

AS INTRODUCED IN THE RAJYA SABHA
ON 9TH DECEMBER, 2022

Bill No. LXIII of 2022

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2022

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BILL

further to amend the Indian Penal Code, 1860.

BE it enacted by the Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2022.

Short title and commencement.

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

45 of 1860.

2. In section 375 of the Indian Penal Code, 1860 for Exception 2, the following shall be substituted namely:—

Amendment of section 375.

"Exception 2.—The fact of a subsisting marriage of the accused and the victim shall not be treated as mitigating factor for the offence under this section."

STATEMENT OF OBJECTS AND REASONS

India was a British colony during the time of drafting of the Penal Code in the 19th century. English laws did not recognise men and women as equals and merged the identity of women with their husbands. Under section 375 of the Indian Penal Code, the offence of rape provides for an exception—'Sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape'. The 42nd Report of the Law Commission (1971) suggested the removal of this exception. The Indian Penal Code was subsequently amended in the year 1983 to criminalise spousal rape during the period of judicial separation, as suggested by the 84th Law Commission Report. However, the exception of marital rape still remained.

2. Article 2 of the Declaration of the Elimination of Violence against Women includes marital rape unequivocally in the definition of violence against women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee also suggested that India should 'widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape'. Inspired by this, the Justice Verma Committee recommended deleting the exemption contained in section 375. Apart from being a moral obligation, incorporation of such international treaties is prescribed in article 253 of the Constitution of India. In addition, article 51 requires that the State endeavour to promote international peace and security, maintain good relations with other nations, and respect international law. Under both these articles, it is a mandate that the Legislature removes this exception.

3. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) did not criminalise marital rape but recognised it as a form of domestic violence, providing a first step towards criminalisation. The marital rape exception is antithetical to the Right to Life and Personal Liberty under article 21 of the Indian Constitution which states that 'No person shall be deprived of his life and personal liberty except according to the procedure established by law'. Through the course of time, the Supreme Court has expanded the Right to Life beyond a mere literal protection of life and liberty. It includes a dignified life, safe living conditions, a woman's right to her reproductive choices, and privacy. Thus, there is a need to remove the exception of marital rape from the offence of rape.

The Bill seeks to achieve the above objectives.

DEREK O' BRIEN.

RAJYA SABHA

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further to amend the Indian Penal Code,1860.

(*Shri Derek O' Brien, M.P.*)