THE CRIMINAL LAW (AMENDMENT) BILL, 2019

By

SHRIMATI KANIMOZHI KARUNANIDHI, M.P.

A

BILL

further to amend the Indian Penal Code, 1860 and the

Be it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called Criminal Law (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE, 1860

2. In section 228A of Indian Penal Code, 1860 (hereinafter in this Chapter referred to as the Penal code), after sub-section (1), the following proviso shall be inserted, namely:—

Provided that if the victim is the wife of the accused, the provisions of this sub-section shall also apply to such accused against whom the allegation or accusation of the offence of rape has been made and prohibition on disclosure of his identity shall remain in force during the life time of the victim.
3. In section 375 of the Penal Code after the proviso to Explanation 2, the following proviso shall be inserted, namely:—

"Provided further that a woman who is in a relationship, marital or otherwise, with the accused, shall not by the reason of being in relationship only, be regarded as consenting to the sexual activity."

4. In section 376 of the Penal Code, after sub-section (2) and before the Explanation, the following proviso shall be inserted, namely:—

"Provided that while imposing punishment for the offence of rape, the existing or past marital relationship between the accused and the complainant shall not be considered as a ground for imposition of lesser punishment."

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973


6. In the First Schedule to the Code of Criminal Procedure, under the heading "OFFENCES UNDER THE INDIAN PENAL CODE", the entries relating to section 376B shall be omitted.
STATEMENT OF OBJECTS AND REASONS

Section 375 of the Indian Penal Code, 1860 states that sexual intercourse by a man with his own wife who is not less than fifteen years of age is not considered as rape. Section 376B provides for a lesser punishment for the perpetrator for committing a sexual offence if the victim is his own wife, living separately, under a decree or otherwise. These provisions are based on the archaic notion of marriage which regards wives as no more than the property of their husbands. Specifically, section 375 leaves child brides, already vulnerable, open to sanctioned marital rape.

The Prohibition of Child Marriage Act, 2006, prohibits the marriage of a girl less than the age of eighteen years and according to the Criminal law Amendment Act, 2013, the age of sexual consent is recognised as eighteen years. This being the case, the exception given in section 375 to marital rape is contradicting other laws. While one set of laws prohibit marriage of girls below the age of eighteen years, the Indian Penal Code, 1860 allows for sexual intercourse in marriage above the age of fifteen years. For the law to be applied in an equitable manner, it is necessary to extent protection to minor girls under section 375 of the Indian Penal Code, 1860.

The Beijing Declaration and Platform for Action recognises marital rape as a form of violence against women. The Justice Verma Committee had recommended that a marital relationship between the perpetrator and the victim should not be considered as valid defence against the crime of rape and sexual assault. The report said that ‘a rapist remains a rapist regardless of his relationship with the victim’. The UN Committee on Elimination of Discrimination of Women had also recommended that India should remove the exception of marital rape from the definition of rape. At least fifty-two countries had explicitly outlawed marital rape in their criminal codes by April 2011.

In view of the need to ensure equal protection to minor girls, protect the dignity of women in a marital relationship and in order to eliminate the notion of treating wives as the property of men, it is essential to repeal exception under section 375 and 376B of the Indian Penal Code, 1860.

Hence this Bill.

NEW DELHI; KANIMozHI KARUNAnIDHI

June 25, 2019.
228A. (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

375. A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

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

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

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also included labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any from of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.
376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

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

(i) commits rape on a woman when she is under sixteen years of age; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.—For the purposes of this sub-section,—

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;
(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

198B. No Court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.

FIRST SCHEDULE OF CODE OF CRIMINAL PROCEDURE

1. OFFENCES UNDER THE INDIAN PENAL CODE

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<td>376B</td>
<td>Sexual intercourse by husband upon his wife during separation</td>
<td>Imprisonment for not less than 2 years but which may extend to 7 years and with fine</td>
<td>Cognizable (but only on the complaint of the victim)</td>
<td>Bailable</td>
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(Shrimati Kanimozhi Karunanidhi, M.P.)

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