

THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013

AN

ORDINANCE

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

Promulgated by the President of in the Sixty-fourth Year of the Republic of India.

WHEREAS Parliament is not in Session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause(1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: -

CHAPTER I

PRELIMINARY

Short title and commencement.--

- (1) This Ordinance may be called the Criminal Law (Amendment) Ordinance, 2013.
- (2) It shall come into force at once.

CHAPTER II

AMENDMENTS TO THE INDIAN PENAL CODE

In the end of clause secondly of section 100 of the Indian Penal Code (hereafter in this Chapter referred to as the Penal Code) the words", which shall include a crime punishable under Section 326A of the Indian Penal Code;" shall be inserted.

Insertion new section 166A.--

After section 166 of the Penal Code (45 of 1860), the following section shall be inserted, namely: -

"166A. Public servant disobeying direction under law.--

Whoever, being a public servant, -

- (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
- (b) knowingly disobeys, to the prejudice of any person, any other direction of

the law regulating the manner in which he shall conduct such investigation,

(c) in relation to an offence punishable under Section 354, Section 354A, Section 354B, Section 354 C(2), Section 376(1), Section 376(2), Section 376 (3), Section 376A, Section 376B(1), Section 376B(2), Section 376C, Section 376D or Section 376F does not record information given to him under Section 154(1) of the Code of Criminal Procedure

shall be punished with for a term which may extend to one year or with fine or with both."

Insertion of new sections 326A and 326B.--

After section 326 of the Penal Code, the following sections shall be inserted, namely: -

'326A. Voluntarily causing grievous hurt by use of acid etc.,--Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means to achieve a similar purpose and effect, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, 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 with fine which may extend to ten lakh rupees.

Provided that any fine imposed under this section shall be given to the person on whom acid was thrown or to whom acid was administered.

Explanation 1: For the purposes of this section, permanent or partial damage or deformity shall not be required to be irreversible.

326B. Voluntarily throwing or attempting to throw acid.--Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means to achieve the purpose of causing permanent or partial damage to any part or parts of the body of the person, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

Explanation 1: --For the purposes of sections 326A and 326B, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2: "Permanent or PartialDamage" includes deformity, or maiming, or

burning, or disfiguring, or disabling any part or parts of the body of a person. Irreversibility will not be a precondition for damage or deformity to be considered as permanent or partial damage.

Amendment of section 354.--

Section 354 of the Indian Penal Code shall be replaced by the following:

"354. Sexual Assault and Punishment for sexual assault.--

(1) The following acts shall constitute the offence of sexual assault: -

(a) Intentional touching of another person when such act of touching is of a sexual nature and is without the recipient's consent;

(b) Using words, acts or gestures towards or in the presence of another person which create an unwelcome threat of a sexual nature or result in an unwelcome advance.

Explanation: For the purposes of this section, 'acts' shall include the display and dissemination of pornographic material.

(2) Any person who commits the offence described in sub-clause (a) of sub-section (1) above shall be punishable with rigorous imprisonment that may extend to five years, or with fine, or both.

(3) Any person who commits the offence described in sub-clause (b) of sub-section (1) above shall be punishable with imprisonment of either description that may extend to one year, or with fine, or both.

354A. Assault or use of criminal force to woman with intent to disrobe her.--

Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, 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.

354B. Voyeurism.--Whoever watches 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 shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but may extend to three years, and with 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 may extend to seven years, and also with fine.

Explanation 1: 'Private act', in the context of this provision, is an act carried out in a

place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2: If the victim consented to capture of the images or other material, but not to their dissemination to third persons, such dissemination shall be considered an offence within this section.

354C (1) - Stalking: Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking.

Provided that the course of conduct will not amount to stalking if the person who pursued it shows:

- i. that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or,
- ii. that it was pursued under any enactment or rule of law, or to comply with any condition or requirement imposed by any person under any enactment; or,
- iii. that in the particular circumstances the pursuit of the course of conduct was reasonable

(2) Whoever commits the offence described in Section 354C(1) shall be punished 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.

Section 370 shall be replaced with new Sections 370 and 370A, defining and punishing the offence of trafficking, and the offence of employing a trafficked person, respectively.

Section 370: Trafficking of a Person

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers or (e) receives, a person or persons, by

Firstly, using threats, or

Secondly, using force, or any other form of coercion, or

Thirdly, by abduction, or

Fourthly, by practising fraud, or deception, or

Fifthly, by abuse of power, or

Sixthly, by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

Sixthly, by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation I: The expression 'exploitation' shall include, prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation II: The consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and also with fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and also with fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) When a public servant or a police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the rest of that person's natural life.

(7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the rest of that person's natural life.

Section 370A: Employing a Trafficked person

(1) Whoever, despite knowing, or having a reason to believe that a child has been trafficked, employs such child in any form of labour, commits the offence of forced labour of a trafficked child, and shall be punished with rigorous imprisonment for a term which shall not be less than five years but may extend to seven years, and with a fine.

fact, to be regarded as consenting to the sexual activity.

Exception. - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault.

376. Punishment for sexual assault.--(1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life 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 such police officer is appointed; or

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

(iii) on a person 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 sexual assault on a 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 is in the area by virtue of deployment by the Central or a State government, and commits rape; 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 sexual assault 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 sexual assault on a patient in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or

authority towards, the person assaulted, commits sexual assault on such person; or

(g) commits sexual assault on a woman knowing her to be pregnant; or

(h) commits sexual assault on a person when such person is under eighteen years of age; or

(i) commits sexual assault, where the person assaulted is incapable of giving consent including in circumstances defined under Section 375 Thirdly, Fifthly and Sixthly. or

(j) being in a position of economic or social dominance, commits sexual assault on a person under such dominance; or

(k) commits sexual assault on a person suffering from mental or physical disability; or

(l) while committing sexual assault causes grievous bodily harm or maims or disfigures or endangers the life of a person; or

(m) commits persistent sexual assault,

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 and shall also be liable to fine.

Explanation 1.- For the purposes of this sub-section,-

(a) "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;

(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) In sub-clause (a) of clause (2), "police officer" shall have the same meaning as the word "Police" under The Police Act, 1861.

(d) For the purposes of this section, 'armed forces' means the naval, military and air forces and includes any member of the Armed Forces enumerated in the Schedule, including the paramilitary forces and any auxiliary forces that are under the control of the Central or State Government.

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

the meaning of this sub-section.

(3) whoever, commits an offence punishable under Section 376(1) or Section 376(2) and in the course of such commission inflicts an injury which causes the death of the person or causes the person 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 may be for life, which shall mean the rest of that person's natural life, or with death.

376A. Sexual assault by husband upon his wife during separation.--Whoever commits sexual assault on his own wife, who is living separately under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description, for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine.

376B. Sexual intercourse by a person in authority.--Whoever, -

- (a) being 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
- (d) being on the management of a hospital or being on the staff of a hospital;

and abuses such position or fiduciary relationship to induce or seduce any person either in the first mentioned person's custody or under the first mentioned person's charge or present in the premises and has sexual intercourse with that person, such sexual intercourse not amounting to the offence of sexual assault, 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 (c) of section 375,

Explanation 2. - For the purposes of this section, Explanations I and II 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 1 to sub-section (2) of section 376.'

376C. Gang rape

Where a person is raped by one or more in a group of persons acting in furtherance of a common intention, each of these persons shall be deemed to have committed the offence of gang rape, regardless of their gender, and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall also be liable to pay compensation to the victim which shall be adequate to meet at least the medical expenses incurred by the victim.

Explanation: For the purposes of this section, imprisonment for life shall mean imprisonment for the rest of that person's natural life.

376D. Whoever commits gang rape, and in the course of such commission inflicts injury upon the victim which causes the victim's death or causes the victim to be in a persistent vegetative state, shall be punished with imprisonment for life. or with death

Explanation: For the purpose of this section "imprisonment for life" shall mean imprisonment for the rest of that person's natural life.

376E: Punishment for repeat offenders: Whoever has been previously convicted of an offence punishable under Section 376 (1), or Section 376 (2), or Section 376(3), or Section 376 A, or Section 376B(1), or Section 376B(2) or Section 376C or Section 376D and is subsequently convicted of an offence punishable under any of these sections shall be punished with imprisonment for life, which shall mean the rest of that person's natural life.

Amendment of section 509.--

In section 509 of the Penal code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine which may not be less than one thousand rupees" shall be substituted.

CHAPTER III

AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE, 1973

Section 54A:

The following proviso shall be added to Section 54A:

"Provided that, if the person identifying the arrestee is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the arrestee using methods that the person is comfortable with.

Provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process may be video graphed.

Amendment of section 154.--

In section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) (hereafter in this chapter referred to as the Code of Criminal Procedure), after subsection (1), the following proviso shall be inserted, namely: -

"Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 375, section 376, section 376A, section 376B, section 376 C, section 376D and section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker, and/or women's organization"

Provided further that:

(1) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354 C, Section 376(1), Section 376(2), Section 376A, Section 376B(1) or Section 376C of the Indian Penal Code 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 person's choice, in the presence of a special educator or an interpreter, as the case may be.

(2) The recording of such information may be videographed.

(3) The police officer shall get the statement of the person recorded by a Judicial Magistrate under Section 164(5)(a) of this Code as soon as possible.

Amendment of section 160.--

In section 160 of the Code of Criminal Procedure in sub-section (1), in the proviso, for the words "under the age of fifteen years or woman", the words "under the age of eighteen years or above the age of sixty-five years or a woman or a physically or mentally disabled person" shall be substituted.

Amendment of section 161.--

In section 161 of the Code of Criminal Procedure, after sub-section(3), the following proviso shall be inserted, namely: -

"Provided that the statement of a woman against whom an offence under section 354, section 375, section 376, section 376A, section 376B and section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, as far as possible, by a woman police officer".

Amendment to Section 164 Cr.P.C.

Sub-sections (5)(a) and (5)(b) shall be added. It shall read as follows:

Section 164(5)(a):

In cases punishable under Section 354, Section 354A, Section 354B, Section 354C(2), Section 376(1), Section 376(2), Section 376A, Section 376B(1), or Section 376C of the Indian Penal Code of 1860, a Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5) of this Section, as soon as the offence is brought to the attention of the police.

Provided that if the person making the statement is temporarily or permanently physically or mentally 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 physically or mentally disabled, the statement made by the person, with the assistance of an interpreter or special educator, may be video graphed.

Section 164(5)(b)

A statement recorded under Section 164(5)(a) of a person who is temporarily or permanently physically or mentally disabled shall be considered a statement in lieu of examination-in-chief, as prescribed in Section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for re-asserting the same at the time of trial.

Insertion of Section 198B:

No Court shall take cognizance of an offence under Section 376(1) of the Indian Penal Code where the persons are in a marital relationship, except upon a police report of the facts which constitute an offence or a complaint having been filed or made by the wife against the accused husband.

Amendment of section 273.--

In section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely: -

"Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to sexual assault or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused."

Amendment of section 327.--

In section 327 of the Code of Criminal Procedure (45 of 1860), in sub-section (2), for the words, figures and letters "trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code", (45 of 1860), the words, figures and letters "trial of sexual assault or an offence under section 376, section 376A or section 376B of the Indian Penal Code", shall be substituted.

Amendment of First Schedule.--

In the First Schedule to the Code of Criminal Procedure, under the heading

"1.-OFFENCES UNDER THE INDIAN PENAL CODE",-

(i) after the entries relating to section 166, the following entries shall be inserted, namely: -

1	2	3	4	5	6
"166A	Public Servant disobeying direction under law	Imprisonment for one year or fine or with both	Non-cognizable	Bailable	Magistrate of the first class";

(ii) after the entries relating to section 326, the following entries shall be inserted, namely: -

1	2	3	4	5	6
"326A	Hurt by throwing or administering acid.	Imprisonment for not less than ten years or imprisonment for life and fine of 10 lakh rupees.	Cognizable	Non-bailable	Court of Session.

1	2	3	4	5	6
326B	Attempt to throw or administer acid.	Imprisonment for five years but which may extend to seven years and fine.	Cognizable	Non-bailable	Court of Session.

(iii) for the entries relating to sections 376, 376A, 376B, 376C and 376D, the following entries shall be substituted, namely: -

1	2	3	4	5	6
376	(1) Sexual assault.	Imprisonment for life or imprisonment for not less than seven years and fine	Cognizable	Non-bailable	Court of Session.
	(2) Sexual assault by a police officer or by a public servant or by a person being on the management or on	Imprisonment for life or rigorous imprisonment for not less than 10 years and fine the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management	Cognizable	Non-bailable	Court of Session.

		or on the staff of a hospital, and sexual assault committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted.			
376A	Sexual assault by the husband upon his wife during separation	Imprisonment for not less than 2 years extendable to 7 years and fine.	Cognizable (but only on the complaint of the victim)	Non-bailable	Court of Session.
376B	Sexual intercourse by a person in authority	Imprisonment for not less than 5 years extendable to 10 years and fine.	Cognizable	Non-bailable	Court of Session."

(iv) in entries relating to section 354, in the column 3, for the words "imprisonment for 2 years, or fine, or both" the words "imprisonment of either description for a term of one year which may extend to 5 years and fine of 1000 rupees" shall be substituted.

(v) entry relating to section 509, in column 3, for the words, "Simple imprisonment for one year, or fine, or both," the words, "Simple imprisonment for 3 years and fine of 1000 rupees" shall be substituted.

CHAPTER IV

AMENDMENT OF THE INDIAN EVIDENCE ACT, 1872

Insertion of new section 53A.--

After section 53 of the Indian Evidence Act, 1872 (1 of 1872) (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely: -

"53A. Evidence of character or previous sexual experience not relevant in certain cases.-- In a prosecution for an offence under section 354, Section 354A, Section 354B, Section 354C, Section 376(1), Section 376(2), Section 376A, Section 376B(1) or Section 376C 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 his or her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent".

Substitution of new section for section 114A.--

For section 114A of the Evidence Act, the following shall be substituted, namely: -

'114A. Presumption as to the absence of consent in certain prosecution for sexual assault.--In a prosecution for sexual assault under clause (a) or clause (b) or clause(c) or clause(d) or clause(e) or clause (f) or clause(g) or clause (h) or clause (i) or clause (j) or clause (k) or clause (l) or clause (m) 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 that person's evidence before the court that she or he did not consent, the court shall presume that she or he did not consent.

Explanation.- In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (c) of section 375 of the Indian Penal Code (45 of 1860).

Amendment to Section 119

In section 119 of the Act the term "dumb witness" shall be substituted by "persons who are unable to communicate verbally."

The following proviso shall be added:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of a special educator or interpreter in recording the statement, and such statement may be videographed.

Amendment of section 146.--

In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted,

namely: -

"Provided that in a prosecution for an offence under section 376(1), section 376(2), section 376A, section 376B(1), section 376C of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to his or her general immoral character, or as to his or her previous sexual experience with any person for proving such consent or the quality of consent."