

AS INTRODUCED IN THE RAJYA SABHA  
ON THE 12TH JULY, 2019

**Bill No. XVI of 2019**

THE CRIMINAL LAW (AMENDMENT) BILL, 2019

A

BILL

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

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 13th March, 2000 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 4th December, 2012 preceded by promulgation of the Criminal Law (Amendment) Ordinance, 2013;

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 12th November, 2018 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 Seventieth year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

- |                               |  |   |
|-------------------------------|--|---|
| Short title and commencement. | <b>1.</b> (1) This Bill may be called the Criminal Law (Amendment) Bill, 2019.   | 5 |
|                               | (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. |   |

## CHAPTER II

### AMENDMENTS TO THE INDIAN PENAL CODE

- |  |   |                   |
|--|---|-------------------|
| Amendment of section 8.                  | <b>2.</b> In section 8 of the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code), for the words "male or female", the words 'male, female or transgender' be substituted.  | 10<br>45 of 1860. |
| Insertion of new section 8A.<br>Modesty. | <b>3.</b> After section 8 of the Penal Code, the following section shall be inserted, namely:—<br><br>"8A. Modesty is an attribute which attaches to the personality with regard to commonly held belief of morality, decency and integrity of speech and behaviour, in any man, woman or a transgender." | 15                |
| Substitution of section 10.              | <b>4.</b> For the section 10 of the Penal Code, the following section shall be substituted namely:—   |                   |
| "Man".<br>"Woman".<br>"Transgender".     | "10. The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age; and the word "others" denotes a human being including but not limited to transgender of any age."  | 20                |

5. For section 354 of the Penal Code, the following section shall be substituted, namely:—	Substitution of new section for section 354.
5 “354. Whoever assaults or uses criminal force to any person, intending to outrage or knowing it to be likely that it will thereby outrage the modesty of that person shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.”	Assault or use of criminal force to any person with intent to outrage modesty.
6. In section 354A of the Penal Code:—	Amendment of section 354A.
10 (i) for the words “a man” and “any man who”, the word “whoever” shall be substituted; and	
(ii) for the word “a woman”, the words “any person” shall be substituted, wherever they occur.	
7. For section 354B of the Penal Code, the following section shall be substituted, namely:—	Substitution of new section for section 354B.
15 "354B. Whoever assaults or uses criminal force to any person or abets such act with the intention of disrobing or compelling that person to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, shall also be liable to fine."	Assault or use of criminal force to any person with intent to disrobe.
8. In section 354C of the Penal Code,:—	Amendment of section 354C.
20 (i) for the words "any man", the word "whoever" shall be substituted; and	
(ii) for the word "a woman", the words "any person" shall be substituted, wherever they occur.	
9. For section 354D of the Penal Code, the following section shall be substituted, namely:—	Substitution of new section for section 354D.
"354. (1) Whoever—	Stalking.
25 (i) Follows any person and contacts, or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person; or	
(ii) Monitors the use by any person of the internet, email or any other form of electronic communication, commits the offence of stalking:	
30 Provided that such conduct shall not amount to stalking if whoever pursued it proves that	
(i) it was pursued for purpose of preventing or detecting crime and whoever accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or	
35 (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.	
40 (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."	

Substitution of  
new section  
for section  
375.

**10.** For section 375 of the Penal Code, the following section shall be substituted, namely:—

Rape.

"375. Any person is said to commit rape if that person.

(a) penetrates their genital, to any extent, into the genital, mouth, urethra or anus of any other person or makes that person to do so with them or any other person; or 5

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the genital, the urethra or anus of any other person or makes that person to do so with them or any other person; or

(c) manipulates any part of the body of any other person so as to cause penetration into the genital, urethra, anus or any part of body of such person or makes that person to do so with them or any other person; or 10

(d) applies their mouth to the genital, anus, urethra of any other person or makes that person to do so with them or any other person, under the circumstances falling under any of the following seven description:

First.—Against the other person's will. 15

Secondly.—Without the other person's consent.

Thirdly.—With the other person's consent, when that person's consent has been obtained by putting them or any person in whom they are interested, in fear of death or of hurt.

Fourthly.—With the other person's consent, when a man knows that he is not that person's husband and that the person's consent is given because they believe that he is another man to whom they are or believe themselves to be lawfully married. 20

Fifthly.—With the other person's consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the or the administration by the person personally or through another of any stupefying or unwholesome substance, the other person is unable to understand the nature and consequences of that to which they give consent. 25

Sixthly.—With or without the other person's consent, when they are under eighteen years of age.

Seventhly.—When other person is unable to communicate consent. 30

*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 any other person by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. 35

*Explanation 3.*—For the purposes of this section, the definition of gender as under section 8 of the Penal Code shall be applicable wherein the pronoun 'he' and its derivatives are used for any person, whether man, woman or transgender:

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. 40

*Exception 1.*—A medical procedure 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."

11. After section 375 of the Penal Code, the following section shall be inserted, namely:—

Insertion of new section 375A.

"375A. The following acts shall constitute the offence of sexual assault, if any person:—

Sexual assault and punishment of sexual assault.

5 (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; or

10 (b) uses words, acts or gestures towards another person which creates an unwelcome actionable threat of sexual nature or result 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.

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

20 *Explanation 3.*—For the purposes of this section, the word touches means 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."

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

Substitution of new section for section 376.

25 "376. (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for rape.

(2) Whoever,

(a) being a police officer, commits rape.

30 (i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on any person in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

35 (b) being a public servant, commits rape on any person in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

40 (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on any person in that hospital; or

- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards any person, commits rape on such person; or
- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (j) commits rape, on any person incapable of giving consent; or 5
- (k) being in a position of control or dominance over any person, commits rape on such person; or
- (l) commits rape on any person suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of any person; or 10
- (n) commits rape repeatedly on the same person,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. 15

*Explanation.*—For the purposes of this sub-section,

(a) armed forces means the naval, military and air force and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government; 20

(b) hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) police officer shall have the same meaning as assigned to the expression police under the Police Act, 1861; 25 5 of 1861

(d) women's or children's institution means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(3) Whoever, commits rape on any person under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine: 30

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: 35

Provided further that any fine imposed under this sub-section shall be paid to the victim."

Amendment of section 376A.

**13.** In section 376A of the Penal Code, for the word "woman", the word person shall be substituted, wherever they occur.

Substitution of section 376C.

**14.** For section 376C of the Penal Code, the following section shall be substituted, 40 namely:—

Sexual intercourse by a person in authority.

"376C. Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or 45

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any person either in the person's custody or under the person's or present in the premises, to have sexual intercourse with that person, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

*Explanation 1.*—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

*Explanation 2.*—For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

*Explanation 3.*—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

*Explanation 4.*—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of section 376."

**15.** In section 376D of the Penal Code, for the words "a woman", the words "any person" shall be substituted. Amendment of section 376D.

CHAPTER III

AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

**16.** In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as the Criminal Code), in section 154, in the provisos to sub-section (1), after the word, figure and letter "section 354D", the word, figure and letter "section 375A" shall be inserted, wherever the occur. Amendment of section 154.

**17.** In section 161 of the Criminal Code, in the second proviso to sub-section (3), after the word, figure and letter "section 354D", the word, figure and letter "section 375A" shall be inserted. Amendment of section 161.

**18.** In section 164 of the Criminal Code, in clause (a) of sub-section (5A), after the word, figure and letter "section 354D", the word, figure and letter "section 375A" shall be inserted. Amendment of section 164.

**19.** In the First Schedule to the Criminal Code, under the heading "I.- OFFENCES UNDER THE INDIAN PENAL CODE",— (a) after the entries relating to section 374, the following entry shall be inserted, namely:— Amendment of First Schedule.

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

CHAPTER IV

AMENDMENTS OF THE INDIAN EVIDENCE ACT, 1872

**20.** In section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), after the word, figure and letter "section 354D", the word, figure and letter "section 375A" shall be inserted. Amendment of section 53A.

Amendment  
of section  
114A.

**21.** In section 114A of the Evidence Act, after the words "in a prosecution for", the words "sexual assault under section 375A and" shall be inserted.

Amendment  
of section  
146.

**22.** In section 146 of the Evidence Act, in the proviso, after the words "Provided that in a prosecution for an offence under", the word, figure and letter "section 375A", shall be inserted.

## 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 and bisexuals and men are excluded from the point of view of victims of sexual exploitation, assault or harassment and, from 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

ANNEXURE

EXTRACTS FROM THE INDIAN PENAL CODE, 1860

(45 OF 1860)

	*	*	*	*	*
Punishment of offences committed within India.	<b>2.</b> Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within 5*[India]6****				
	*	*	*	*	*
Gender.	<b>8.</b> The pronoun "he" and its derivatives are used of any person, whether male or female.				
	*	*	*	*	*
“Man”. “Woman”.	<b>10.</b> The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.				
	*	*	*	*	*
Assault or criminal force to woman with intent to outrage her modesty.	<b>354.</b> Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.				
Sexual harassment and punishment for sexual harassment.	<b>354A.</b> (1) A man committing any of the following acts— (i) physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment. (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of subsection (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.				
Assault or use of criminal force to woman with intent to disrobe.	<b>354B.</b> Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.				
Voyeurism.	<b>354C.</b> Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but 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 shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

*Explanation 1.*—For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

*Explanation 2.*—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

**354D.** (1) Any man who,— Stalking.

(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.

\* \* \* \* \*

**375.** [2]A man is said to commit rape if he— Rape.

(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 the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or 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,

under the circumstances falling under any of the following seven descriptions:

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 of 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 reason 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 is 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 the 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.

Punishment  
for rape.

**376.** (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].

(2) Whoever,

(a) being a police officer, commits rape,

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

2. \* \* \* \* \*

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

*Explanation.*—For the purposes of this sub-section,

(a) armed forces means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) police officer shall have the same meaning as assigned to the expression police under the Police Act, 1861 (5 of 1861);

(d) women's or children's institution means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

3. [(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with, rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.]

**376A.** Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

Punishment for causing death or resulting in persistent vegetative state of victim.

\* \* \* \* \*

**376C.** Whoever, being—

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

Sexual intercourse by a person in authority.

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

*Explanation 1.*—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

*Explanation 2.*—For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

*Explanation 3.*—"Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

*Explanation 4.*—The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

Gang rape.

**376D.** Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

Punishment for repeat offenders.

**376E.** Whoever has been previously convicted of an offence punishable under section 376 or section 376A or [section 376AB or section 376D or section 376DA or section 376DB,] and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.]

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CHAPTER XII

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

**154.** (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf: Information in cognizable cases.

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that,—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such persons choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

\* \* \* \* \*

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that Statement made under this sub-section may also be record by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

\* \* \* \* \*

(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, subsection (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such

offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

EXTRACTS FROM THE INDIAN EVIDENCE ACT, 1872

(1 OF 1872)

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**53A.** In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 378DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such persons previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.]

Evidence of character or previous sexual experience not relevant in certain cases.

\* \* \* \*

**114A.** In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1869), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Presumption as to absence of consent in certain prosecution for rape.

*Explanation*—In this section, sexual intercourse shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

\* \* \* \*

**146.** When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend

Questions lawful in cross-examination.

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:

Provided that in a prosecution for an offence under section 376, 2 section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent in an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

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RAJYA SABHA

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**BILL**

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

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