

**Bill No. IX of 2018**

THE CRIMINAL LAWS (AMENDMENT) BILL, 2018

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BILL

*further to amend the Indian Penal Code, 1860 and the Code of Criminal  
Procedure, 1973*

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

1. (1) This Act may be called the Criminal Laws (Amendment) Act, 2018.

Short title,  
extent and  
commencement.

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

45 of 1860.

2. The Indian Penal Code, 1860, for section 354D, the following shall be substituted  
5 namely:—

Amendment  
of Section  
354D.

"(1) Whoever—

(i) follows a person and contacts, or attempts to contact such person to foster  
personal interaction repeatedly despite a clear indication of disinterest by such person;  
or

Stalking.

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(ii) monitors the use by a person of the internet, email or any other form of  
electronic communication; or

(iii) watches or spies on a person in a manner that results in a fear of violence or  
serious alarm or distress in the mind of such person, or interferes with the mental peace  
of such person, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the person who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

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(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine."

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Amendment  
of First  
Schedule to  
the Code of  
Criminal  
Procedure,  
1973.

**3.** In the First Schedule to the Code of Criminal Procedure, 1973, in Table I, in the entries relating to section 354D, in column 5, for the word "Bailable", the word "Non-bailable" shall be substituted.

2 of 1974.

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## STATEMENT OF OBJECTS AND REASONS

Crimes against women violate their personal liberty. One of these crimes include stalking which is a criminal offence under the Indian Penal Code, 1860. The Justice J.S. Verma Committee report proposed that stalking be made a criminal offence in 2013. Based on the data provided in response to an unstarred question in Rajya Sabha on 7 February, 2018, the number of cases registered have increased over the years. In 2014, 4699 cases were registered. With an increase of 33 per cent, 6266 cases were reported in 2015. These further increased to 7190 cases in 2016. A total of 20,761 persons have been arrested under the offence of stalking between 2014 and 2016. The conviction rate, however, decreased from 34.8 per cent in 2014 to 26.4 per cent in 2015 and 24.6 per cent in 2016.

But despite that, the status of stalking as an offence is deficient since it is a bailable offence under the Code of Criminal Procedure, 1973. This allows the accused to cause further harm to the victim in the absence of any judicial supervision. As a result, in several instances, the victims face prolonged harassment from their stalkers with increased likelihood of further sexual, physical and emotional harm. Despite the police's attempt to take the offence seriously, the accused can easily get bail and be left free to repeat the offence. The probability of the same is extremely high due to the very nature of the offence — repeated attempts to establish contact with the victim.

The Justice J.S. Verma Committee report highlights the seriousness of the offence. It noted that "*the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing' etc. are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement*". It recommended that the offence of stalking be made cognizable and non-bailable. Similarly, the 167th report of the Standing Committee on Home Affairs highlighted the general legal practice of making such offences with a sentence of less than three years, bailable. Since the maximum punishment for stalking under Section 354D can be three years or more (on second conviction), it must be made non-bailable.

Rising cases of stalking against men emphasises the need for making stalking a gender-neutral offence. In the absence of any legal recourse available to men in instances of stalking, they are forced to live with fear and distress. The Standing Committee on Home Affairs in its 167th report noted that "*in society, there may be similar practices which are obnoxious, reprehensible, committed in respect of boys and the approach, in this context, of law should be gender neutral*". As a consequence, it recommended that the offence be made gender neutral. The Justice J.S. Verma Committee, in its report, has also defined stalking in a gender-neutral language.

Therefore, it has been proposed that stalking be made a non-bailable as well as a gender-neutral offence. By amending its Criminal Law, India will join the league of developed nations like Germany and United Kingdom that have enacted comprehensive laws with strict punishment for stalking.

Hence this Bill.

HUSAIN DALWAI

ANNEXURE

EXTRACTS FROM THE INDIAN PENAL CODE, 1860

\* \* \* \* \*

Stalking.

**354D.** (1) Any man who—

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication,

commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

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EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

THE FIRST SCHEDULE

CLASSIFICATION OF OFFENCES

\* \* \* \* \*

I. OFFENCES UNDER THE INDIAN PENAL CODE

\* \* \* \* \*

Stalking.

354D.	Imprisonment up to 3 years and with fine for first conviction.	Cognizable	Bailable	Any Magistrate
	Imprisonment up to 5 years and with fine for second or subsequent conviction.	Cognizable	Non-bailable	Any Magistrate

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RAJYA SABHA

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**BILL**

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Procedure, 1973

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*(Shri Husain Dalwai, M.P.)*