

Bill No. LII of 2014

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2014

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BILL

further to amend the Indian Penal Code, 1860

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

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2014.

(2) It extends to the whole of India.

(3) It shall come into force with immediate effect.

Short title,
extent and
Commence-
ment.

45 of 1860. 5 2. In the Indian Penal Code, 1860 in section 375, the following Exception shall be omitted.

Amendment
of section
375.

"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."

STATEMENT OF OBJECTS AND REASONS

The Convention on the Elimination of All forms of Discrimination against Women (CEDAW) which was adopted by the United Nations General Assembly in 1979, for the first time in the sphere of international law, accorded primacy and supremacy to human rights of woman. Whereas India ratified the Convention on 25th June, 1993, much remains to be done within our domestic laws to recognize and enforce the equal right of women to dignity and sexual autonomy. The Protection of Women from Domestic Violence Act, 2005 (act 43 of 2005) falls short of explicitly including rape within the definition of domestic violence. The marital rape exception, which has been retained in the statute book for decades, is a representation of our colonial past and the outdated conception of marriage in the Common Law tradition which regarded wives as no more than the property of their husbands.

However, the growing epidemic of violence against women, especially acts of sexual violence within the household is eroding the fabric of our society and needs urgent action. The abysmally low rate of reporting of incidents of sexual violence committed against women by husbands is an alarming symptom of the historical domination over and discrimination against women by men. This was also recognized by the Report on Amendments to Criminal Law drafted by the Justice Verma Committee in January 2013, wherein it was recommended that the law ought to be amended to delete the marital rape exception and bring our domestic laws in conformity with India's international human rights obligations.

Under Article 253 of the Constitution of India, the Parliament is empowered to enact laws for the whole or any part of the territory of India for implementing treaties and conventions entered into with other countries, or decisions made at any international conference, etc. This Bill proposes to remove the exception of marital rape from the definition of rape under the Indian Penal Code, 1860 and recognize that such extreme forms of violence against women are a violation of the fundamental rights guaranteed equally to all citizens.

However, it is indispensable that the legal prohibition on marital rape is accompanied by changes in the attitudes of not only husbands towards their wives, but also prosecutors, police officers and lawmakers.

Hence this Bill.

AVINASH PANDE.

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

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CHAPTER XVI
OF OFFENCES AFFECTING THE HUMAN BODY

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Sexual Offences

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

(a) penetrated his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her 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.—

Thirdly.—Without her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or 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 include *labia majora*.

Explanation 2.—Consent means unequivocal voluntary agreement when the woman by words, gestures or any form 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 sexual activity.

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

Explanation 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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RAJYA SABHA

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to further amend the Indian Penal Code, 1860.

(Shri Avinash Pande, M.P.)