

5. Amendments to the laws relating to rape and related provisions

Introduction

The need for a new law on sexual assault was felt as the present law does not define and reflect the various kinds of sexual assault that women are subjected to in our country. The Supreme Court in Sakshi vs. union of India had recognized the inadequacies in the law relating to rape and had suggested that the legislature should bring about the required changes.

The law commission had examined the entire law relating to rape and sexual assault in IPC and suggested a complete overhauling of the law.

Bill, drafted by Ms Kirti Singh advocate and legal convener of AIDWA, is based on 172nd report of the Law Commission to amend the laws relating to sexual assault in Section 375, 376, 354 and 509 IPC and the relevant sections of the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872. The recommendations are based on the national consultation on the issue organized by the national commission for women

I Short title and extent: -

1. This act will be called the Criminal Law Amendment Act 2006.
2. It extends to the whole of India except the State of Jammu and Kashmir.

II Changes in the Indian Penal Code, 1860

1. Substitution of existing section 375 of the IPC recommended – the existing section 375 be substituted by the following:

“375. Sexual Assault: Sexual assault means –

- (a) The introduction (to any extent) by a man of his penis, into the vagina (which term shall include the labia majora), the anus or urethra or mouth of any woman or child–
- (b) the introduction to any extent by a man of an object or a part of the body (other than the penis) into the vagina (which term shall include the labia majora) or anus or urethra of a woman
- (c) the introduction to any extent by a person of an object or a part of the body (other than the penis) into the vagina (which term shall include the labia majora) or anus or urethra of a child.
- (d) manipulating any part of the body of a child so as to cause penetration of the vagina (which term shall include labia majora) anus or the urethra of the offender by any part of the child's body;

In circumstances falling under any of the six following descriptions:

Firstly – Against the complainant's will.

Secondly – Without the complainant's consent.

Thirdly – With the complainant's consent when such consent has been obtained by putting her or any person in whom the complainant is interested, in fear of death or hurt.

Fourthly – With the complainant's consent, when the man knows that he is not the husband of such complainant and that the complainant's consent is given because the complainant

believes that the offender is another man to whom the complainant is or believes herself to be lawfully married.

Fifthly – With the consent of the complainant, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the complainant is unable to understand the nature and consequences of that to which such complainant gives consent.

Sixthly – With or without the complainant's consent, when such complainant is under eighteen years of age.

Provided that consent shall be a valid defence if the complainant is between sixteen years and eighteen years of age and the accused Person is not more than five years older.

Explanation: Consent means the unequivocal voluntary agreement by a person to engage in the sexual activity in question.

2. Recasting of section 376 of the IPC recommended: - Section 376 shall be recast as follows:

“376. Punishment for sexual assault – 1 (a) whoever, except in the cases provided for by sub-section (2) commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to 10 years and shall also be liable to fine.

(b) If the sexual assault is committed by a person in a position of trust or authority towards the complainant or by a near relative of the complainant, he/she shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine.

- (2) Whoever,-
- (a) Being a police officer commits sexual assault-
 - (i) Within the limits of the police station to which he is appointed; or
 - (ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or
 - (iii) On a woman or minor in his custody or in the custody of a police officer subordinate to him; or
 - (iv) While such person is in uniform.

 - (b) Being a public servant, takes advantage of his official position and commits sexual assault on a woman or minor in his custody as such public servant or in the custody of a public servant subordinate to him; or

 - (c) 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 takes advantage of his official position and commits sexual assault on any woman or minor inmate of such jail, remand home, place or institution; or

 - (d) Being on the management or the staff of a hospital, takes advantage of his official position and commits sexual assault on a woman or minor in that hospital; or

 - (e) commits sexual assault on a pregnant woman, or

 - (f) commits sexual assault on a person when such person is under sixteen years of age; or

 - (g) commits gang sexual assault, or

 - (h) being in a position of economic or social or political dominance commits sexual assault on a woman or minor under such dominance, or

- (i) commits sexual assault on a person suffering from mental and physical disability, or
- (j) while committing sexual assault causes grievous bodily harm, maims disfigures or endangers the life of a woman or minor
- (k) commits persistent sexual assault

Shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.

Explanation 1. – “Minor ” in this sub-section, Section 376 C, and 376 D (2), (3) means a person below the age of sixteen years.”

Explanation 2 -Where a person is subjected to sexual assault by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang sexual assault within the meaning of this sub-section.

Explanation 3. – “Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected women or children or a widows’ home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Explanation 4. – “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.”

Modification in section 376A of the IPC recommended :- Section 376A shall read as follows :

II 3 Deletion of Section 376 A - The existing Section 376 A is hereby deleted.

II 4 The existing Sections 376 B, C & D will become Section 376 A, Section 376 B and Section 376 C. new provision in sec 376E

“376A. Sexual intercourse by public servant with a woman in his custody. Whoever, being a public servant, takes advantage of his official position and induces or seduces a woman, who is in his custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Explanation: “Sexual intercourse” in this section and sections 376B and 376C shall mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 shall also be applicable.”

“376B. Sexual intercourse by superintendent of jail, remand home, etc. Whoever, being the 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 of a women’s or children’s institution takes advantage of his her official position and induces or seduces any inmate of such jail, remand home, place or institution to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years shall also be liable to fine.

Explanation 1. – “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 he/she can exercise any authority or control over its inmates.

Explanation 2. – The expression “Women’s or children’s institution” shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

376C. Sexual intercourse by any member of the management or staff of a hospital with any woman or minor in that hospital. – Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his\her position and has sexual intercourse with a woman or minor in that hospital, such sexual intercourse not amounting to the

offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Explanation: - The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376."

II 5 *Insertion of new sections 376D recommended.* – A new section, namely section 376D be inserted in the IPC in the following terms:

"376D.Unlawful sexual contact. - (1) Any man who with a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a woman, without the consent of such woman, shall be punished with simple imprisonment for a term which may extend to three years or with fine or with both.

Provided that, if the man is related to the woman, he shall be punished with imprisonment of either description for a term which may extend to 7 years and with fine "

2(a) Whoever, with a sexual purpose, touches, directly or indirectly, with a part of the body or with an object any part of the body of a minor, or

(b) Whoever, with a Sexual purpose, invites, counsels or incites a minor to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites or the body of the minor.

Shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine.

(3) Whoever being in a position of trust or authority towards a minor or being a person with whom the minor is in a relationship of dependency,

(a) touches, directly or indirectly, with a sexual purpose, with a part of the body or with an object, any part of the body of such minor or

(b) With a sexual purpose, invites, counsels or incites a minor to touch, directly or indirectly, with a part of the body or with an

object, the body of any person, including the body of the person who so invites, counsels or incites or the body of the minor.

Shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

II 6 Deletion of Section 354 IPC – Section 354 of IPC is hereby deleted.

II 7 Deletion of Section 377. –Section 377, IPC shall be deleted and a new Section 377 shall be inserted as under: --

"S.377.Any adult person who has sexual intercourse with another adult person against the will and without the consent of the other adult person shall be punishable by imprisonment of either description up to seven years and with fine.

Explanation 1:Penetration is necessary to constitute an offence under this section

Explanation 2: Penetration of the anus or mouth by the penis or penetration by an object or part of the body into the anus or vagina is necessary to constitute the sexual intercourse necessary for the offence described in this section.

Explanation 3: No consent is obtained for the purpose of the above section if it has been obtained by coercion or under undue influence or if the person giving the consent suffers from intoxication or unsoundness of mind or mistake as to the identity of the offender.

II 8 Amendment of section 509, IPC.- The existing section 509 be amended as follows :

"509.Word, gesture or act with a sexual purpose or with the intention to insult a woman - Whoever, with a sexual purpose or with the intention to insult any woman, utters any word, makes any sound or gesture, or exhibits any object or a part of the body intending that such word or

sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

II 9 New sections 509A and 509 B, IPC. - New sections 509 A and 509 B & 509C to be added in the IPC in the following terms.

509A (i) Whoever, with a sexual purpose utters any word, makes any sound or gesture or exhibits any object or a part of the body intending that such word or sound shall be heard or that such gesture or object shall be seen by a minor, or

(ii)Whoever makes a minor witness any sexual activity,

Shall be punished with an imprisonment of either description for a term which may extend to 5years but shall not be less than 3 years.

Explanation1." Minor " for the purpose of this section will be any person under the age of sixteen years.

509B. “Any person who stalks a woman with the intention to cause,(a) serious harm or injury to that woman or a third person or (b) apprehension or fear of serious harm or injury to that woman or to a third person shall be punished with imprisonment of either description which may extend to 7 years or with fine or with both.”

Explanation 1: For the purpose of this section a person shall be taken to stalk a woman if, on at least 3 occasions, that person

(a) follows or approaches the woman or

(b) loiters near, watches, approaches or enters a place where the woman resides ,works or, visits or

(c) keeps the woman under surveillance or

- (d) interferes with the property in possession of the woman or
- (e) gives or sends offensive material to the woman or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the woman or
- (f) Acts covertly in a manner that could reasonably be expected to arouse apprehension or fear in the woman or
- (g) Engages in conduct amounting to intimidation, or an offence under Section 509

Explanation 2. 'harm' means physical harm as well as mental harm.

Section 509C - Other forms of Sexual Harassment" Whoever by means of a telecommunication Device or by any other electronic form including the Internet knowingly makes, creates, or solicits, or initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass or stalk another person/persons shall be punished with imprisonment of either description which may extend to 7 years or with fine or with both."

II 10 New section 166A, IPC.- A new section 166A be introduced in the IPC in the following terms :

"166A. Whoever, being a public servant –

- (a) Knowingly disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or
- (b) Knowingly disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

III Changes recommended in the Code of Criminal Procedure, 1973.

III 1 Insertion of sub-sections (3) and (4) in section 160 of the code of Criminal Procedure, 1973. – The following two sub-sections be inserted in section 160 of the code of Criminal Procedure:

“(3) Where under this chapter, the statement of a female is to be recorded either as first information of an offence or in the course of an investigation into an offence and she is a person against whom an offence under sections, 375, 376, 376A, 376B, 376C, 376D, 377 or 509 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded by a female police officer and in case a female police officer is not available, by a female government servant available in the vicinity and in case a female government servant is also not available, by a female authorised by an organisation interested in the welfare of women or children.

(4) Where in any case none of the alternatives mentioned in sub-section (3) can be followed for the reason that no female police officer or female government servant or a female authorised by an organisation interested in the welfare of women and children is available, the officer in charge of the police station shall, after recording the reasons in writing, proceed with the recording of the statement of such female victim in the presence of a relative of the victim.”

III 2 Modification of the proviso to sub-section (1) of section 160. – The age mentioned in the proviso to sub-section (1) of section 160 should be raised from fifteen years to sixteen years.

III 3 Substitution of the proviso to sub-section (1) of section 160. – In addition to the above modification, the proviso to sub-section (1) of section 160 be substituted to read as follows:

“Provided that no male person under the age of 16 years or woman shall

be required to attend at any place other than the place in which such male

person or woman resides. While recording the statement, a relative or a friend or a social worker of the choice of the person whose statement is being recorded shall be allowed to remain present.

III 4 Insertion of a new section, namely, section 164A in the code of Criminal Procedure, 1973. – The following section 164A be inserted in the code of Criminal Procedure:

“164A.(1) Where, during the stage when any offence under section 376, Section 376A, section 376B, section 376D, is under investigation and it is proposed to get the victim examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the complainant or of some person competent to give such consent on his/her behalf. In all cases, the complainant should be sent for such examination without any delay.

Provided that if the complainant happens to be a female, the medical examination shall be conducted by a female medical officer, as far as possible.

- (2) The registered medical practitioner to whom the complainant is forwarded shall without delay examine the person and prepare a report specifically recording the result of his/her examination and giving the following details:
 - (i) The name and address of the complainant and the person by whom he/she was brought,
 - (ii) the age of the complainant,
 - (iii) marks of injuries, if any, on the person of the complainant,
 - (iv) general mental condition of the complainant and
 - (v) Other material particulars, in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.

- (4) The report shall specifically record that the consent of the complainant or of some person competent to give such consent on his/her behalf to such examination had been obtained.
- (5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- (6) Nothing in this section shall be construed as rendering lawful any examination without the consent of the complainant or any person competent to give such consent on his/her behalf.”

III 5 Insertion of new sections 53A in the Code of Criminal Procedure -

The proposed section 53A shall read as follows:

- “53A.(1) When a person accused of any of the offences under sections 376, 376A, 376B, 376C, 376D or 377 or of an attempt to commit any of the said offences, is arrested and an examination of his/her person is to be made under this section, he/she shall be sent without delay to the registered medical practitioner by whom he/she is to be examined.
- (2) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars:
 - (h)the name and address of the accused and the person by whom he was brought,
 - (ii)the age of the accused,
 - (iii)marks of injury, if any, on the person of the accused, and
 - (iv)Other material particulars in reasonable detail.
 - (3) The report shall state precisely the reasons for each conclusion arrived at.

- (4) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.”

(Paragraph 4.6.2, supra)

III 6 Consequential amendments in the First Schedule to the Code of Criminal Procedure, 1973 recommended. – Consequent upon the proposed amendments in the IPC, the existing entries in respect of sections 376C to 376D, 377 and 509 will have to be substituted and entry in respect of new section 376E, IPC will have to be inserted as under:

III 7 Amendment of sub-section (6) of section 198 of the code of Criminal Procedure, 1973. – Consequent upon proposed amendment of section 376 of IPC, sub-section (6) of section 198 CrPC shall be amended in the following manner: -

The words “sexual intercourse” shall be substituted by the words “sexual assault” and the word “fifteen” shall be substituted by the word “sixteen”.

III 8 Section 164 of the Cr.P.C. shall be amended as follows:

The present sub section 1 will be read as 1 (a) and a new sub section 1 (b) will be added to the following effect: -

- (b) Any statement made under sub section (a) by a young person under the age of eighteen years who is a victim of sexual assault under Section 375, 376 or Section 509 shall, except in exceptional circumstances be video taped.

III 9 Amendment of section 273, Code of Criminal Procedure, 1973. – A proviso to the following effect be added under section 273 above the Explanation clause therein:

Provided that where the evidence of a person below eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court shall, take appropriate measures to ensure that such person is not confronted by the accused. These measures may include video taping the evidence of the complainant in a place to be decided by the Court, or placing a screen between the complainant and the accused and others. Provided further that the cross examination of a young person below eighteen years shall be carried out by the court on questions put to it by the accused or his counsel.

IV Changes recommended in the Indian Evidence Act, 1872

IV 1 Amendment of Section 45 of the Evidence Act, -- Section 45 of the Indian Evidence Act will be amended to add a clause (d) under Illustrations as under:

" Where the question is whether a child who is unable to talk of sexual abuse has been subjected to sexual abuse as defined in S.375 IPC or S. 376 IPC or elsewhere the opinion of an expert that the symptoms and behaviour of the child are such that they show that the child has suffered from such abuse are relevant."

IV 2 Modification of Section 114A of the Evidence Act. Section 114A be modified to read as follows:

“114A.Presumption as to absence of consent in certain prosecutions for sexual assault. – In a prosecution for sexual assault under (a) or clause (b) or clause(c) or clause (d) or clause (e) or clause (g) or clause (h) (i) or (j) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person alleged to have been sexually assaulted and such other person states in his/her evidence before the court that he/she did not consent, the court shall presume that he/she did not consent.

Explanation: “Sexual intercourse” in this section and sections 376A to 376C shall mean any of the acts mentioned in clause (a) to (e) of section 375. Explanation to section 375 shall also be applicable.”

IV 3 Deletion of clause (4) of section 155 of the Evidence Act.- Clause (4) of section 155 of the Evidence Act is hereby deleted.

IV 4 Amendments in proposed section 53A, Evidence Act.- After section 53, the following section be inserted:

“53A. In a prosecution for an offence under section 376, 376A, 376B, 376C, 376D or 376E 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 his/her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”

IV 5 Insertion of clause (4) in section 146 of the Evidence Act– In section 146 of the Evidence Act, the following clause shall be added after clause (3):

“(4) In a prosecution for an offence under section 376, 376A, 376B, 376C or 376D or for attempt to commit any such offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to his/her general immoral character, or as to his/her previous sexual experience with any person for proving such consent or the quality of consent.”

IV 6 A new section will be inserted in the Indian Evidence Act to make the video taped or other statement of the minor complainant of sexual assault admissible in evidence as follows:

“In any trial or inquiry related to the sexual assault of a minor under Section 375, 376 and 509 of the Indian Penal Code, the video taped

statement of the minor made to a Magistrate is admissible in evidence if the complainant while testifying adopts the contents of the video taping.”

Section 309 Crpc – sub-section (1) of section 309 a proviso to be added that “provided that where the inquiry or the trial relates to an offence under section 376 to 376 E (both inclusive) of the IPC the judgment shall, as far as possible be delivered within a period of 6 months from the date of commencement of the trial