

Criminal Law Amendment Act, 2006

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Criminal Law Amendment Act, 2006

1. 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.

2. 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 childs body;

In circumstances falling under any of the six following descriptions:
Firstly - Against the complainants will.

Secondly - Without the complainants consent.

Thirdly - With the complainants 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 complainants consent, when the man knows that he is not the husband of such complainant and that the complainants 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 complainants 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 -

(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 womens or childrens 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. - "Womens or childrens 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 :

3. Deletion Of Section 376 A :-

The existing Section 376 A is hereby deleted.

4. Section 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 womens or childrens 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 womens or childrens 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 "Womens or childrens 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."

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 "

(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.

6. Deletion Of Section 354 Ipc :-

Section 354 of IPC is hereby deleted.

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.

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."

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 5 years but shall not be less than 3 years.

Explanation 1. " 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."

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."