

AS INTRODUCED IN THE RAJYA SABHA  
ON THE 25TH FEBRUARY, 2011

**Bill No. LV of 2010**

THE INCEST AND SEXUAL ABUSE IN FAMILY (OFFENCES)  
BILL, 2010

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BILL

*to define the offences relating to incest and sexual abuse in family and prescribe the special procedure for punishment for the offences relating to incest and sexual abuse in family and matters connected therewith and incidental thereto.*

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

**1.** (1) This Act may be called the Incest and Sexual Abuse in Family (Offences) Act, 2010. Short title and commencement.

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

Definitions.	<b>2.</b> In this Act, unless the context otherwise requires,—	
	(a) 'appropriate Government' means in the case of a State, the Government of that State and in all other cases, the Central Government;	
	(b) 'family member' means grand-mother, mother, daughter, sister, sister-in-law, daughter-in-law and includes male child below the age of 12 years;	5
	(c) 'prescribed' means prescribed by rules made under this Act;	
	(d) 'sexual abuse' includes making sexually explicit remarks, intentional physical contacts, wilfully touching and patting, showing and use of pornographic material and molestation;	
	(e) terms used in this Act and not defined but defined in the Indian Penal Code, 1860 or Code of Criminal Procedure, 1973 shall have the same meanings respectively assigned to them in those laws.	10 45 of 1860. 1 of 1974.
Incest Offences.	<b>3.</b> Any person who has sexual intercourse with his family member or attempts to have sexual intercourse with such family member shall be guilty of the offence of incest and shall be punished as per the provision of this Act.	15
Sexual abuse of family member.	<b>4.</b> Any person who sexually abuse any of his family member shall be guilty of the offence of sexual abuse and shall be punished as per the provision of this Act. <i>Explanation</i> —For the purposes of sections 4 and 5, the consent of the family member shall not be available as defence to the accused.	
Penalty.	<b>5.</b> Whoever found guilty of offence under: (i) section 3 shall be punished with rigorous imprisonment for a term for life and shall also liable to fine: Provided that if the victim is a child, offender shall be punished with death. (ii) section 4 shall be punished with rigorous imprisonment for a term of five years which may extend upto seven years and shall also liable to fine.	20 25
Burden of proof.	<b>6.</b> Notwithstanding anything contained in any other law, for the time being in force, in the 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.	
Special Court.	<b>7.</b> The proceedings under this Act, shall be tried by Special Courts by a women magistrate and the Court shall follow such procedure as may be determined by it in consultation with District Judge.	30
Offences to be cognizable and non-bailable.	<b>8.</b> Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences under this Act shall be cognizable and non-bailable.	
Provisions of the Code of Criminal Procedure to be applied.	<b>9.</b> Save as provided under this Act, the provisions of the Code of Criminal Procedure, 1973, shall be applicable to the trial under this Act.	35
Act to have overriding effect.	<b>10.</b> 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 and sexual abuse.	
Power to make rules.	<b>11.</b> The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.	40

## STATEMENT OF OBJECTS AND REASONS

Incest and sexual abuse of family members is a deviant behaviour. Incest and sexual abuse is a social disease. Hardly, a day passes without a case of incest or sexual abuse within family being reported in newspapers and media. What is sad about incest and sexual abuse in India is the lack of seriousness with which the crime is often treated.

The society is in a state of denial that incest and sexual abuse in family does not exist. Victims are often reluctant to report incest or sexual abuse by family member as the offender in most of the cases is a close family member. This problem is made worse by the fact that there are no law adequate to prosecute such criminals. Whereas the bare truth is that it is widespread in our society and only a very small number of cases go reported.

As on today, there is no law on offences relating to incest and sexual abuse within family in India. The incest is treated as rape and if it is an abuse of a boy, it would be covered under section 377 of the Indian Penal Code, 1860. The Courts often let off offenders who raped their daughter as this crime was not recognised as a punishable offence in our country. The judges also sometime do not believe that a girl can be abused by her father.

Many developed countries recognise incest as a serious crime. The United Kingdom has a law on it since 1908, which provides punishment for fourteen years and many of other countries have laws on incest and sexual abuse in family. In the United States also a separate law is there.

There is consistent demand for a definite law on incest and sexual abuse in the family for quite some time. But so far it has not been enacted. It is, therefore, urgently required that a separate and strict law should be enacted to counter this menace in the society.

Hence this Bill.

MAHENDRA MOHAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Government to make rules for carrying out the purposes of the Bill and the rules with relate to matters of detail only. The delegation of legislative power is, therefore, of a normal character.

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*(Shri Mahendra Mohan, M.P.)*