

THE CRIMINAL LAW (AMENDMENT) BILL, 2019

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BILL

to

to further amend the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872

to

provide for effective protection of the Constitutional Rights of all persons vulnerable to sexual exploitation and offences, to punish acts of sexual assault and rape of all persons including but not limited to men and transgender persons in addition to the protection afforded to women under the existing penal laws and punish offenders of any sex or gender thereto;

WHEREAS the Constitution of India guarantees to all persons the Right to Life and Personal Liberty, the Equal Protection of Laws and Prohibits Discrimination on the Ground of Sex and provides a Special Provision for the Advancement of Socially Backward Classes of Citizens;

AND WHEREAS it is deemed necessary and expedient to enact legislation for the protection of these rights guaranteed by the Constitution;

AND WHEREAS the Law Commission of India vide its 172nd Report dated twentieth march two-thousand after considering all aspects had recommended that sexual offences should be made gender neutral;

AND WHEREAS a Bill to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 to provide for gender neutrality for numerous penal sections was introduced in the House of the People in 2012 and was referred to the Parliamentary Standing Committee on Home Affairs for examination followed by the Introduction of the Criminal Law (Amendment) Bill, 2012 in the House of People on the fourth of December, in the sixty-second year of Republic of India preceded by promulgation of the Criminal Law (Amendment) Ordinance, 2013 in the sixty-third year of the Republic of India;

AND WHEREAS after the said Ordinance having been lapsed, there have been a spate of incidents resulting in injuries, psychological trauma and death of persons at the hands of offenders belonging

to either gender or sex on account of various sexual offences & exploitation committed against them;

AND WHEREAS the Hon'ble Supreme Court in the case of National Legal Services Authority v. Union of India, (2014) 5 SCC 438 had afforded recognition to Transgender Persons as the 'Third Gender';

AND WHEREAS the Hon'ble Supreme Court in the case of Criminal Justice Society of India v. Union of India & Ors., W.P. (C) No. 1262/2018 vide its Order dated twelfth november two-thousand eighteen, found merit in the plea of the Petitioner praying for gender neutral rape laws and desired that the Parliament may consider the same;

AND WHEREAS the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, 1948 to give effect to its commitment to protect the human rights of equality & protection from discrimination of all individuals;

AND WHEREAS the Republic of India, being a signatory to and having ratified the aforesaid Declaration, it is expedient to give effect to the said Declaration.

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

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CHAPTER I PRELIMINARY

1. (1) This Bill may be called the Criminal Law (Amendment) Bill, 2018.
- (2) It shall come into force at once on such date as the Central Government may, by notification in the Official Gazette.

CHAPTER II AMENDMENTS TO THE INDIAN PENAL CODE, 1860

2. **Amendment of Section 2** – In the Section 2 of the Indian Penal Code, 1860 (hereinafter referred to as 'the Penal Code') for the purposes of this Code, the following definitions shall be inserted:

(i) **Modesty** is an attribute which attaches to the personality with regard to commonly held belief of morality, decency and integrity of speech and behavior, in any man, woman or a transgender.

3. Amendment of Section 8 – In the Section 8, the word “transgender” shall be inserted after the words “The pronoun ‘he’ and its derivatives are used of any person, whether male, female or transgender.”.

4. Amendment of Section 10 – In the Section 10 of the Penal Code, the words “‘Others’ denotes a human being including but not limited to Transgender Persons of any age” shall be inserted after the words “The word ‘Man’ denotes a male human being of any age, ‘Woman’ denotes a female human being of any age and ‘Others’ denote human being including but are not limited to Transgender of any age.”

5. Amendment of Section 354 – In the title of Section 354 of the Penal Code, for the word ‘woman’, the words ‘any person’ shall be substituted; and for the word ‘her’, the word ‘his’ shall be substituted. In Section 354, for the word ‘woman’, the words ‘person’ shall be substituted; and for the word ‘her’, the words ‘the other person’s’ shall be substituted; and for the word ‘he’, the word ‘it’ shall be substituted.

6. Amendment of Section 354A – In Section 354A of the Penal Code, for the words “A Man”, and ‘Any Man’, the word “Whoever” shall be substituted; and for the word “woman”, the words “any person” shall be substituted.

7. Amendment of Section 354B - In Section 354B of the Penal Code, for the words “Any man” , the word shall be ‘Whoever’ shall be substituted; and for the word “woman”, the word “person” shall; and for the word ‘her’, the words “the person” shall be substituted.

7. Amendment of Section 354C – In Section 354C of the Penal Code, for the words “Any Man”, the word “Whoever” shall be substituted; and for the words “woman” and “she”, the word “any person” shall be substituted.

8. Amendment of Section 354D: In Section 354D of the Penal Code, for the words “Any man”, the word “Whoever” shall be substituted; and for the word “woman”, the words “any person” shall be substituted; and for the words “he/she”, the words “the person” shall be substituted.

9. Amendment of Section 375 of the Penal Code: In the Section 375 of the Penal Code, except for sub-clause (fourthly) and Exception 2., for the words “A Man”, the words “Any Person” shall be substituted; and for the words “a woman”, and the words “any other person” shall be substituted., and for the word “her” the words “the person’s” shall be

substituted; and for the word “she”, the words “the person” shall be substituted. For the words “such woman”, the words “such person” shall be substituted. Furthermore, except for sub-clause (b), for the words “penis”, the word “genital” shall be substituted; and except for Explanation 1., for word “vagina” the word “genital” shall be substituted. Amendment by Insertion of definition of Genital namely “the word ‘genital’ denotes penis and vagina’ in Explanation 1 after the words “For the purposes of this section,” and before the words “‘vagina’ shall also include labia majora”. Amendment by insertion of Explanation 3 namely by inserting the words “Explanation 3.- For the purposes of this Section, the definition of Gender under 8 of the Code shall be applicable wherein the pronoun ‘he’ and its derivatives is used for any person whether man, female or transgender.” before the proviso to Section 375 “Provided that, a person 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.”

10. Insertion of Section 375A of the Penal Code-

375A. Sexual Assault and Punishment of Sexual Assault – “(1) The following acts shall constitute the offence of sexual assault, if any person: -

- (a) intentionally touches the genital, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person, without the other person’s consent except where such touching is carried out for proper hygienic or medical purposes;
- (b) uses words, acts or gestures towards another person which create an unwelcome actionable threat of sexual nature or results in any unwelcome advance;

and shall be punished with rigorous imprisonment that may extend to three years, or with fine, or both.

Explanation 1.— For the purposes of this section, the word ‘genital’ denotes penis and vagina; and “vagina” shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act. ”

Explanation 3. For the purposes of this section, the word ‘touches’ shall mean touching of sexual nature without the consent of the victim and in absence of a reasonable belief that the victim has consented for the same.

11. Amendment of Section 376: In Section 376 of the Penal Code, except for sub-clause (d) and (h) of sub-section 2 and Explanation C., for the word “woman”, the words “any person” shall be substituted; and for the word ‘she’ the words, ‘the person’ shall be substituted.

12. Amendment of Section 376A: In Section 376A of the Penal Code, for the words “the woman”, the words “any person” shall be substituted.

13. Amendment of Section 376C: In Section 376C of the Penal Code, except for sub-clause (c); Explanation 3. and Explanation 4., for the words “any woman”, the words “any person” shall be substituted. Furthermore, in sub-clause (c) for the words ‘his’, the words ‘the person’s’; and for the word ‘him’, the word ‘the person’ shall be substituted.

14. Amendment of Section 376D: In Section 376D of the Penal Code, for the words “ a woman”, the words “any person” shall be substituted.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973.

17. Amendment of Section 154: In section 154 of the Code of Criminal Procedure, 1973 (hereinafter refer to as “The Criminal Code”), to the provisio to sub-section (1) the words “section 375A,” shall be inserted after the words “section 375,” and before the words “section 376,”; and to the second provisio to sub-section (1) the words “section 375A,” shall be inserted after the words “section 354D,” and before the words “sub-section (1) or sub- section (2) of section 376,”.

18. Amendment of Section 161: In Section 161 of the Criminal Code, to the provisio to sub-section (3), the words “section 375A,” shall be inserted after the words “section 354D,” and before the words “section 376,”.

19. Amendment of Section 164: In Section 164 of the Criminal Code, to the provisio to sub-clause (a) of sub-section (5A), the words “section 375A,” shall be inserted after the words “sub-section (2) of section 354C,” and before the words “sub- section (1) or sub- section (2) of section 376,”.

20. In the First Schedule to the Code of Criminal Procedure, under the heading “1.- OFFENCES UNDER THE INDIAN PENAL CODE”,—

(a) after the entries relating to section 375, the following entry shall be inserted, namely:—

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1	2	3	4	5	6
375 A	(1)Sexual Assault.	Rigorous imprisonment with may extend to 3 years or with fine, or both	Cognizable	Bailable	Court of Session.

CHAPTER IV

AMENDMENTS TO INDIAN EVIDENCE ACT,1872

21. Amendment of Section 53A: In Section 53 of the Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”, the words “section 375A,” shall be inserted after the words “section 354C,” and before the words “sub-section (1) or sub-section (2) of section 376,”.

22. Amendment of Section 114A: In Section 114A of the Evidence Act, the words ‘Sexual Assault’ shall be inserted after the words “in a prosecution for” and before the word “rape”; and the word “section 375A,” shall be inserted after the words “rape under” and before the words “clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l) or clause (m) of sub-section (2) of section 376 of the Indian Penal Code..”.

23. Amendment of Section 146: In Section 146 of the Evidence Act, the words “section 375A,” shall be inserted after the words “Provided that in a prosecution for an offence under” and before the words “sub- section (1) or sub-section (2) of section 376,”.

STATEMENT OF OBJECTS AND REASONS

The idea of India, as envisaged by our founding fathers, is of one land embracing many, a nation that may endure differences of caste, creed, colour, conviction, culture, cuisine, costume and custom and yet continue to maintain its composite and pluralistic democracy. It's the underlying seamless web that unites India as a Sovereign, Socialist, Secular, Democratic Republic.

The Constitution of India guarantees to all persons the Right to Life and Personal Liberty, the Equal Protection of Laws and Prohibits Discrimination on the Ground of Sex and provides a Special Provision for the Advancement of Socially Backward Classes of Citizens;

It is imperative to note that transgender persons including homosexuals & bisexuals and men are excluded from the point of view of victims of sexual exploitation, assault or harassment and protection of rape, etcetera, under the Penal Laws of the country despite an impending need for the same.

The intention of the Bill is not to undermine the experiences of women subjected to rape and discrimination. But, as society matures, we must develop empathy for all and

this includes male and transgender rape victims also. We need to break our silence on the issue of male and transgender rape and questioning social constructs that glorify machismo, reduce men and transgender to stereotypes and force them to mask their feelings. This Bill is an endeavor to bring laws relating to sexual exploitation, harassment and assault to be in-step with changing social morality.

Pursuant to the resolutions of the United Nations and the Universal Declaration of Human Rights, 1948, there has been a steady stream of countries that have amended the laws to make sexual offences gender neutral in line with the Universal Declaration of Human Rights, 1948. More than 63 countries have already given effect to gender neutrality in relation to sexual offences by amending their Penal Laws to bring them in conformity with their commitment to the United Nations and the Mankind. It cannot be forgotten that discrimination is the antithesis of equality and recognition of equality in its truest sense will foster the dignity of every individual. The lack of acknowledgment of male rape has impacted the ability of victims to recognize their own victimization.

Therefore, this Bill

K.T.S. TULSI

FINANCIAL MEMORANDUM

The maintenance of convicts and under-trials, under this bill, in the prisons of States and Union Territories will require certain expenses. The expenditure relating to States shall be borne out of the Consolidated Funds of respective States. The expenditure relating to Union territories shall be incurred from the Consolidated Fund of India. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees two hundred crore per annum would be involved from the Consolidated Fund of India. A non-recurring expenditure of about rupees ten crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 31 of the Bill empowers the State Government to make rules for carrying out the purposes of this Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

RAJYA SABHA

Bill

to further amend the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 to provide for effective protection of the Constitutional Rights of all persons vulnerable to sexual exploitation and offences, to punish acts of sexual assault and rape of all persons including but not limited to men and transgender persons in addition to the protection afforded to women under the existing penal laws and punish offenders of any sex or gender thereto;

(Mr. K.T.S Tulsi, M.P.)
