punishment for certain heinous rape cases. For example, the Criminal Law (Amendment) Act, 2013 amended the IPC to allow death penalty in rape cases where the accompanying brutality leads to death or leaves the victim in a persistent vegetative state, and in cases of repeat offenders.² The Criminal Laws (Amendment) Act, 2018 provided for death penalty for rape and gang rape of girls below the age of 12 years.³

Recently, states such as Andhra Pradesh, Arunachal Pradesh, and Chhattisgarh have also amended the IPC to enhance punishments for certain offences against women. For example, Andhra Pradesh passed the Disha Bill, 2019 to provide for enhanced punishment (including death penalty) for certain crimes against women.⁴ The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020 (Shakti Bill) was introduced in December 2020, and its provisions are similar to the Andhra Pradesh Disha Bill, 2019.

The Shakti Bill amends the IPC, the Code of Criminal Procedure, 1973 (CrPC), and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) in their application to Maharashtra. It amends these laws for offences committed against women and children to curb sexual crimes committed against them. The Bill has been referred to a Joint Select Committee of MLAs and MLCs.

Key Features

Key features of the Shakti Bill include:

- **Death penalty:** The Bill introduces death penalty for offences such as causing grievous hurt by use of acid, rape, and gang rape. Under IPC, the maximum punishment for these offences is life imprisonment, along with a fine. The Bill amends the IPC to provide for death penalty for these offences, where the offence is heinous, there is conclusive evidence, and the circumstances warrant exemplary punishment.
- **Enhanced punishment:** The Bill increases the term of imprisonment and fine for certain offences under the IPC and the POCSO Act as shown in Table 1.

Table 1: Punishment for certain offences under the Acts and the Bill (minimum – maximum punishment)

Offences	Act (min-max)	2020 Bill (min-max)
POCSO Act, 2012		
Sexual assault	3 - 5 years	5 - 7 years
Aggravated sexual assault	5 - 7 years	7 - 10 years
Penetrative sexual assault of a child below 16 years of age	20 years – life imprisonment; and a fine	20 years - death; and a fine of at least five lakh rupees
IPC, 1860		
Voluntarily throwing or attempting to throw acid	5 - 7 years	7 - 10 years
Intentionally providing false information to a public servant	Six months (maximum)	1 year (maximum)

Sources: IPC, 1860; POCSO Act, 2012; the Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020; PRS.

- **Intimidating a woman:** The Bill adds that intimidating a woman will be punishable with imprisonment of up to two years and a fine of up to one lakh rupees. Such intimidation includes: (i) offensive communication (which is lewd in nature), and (ii) use of social media to defame a woman, among others.
- **Failure to share data for investigation:** The Bill provides that an investigating officer may seek data from social media platforms or telecom service providers, among others, for investigating specified offences against women and children under the IPC and the POCSO Act. Such data must be shared with the officer within seven working days. Failure to share data within the stipulated time will constitute an offence punishable with imprisonment of up to one month, or a fine of five lakh rupees, or both.
- **Disclosure of identity:** Under IPC, disclosing the identity of the victim for offences such as rape committed against women and children is punishable with imprisonment and a fine. The Bill extends this provision to other offences committed against women such as sexual harassment, voyeurism, and stalking.
- **Giving information of certain offences:** Under CrPC, every person who is aware of the commission or intention to commit offences such as kidnapping for ransom, and robbery, should inform the nearest magistrate or police officer of such commission or intention. The Bill extends this requirement to offences committed against women and children such as sexual harassment, stalking, and rape.
- **Shorter timeline:** The Bill reduces the time for completion of investigation, trial, and disposal of appeal for offences committed against women and children such as rape and gang rape. These timelines will also apply for the completion of investigation and other related procedures for acid attacks.

Table 2: Shorter timeline for procedures (for offences including rape and gang rape)

Procedures	CrPC, 1973	2020 Bill
Completion of investigation	2 months	15 working days (extendable by 7 days)
Completion of inquiry or trial from the date of filing of the charge sheet	2 months	30 working days
Period for disposal of appeal against sentence	6 months	45 days

Sources: CrPC, 1973; the Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020; PRS.

Issues for Consideration

Provisions regarding death penalty

Bill provides for mandatory death penalty which has been held to be unconstitutional

IPC:
Section 326
(A), and
376;
POCSO
Act:
Section 4
Bill: Clause
6(a), 9, 10,
11, and 26

The Bill amends the IPC to provide for death penalty for certain offences such as causing grievous hurt by use of acid, rape, and gang rape. It also amends the POCSO Act to provide for death penalty for penetrative sexual assault of a child below 16 years of age. For these offences, death penalty will apply where the offence is heinous in nature, there is adequate conclusive evidence, and the circumstances warrant exemplary punishment. This could be interpreted as the Bill providing for mandatory death penalty in such cases.

The Supreme Court has ruled that mandatory death penalty for an offence violates Article 14 (right to equality) and Article 21 (right to life) of the Constitution.⁵ The Court has held that mandatory death penalty is arbitrary and unfair as it denies courts the right to exercise their discretion on whether to impose a death sentence.^{5,6} The Court has also held that before opting for the death penalty, both the circumstances of the ‘crime’ as well as those of the ‘offender’ must be taken into consideration.⁷ However, the Bill provides that the death penalty will apply when the offence is heinous and the circumstances warrant exemplary punishment. These provisions do not factor in the circumstances of the offender. The Law Commission (2015) has observed that courts have not awarded the death penalty in certain cases which they considered to be heinous, if there were mitigating factors such as the young age of the accused and the possibility for reform.⁸

Death penalty as punishment for rape

The second question is whether death penalty should be awarded for the offence of rape. The Justice Verma Committee (2013) acknowledged that though rape is a violent crime, the punishment should be proportionate, as it is possible to rehabilitate the survivor.⁹ The Committee supported enhanced punishment for rape, extending up to life imprisonment, but not death penalty. Over the years, Parliament has passed laws to allow for death penalty for certain cases related to rape. For example, the Criminal Law (Amendment) Act, 2013 amended the IPC to allow death penalty in rape cases where the accompanying brutality leads to death or leaves the victim in a persistent vegetative state, and in cases of repeat offenders.² Further, the Criminal Laws (Amendment) Act, 2018 amended the IPC to allow for death penalty for rape and gang rape of girls below the age of 12 years.³

On the other hand, it has been argued that imposing death penalty for rape could deter individuals from committing the offence and help reduce its incidence.¹⁰ Further, awarding death penalty allows for retributive justice for the victims.¹⁰ Over the years, the Supreme Court has narrowed the application of death penalty to the 'rarest of rare' cases and issued criteria to determine whether the accused deserves a death sentence.^{5,7} This implies that courts can award death sentence for rape only in exceptional circumstances, which include where the reformation and rehabilitation of the convict is not possible.⁹

Short timeline for investigation and trial for certain offences

CrPC:
Section 173
(1A), 309
(1), 374 (4),
and 377 (4)

The Bill reduces the timeline for investigation, trial, and disposal of appeal for offences such as rape, gang rape, and acid attacks. With the existing provisions for investigation (two months) and trial (two months), several cases related to these offences and crimes against women are already pending investigation and trial. Reducing the time further may not allow sufficient time to complete the relevant procedures.

Shorter timeline for investigation of offences

Bill: Clause
16, 17, 20,
and 21

The Bill proposes that the investigation for offences such as rape, gang rape be completed within 15 working days after an FIR is filed. This can be extended by seven days, if the investigating officer gives written reasons to the Special Inspector General of Police or the Commissioner of Police.

It can be argued that such a time frame may not be sufficient to conduct the investigation which includes various steps such as collecting evidence, and recording statements. There could also be cases that are complex and may require more time for investigation. Further, note that there is a severe manpower shortage in the police department in Maharashtra which could also impact the timely closure of investigations. As of 2019, the actual police-population ratio of Maharashtra was 175 policemen per lakh population, which is less than the ratio of 222 recommended by the United Nations.¹¹ Table 3 gives details on the pendency for investigation of rape and acid attacks cases in India, and cases of crimes against women in Maharashtra.

Table 3: Cases pending investigation for certain offences (2019)

Offences	Cases pending investigation from 2018	Cases reported during 2019	Cases pending investigation at the end of 2019	% of cases pending investigation
India				
Rape	13,480	32,033	14,961	33%
Acid attacks	88	192	96	34%
Maharashtra				
Crime against women	24,915	37,144	27,216	44%

Sources: Crime in India – 2019, The National Crime Records Bureau; PRS.

Shorter timeline for trial of offences

The Bill also proposes that the trial in these cases be completed within 30 working days from the date of filing of the charge sheet. This timeline may not be adequate for different cases depending on their complexity and other circumstances such as the availability of various parties connected to the case. Table 4 gives details on the pendency for trial for rape and acid attacks in India, and cases of crimes against women in Maharashtra.

Table 4: Cases pending trial for certain offences (2019)

Offences	Cases pending trial from 2018	Cases sent for trial during 2019	Cases pending trial at the end of the year	% of cases pending trial
India				
Rape	1,37,893	24,848	1,45,632	90%
Acid attacks	375	155	501	95%
Maharashtra				
Crime against women	1,92,201	28,234	2,07,220	94%

Sources: Crime in India – 2019, The National Crime Records Bureau; PRS.

Timeline for investigation of sexual offences by a person in authority or by a husband during separation not reduced

The Bill reduces the timeline for investigation of offences committed against women and children, such as rape and gang rape, from two months (in the CrPC) to 15 days. However, the timeline for investigation of sexual intercourse offences by a husband during separation, or by a person in authority has not been reduced. It is unclear as to why the timeline for investigation has not been reduced for these offences. A person in authority includes: (i) a public servant, (ii) superintendent of a jail, or (iii) a person in the management or staff of a hospital, among others.

Application of multiple laws for similar offences

IPC: Section 354C; *IT Act:* Section 66A, 66E, 67A, and 67B

The Bill amends the IPC to provide that causing intimidation to a woman, in addition to insulting her modesty, will be punishable with imprisonment of up to two years, and a fine of up to one lakh rupees. Offences that cause intimidation include: (i) offensive communication (which is lewd in nature) by electronic means, (ii) dissemination of material depicting woman's involvement in sexual acts, (iii) use of social media to defame a woman, and (iv) use of woman's personal information to violate her privacy. Note that some of these offences are defined under existing Acts such as the IPC, and the Information Technology Act, 2000 (IT Act) (Table 5). For all these offences, punishment under the IT Act is more stringent than the punishment envisaged by the Bill.

Bill: Clause 8

Table 5: Comparison of the Bill with existing laws for punishment for certain offences

Provision	IPC, 1860	IT Act, 2000	Shakti Bill (Clause 8)
Offensive communication		<ul style="list-style-type: none"> Dissemination of obscene/lascivious material in electronic form (Sec 67) Imprisonment: up to 3 years Fine: Amount not specified 	<ul style="list-style-type: none"> Offensive communication in a manner that is lascivious, using electronic means Imprisonment: up to 2 years. Fine: up to Rs 1 lakh
Violation of privacy/ outrage modesty		<ul style="list-style-type: none"> Electronic dissemination of images to violate the privacy of the person (Sec 66E) Imprisonment: up to 3 years Fine: up to Rs 2 lakh 	<ul style="list-style-type: none"> Use of woman's name/photos with intent to outrage her modesty or violate her privacy Imprisonment: up to 2 years Fine: up to Rs 1 lakh
Dissemination of sexually explicit material	<ul style="list-style-type: none"> Dissemination of images depicting woman engaging in a private act (including sexual act) (Sec 354C) Imprisonment: 1 to 3 years (first offence), 3 to 7 years (subsequent offence) Fine: Amount not specified 	<ul style="list-style-type: none"> Dissemination of sexually explicit material (including those involving children) in electronic form (Sec 67A, 67B) Imprisonment: up to 5 years (first offence), up to 7 years (subsequent offence) Fine: up to Rs 10 lakh 	<ul style="list-style-type: none"> Threat to disseminate through media, material depicting any part of woman's body, or involvement in sexual act Imprisonment: up to 2 years. Fine: up to Rs 1 lakh

Sources: IPC, 1860; IT Act, 2000; The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020; PRS.

Obligations on data intermediaries and custodians to share data

IPC: Section 175; *IT Act:* Section 69

Bill: Clause 3

The Bill provides that any social media platform, internet, or mobile telephone data provider who fails to share data including documents or electronic records with the Investigation Officer as requested, for the purpose of investigation of crimes committed against women and children, shall be punished. Such punishment may consist of imprisonment of up to one month, or a fine of five lakh rupees, or both. Further, the requested information must be provided within seven days. The Bill does not specify the requirement of a court order or warrant, or provide any safeguards when seeking such information for investigation.

Note that the IPC and the IT Act also contain provisions that require persons to provide documents to authorised persons. The IPC provides that a person who is legally bound to produce any document or electronic record to any public servant, shall be punished for failure to comply.¹² Punishment may be imprisonment of up to one month, or a fine of five hundred rupees, or both. Under the IT Act, an authorised person may, for reasons to be recorded in writing, by order, direct persons to provide access to certain information.¹³ Reasons may include interest of the security of India, prevention of incitement to commit certain offences, or investigation of any offence. Failure to share information shall result in imprisonment which may extend to seven years, and a fine.

The lack of requirement of a court order or provision of safeguards (circumstances for which the Investigation Officer may gain access to data) under the Bill when seeking access to information, may violate the fundamental right to privacy. The Supreme Court has held that individuals have a fundamental right to privacy.¹⁴ Restraints on privacy, should satisfy three requirements: (i) restraint must be in accordance with procedure established by law, (ii) the law must be in pursuit of a legitimate state aim (need), and (iii) restraint imposed must be proportional to the aim.¹⁴ In the absence of sufficient safeguards, the restrictions imposed on the right to privacy by the Bill may fail to meet the requirements specified by the Supreme Court.

Punishment for false evidence

IPC: Section 211; *POCSO Act:* Section 22

Bill: Clause 4

The Bill amends the IPC to add making a false complaint or providing false information against any person solely with the intention to humiliate, extort, threaten, defame, or harass them, as a punishable offence. This shall apply to offences related to certain crimes against women (such as acid attacks and rape). It shall be punished with imprisonment for up to one year, or with a fine, or both. This may act as a deterrent to reporting of crimes against women and children, which are already under-reported.

Note that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has a similar provision that penalises a woman for filing a false complaint.¹⁵ The Justice Verma Committee (2013) had noted that this provision is abusive and nullifies the objective of the law.⁹ Note that, the Report of the Committee on Crime Statistics (2011) observed that there is significant under-reporting of crimes against women.¹⁶ The Committee also estimated that the NCRB (2009) captured less than 0.16% of the total crimes against women, compared to the National Family Health Survey (2005-06).¹⁶

Further, punishment for the offence of making a false complaint and providing false information already exists under the IPC and the POCSO Act (Table 6). While these laws provide for imprisonment of up to six months, the Bill provides for imprisonment of up to one year.

Table 6: Comparison of the Bill with existing laws for false complaint

Act/ Bill	Offence
IPC, 1860 (Sec 211)	<ul style="list-style-type: none"> ▪ Institutes false charge of offence with intent to injure. ▪ Imprisonment: up to 2 years (up to 7 years if the charge is for an offence punishable with death or life imprisonment); Fine: Amount not specified.
POCSO Act, 2012 (Sec 22)	<ul style="list-style-type: none"> ▪ Makes false complaint or gives false information against any person for offences of sexual assault against children, solely with the intention to humiliate, extort, threaten, defame, or harass. ▪ Imprisonment: up to 6 months; Fine: Amount not specified.
2020 Bill (Clause 4)	<ul style="list-style-type: none"> ▪ Makes false complaint or gives false information against any person for crimes against women (such as acid attack, and rape), solely with the intention to humiliate, extort, threaten, defame, or harass. ▪ Imprisonment: up to 1 year; Fine: Amount not specified.

Sources: IPC, 1860; POCSO Act, 2012; The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020; PRS.

Uniformity of provisions for safety of women and children across states

The Bill amends the IPC, CrPC, and the POCSO Act in their application to Maharashtra for offences committed against women and children. As criminal law falls under the Concurrent List of the Constitution, it is within the purview of states to make amendments to criminal laws. The question is whether it is desirable that punishments for such offences be different across states.

States such as Andhra Pradesh, Arunachal Pradesh, and Chhattisgarh have made amendments to enhance punishments for certain offences against women (Table 7). Note that a criminal case may be registered in one state but tried in another state, depending on the facts and circumstances of a case. In 2019, 117 rape-related cases and 94 cases under the POCSO Act were transferred to another state or agency.¹⁷

Table 7: Certain state amendments related to offences against women made to the IPC

Punishment for certain offences	IPC, 1860	Maharashtra	Andhra Pradesh	Arunachal Pradesh	Chhattisgarh
Assault with intent to outrage a woman's modesty	1-5 years	-	5-7 years	2-7 years	2-7 years
Assault with intent to disrobe a woman	3-7 years	-	-	First offence: 3-7 years Subsequent offence: 7-10 years	-
Stalking a woman	Subsequent offence: up to 5 years	-	-	Subsequent offence: 3-7 years	-
Rape	10 years to life imprisonment	With death, where offence is heinous in nature, there is adequate conclusive evidence, and the circumstances warrant exemplary punishment	With death, where offence is heinous in nature, there is adequate conclusive evidence, and the circumstances warrant exemplary punishment	-	-

Sources: Indian Penal Code, 1860; The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020; Indian Penal Code (Andhra Pradesh Amendment) Act, 1991; Andhra Pradesh Disha Bill - Criminal Law (Andhra Pradesh Amendment) Bill, 2019; Criminal Laws (Arunachal Pradesh Amendment) Act, 2018; Criminal Law (Chhattisgarh Amendment) Act, 2013; PRS.

Other measures for the safety of women

The Bill amends the IPC, CrPC, and the POCSO Act to enhance punishment for offences related to rape and gang rape of women and adds punishment for offences related to causing intimidation and insulting the modesty of a woman, among others. While the Bill enhances punishments for certain offences against women, there are other measures suggested by various Committees which may be implemented to improve the safety of women.

The Justice Verma Committee (2013) noted that the efficiency of law enforcement agencies and the individual interest of all citizens is required for laws to remain effective.⁹ The Parliamentary Standing Committee on Human Resource Development (2020) while examining issues related to women safety noted that in spite of the legislative framework in place, women continue to face inequality, discrimination, and violence.¹⁸ The Standing Committee on Human Resource Development (2020) recommended the following:¹⁸

- **Implementation:** Laws to protect women should be strictly implemented. Some ways in which implementation of laws can be improved include: (i) filing of charge sheets within 30 days, (ii) denial of bail to accused, and (iii) conducting trial of pending cases within six months.
- **Infrastructure:** Certain infrastructural and institutional measures may be implemented. These include: (i) setting up of women's cells in police stations, who are trained to handle cases related to gender-based violence, (ii) increasing the number of women police officers, (iii) setting up a single helpline number for complaints related to women's safety, (iv) setting up forensic labs in all state capitals, and (v) installing CCTV and panic buttons in all public transport.
- **Education and awareness:** Public awareness programmes through media should be conducted to educate the public about laws for the safety and security of women along with the consequences for violating these laws. Textbooks and school curriculum should teach values of respect towards women. Further, universities should set up Departments of Women Studies which can counsel distressed women. Healthcare workers should be educated on dealing with victims of gender-based violence. Further, all judges of the subordinate and higher judiciary should receive training in gender sensitivity.
- **Utilisation of funds:** The Committee noted that many states had not utilised funds allocated to them under various schemes for the safety of women such as one-stop centers (providing services such as medical assistance, legal aid, and shelter to women affected by violence), and helpline for women. Further, it noted that of the total amount allocated under the Nirbhaya Fund (for projects to ensure women safety), only 36% had been disbursed by the concerned Ministries implementing the projects. The Committee recommended that these projects be implemented in a timely manner and the allocated funds be utilised promptly.

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