

Bill No. XXX of 2023

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2023

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further to amend the Indian Penal Code, 1860.

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

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2023.

Short title and commencement.

5 (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. For section 305 of the Indian Penal Code, 1860, (hereinafter referred to as the Code), the following section shall be substituted, namely: —

Substitution of section 305.

10 “305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, any specially-abled person, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.”

Abetment of suicide of child, insane person or specially-abled person.

3. In the Code, in section 375, Exception 2, shall be omitted.

Amendment of section 375.

STATEMENT OF OBJECTS AND REASONS

India is a society riddled with myriad distinctions. The plight of individuals who are specially-abled makes them vulnerable to extraneous pressures or coercion of any kind. The World Bank estimates that 15 per cent. of the world's population is affected by one disability or another. According to the 2011 Census, the number of disabled in India stands at 2.68 crores or 2.21 per cent. of the population. In the last decade, India has unfortunately witnessed a spate of suicides by the specially-abled.

Suicides can be triggered by a variety of factors. The extreme levels of inequity notwithstanding, the specially-abled are at a high risk of being pushed towards the extreme. Section 305 of the Indian Penal Code covers children, insane persons, and persons under intoxication. Considering the potential psychological impact of societal inequities, limitations of opportunity, and general hostility, it becomes essential to place the life of the specially-abled in the same bracket.

Further, cases of child molestation and Rape have always been a source of tension for a developing society like India. As per the reports of the National Crime Records Bureau (NCRB) in 2020, over twenty-eight thousand crimes reported under the Protection of Children from Sexual Offences (POCSO) Act were against girls. This was a total of 99 per cent. of crimes against children under the POCSO act. Further, under the same report, the crimes against 16 to 18 year old girls were the highest at 14,092.

The data shows that minor girls continue to be the most vulnerable sections of society. In this context, up until the year 2022, the Indian Penal Code, 1860 did not even acknowledge forced sexual intercourse by a man with his own wife, if she was 15 years of age and above. While the Criminal Law (Amendment) Act, 2013 amended the Indian Penal Code to raise the age of consent to sexual intercourse to 18, but, it did not apply further to Exception 2 of section 375.

It created a contradiction where exception 2 of section 375, i.e. "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape" implied that forced sexual intercourse by a husband with a minor wife was decriminalized. However, in 2018, under *the Independent Thought Vs Union of India, 2017* case, the Supreme Court acknowledged this and read down the exception to raise the age of consent to 18. This decision was taken in line with the age of consent and attaining majority as established in different laws and statutes across the country. It also called for Parliament to rectify the anomaly and address violations of girls' rights due to child marriage. However, no amendment has been introduced in this regard since then.

The very existence of Exception 2, which fails to deter husbands from engaging in acts of forced sexual contact with their minor wives, adversely affects the physical and mental health of women and undermines their ability to live with dignity. Therefore, the provisions mentioned under the exception to this section further perpetuate inequality and violate the right to life and personal liberty, calling for urgent Parliamentary intervention.

This Bill proposes to protect the specially-abled persons and bring such people, who abet their suicide, to justice and to bring greater clarity in preventing sexual violence against minor married girls.

Hence this Bill.

AMAR PATNAIK.

ANNEXURE

EXTRACTS FROM THE INDIAN PENAL CODE, 1860 (45 OF 1860)

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305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine. Abetment of suicide of child or insane person.

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375. * * * * * Rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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further to amend the Indian Penal Code, 1860.

(Dr. Amar Patnaik, M.P.)