

Bill No. XVIII of 2021

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2021

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BILL

further to amend the Indian Penal Code, 1860.

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

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2021.

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.

Act 45 of 1860.

2. For section 124A of the Indian Penal Code, 1860 (hereinafter referred to as the Code), the following section shall be substituted, namely:—

Substitution of new section for section 124A.

10 "124A. Whoever, by words, either spoken or written, or by signs, or by visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law

Sedition.

in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine:

Provided that the provisions of this section shall apply only when the words, signs, visible representation or any other action directly results in incitement of violence and commission of an offence punishable with imprisonment for life under this Code. 5

Explanation.—Comments or signs or visible representation or any other act expressing disapprobation of the administrative measures or other action of the Government, do not constitute an offence under this section." 10

Substitution of new section for section 309.

3. In the Code, for section 309, the following section shall be substituted namely:—

Threat of suicide with intent to coerce a public authority.

"309. Whoever holds out a threat of suicide to a public authority, with intent to cause that authority to do any act which it is not legally bound to do, or to omit to do any act which it is legally entitled to do, as the means of avoiding the execution of such threat, and does any act towards the execution of such threat, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both." 15

Substitution of new exception for exception 2 of section 375.

4. In the Code, in section 375, for Exception 2, the following Exception shall be substituted, namely:—

"(2) Marriage or other relationship shall not constitute a defence to a charge of rape under this section." 20

STATEMENT OF OBJECTS AND REASONS

Democracy is not another name of majoritarianism, on the contrary it is a system to include every voice, where thought of every person is counted, irrespective of the number of the people backing that idea. In a democracy, it is natural that there will be different and conflicting interpretations of a given account of an event. Not only viewpoints which constitute the majority are to be considered, but at the same time, dissenting and critical opinions should also be acknowledged. Free speech is protected because it is necessary to achieve some greater, often ultimate, social good. In a democratic set-up, there has to be an active and intelligent participation of the people in all spheres and affairs of their community as well as the State. It is their right to be kept informed about current political, social, economic and cultural life as well as the burning topics and important issues of the day in order to enable them to consider and form broad opinion about the same and the way in which they are being managed, tackled and administered by the Government and its functionaries. To achieve this objective the people need a clear and truthful account of events, so that they may form their own opinion and offer their own comments and viewpoints on such matters and issues and select their further course of action.

2. The Supreme Court has also narrowed the scope and applicability of section 124A, in its landmark judgment in *Kedar Nath Singh V/s State of Bihar* (1962) case, where it linked sedition to a test of tangible evidence of actual harm. There is an urgent need to amend section 124A of the Indian Penal Code in compliance with the judgment of the Supreme Court and to prevent the possibility of undue harassment of citizens who simply disagree with the Government.

3. Section 309 of Indian Penal Code criminalised an attempt to suicide by any person. However section 115 of the Mental Health Care Act, 2017 States that any person who attempts to commit suicide shall be presumed to have stress and therefore shall not be punished under IPC thus making provision of section 309 of IPC otiose. The Law Commission had twice, in 1971 and 2008, also recommended the repeal of section 309 of the IPC. In *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454, the Supreme Court emphasised that a person suffering from mental health illnesses needs help rather than punishment. However, it is imperative to punish suicide where it serves another purpose, *i.e.*, an attempt to suicide should be criminalised when it is used as an instrument to threaten with the object of coercing a public authority to pursue a course of action. To prevent suicide attempts being used as threats, to intimidate or coerce public authorities, the new provision be added to the code.

4. In India, marital rape exists *de facto* but is not recognised *de jure*, *i.e.* in law. While in other countries either the legislature has criminalized marital rape, or the judiciary has played an active role in recognizing it as an offence, in India, however, very little has been done to recognise this crime. Though marital rape is the most common and repugnant form of masochism in Indian society, it is hidden behind the iron curtain of marriage. In 1993, the United Nations High Commissioner for Human Rights published the declaration on the elimination of violence against women. This also establishes Marital Rape as a human right violation. However, India is one of the thirty-six countries that still have not criminalized marital rape. In a landmark judgment, the Supreme Court in *Independent Thought v. Union of India*, (2013) 382 SCC (2017) criminalized unwilling sexual contact with a wife between fifteen and eighteen years of age. This judgment has in turn led to an increase in other writs challenging the constitutionality of Exception 2 of section 375 of IPC as a whole. Although the Constitution guarantees equality to all under Article 14, Indian criminal law discriminates against female victims who have been raped by their own husbands. Exception 2 also violates

Article 21's right to live a healthy and dignified life. It is well settled that the "right to life" envisaged in Article 21 is not merely a right to exist. The courts have repeatedly held that the "right to life" encompasses a right to live with human dignity. Yet, the very existence of Exception 2 of section 375 which fails to deter husbands from engaging in acts of forced sexual contact with their wives, adversely affects the physical and mental health of women and undermines their ability to live with dignity. It is time that we recognise the inhumane nature of this provision and consign it to the dustbin of history.

This Bill seeks to amend sections 124A, 309 and Exception 2 of section 375 of the Indian Penal Code, 1860 to achieve the aforesaid objectives.

DR. SASMIT PATRA

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

(45 OF 1860)

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124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards, the Government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. Seditious.

Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

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309. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both. Attempt to commit suicide.

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375. A man is said to commit “rape” if he— Rape.

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Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse of 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. Sasmit Patra, M.P.)