Justice Verma committee: an illustration of deliberative democracy in India

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Abstract: The objective of having a democracy is an ideal path towards just society. We, as a society, have moved onto a newer system which then has seemed best suited to achieve the utopian dream of a just social position. Thus, the move towards a deliberative ideal of Authority has been a part of to evolve human thought with respect to the best possible method of achieving a Just society. The paper is divided into three parts; first part, of the paper discusses the recent crisis in democracy and impact of political conditions on the same. The second part of the paper focuses on deliberative democracy and its essential elements. The third part of the paper is an operational one which tries to harmonise the working of Verma committee constituted in India with the essential elements of deliberative democracy. It analyses the working of Verma committee where such a mass participation was perceived to enact legislation. Apart from the public the Verma committee ought opinions of higher judiciary and members of the national and international academia. The paper concludes strengthening the idea that We the society can fulfil our Responsibility to help form a more Just society.

Keywords: deliberative democracy; India; Verma committee; representative democracy.

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1 Introduction

“The established democracy still provides the only legitimate framework for change and must therefore be defended against all attempts on the right and the center to restrict this framework, but at the same time, preservation of the established democracy preserves the status quo and the containment of change.”

1.1 The power-rights-justice conundrums – evolutionary aspect

In society while living there is a need to balance out the power of individuals and groups by providing them with rights so as to reach a just position. to achieve such a just situation society has for centuries organised itself into various forms of structures of authority (refer to Figure 1).
As different methods have failed mankind in this endeavour, we as a society, have moved onto a newer system which at that point of time has seemed best suited to achieve the utopian dream of a just social position. This view of radicalising, or deepening democracy has since come to be known as ‘deliberative democracy’ (refer to Figure 2).

Thus, the move towards a deliberative ideal of authority has been a part of the evolution of human thought with respect to the best possible method of achieving a just society.

1.2 The ‘crisis’ of democracy – academic atmosphere

In addition to this, evolutionary aspect, there were other factors that caused the arrival of the idea of deliberation into democratic thought. Prominent among these was the fact that the academic atmosphere was tilted in favour of such a move. Though the idea of deliberation in politics dates back to the times of Aristotle, it was in the 1950’s and 1960’s that the economic and elitist theories of democracy were seen to be causing a ‘crisis’ of democracy by favouring, as their name itself suggests, few at expense of the many.

This ‘crisis’ has been often referred to as the ‘liberal-communitarian debate’ wherein the communitarians argued that the liberal political philosophy was based on a very atomistic view of the individual and therefore it was not possible for it to fully develop an adequately robust vision of democratic citizenship. Michael Sandel succinctly captured the sting of the critique, writing that liberalism “cannot secure the liberty it promises” because it “cannot inspire the sense of community and civic engagement that liberty requires”.

As a response to these conditions there was a revival in the ‘public-spirited’ studies of democracy, which lead to a renaissance of the participatory view of democratic politics – it was in this atmosphere that the idea of deliberative democracy, first coined by Joseph Bessette in 1980, took its root.
1.3 Increase in social complexity – the societal aspect

No matter how much the educated elite or the academia elaborate the pros and cons of a system, wide scale change is shaped by the frustrations of the masses. It was this, the social factors that Habermas notes as a reason for pursuing communicative action13.

As per him there were three basic reasons behind the need to deepen democracy through an ideal of communicative action14 – the existing system did not have enough outlets for expression of anger, sorrow and pain that prevailed in the pluralistic societies characterised by a high degree of social complexity and manipulated by complex differentiation leading to disenchantment amongst the masses15. According to Habermas there exists a vicious circle, powered by the lack of interaction, in all modern societies16 (refer to Figure 3).

**Figure 3** Vicious circle of democratic societies

![Vicious circle of democratic societies](image)

He notes that as the fractures in the society grow – these may be on the lines race in the USA or caste in India, class, ethno-religious issues or that off the urban-rural divide – there is a concomitant decrease in the shared worldviews, or ‘lifeworlds’ as put by Habermas17. As the shared worldviews decrease, the understanding of the ‘other’ also decreases causing an increase in the contestable claims.

This situation causes disenchantment which may happen in two mutually supportive ways which feed off each other. The trigger generally comes when a person or a group believing something to be their due come in conflict with the interest of the ‘other’ and the state or society, as the case may be, is not able to side itself with one or the other. A middle path is worked out leaving both parties a little aggrieved with the decision and a feeling that they were wronged. As a result, a second type of disenchantment occurs – some elements, under the influence of feelings of being wronged, lose faith in the establishment and meander outside the purview18.

The disenchantment is furthered by what Habermas refers to as complex differentiation of functional spheres19. He explains this complex differentiation by distinguishing between two modes of action20 – work and interaction (refer to Figure 4).

Those in the dominant position tend to reduce practical questions about the good life, ones which could be cleared by interaction among stakeholders, into technical problems requiring inputs of experts to be worked out. Thus, this form of ‘power-over’ conveniently allows the elites to eliminate the need for public interaction and democratic discussion by creating an illusion of helplessness among the masses completing the vicious circle of lack of interaction in the modern society21 (refer to Figure 5).
Figure 4  Habermas’ two modes of action

<table>
<thead>
<tr>
<th>'Work'</th>
<th>'Interaction'</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Rational choice of efficient means</td>
<td>1. &quot;Communicative action&quot;</td>
</tr>
<tr>
<td>2. Instrumental and strategic action</td>
<td>2. Actors coordinate their behaviors on the basis of &quot;consensual norms&quot;</td>
</tr>
</tbody>
</table>

Figure 5  The problem with a technocracy

These reasons that Habermas points out as the reason for his work on communicative action will be more apparent through the discussion of the fourth and the final factor for growth of a deliberative ideal in democratic thinking in the later decades of the twentieth century.

1.4  The political conditions – the immediate cause

In the 1980’s – a decade that saw the birth of a new philosophy of democratic thinking, that of deliberative involvement of the masses – the Reagan administration was established in the USA while Thatcher formed the government in the UK. The aforementioned governments employed economic policies characteristic features of which were free markets by reduction of government regulation through firm control over public expenditure, tax cuts to stimulate investment and privatisation by putting constraints on the labour movements. Similar economic policies were also followed at around the same time in many parts of the world; Australia and New Zealand being illustrative examples.

These policies had the effect of alienating large sections of the society as with lowering of taxes on big businesses and reduced government spending there was a consequential drop in social security and lead to increase in unemployment. Similar situation can also be seen in the Indian context where neo-liberal policies – including ‘opening’ of economy for international trade and investment, deregulation and initiation of privatisation, tax reforms skewed in favour of big business – were introduced. However, as in the other parts of the world, the system has not been able to bring about inclusive growth with deepening of income inequalities.

In hindsight, these failed flirtations with trickle-down economics – failed in the sense that there effects have not brought prosperity to ‘all’ but to ‘some’ – provided a more open and connected world, but with huge inequalities. The positives of this are that those at the disadvantaged position had more awareness of their disadvantage, as compared to before, and as such felt the need to have more of a voice in the running of the system. This provided for a very conducive atmosphere for an introduction of the deeper theories of democracy, deliberative democracy being one of them.
After stressing upon the reasons for introduction of a deliberative ideal into democratic thinking have been established, the next section explores the two questions – firstly, whether the Indian politico-legal system had at any time in the past had an opportunity to set the nation on an open, deliberative path, and secondly does the present system also have enough space for such deliberative methods to be employed in our polity.

2 Deliberative democracy

The theory of deliberative democracy is not one single thought; it seems to branch out in different directions with different theorists. Still, one can broadly state that, its various statements agree to conceive of democracy as a process whereby citizens engage in rational discussions to resolve the problems collective life poses. It is an ideal whereby citizens use reason and give reasons in dialogues aimed at making decisions about what to do – i.e., discussion and reason are its supreme democratic values.

It is due to this character, of valuing discussion and reason above all else, that the ideal of deliberative democracy has been referred to as a revolutionary political ideal. It is revolutionary in two senses; firstly, as it calls for fundamental changes in the bases of political decision making – in terms of those included in the processes, sites at which the process is to take place – i.e., the very character of politics itself and secondly, it requires a dramatically more egalitarian political, social, and economic set-up than exists in any contemporary society as inequities in these regards upset the communicative equality that deliberation requires.

Conover, Searing and Crewe neatly bring down the vast variety of visions of democratic deliberation into three essential characteristics (refer to Figure 6). They believe that to begin with it is generally accepted all deliberations, to fall under this ideal, must be public. This signifies two things – firstly that the access to such deliberation is to be ‘open’ to all and secondly, that the deliberation is to be carried out in a rational manner offering ‘public’ reasons for various preferences.
Apart from this, the deliberative ideal also requires the discussions to be *non-tyrannical*; both as a process and in terms of its outcomes. This basically means that the discussions must be open to contestation, i.e., they admit and examine different viewpoints, and the consequent agreements cannot be ‘coerced illegitimately or reflect the undue influence of powerful groups’.

Finally, the democratic deliberations must meet a standard of *political equality*; this does not mean that each citizen is bound to participate equally but that the basic procedural and substantive inequalities that could prevent equal participation are eliminated. In other words, this means that procedurally the citizens must have an equal access to deliberative arenas and that substantively they must have equal opportunities to influence the deliberation.

### 2.1 Discussion must be ‘public’ (refer to Figure 7)

The ideal of deliberative democracy requires that all ‘deliberations’ must be *public*, both in content and context of the discussion. The publicity of the content relies on two things – the topic discussed and reasons advanced as regards the same. Summing up the discourse on this point, Conover et al. believe that as long as the topic is of public concern, i.e., involved with the common good, and the arguments advanced with respect to it employ public reason, as opposed to private reason, it would fall within the ambit of the ideal of deliberative democracy.

![Figure 7](https://example.com/figure7.png)

**Figure 7** The public discussion

So one of the foremost questions raised is, whether something relates to common good? Where must one draw the line as an answer to this? John Rawls suggests that only those questions could be accepted to be ‘public’ in content which concern themselves with ‘constitutional essentials and basic justice’. This yardstick would make most everyday political discussions not ‘public’ and this simply does not seem correct.

A more cogent criterion is provided by theorists like Nancy Fraser and James Bohman who suggest that if an issue is of ‘common’ concern then it must be public and require ‘public’ reason to be provided in discussions on it. To decide if something is of ‘common’ concern one only needs to look at how widespread are the discussions related to it.
In relation to context; discussions must take place in ‘public spaces’\(^{48}\), access of which is ideally open to all stakeholders\(^{49}\). The idea behind this is that such ‘openness’ not only stimulates exchange of information\(^{50}\), but also motivates citizens to use ‘public’ reason so as to not come across as self-promoting\(^{51}\). Thus, in addition to fostering political equality, a public context also promotes the use of public reason\(^{42}\). It is important, therefore, to assess both the content and context of political discussion.

2.2 Discussion must be non-tyrannical

Another essential element of the theory of deliberative democracy is the criterion of non-tyranny. Democracy, has traditionally, placed a high value on contestation as it essentially provides choice between alternatives. Deliberative democracy deepens the choice by striving to make it an informed one – it not only requires discussions, but in a manner whereby only reasons provided can solve an impasse.

For a discussion to be non-tyrannical it needs to overcome two types of hurdles; not only should it be open to all, give everyone a voice but it should also ensure that if reason is provided by one in favour of a certain proposition it cannot go unheard unless a better reason is provided for the counter-proposition\(^{53}\). This will be best explained when we come to the methodology followed by the practical illustration of Verma committee. As of now, we shall move onto an explanation of the final essential of the ideal of deliberative democracy.

2.3 There must be political equality for the discussants

The deliberative theory requires that all discussions must satisfy a standard of political equality. This does not mean that all stakeholders must participate\(^{54}\), some may choose not to, but that at no point should non-participation be a reflection of procedural or substantive inequalities\(^{55}\).

The former requires that differences in power – whether social, economic or political – do not become roadblocks in the access to the public space where the deliberations are carried out\(^{56}\). In other words procedural equality basically means that no disadvantaged groups be systematically excluded from discussions\(^{57}\). The latter entails that the existing asymmetries in power and resources do not influence the discussions\(^{58}\), and that only power of better reason holds sway. Describing substantive equality, James Bohman points out that it means nothing more than the fact that during discussions no citizens be unfairly advantaged such that they might coerce less powerful discussants, or disadvantaged such that they are unable to initiate discussions and make their views heard\(^{59}\) (refer to Figure 8).

For there to be political equality, there must be equality of capacity for deliberation among citizens – they can achieve public attention and deliberative uptake, i.e., they have the ability to initiate discussions on issues of importance to them, and their arguments are heard and respected\(^{60}\). Inequalities in capacity undercut the political equality at both an individual and group level; by creating ‘communicative inequalities’ discouraging specific individuals from participating and by manifesting stereotypes and effectively depriving groups of a political ‘voice’ on certain points\(^{61}\).
Thus, to sum up – deliberative democracy is a normative ideal for deepening the existing democratic systems developed due to various factors which required the same. It is also a method via which, we – the demos of a nation can help fulfil our responsibility to overcome asymmetries of power and create a just society. The essential elements of this deliberative ideal are that all deliberations must be carried out in a public, non-tyrannical and politically equal environment.

The next section of the paper, take up the task of finding out whether the working of the Verma committee report was deliberative in nature or not.

3 Working of the Verma committee and deliberative democracy

On 16 December 2012 a woman in her early twenties was gang-raped on a moving bus in Delhi\(^6^2\). The act was of extreme brutality with medical reports suggesting serious injuries to her abdomen, intestines and genitals due to the assault with blunt object later described by police as being a rusted, L-shaped implement of the type used as a wheel jack handle\(^6^3\). After the beatings and rape ended, the attackers threw the victim from the moving bus and tried to run her over\(^6^4\).

Almost immediately following this heinous act, public protests broke out in various parts of the country with the capital being the epicentre of public outrage\(^6^5\). Though incidence of rape and other women related crimes in Delhi had been high\(^6^6\), and on the rise\(^6^7\), this case became a ‘wake-up call’ for the nation\(^6^8\).

In light of this, on 23 December 2012 a judicial committee headed by Justice J.S. Verma was appointed by the Central government to submit a report on possible amendments that could be brought in the criminal law to deal sternly with cases of sexual assault\(^6^9\). In the following section an endeavour is made to bring out the method followed by the said committee in its task.

3.1 Methodology followed by the Verma committee

The committee issued a public notice, through the Ministry of Home Affairs, soon after its formation seeking suggestions to be sent to it in regard to the matter at hand\(^7^0\). Through this method the committee allowed the general public a chance to have a voice in the matter, which was of concern to one and all, and received overwhelming response.
with the total e-mails, post and fax in excess of 70,00071. Apart from the general public the Verma committee also reached out to experts in the field and sought opinions of not only the higher judiciary but also members of the national and international academia, various women’s and child rights organisations, members of the medical fraternity and administrative and police services, think-tanks and research groups about “their views and comments on theories and practices, experiences and also the medical and psychological aspects of sexual crimes”72.

In the first three week period out of the month given to it for coming up with the report the Verma committee also interacted with various stakeholders. These meetings were organised to provide an opportunity to experts from all over India to ‘voice their opinions with an all-encompassing and a comprehensive set of agendas’ which covered a variety of issues that have a bearing on gender justice73. It also engaged with, and analysed the work of, various interest groups which had large grass route level experience and organisations which worked with statistical databases, collected over years of research, to evaluate systemic problems having far reaching consequences for women’s rights – economic, social and political14.

First of all we have to analyse the methodology followed by the Verma committee in order to determine whether it was ‘deliberative’ in nature. One of the pre-requisite questions that need to be answered in this regard would be with respect to the requirement of discussions in the deliberative ideal.

3.1.1 Was inviting responses from the masses and engaging with them a form of deliberation?

The first and most important question, before we go onto talk about characteristic elements, becomes whether inviting only a response from the public at large without engaging in an argument with them would be ‘deliberation’?

To answer this question we can base our argument in the etymology of the word ‘deliberation,’ i.e., what does ‘deliberation’ mean? The literature on deliberative democracy one could say that it seems to be ‘discussions about what to do carried out via the use of reason.’

Cheryl Hall in her work on this very point argues that “the word (deliberation) itself is not linked to either discussion or reason”75. She then goes onto trace the origins of the word in the Latin word *libra*, i.e., to weigh. Thus to “deliberate is to weigh alternatives before choosing among them… it is to consider options carefully, balancing advantages and disadvantages, before deciding which is best”76. One of the alternate meaning of the word ‘discuss’ is to “talk over or write about, especially to explore solutions or to make known”.

Thus, for ‘deliberation’ there needs to be weighing up of varying responses which may be done via an oral argument between two parties or by application of mind by one on the written responses of the other77. In light of this one could easily see how the act of calling for responses from the public at large and then engaging with them to come up with a holistic document is ‘deliberation’ in the plain sense of the word. No doubt a large number of opinions received by the committee would have provided it ample material on the matter from many different angles in relation to the question at hand and they would have then weighed the choices and come up with a final decision.

As such there was a deliberative element in the working of the Verma committee. This brings us to the next important question – what do we deliberate for?
Now deliberation can be done either by oneself or with others, though reasons for it must stay the same — as Aristotle explains in the *Nicomachean Ethics* — we deliberate only “where the outcome is unclear and the right way to act is undefined”.78 We deliberate because we need to act, and we would like to act well and we do not know how; the point of deliberating is to reach a decision about how to act based on the merits of the various options rather than on chance, faith, impulse or habit, i.e., the point is to make a conscious (and conscientious) judgment about what to do.79 This is exactly what the Verma committee did — it was entrusted the task of submitting a report on possible amendments that could be brought in the criminal law to deal sternly with cases of sexual assault80 and it went about the task of democratic deliberation by collectively envisioning and evaluating potential consequences of actions in order to make a conscientious and equitable judgment about how best to act as a polity.81.

Thus it can be said that the methodology followed by the Verma committee was one that involved ‘deliberation’. However, what still remains in doubt is whether this method was in line with the ‘deliberative ideal’ espoused by the theory of democratic deliberation? The next sub-section ponder over the same, highlighting the fact that though the Verma committee did fulfil the elements of the normative ideal of deliberation it failed on the point where the theory itself has not been able to win over its critics in general.

### 3.1.2 Was the methodology followed by the Verma committee in line with the ‘deliberative ideal’?

It is generally accepted that all ‘deliberations’ must be public — both in content and context.82 Whereas the latter means that the topic must be of public concern,83 which the law relating to sexual assault certainly is, the former requires that discussions ought to take place in ‘public spaces’ access of which is ideally open to all stakeholders. Even this condition of ‘openness’ was satisfied by the public notice issued by the Ministry of Home Affairs asking all people to send in their views to the committee while giving them adequate time to make themselves heard. As such, I believe that the condition of ‘public’ deliberation was satisfied by the Verma committee.

The other two conditions of a truly deliberative engagement are that decisions are only legitimate “if they could be the object of free and reasoned agreement among equals”, i.e., it involves parties advancing reasons for accepting or rejecting proposals. Further, this reasoning must not be “constrained by the authority of prior norms or requirements” but ought to prevail only by way of “force … of the better argument”.86. In this manner, the theory puts forward a method to give ‘power’ to all groups, and individuals, immaterial of the fact whether they are the dominant section of the society or the marginalised. Essentially this means that the ends of a truly deliberative engagement would be ‘emancipatory’ (refer to Figure 9).

In light of the above stated end of deliberation, though it might not be possible to present direct evidence to support the claim that these conditions were indeed followed by the Verma committee, but we would make attempt to look at the report that it came out with and make a claim that the position taken by it was emancipatory in nature and rebelled against the dominant patriarchal society and hence was in line with the deliberative ideal.
3.1.3 Was the Verma committee report emancipatory in nature?

One of the objects of introducing a deliberative element into democratic process is to create for better, more ‘just’ conditions of social living. In this sub-section, to evaluate the Verma report’s attempt at such emancipation, we delve upon the substantive parts of the report and then provide some responses of experts in the field.

3.1.3.1 The amendments suggested by the committee

With respect to the amendments suggested by the Verma committee to the criminal law system of our nation one could read them in three broad categorisations. To begin with one could look at the improvements it suggested to the existing law; an illustration of the same is the umbrella category is created for ‘sexual’ offences. Apart from this it also added to the changes suggested to the Criminal Law (Amendment) Bill 2012 by trying to improve upon the same, a case in point being the provision it suggested with respect to ‘acid attacks’. Finally, one can look at the new offences it sought to create to make the legal framework regarding sexual offences more wholesome in its protection.

Improvements suggested on existing law

- **Sexual offences: S. 354 ipc:**

  Though there was a penal provision with respect to assault with intent ‘outraging of the modesty’ of a woman there were significant loopholes in the same. Common questions revolved around whether females below age of puberty have ‘modesty’ or regarding the character of the victim in question and even to extent that there was no ‘intention’ to outrage the modesty. In light of the same the needs for change was very much evident so as to change the focus of the crime from notions of ‘modesty’ to violation of sexual autonomy to basically criminalise unwelcome sexual acts of varying degrees of severity.

  The committee suggested that provisions ought to criminalise all acts of non-penetrative sexual violence under the umbrella term of ‘sexual assault.’ This covers within its ambit all un-consented intentional contact of a sexual nature and also the use of words, acts or gestures which may result in an unwelcome advance. It further observed that the courts will examine factors such as the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, threats, intent of the accused and any other relevant circumstances but warns that it should not be a prerequisite that the assault be for
sexual gratification. The motive of the accused is simply one of many factors to be considered.

• Reporting of sexual offences: S. 39 cr. pc:

The said section imposes a duty on the public to report offences if they become aware of commission or the intention of a person/s to commit the offence listed in sub-section (1) of that section. If a person intentionally omits to inform the police or the nearest magistrate, such omission is punishable under the Indian Penal Code, 1860. Sub-section (1) did not include sexual offences which the committee has suggested to be added to the said section. The idea behind this proposed change in the law recognises the under-reporting of rape cases, because of survivors being discouraged by individuals who become aware of the incident.

• Recording of survivor’s statement by magistrate: S. 164 cr. pc:

Section 164 Cr.P.C deals with the recording of confessions and statements by Magistrates. The committee has recommended that once the commission of a sexual offence is brought to the attention of the police, arrangements shall be made to have the survivor’s statement recorded by a Magistrate. The idea behind such a provision is to counter the fact that ‘a major reason for acquittals in rape cases is the survivor turning hostile’ and retract from statement made to police ‘due to societal and other pressures’ allowing a large number of accused to go away scot free.

• Bar to taking cognisance of offence by public servant: S. 197 cr. pc:

Another major change suggested by the committee is to overcome the cases of custodial rape. Section 197(1) of the Cr.P.C bars a court from taking cognisance of an offence committed by a public servant, while acting or purporting to act in the discharge of his official duties, unless sanction is granted by the appropriate government. The committee has recommended that such a bar needs to be lifted with respect to taking cognisance in sexual offences, as well as the offence of trafficking.

• Trials for sexual offences in public:

With respect to trial proceedings the committee has suggested that the examination in chief and the cross examination of cases under Sections 376, 376A-D and new sexual offences suggested by it should be conducted in camera while the rest of the proceedings should be open to the public in order to ensure that there is a check on misogynistic and prejudicial practices in court proceedings.

• Amendments to the first schedule of the cr. pc:

In light of the seriousness of sexual offences, the committee recommends that all the offences made punishable by the amendment bill be cognisable and non-bailable.

Additions suggested to the Criminal Law (Amendment) Bill 2012

• Acid attack: S. 326-a ipc:

The committee noted the commonplace nature of the act of acid attacks, and how they have been traditionally dealt with the under Section 326 of the IPC. It went onto observe that such act cause not only physical, but also psychological damage to the
victim and hence ought not to be simply categorised as an offence against the body but something that curtails the right to live with dignity itself\textsuperscript{98}.

Though an offence of ‘voluntarily causing grievous hurt, through use of acid’ has been envisaged by the Criminal Law (Amendment) Bill, 2012 under proposed Section 326A – in part the proposed section suggested that the act of “… throwing acid on, or administering acid…” should be punishable with inter alia “… a fine of a maximum of rupees ten lakhs…”

The Verma committee has suggested some modification to this proposed section by seeking for the offence not to be confined to throwing acid on a person but making it more generic to “… causing permanent or partial damage to the body of another person”. They also suggest that the victim should receive central and state government assistance through a compensation fund\textsuperscript{99}, and that instead of the fine the aggressor be made liable to pay to cover the medical expenses of the victim.

In this manner an attempt has been made to not only take the offence beyond the specific sphere of acid attacks to include other violent hate crimes against the body of a woman\textsuperscript{100} but also to pre-empt an argument against liability if the victim ‘reverses’ the visible effects of the attack, through medical treatment\textsuperscript{101}.

- **Recording of fir: S. 154 cr. pc:**

  The Criminal Law (Amendment) Bill, 2012 proposes amendments to Section 154(1), Cr.P.C. requiring the FIR to be recorded by, as far as possible, a woman police officer with respect to offences against women\textsuperscript{102}.

  The committee made certain additions to this proposed amendment. To begin with they suggested that all ‘new’ offences created be added in list of provisions such section shall deal with. Secondly the committee noted the fact that atmosphere of a police station is not friendly to report a sexual crime and hence suggested that if the rape survivor is a woman then not only she should be provided legal assistance but also that of a healthcare worker and/or a women’s organisation. Further, in case the survivor is temporarily or permanently physically challenged the FIR ought to be recorded at a place convenient to the survivor, in the presence of a special educator or an interpreter, and the same should be videographed\textsuperscript{103}.

- **Question of consent and sexual history of victim: s. 53a, 114a and 146 iea:**

  Sections 53A and 146 of the IEA deal with the issue of sexual history of the rape survivor. Though the Criminal Law (Amendment) Bill 2012 had proposed that the character or past sexual history of the survivor shall not be relevant in deciding on the issue of consent, the committee took the point further and basically provided that the past sexual history of the survivor will not be a relevant fact in a prosecution for any sexual offence\textsuperscript{104}.

  The Verma committee also extended the ambit of Section 114A of the Evidence Act, 1872 which provide that in a prosecution for rape under certain clauses of Section 376(2) of the Indian Penal Code, if sexual intercourse is proved by the prosecution, and the issue is one of consent, and the woman testifies that she did not consent, the court shall presume that the lack of consent. In light of the new offences recommended by the committee, it suggests that the presumption apply to all the
clauses of Section 376(2), as also to the offence of gang rape defined by the newly proposed Section 376C.

Category of ‘new’ offences suggested by the committee

“The committee was surprised to find out that offences such as stalking, voyeurism, ‘eve-teasing’, etc. are perceived as ‘minor’ offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement.” Noting this the committee suggested that it was not sufficient for the state to legislate and establish machinery of prosecution of only what were considered major offences but also to take seriously what were till now referred to as the ‘minor’ offences as measures for the initial minor aberrations are necessary to check their escalation into major sexual aberrations.

In light of the same it came up with a number of ‘new’ offences dealing with sexual violations. Noting the increasing occurrence of publicly disrobing a woman with the intention to humiliate the victim the committee recommended the enactment of a separate Section 354-A to deal with this offence carrying a minimum sentence of three years, and a maximum sentence of seven years.

Another new offence recommended by the committee is that of voyeurism. The idea was previously covered within the invasion of privacy under the information technology act; however there was no definition provided for the same nor was it penalised. In its suggestions the committee has provided a well-rounded description of what the offence is to cover to check the increasing perpetration of said act.

The committee also suggested a gender neutral provision to be created for the act of stalking. Such provision was aimed at covering various manners in which the said offence can take place – in the physical space (following, etc.) or via the use of cyber space and also those which create in the victim a fear of violence or distress. The punishment recommended for the offence of stalking is imprisonment of either description for a term which shall not be less than one year but which may extend to three years along with a fine.

Thus one can suggest that the Verma committee has come out with suggestions that, if applied in their true spirit, would greatly improve our criminal justice system. They are not only empowering to the women but also a break from our entrenched norm of patriarchal dominance. Now the next are certain other areas where the committee has suggested that reforms be pursued by the state.

3.1.3.2 Police reforms

The Verma committee discusses ‘police reforms’ in great detail and reiterates the need for the same in its findings and recommendations. In terms of general reforms they align themselves with the views of the Supreme Court in the Prakash Singh case, while noting nothing has been done along the direction that had been suggested in the said case. The committee further goes on to describe methods to improve policing methods by illustrating a Ministry of Home Affairs Memorandum and notes that most of these have not been complied with by respective state governments to whom they were issued.

They further note that guidelines have already been laid out regarding the filing and registration of complaints with respect to crimes against women by the Delhi High
Court\textsuperscript{116} and these ought to be made mandatory and immediately followed across the country.

Another key area touched upon by the report is with regard to improvement needed in the auditing mechanisms of police performance\textsuperscript{117}. It opined that the current mechanisms of judging the general public and duty police officers on basis of the number of cases ‘solved’ and crimes registered is faulty and unduly stretches the concerned individuals.

### 3.1.3.3 Reforms in the healthcare and evidence collection system

The Verma committee also delved into the realm of healthcare and evidence collection system citing the Supreme Court in Pt. Parmanand Katara case\textsuperscript{118}.

> “... emphasized the paramount, absolute and total obligation of doctors, whether in private or government service to extend his/her services with due expertise for protecting the life of the victim without interference from laws of procedure. This duty needs no support from any code of ethics or rule of law. The said decision also casts a duty on the state machinery to abstain from unduly harassing doctors who will have to be witnesses in such cases. These directions have not been adequately complied with and doctors, especially in private hospitals, are extremely wary to deal with cases of this nature.”

The committee called for Health Centres to be manned by a gynecologist and psychological counselor among other personnel at all times of the day\textsuperscript{119} and sanitised medical examination rooms provided with a ‘sexual assault investigation kit’ on the premises for evidence collection\textsuperscript{120}.

With respect to the ‘two finger’ test – often used to ascertain the laxity of the vaginal muscles – the committee came down heavily seeking for it to be discontinued in all forms as it serves as a method of strengthening the feeling of disrespect towards the victim of a violent crime\textsuperscript{121}.

The committee also underscores the imperative need for proper refrigeration and storage facilities to secure forensic evidence, including DNA evidence\textsuperscript{122}. The committee also laid out specific guidelines with respect to the content of the medico-legal examination report of the victim in a rape/sexual assault cases to bring about uniformity of the procedure on the point\textsuperscript{123}.

### 3.1.3.4 Electoral reforms – weeding out the accused

The Verma committee also looked at the election process in India and how we allow people with serious offences registered against them to run for public offices. It sought clarifications from the Election Commission which in its response stated that it had sent a recommendation to the government as far back as 1998 that candidates should be disqualified even prior to conviction for serious offences\textsuperscript{124}. To quote from the report:

> “… a person against whom charges have been framed by a court for an offence punishable with imprisonment of 5 years or more should stand disqualified from contesting election. We have noticed that the said proposal was repeated in 2004 and has clearly been ignored by parliament.”

The committee takes a philosophical note and observes that in a democratic country for free and fair elections to take place, the character of the candidate ought to be relevant. In light of the above claim it requested the Election Commission to compile information of charges faced by candidates from affidavits about cases registered against them\textsuperscript{125}. While
acknowledging the work being done in the area by a non-governmental organisation – Association for Democratic Reforms – the committee requested the Election Commission to refer to their model database.

It also noted that in the general elections of 2009 at least six candidates were given tickets that were charged with rape, while another 34 had charges of various crimes that constitute violence against women against them. The committee stressed on the need for an amendment to place a compulsion on the candidates to disclose such “facts” truthfully under Section 33A – failing which disqualifications must be made. It further suggested that Section 8(1) of the Representation of People Act, 1951 ought to be suitably amended to contain a provision for disqualification in respect of every case where a person has been accused of the offences listed therein where a the court has taken cognisance.

3.1.3.5 Educational reforms – key to reforming society

The Verma committee also deals with reforms needed in the educational system to fight societal discrepancies. One of the core areas of focus in this regard is with respect to sex education – how the lack of it is leading to a spurt in sexual crimes, as most such cases, particularly in the case of juvenile crimes, seem to be stemming from the ‘sense of inquiry’. They further went onto insist that the education system as a whole needed major reworking, by encouraging communication within the peer group, to assist in doing away with the prevalent negative perceptions and social norms, instead of reinforcing them.

In light of the suggestions made by the Verma committee – especially when one realises how they cut through the existing social biases – one can honestly suggest that the report is emancipatory in nature as it has fundamentally altered the entire paradigm of gender rights in India.

Similar opinions have been voiced by various scholars working in the field, to make my point, before I bring this work to an end I note one of these below:

“The Verma committee report most fundamentally alters the public discourse on crimes against women by placing these crimes within the framework of the Indian Constitution and treating these offences as nothing less than an egregious violation of the right to live with dignity of all women. What is particularly moving and inspiring about the report is that it does so by placing the autonomy and indeed the sexual autonomy of women at the very centre of its discourse.”

3.2 Verma committee report

India was for the first time witnessed such mass participation to enact legislation. It report was laid down in one month after the constitution of the committee and it suggested comprehensive changes in the existing law and suggested a new provision on the circumstances which were not dealt at length. Justice Verma committee has done a laudable work where the committee submitted it is voluminous of 630 pages in 29 days. The committee adopted multidisciplinary approach not only focusing on punishing the crime but addressing the grass root of the problem by touching social norms and values. As a pressure of common man before the Criminal Law (Amendment) Act, 2013 was formally assented in both the houses it was promulgated in the form of ordinance on 3 February 2013. The amendment was formally assented in 2 April 2013 and was made
enforceable from 3 April 2013. How far this amendment serves the real purpose or not is the question to be answered in future. But this amendment which came due to the result of public outrage has added new chapter in the democracy where people elected in the legislature fail to perform their public duties were forced to take the matter with immediate concern.

4 Conclusions

“It is nothing but common sense that crime hides in darkness and eradication of darkness is an easy way to eradicate crime.”

The ‘darkness’ referred above is the darkness of power that exists at all points of time in all societies. The Verma committee report, one written after deliberations and discussions at various levels, is deeply empowering and one might even say emancipators in nature. As such one could make an argument suggesting that deliberative democracy is a method by which the society can fulfil our responsibility to help form a more just society.

Notes

1 A part of the paper was submitted in the research work while completing PG in law from NALSAR University of Law.
2 These lines explaining the ‘absurdity of democracy’ by Herbert Marcuse are the opening words of the article. It was established that responsibility to take the society towards it just or right ends lies with the people, but how should they tackle the said task? If Marcuse’s words are something to go by then we must do so while remaining within the four corners of the ‘democracy’ but do something to improve democratic life. It is in this regard the need is to work on the normative ideals of a more participative system – deliberative democracy.
3 Beetham, D. (1991) The Legitimation of Power, MacMillan Educational Press, London at p.43 – “Power, in its broadest form is the ability to produce intended effects upon the world and it lies with every individual … [whereas] political authority is the legitimate right to exercise power over a particular group of people at a particular time… [acquired through] consent of the powerless without coercion”.
17 On Habermas’s concept of lifeworld, see Habermas, J. (1987) *The Theory of Communicative Action Vol. 2*, in McCarthy, T. (Trans.), Beacon Press, Boston, at pp.119–152 – “For the members themselves the background remains largely unthematized, but the theorist can differentiate its resources into three broad components: the stock of taken-for-granted certitudes and ideas (‘culture’); the norms, loyalties, institutions, and so forth, that secure group cohesion or solidarity (‘society’); and the competences and skills that members have internalized (‘personality’). A viable lifeworld is reproduced, then, through the cultural transmission of ideas, through forms of social integration, and through the socialization of its members”.


29 Theorists disagree over whether to define deliberation in terms of its outcome (e.g., reaching consensus or changing preferences) its process (e.g., formal procedures) or its setting. See Elster, J. (1998) ‘Introduction’, in Elster, J. (Ed.): *Deliberative Democracy*, pp.1–18, Cambridge University Press, Cambridge at p.8.


33 It calls for a more inclusive method of participation in the ‘bases of political decision making’. It envisages a system where *inter alia* citizens not only just vote once every few years but have a larger, and more meaningful, say in the running of their State. As an example of one such legislation in India see, The Biological Diversity Act, 2002 available at http://www.moef.nic.in/divisions/biodiv/act/bio_div_act.htm (accessed 30 May 2013) which provides for the making of biological management committees. These committees are to serve as a place to provide a direct voice to members of the community, at the grass-root level, in making decisions which affect them and their surroundings. For a theoretical narrative on the concept of changing the ‘bases of political decision making’, see Dryzek, J. (2000) ‘Discursive democracy vs. liberal constitutionalism’, in Savard, M. (Ed.): *Democratic Innovation: Deliberation, Representation, and Association*, pp.78–89, Routledge, London.

intervention aimed at developing effective participation must disproportionately favor socially disadvantaged groups ... we do not here propose the redistribution of income and wealth primarily as a remedy for problems posed by the efforts of advantaged actors to exploit resource asymmetries ... Rather, we endorse such redistribution as a remedy for the more fundamental difficulty that citizens must possess a certain level of income and resources if they are to develop the basic capacities necessary to be effective participants in democratic deliberation".


43 See Supra 40 at p.26 – “‘Public’ reasons are addressed to an unrestricted audience of citizens-at-large, and must be communicated in a fashion that they can understand and respond to in their own terms”.

44 See Supra 34 at p.26.


47 As an illustration, the wide-spread discussion about the sexual assault laws in India – both in the public and private domain – would be a marker of the ‘common’ concern factor of the issue. The fact that a lot of these discussions did take place in the formal settings under the aegis of the Verma committee, as I would argue in the next section of this part, shall make its working to be eligible to be called an example of deliberative ideal.


See Supra 62 at p.27.


60 Pamela Johnston Conover, Donald See Supra 62 at p.42 – “Some of the capacities that are useful in attaining equal political influence in deliberations include: autonomy, which enables citizens to develop authentic preferences; ‘the effective use of cultural resources’ such as knowledge and language; cognitive capabilities; and skill at discussion”.


70 Justice Verma, J.S. et al., Report of the Committee on Amendments to Criminal Law [online] http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf (accessed 30 December 2013), p.20 (para 2) – the said notice was issued a day after the formation of the committee on 24 December 2012. A window of two weeks was created in this regard, which provides anyone concerned or interested with ample chance of being a part of the process.

71 Id. at p.20 (para 2).
72 Id. at p.20, 21 (para 3).
73 Id. at p.22 (para 4).
74 Id. at p.22 (para 5).
75 Id.
76 Id.

77 We admit that this is not the ‘deliberation’ in its perfect form as has been given by Habermas, nonetheless it is deliberation. Estlund remarks that the system of deliberation provided by Habermas (ideal speech situation) is only possible at a small level but not at the meta-level. He points out that ‘mirroring’ of the process at a national or provincial level is not possible. See Estlund, D. (2006) ‘Democracy and the real speech situation’, in Besson, S. and Marti, J.L. (Eds.): Deliberative Democracy and its Discontents, pp.75–92, Ashgate.

78 Aristotle (1999) Nicomachean Ethics, in Irwin, T (Trans), pp.1112b–10, Hackett Publishing Company, Indianapolis; See also Bickford, S. (1996) The Dissonance of Democracy: Listening, Conflict, and Citizenship, pp.26–35, Cornell University Press, Ithaca, NY; Dewey, J. (1960) Theory of the Moral Life, p.195, Holt, Rinehart, and Winston, New York – ‘deliberation is actually an imaginative rehearsal of various courses of conduct. We give way, in our mind, to some impulse; we try, in our mind, some plan. Following its career through various steps, we find ourselves in imagination in the presence of the consequences that would follow: and as we then like and approve, or dislike and disapprove, these consequences, we find the original impulse or plan good or bad’.

79 See Supra 28 at p.90.


81 See Supra 17 at pp.93–94.
82 See Supra 24 at p.37.

84 Conover, P.J., Searing, D.D. and Crewe, I.M. (2002) ‘The deliberative potential of political discussion’, British Journal of Political Science, January, Vol. 32, No. 1, pp.21–62 at p.29 – ‘the more ‘public places’ are those settings that are accessible to the public (often as a consequence of government guarantees), places that allow for open discussions and the expression of a broad array of opinions by any interested citizens. The more ‘private places’, in contrast, are those settings to which access can be controlled by individuals and where the exchange of a wide range of diverse opinions is more likely to be limited’”. For a more detailed view, see Fraser, N. (1992) ‘Rethinking the public sphere’, in Callou, C. (Ed.): Habermas and the Public Sphere, pp.109–142, MIT Press, Cambridge, Mass. at pp.118–121;
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Benhabib, S. and Cornell, D. (Eds.): Feminism as Critique, pp.56–76, University of Minnesota Press, Minneapolis at pp.73–76.
8 Knops, A. (2006) ‘Delivering deliberation’s emancipatory potential’, Political Theory, October, Vol. 34, No. 5, pp.594–623 – “deliberative theory of democracy … centered on the idea that collective decisions are determined through reasoned debate between all concerned … such discussion is unfettered by all but the power of the better argument…. It is to this extent… harbours an emancipatory potential”.
88 S. 354 Indian Penal Code.
90 Supra at 24 p.436.
91 Supra 63 – on similar lines a change in S. 40 Cr PC has also been suggested which expressly deals with the duty of member of Panchayat at the village level to report such offence.
92 Id.
93 Justice Verma, J.S. et al., Report of the Committee on Amendments to Criminal Law, p.448 [online] http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf (accessed 30 May 2013) – the said notice was issued a day after the formation of the committee on 24 December 2012. A window of two weeks was created in this regard, which provides anyone concerned or interested with ample chance of being a part of the process.
94 Id. at p.449.
95 Id. at p.449.
96 Id. at p.450.
97 Id. at p.146.
98 Id. at p.147 – “what happens when there is permanent physical and psychological damage to a victim, is a critical question and law makers have to be aware that offences are not simply based on the principle of what might be called offence against the body, i.e., damage of the body, but they must take into account the consequences on the right to live with dignity which survives the crime”.
99 Id. at p.148.
100 Certain examples of the same are forced circumcision of a woman or female genital mutilation.
101 Supra 63.
102 Supra 67 at p.447.
103 Id. at pp.447–448.
104 Id. at pp.451–452.
105 Id. at p.451.
106 Id. at p.215.
107 Id.
108 Id. at p.437.
Id. at p.437 – the provision covers two types of instances:

a. where the perpetrator watches the woman secretly

b. where the woman might have consented to the perpetrator watching her (for instance, when the woman might be in a relationship with the perpetrator) but not of any third party watching her at the perpetrator’s behest.

Watching a woman in these circumstances amounts to voyeurism if she was engaged in a ‘private act’, which, in the first explanation to the provision is defined as “an act 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”. The second explanation covers instances where a woman may have consented to her private images being captured by the perpetrator (such as, once again in instances of a relationship between them) but not to such pictures being disseminated by him to third parties.

110 Id. at p.437 – “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”.

111 Id. at pp.312–339 (Chapter 12).

112 Prakash Singh & Ors v Union of India & Ors (2006) 8 SCC 1 (on p.313) – “…

a. formation of State Security Commissions

b. criteria of selection and minimum tenure of director general of police of the state

c. ensuring minimum tenure of IG of police and other officers

d. separation of the investigating police from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people

e. setting up of a police establishment board in each state which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of deputy superintendent of police

f. setting up of a police complaints authority at the district level to look into complaints against police officers of and up to the rank of deputy superintendent of police, and another police complaints authority at the state level to look into complaints against officers of the rank of superintendent of police and above

g. setting up of a national security commission at the union level to prepare a panel for being placed before the appropriate appointing authority, for selection and placement of chiefs of the central police organisations (CPO), who should also be given a minimum tenure of two years” (refer to pp.321–327 of report).

113 Quoting State of U.P v Chhoteylal (2011) 2 SCC 550 (para 36) – “we are constrained to observe that criminal justice system is not working in our country as it should. The police reforms have not taken place despite directions of this Court in the case of Prakash Singh & Ors v Union of India & Ors” and providing the Justice K.T Thomas Monitoring Committee Report on Police Reforms India, State Wise Compliance with the Supreme Court Directives in the Prakash Singh Case (refer to p.319-320 of report).

114 ‘Advisory on crime against women – measures needed to curb – regarding’ Ministry of Home Affairs Office Memorandum No. F. NO.15011/48/2009-SC/ST-W dated 4 September 2009 (p.263 of report) – “increase the no. of beat constables, especially on the sensitive roads; Increase the number of police help booth/kiosks, especially in remote and lonely stretches; Increase police patrolling, especially during the night; Increase the number of women police officers in the mobile police vans; Set-up telephone booths for easy access to police; Install people friendly street lights on all roads, lonely stretches and alleys; and Ensure street lights are properly and efficiently working on all roads, lonely stretches and alleys”.
Justice Verma committee

115 Supra 67 at p.263 – “what is even more shocking is the incapability of the Government of India and of the various state governments to implement even the most basic safety measures with any amount of efficacy”.
117 Supra 67 at p.336.
119 Supra 67 at p.273.
120 Id. at p.272.
121 Id. at p.275.
122 Id. at p.273.
123 Id. at p.274 –
   a “age of the victim
   b injuries to the body of the victim
   c general mental condition of the victim
   d counselors report regarding disabilities of the victim, if any
   e information about presiding officer, date and time of examination and in case of delays the reasons as well”.
124 Supra 67 at p.342.
125 Id. at pp.348–349.
126 Id. at pp.359–360.
127 Id. at pp.361–362.
128 Id. at p.400 citing Sheshadari, S. and Rao, N. (2012) Parenting the Art and Science of Nurturing, Byword Books Private Limited – “sexuality education is the process of assisting young people in their physical, social, emotional and moral development as they prepare for adulthood, marriage, parenthood and ageing, as well as their social relationships in the context of family and society. The need to impart appropriate education on sexuality is an important issue that parents and teachers must acknowledge and address if they want to make sure that their children are well adjusted and safe, and will grow up to be mature and balanced individuals”.
129 Id. at p.388, talking about the normalization of power asymmetries, where the girl child is disadvantaged as compared to the boy, in the society the report says – “the school as a social arena is also marked by asymmetrical power relations. In a certain sense, the entire purpose of law is to correct the asymmetry of power. If that asymmetry of power begins in the arena of a school, we need to consider this closely”.