

The Criminal Law (Amendment) Bill, 2018

I. Background and Salient Feature

In light of the recent spate of heinous sexual attacks against girls across the country, there has been increasing public outrage over the issues of sexual assault against minors, and against females in particular. Continuous demands have been made from various sections of the society to make penal provisions more effective and ensure speedy trial of such cases.

To take an immediate action and make necessary effort, the Union Government promulgated The Criminal Law (Amendment) Ordinance, 2018 on April 21, 2018. Further, now the Minister of State (Home Affairs) Mr. Kiren Rijiju introduced The Criminal Law (Amendment) Bill 2018 in Lok Sabha on July 23rd 2018 to replace the Ordinance. It aims to amend the Indian Penal Code, 1860, Indian Evidence Act, 1872, the Code of Criminal procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012 related to rape of minor girls, with the objective of increasing protection of the girl child against sexual assault. The main introduction in this Bill is the increase in the quantum of punishment, with the **death penalty allowed for those convicted of rape or gang-rape of women under the ages of 12 or 16**. Some important key changes/salient features of the Bill are mentioned below:

- **Higher Minimum Punishment:** The minimum punishment in case of rape of women has been increased from rigorous imprisonment of seven years to 10 years, extendable to life imprisonment.
- **Investigation:** Investigation in relation to all rape cases must be completed in two months, as opposed to the previous three-month period.
- **Prosecution of Public Servants:** No prior sanction is required from the Government to prosecute Government officials and judicial officials for rape of girls aged below 12 or 16.
- **Appeal:** Any appeal against a sentence related to such rape cases must be disposed of within 6 months.
- **Bail Provisions:** Anticipatory bail has been disallowed for those accused of specific crimes of rape against minor girls, while for regular bail, a provision for giving notice has been introduced. The court will also have to give notice of 15 days to the public prosecutor and a representative of the victim before granting bail in the case of the rape of any girl below the age of 16.
- **Prior sanction:** There is no prior sanction required to prosecute public and judicial officials for the crime of rape against girls in these age groups

The various amendments are explained in further detail below.

A. Substantive Amendments

The Bill makes key changes to the Indian Penal Code, 1860 (IPC), as well as the Protection of Children from Sexual Offences Act (POCSO), 2012.

Section	Title	Original Position	Change made by Bill
Indian Penal Code, 1860			
Section 376 (1)	Punishment For Rape	The minimum punishment under this section was previously seven years imprisonment extendable to life	The minimum punishment for rape is now ten years imprisonment extendable to life
New: Section 376 (3)	Punishment for Rape	Did not exist prior to amendment	A subsection was added stating that in case of the rape on a woman under the age of 16, the punishment is a minimum of 20 years imprisonment extendable to life
New: Section 376AB	Punishment for Rape of Woman under 12 years of age	Did not exist prior to amendment	A subsection was added stating that in case of the rape on a woman under the age of 12, a rigorous imprisonment of at least 20 years extendable to life imprisonment, along with fine to meet medical expenses and rehabilitation cost of the victim, <i>or</i> , death.
New: Section 376DA	Punishment for Gang-Rape of Woman under 16 years of age	Did not exist prior to amendment	Life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of victim.
New: Section 376DB	Punishment for Gang-Rape of Woman under 12 years of age	Did not exist prior to amendment	Life imprisonment, along with fine, to meet medical expenses and rehabilitation cost of the victim, <i>or</i> , death.
Protection of Children from Sexual Offences Act, 2012			
Section 42	Alternate punishment	Where an act or omission constitutes an offence punishable under this Act, including those of rape, then the offender found guilty under the Indian Penal Code, in case the degree of	Applies to cases of rape against minor girls of ages below 12 and 16.

		punishment is higher than in POCSO	
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Sources: Indian Penal Code, 1860; The Criminal Law (Amendment) Bill, 2018.

B. Procedural Amendments

The Code of Criminal Procedure (CrPC), 1973 lays down the process to be followed in case of a reported crime. This covers all stages including the police investigation, trial in the court, and sentencing by the judiciary. The Criminal Law (Amendment) Bill makes changes to certain key sections of this act.

Section	Title	Original Position	Change made by Bill
Section 173	Report of Police Officer on completion of investigation	The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.	Investigation relating to the rape of a woman or the rape or gang-rape of a woman under the ages 12 or 16 must be completed within two months
Section 374(3)	Appeals from convictions	Any person convicted by the Sessions Court (if sentence is greater than 7 years) or High Court may appeal to the High Court or Supreme Court respectively	Appeal in case of rape of a women, rape or gang-rape against a women less than 12 or 16 years must be disposed of within 6 months from the date of filing of such appeal
Section 438 (4)	Direction for Grant of Bail to person apprehending arrest	Did not exist prior to amendment	This section regarding anticipatory bail would not apply to those accused of raping a women, or raping or gang-raping a women below the age of 12 or 16
Section 439 (4)	Special Powers of High Court or Court of Sessions regarding bail	Did not exist prior to amendment	Before granting bail to a person accused of raping a women, or raping or gang-raping a women below the age of 12 or 16, the court will give 15 days-notice to the Public Prosecutor

C. Expanded Sections

Under the Bill, certain existing sections of important legislations such as the CrPC and the Indian Evidence Act, 1872 were modified and extended, to include within their ambit the crimes of gang-rape, and rape of girls under 12 and 16.

Act	Section	Title	Original Position	Change made by Bill
Indian Evidence Act, 1872	53A	Evidence of character or previous sexual experience not relevant in certain cases.	In a prosecution for certain offences, including rape, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.	Now includes rape and gang-rape of women under the ages of 12 and 16
Indian Evidence Act, 1872	146	-	In a prosecution for certain offences, including rape, 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 the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent	
Code of Criminal Procedure, 1973	26(a)	Courts by which offences are to be tried	Any offence regarding rape under the IPC shall be tried as far as practicable by a Court	
Code of Criminal Procedure, 1973	154; 161	Information in cognizable cases, Examination of witnesses by police	If the information or statement is given by the woman against whom specific offences (including rape) is alleged to have been committed or attempted, then such information or statement shall be recorded, by a woman police officer or any woman officer	

Code of Criminal Procedure , 1973	197	Prosecution of Judges and Civil Servants	When any person who is or was a Judge or Magistrate or a public servant, not removable from his office, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Central to State Government	
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II. Shortcomings of the Bill

While the salient features highlight the strength of the Bill in providing an inclusive law, there are certain key issues, which creates further gaps in catering to the main aim of the Bill.

➤ Lack of a Gender-Neutral Stance

The amendments to provisions across legislations have resulted in a situation where cases involving rape of females is given precedence, be at the investigation stage or the sentencing stage. With the Bill amending the IPC to impose death penalty for those convicted of raping a female child below the age of 12, a rapist under the IPC will now face a much higher punishment in the case of rape of a 12-year-old girl child, but a much lesser punishment for that of a male child. This is despite the fact that the POCSO Act has equal punishment for the rape of both a male and female child.

Another critique is with regards the investigation stage, where cases involving rape of a female have to be disposed one month faster than those involving male children. This involves the courts differentiating between two children, who may be victims of a heinous crime of the same magnitude, based only on gender. This distinction has been questioned by many, and stands as a critique of the Bill.

➤ Debate regarding Introduction of Death Penalty

There are several arguments against the introduction of the death penalty for the rape of a girl under the age of 14. The most important being that as per the National Crime Records Bureau, 2016 (NCRB 2016), a majority of those accused of rape of minors were members of the family. In such a scenario, introducing death penalty for such cases are thought to cause increased mental trauma and anguish to the victim, as well as lower reporting rates for such crimes.

Another argument against the death penalty states that in the case where the punishment for murder and rape is the same, the accused would be incentivized to kill the victim to try to better hide the crime. A third argument is that the introduction of the death penalty does not necessarily leads to lower incidence of the crime. An

example given to support this argument is the introduction of the death penalty under the Criminal Law (Amendment) Act, 2013, for the crime of causes the victim to die or to be left in a persistent vegetative state during sexual assault. Since this passing of this amendment, there has been no substantial change in the reported cases under this crime, as per NCRB data.

In furtherance of this, critics have claimed that the true problem in the system is not a lack of strong punishment, but faulty procedure, which allows for rape cases to be pending in court for years on end. To this end, a critique of the Bill is that it does not provide for the setting up of any fast-track courts, or make any effort to improve the current back-log or remedy the low conviction rates.

➤ **Failure to address existing procedural issues**

The rise in rape cases has been attributed to much more than insufficient punishment, and these issues have not been addressed in the new bill. Critics state that an increased punishment does not go to the root of the problem, and hence may not be enough to tackle the issue. The biggest bottlenecks are currently the police and judicial processes. There is unwarranted delay by the police filing missing person complaints, or even registering the written complaints of sexual assault survivors, leading to less women coming forth. This is made worse by instances of insensitive police investigations, and delayed forensic reports.

Further, with regards to the judiciary, there are shortcomings in the infrastructure itself such as the inadequacy of fast-track courts, a shortage of judges at several levels, and more importantly, an extremely low conviction rate. In addition, cases of rape that reach the courts often see victims being aggressively cross-examined, or receiving uneven disbursement of compensation. All these factors lead to victims not coming forth, and increased impunity for the perpetrators of such crimes. This is represented in the NCRB report, wherein a number of perpetrators of rape are repeat offenders. The bill has been criticized for adopting a one-dimensional approach for deterrence of the crime of rape. Suggestions have been put forward to expand the scope of the bill to include the setting up of fast track courts, increased compensation to rape survivors, witness protection for rape cases, and large-scale reforms to the present framework of child protection.

III. Conclusion

Overall, the Bill is certainly a step forward to bring impartiality to the victims of rape and gang rape. However, it is equally important to address the gaps to ensure the formulation of a stringent law catering to issues of all kind.

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