

Bill No. X of 2009

THE INCEST OFFENCES BILL, 2009

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to provide for punishment for the offences relating to incest and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Incest Offences Act, 2009.

Short title and
commence-
ment.

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

2. In this Act, unless the context otherwise requires,—

Definitions.

5 (a) "appropriate Government" means in the case of a State, the Government of that State and in other cases, the Central Government;

 (b) "prescribed" means prescribed by rules made under this Act;

10 (c) "sexual exploitation" includes fondling, sexually explicit remarks, avoidable and unwarranted physical contact, willfully touching and patting, forcing for the use of pornographic material and molestation;

	(d) terms used in this Act and not defined in this Act but defined in the Indian Penal Code, 1860 or the Code of Criminal Procedure, 1973 shall have the same meanings respectively assigned to them in those laws.	45 of 1860. 2 of 1974.
Incest offences.	3. Whoever knowingly has or attempts to have sexual intercourse with another person, who is a close family member shall be guilty of incest and shall be punished with rigorous imprisonment for a term which shall not be less than ten years and shall also be liable to a fine: Provided that if the close family member is a child under eighteen years of age, the offender shall be punished with life imprisonment.	5
	(2) Whoever knowingly does or attempts to sexually exploit any other person, who is a close family member shall be punished with rigorous imprisonment for a term not less than five years, which may extend upto seven years, and shall also be liable to a fine.	10
	(3) For the purposes of sub-sections (1) & (2) the Court shall not take cognizance of the fact that the act of sexual intercourse or attempt of sexual intercourse or sexual exploitation has happened with the consent of the person.	
	<i>Explanation.</i> — For the purposes of this Act "close family members" means following persons who are members of a victim's family by birth:—	15
	(a) a parent or grandparent, of either sex.	
	(b) a child or other lineal descendent.	
	(c) a brother or sister including half-brother or half-sister.	
Burden of proof.	4. Notwithstanding anything contained in any other law, for the time being in force, in any trial under this Act, the burden of proof as to the innocence shall be on the accused and the victim shall have the right to lead evidence in rebuttal.	20
Proceedings to be in-camera.	5. The proceedings under this Act shall be tried by Special Courts as far as possible before a woman magistrate and in-camera if it is so desired by the victim.	
Statement of victim to be recorded at residence.	6. Any statement of the victim under this Act shall be recorded at her or his residence or at the place of her or his choice and as far as possible by a woman police officer in the presence of the victim's guardian or social worker of the locality.	25
Offences to be cognizable and non-bailable.	7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under this Act shall be cognizable and non-bailable.	2 of 1974.
Bar on granting anticipatory bail.	8. Notwithstanding anything contained in any other law, for the time being in force, no court other than a High Court or the Supreme Court of India shall have the authority to grant anticipatory bail to any person accused of committing an offence under this Act.	30
Provisions of the Code of Criminal Procedure to be applied.	9. Save as provided under this Act, the provisions of the Code of Criminal Procedure, 1973 shall be applicable to any trial under this Act.	2 of 1974.
Power to remove any difficulties.	10. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Gazette of India, make such provisions, not inconsistent with the provisions of this Act, as it deems necessary or expedient for removing the difficulty.	35
Act to have overriding effect.	11. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force relating to incest.	40
Power to make rules.	12. The Central Government may, by notification in the Gazette of India, make rules for carrying out the purpose of this Act.	

STATEMENT OF OBJECTS AND REASONS

As of today, there is no law on incest offences in India. Any incidence of incest is treated as rape and if it is the abuse of a boy, it is covered under Section 377 of the Indian Penal Code (that criminalises homosexuality). Last year, a Mumbai court let off a father who raped his daughter as the heinousness of his crime was not recognised as a separately punishable offence in our country. Also, the particular problem of incest going under-reported is more prevalent in India because the family is almost considered sacred and abuse, if it happens, is met with disbelief and denial. At times, even the judges do not believe that a girl or boy can be abused by her or his father or relatives. Activists demanding a law to tackle incest believe that it is a reflection of the society's refusal to acknowledge that it exists. The society is in a state of denial that incest does exist, whereas the bare truth is that it is prevalent in our society and only a miniscule number of cases are reported.

In contrast, many developed countries recognise incest as a serious crime. The United Kingdom has had a law on it since 1908, which provides punishment with imprisonment up to 14 years, as do laws in Canada, Germany, Hungary, Ireland, Israel, Italy, the Netherlands, Brazil and a host of other countries have laws pertaining to incest. In the United States, punishment varies from State to State. Incest is more common in India than in other countries as there is no fear of the law of the land.

Children's rights activists have been demanding a specific law on incest for quite some time now. The demand was more vociferous, when Section 376 of the Indian Penal Code (pertaining to rape) was amended, to include policemen and hospital and prison staff who abuse women in their custody, the issue of incest—where a parent or relative abuses a child in his or her care—was over looked. It is difficult to fathom the agony and trauma of a child who goes through molestation at the hands of a trusted one. The child suffers this stigma throughout his or her life and has to re-live the pain and trauma over and over again. It is high time, therefore, that a strict and separate law is enacted to counter incest in our society.

Hence this Bill.

SHOBHANA BHARTIA

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of this Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only. The delegation of legislative power is, therefore, of a normal character.

RAJYA SABHA

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(Shrimati Shobhana Bhartia, M.P.)