

Tamil Nadu's Bills To Strengthen Penalties for Sex Crime Are Useful, but Success Will Hinge on More

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Tamil Nadu: Chief Minister M.K. Stalin speaking in the state assembly. Photo: Screengrab via YouTube video/Tamilnadu Assembly

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The Tamil Nadu assembly recently passed two Bills to amend the Tamil Nadu Prohibition of Harassment of Women Act, 1998, as well as the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023.

These Bills, moved by chief minister M.K. Stalin and assented to by the governor last week, introduce more stringent punishments for sexual offences and address various forms of harassment, including those occurring on digital platforms.

While these amendments represent a significant step forward, their effectiveness can be analysed through established criminological theories and empirical evidence from similar initiatives worldwide.

Broken windows theory and marginal deterrence theory

The broken windows theory, developed by political scientist James Q. Wilson and criminologist George L. Kelling, suggests that addressing minor offences can prevent more serious crimes. The theory asserts that visible signs of disorder, like broken windows, create an environment that encourages more crime and disorder.

For example, if a neighbourhood tolerates graffiti and petty vandalism, more serious crimes like theft or assault might become more prevalent. This is because the lack of enforcement of minor rules signals that the community does not care, thus emboldening criminals.

In the context of sexual offences, the broken windows theory would imply that strictly enforcing laws against minor forms of harassment might deter more severe offences like rape.

The marginal deterrence theory proposed by George Stigler suggests that relatively severe punishments for the most serious crimes are more effective in deterring serious crime.

This theory is based on the idea that if the penalties for minor and major crimes are similar, offenders might choose to commit the more serious crimes.

For instance, if the penalty for theft is almost as severe as the penalty for armed robbery, a thief may choose to commit the armed robbery instead, as the marginal increase in punishment is low. At the same time, the potential gain may be much higher.

In the context of sexual offences, marginal deterrence would argue that harsher punishments for rape would serve as a strong deterrent to the serious offence.

Analysis of the Tamil Nadu amendment Bills

These amendments are a positive step towards protecting women, but can be further analysed using the theoretical approaches discussed.

The amendments increase the minimum term of imprisonment for rape from ten to 14 years and clarify that “life imprisonment” refers to imprisonment for the remainder of a person’s natural life.

Additionally, for offenders who repeatedly rape a woman, the minimum imprisonment has been increased to 20 years, and there is a provision for life imprisonment. For gang rape, the minimum punishment is now life imprisonment.

These measures align with the marginal deterrence theory, where a more severe punishment for serious crimes is set to deter the said serious crimes.

The amendments also address the harassment of women, which is considered a less severe offence but is still a criminal act. For first-time harassment offences in public places, the punishment has been increased to up to five years of imprisonment and a fine

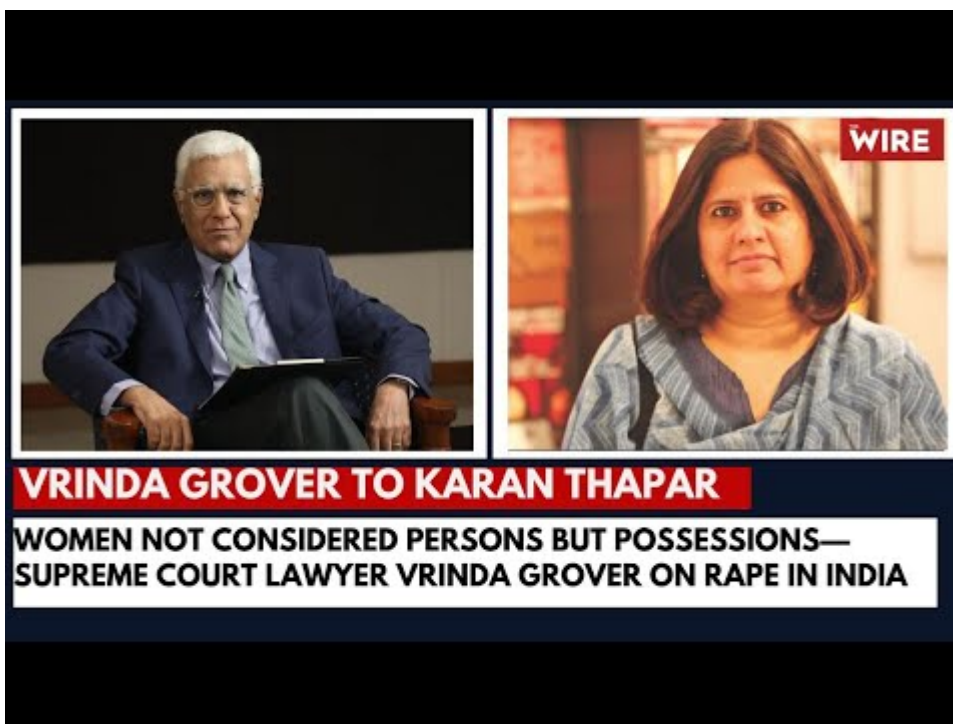
of Rs 1 lakh. Additionally, for second or subsequent convictions, imprisonment can go up to ten years with a fine of Rs 10 lakh.

The Bill also incorporates digital harassment within the definition of harassment, covering online threats and abuse.

These amendments to increase the punishments for harassment can be seen as an attempt to follow the broken windows theory, which suggests that harsher punishment for minor offences – if they are strictly implemented – is expected to prevent more serious crimes.

Further, one of the Bills also introduces a “protection order”, which can be issued to prevent an accused person from contacting an aggrieved woman. A breach of such an order can result in imprisonment of up to three years and a fine of Rs 1 lakh.

These measures can be seen as an attempt to create a safer environment for women by taking proactive steps to prevent harassment and the escalation of crime.



Watch Video At: <https://youtu.be/VL-cfqnuOsk>

Effectiveness of harshening punishments

The question that arises in this scenario is whether simply increasing punishments will effectively deter sexual crimes. Research on sexual offences suggests that successful enforcement and conviction in rape cases serve as the strongest deterrent for both severe and minor sexual crimes. This finding challenges the simple assumption that harsher punishments alone will reduce crime rates.

While Tamil Nadu’s amendments demonstrate a commitment to addressing sexual crimes through enhanced punishments for offences ranging from harassment to rape, the approach requires careful consideration.

The marginal deterrence theory raises a concerning possibility: if the punishment gap between harassment and rape narrows significantly, some offenders may choose to commit the more serious crime, since they face similar consequences. This highlights the importance of maintaining proportional punishment differentials between crimes of varying severity.

But the amendments' effectiveness will likely depend more on implementation than on the severity of prescribed punishments. Several key priorities emerge for successful implementation: improving conviction rates, especially for serious sexual offences; strengthening investigative capabilities and evidence collection; implementing preventive measures like CCTV surveillance in public spaces; and effectively utilising protection orders to prevent repeat offences.

By combining enhanced punishments with these practical enforcement measures, Tamil Nadu's amendments will have the potential to create meaningful change. Success will require sustained focus on improving the criminal justice system's capacity to investigate, prosecute and convict perpetrators of sexual crimes rather than merely increasing statutory punishments.

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