

Bill No. XXVIII of 2014

THE CRIMINAL LAWS (AMENDMENT) BILL, 2014

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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-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Criminal Laws (Amendment) Act, 2014.

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

Short title
and Com-
mence-
ment.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE, 1860

45 of 1860. 2. In the Indian Penal Code, 1860 (hereafter in this Chapter referred to as the Penal
10 Code) in section 228A, after clause 1, the following proviso shall be inserted, namely:—

Amendment
of Section
228A.

“Provided that if the victim is the wife of the accused, the prohibition referred to
in sub-section (1) shall apply in relation to the person against whom the allegation or
accusation of rape offence is made as it applies to the women, but shall continue in
force for the duration of the woman’s life only.”

Amendment
of Section
375.

3. In section 375 of the Penal Code,—

(i) after the proviso to Explanation 2, the following proviso shall be inserted, namely:—

“Provided further that a woman who is in a relationship, marital or otherwise, with the accused, shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

(ii) Exception 2 shall be omitted.

Amendment
of Section
376B..

4. For section 376B of the Penal Code, the following section shall be substituted namely:—

“376B. When imposing a sentence in respect to the offence of rape, the existing or past marital relationship between the accused and the complainant shall not be considered as justification for the imposition of lesser sentence.”

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment
of Section
198B.

5. In the Code of Criminal Procedure, 1973, (hereafter in this Chapter referred to as the Code of Criminal Procedure) section 198B shall be omitted. 2 of 1974.

Amendment
of First
Schedule.

6. In the First Schedule to the Code of Criminal Procedure, under the heading “OFFENCES UNDER INDIAN PENAL CODE”, the entries related to section 376B shall be omitted.

STATEMENT OF OBJECT AND REASONS

Section 375 of the Indian Penal Code, 1860 states that sexual intercourse by a man with his own wife who is not less than 15 years of age is not considered as rape. Section 376B provides for a lesser punishment for the perpetrator for committing a sexual offence if the victim is his own wife, living separately, under a decree or otherwise. These provisions are based on the archaic notion of marriage which regards wives as no more than the property of their husbands. Specifically, Section 375 leaves child brides, already vulnerable, open to sanctioned marital rape.

The Prohibition of Child Marriage Act, 2006, prohibits the marriage of a girl less than the age of 18 years and according to the Criminal Law Amendment Act, 2013, the age of sexual consent is recognised as 18 years. This being the case, the exception given in Section 375 to marital rape is contradicting other laws. While one set of laws prohibit marriage of girls below the age of 18 years, the Indian Penal Code allows for sexual intercourse in marriage above the age of 15 years. For the law to be applied in an equitable manner, it is necessary to extend protection to minor girls under Section 375 of the Indian Penal Code.

The Beijing Declaration and Platform for Action recognises marital rape as a form of violence against women. The Justice Verma Committee had recommended that a marital relationship between the perpetrator and the victim should not be considered as valid defence against the crime of rape and sexual assault. The report said that 'a rapist remains a rapist regardless of his relationship with the victim'. The UN Committee on Elimination of Discrimination of Women had also recommended that India should remove the exception of marital rape from the definition of rape. At least 52 countries had explicitly outlawed marital rape in their criminal codes by April 2011.

In view of the need to ensure equal protection of minor girls, protect the dignity of women in a marital relationship and in order to eliminate the notion of treating wives as the property of men, it is essential to repeal exception under Section 375 and 376 B of the Indian Penal Code.

Hence the Bill.

KANIMOSHI

ANNEXURE

EXTRACTS FROM THE INDIAN PENAL CODE, 1860

228A. (1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

* * * *

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

(a) penetrates his penis, to any extent into the vagina, mouth, urethra or anus of a woman or makes her to 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 vagina, urethra, anus or any part of body of such woman or makes her to do so with him to 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,

First.—Against her will.

Secondly.— Without her consent.

Thirdly.—With 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 reasons 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 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 an unequivocal voluntary agreement when 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 the sexual activity.

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

376B. Whoever has sexual intercourse with his own wife, who is living separately whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of Section 375.

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

198B. No court shall take cognizance of an offence punishable under section 376B of the Indian Penal Code where the persons are in a marital relationship, except upon *prima face* satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.

FIRST SCHEDULE OF CODE OF CRIMINAL PROCEDURE

I. OFFENCES UNDER THE INDIAN PENAL CODE

1	2	3	4	5	6
376B	Sexual intercourse by husband upon his wife during separation	Imprisonment for not less than 2 years but which may extent to 7 years and with fine	Cagnizable (but only on the complaint of the victim)	Bailable	Court of session

RAJYA SABHA

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BILL

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

(Smt. Kanimozhi, M.P.)