

Bill No. 14 of 2012

THE INCEST OFFENCES BILL, 2012

By

DR. MAHENDRASINH P. CHAUHAN, M.P.

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BILL

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 Sixty-third Year of the Republic of India as follows:—

1. This Act may be called the Incest Offences Act, 2012.

Short title.

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

Definitions.

(a) “prescribed” means prescribed by rules made under this Act; and

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(b) “sexual exploitation” includes fondling, making sexually explicit remarks, making avoidable and unwarranted physical contact, willful touching or patting, forcing

for the use of pornographic material or indulging in molestation by deceit or by threatening.

(2) the words and expressions used herein 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. 5

Incest offences.

3. (1) Whoever knowingly engages or attempts to engage in sexual intercourse with a person, who is his close family member, shall be guilty of an offence of incest and shall be punished with rigorous imprisonment for a term which shall be not less than ten years and shall also be liable to fine:

Provided that if the close family member is a child under eighteen years of age, the offender shall be punished with life imprisonment. 10

(2) Whoever knowingly sexually exploits or attempts to sexually exploit any person, who is his close family member, shall be punished with rigorous imprisonment for a term which shall be not less than five years but which may extend upto seven years, and shall also be liable to fine. 15

(3) For the purposes of sub-sections (1) and (2), the Court shall not take cognizance of the fact that the act or attempt of sexual intercourse with or sexual exploitation of the close family member has happened with the consent of that member.

Explanation.—For the purposes of this section, "close family members" means the following persons:— 20

(a) a parent including step parent or grandparent, of either sex;

(b) a child or other lineal descendent; and

(c) a brother or sister including half-brother or half-sister; and

(d) a guardian, uncle, aunt or any other close relative.

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. 25

Proceedings to be in-camera.

5. The proceedings under this Act shall be held in camera, if it is so desired by the victim, by a Special Court and, as far as possible, before a women magistrate.

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 parents or guardian or near relatives or social worker of the locality, as the case may be. 30

Offences to be cognizable and non-bailable.

7. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be cognizable and non-bailable. 2 of 1974. 35

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.

Provisions of the Code of Criminal Procedure to be applied.

9. Save as otherwise provided under this Act, the provisions of the Code of Criminal Procedure, 1973 shall be applicable to any trial under this Act. 40 2 of 1974.

Power to remove difficulties.

10. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not

inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of three years from the commencement of this Act.

5 **11.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Act to have overriding effect.

12. (1) The Central Government may, by notification in the Gazette of India, make rules for carrying out the purposes of this Act. Power to make rules.

10 (2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modifications in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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 related to the abuse of a boy, it is covered under section 377 of the Indian Penal Code. 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. Most of the cases of incest offences go unreported in India because the family is almost considered sacred and any act of child 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 family members 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 a law to govern offences of incest since 1908, which provides punishment with imprisonment up to a period of fourteen years. Such laws also exist in Canada, Germany, Hungary, Ireland, Israel, Italy, the Netherlands, United States, Brazil and in a host of other countries. Incest is more common in India than in other countries as there is no law to govern such offences in our country. Child 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 was amended to include policemen and hospital and prison staff who abuse women in their custody and the issue of incest—where a parent or relative abuses a child in his or her care—was overlooked. It is difficult to fathom the agony and trauma of a child who has been a victim of molestation or incest offence by their known or family members. 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, therefore, high time that a strict and separate law is enacted to counter incest offences in our society.

Hence this Bill.

NEW DELHI;
November 16, 2011.

MAHENDRASINH P. CHAUHAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

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

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(Dr. Mahendrasinh P. Chauhan, M.P.)