

THE CRIMINAL LAW (AMENDMENT) BILL, 2010

A

BILL

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

BE it enacted by Parliament in the Sixty-first Year of the Republic of India
as follows:-

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Criminal Law (Amendment) Act, 2010

Short title and
commencement

(2) It shall come into force on such date as the Central Government may, by
notification in the Official Gazette appoint.

CHAPTER II
AMENDMENT OF THE INDIAN PENAL CODE

Insertion of
new section
166A

2. After section 166 of the Indian Penal Code (hereafter in this Chapter referred to as
the Penal Code), the following section shall be inserted, namely:-

45 of 1860

Public servant
Disobeying
direction
under law.

“166A. 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 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,

shall be punished with imprisonment for a term which may extend to one year or with

fine or with both.”

Substitution of
New sections
for sections
375,376,376A,
376B,376C
and 376D.

3. For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:-

Sexual assault

‘375. A man is said to commit “sexual assault” if he –

(a) penetrates the vagina, the anus or urethra or mouth of any woman with

- (i) any part of his body; or
- (ii) any object manipulated by such man

except where such penetration is carried out for proper hygienic or medical purposes;

(b) manipulates any part of the body of woman so as to cause penetration into the vagina, the anus or the urethra of the offender by any part of the woman’s body;

(c) introduces any part of his penis into the mouth of woman,

under the circumstances falling under any of the following six descriptions:-

Firstly.-Against her will.

Secondly.- Without her consent

Thirdly.- With her consent when such consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes to be lawfully married.

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

Sixthly.-With or without her consent, when she is under eighteen years of age

Explanation I – Mere penetration is a sexual assault within the meaning of this section.

Explanation II – For the purposes of this section “vagina” shall also include labia majora.

Exception. – Sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not sexual assault.

376.(1) Whoever, except in the cases provided for 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 be for life and shall also be liable to fine.

Punishment for
sexual assault.

(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 women in his custody or in the custody of a police officer subordinate to him; or

(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 women or minor inmate of such jail, remand home, place or institution; or

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

(e) being relative of, or person in a position of trust or authority towards, the women assaulted commits sexual assault with such woman; or

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

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

(h) commits gang sexual assault,

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

(j) commits sexual assault on a woman suffering from mental and physical disability, or

(k) while committing sexual assault causes grievous bodily harm, maims or disfigures or endangers the life of a woman, or

(l) commits persistent sexual assault,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be imprisonment for life and shall also be liable to fine:

Explanation 1.-Where a woman is subjected to sexual assault by one or more in a group of persons acting in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this subsection.

Explanation 2.-“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.

Explanation 3.—“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.

Sexual
intercourse by
husband upon
his wife during
separation

376A. Whoever commits sexual assault with 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 be extend to seven years and shall also be liable to fine:

Sexual
intercourse by
a person in
authority

376B. Whoever being in position of authority,

a public servant; or

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

being on the management of a hospital or being on the staff of a hospital;

takes advantage of his position and induces or seduces any woman either in his custody or under his charge or present in the premises and has sexual intercourse with that woman, such sexual intercourse not amounting to offence of sexual assault, shall be punished with imprisonment of either description for a term which may extend to 10 years but shall not be less than 5 years and shall also be liable to fine.

Explanation 1.—“Sexual intercourse” in this section and section 376C shall mean any of the acts mentioned in clauses (a) to (c) of section 375.

Explanation 2. – For the purposes of this section, the *Explanations* 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 he can exercise any authority or control over its inmates.

Explanation 4. –The expression “women’s or children’s institution” shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

Explanation 5. – The expression “hospital” shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.

376C(1) A person is said to commit “sexual abuse of minor” against a minor under the age of eighteen years if the person-

Sexual abuse of
minor

- (i) penetrates his penis into the vagina, the anus or urethra or the mouth of a minor;
- (ii) manipulates any object or part of his or her body or that of the minor so as to cause penetration into the vagina, the anus or urethra or mouth of any minor with or without the will or consent of the minor.

Explanation-Mere penetration is a sexual assault within the meaning of this section.

(2) Whoever commits any offence of sexual abuse of minor shall be punished

with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

(3) Whoever, with sexual intent, invites, counsels or incites or exhibits pornography a minor to touch, directly or indirectly, with a part of the body or with an object, the body of any minor, including the body of the person who so invites, counsels or incites, or touches, with sexual intent, directly or indirectly, with a part of the body or with an object, any part of the body of a minor, shall be punished with imprisonment of either description which may extend to ten years.

(4) In this section,-

(a) 'minor' means –

a person under eighteen years of age.

Amendment of section 509.

4. 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 seven years and shall also be liable to fine which may not be less than Rs.1000” shall be substituted.

CHAPTER III

AMENDMENT OF THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment of section 154.

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

“Provided that if the information is given by the woman against whom an offence under sections 354, 375, 376, 376A, 376B, 376C and 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer”. 45 of 1860

Amendment of section 160.

6. In section 160 of the Code of Criminal Procedure in sub-section (1), in the proviso, for the words “age of fifteen years”, the words “age of eighteen years or above sixty-five years” shall be substituted

Amendment of section 161.

7. 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 sections 354, 375, 376, 376A, 376B, 376C and 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”. 45 of 1860

Amendment of section 198.

8. In section 198 of the Code of Criminal Procedure, in sub-section(6),-

(i) for the words “sexual intercourse”, the words “sexual assault” shall be substituted.

Insertion of new section 198B.

9. After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:-

Prosecution of offences under sub-sections(2) and (3) of section 376C of the Indian Penal Code

“198B. No court shall take cognizance of an offence punishable under sub-section (2) or sub-section(3) of section 376C of the Indian Penal Code, except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by his father, mother, brother, sister or by his father’s or mother’s brother or sister or by any other person related to him by blood or adoption, if so permitted by the court”.

45 of 1860

Amendment of section 273.

10. 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

11. In section 327 of the Code of Criminal Procedure, 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”, the words, figures and letters “trial of sexual assault or an offence under section 354, section 376A, section 376B or section 376C of the Indian Penal Code”, shall be substituted.

45 of 1860

Amendment of the First Schedule.

12. In the First Schedule to the Code of Criminal Procedure, under the heading”1.- OFFENCES UNDER THE INDIAN PENAL CODE”,-

Substitution of new entry 166A.

(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) 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 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 or on the staff of a hospital, taking advantage of his official position 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.	Imprisonment for life or rigorous imprisonment for ten years and fine	Cognizable	Non-bailable	Court of Session

376A	Sexual intercourse by the husband upon his wife during separation.	Imprisonment for not less than two years extendable to seven years with fine.	Cognizable (but only on the complaint of the victim)	Non-bailable	Court of Session
376B(i)	Sexual intercourse by public servant with person in his custody	Imprisonment for not less than five years extendable to ten years and fine.	Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)	Non-bailable	Court of Session
376B(ii)	Sexual intercourse by superintendent of jail, remand home, etc.	Imprisonment for not less than five years extendable to ten years and fine.	Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)	Non-bailable	Court of Session
376B(iii)	Sexual intercourse by any manager, etc. of hospital with any person in that hospital	Imprisonment for not less than five years extendable to ten years and fine.	Cognizable (but no arrest shall be made without a warrant or without an order of a Magistrate)	Non-bailable	Court of Session
376C	Sexual abuse of a young person.	Imprisonment for not less than seven years extendable to imprisonment for life.	Cognizable if information relating to the commission of the offence is given to an officer in charge of a police station by the person aggrieved by the offence or by any person related to her or him by blood, or adoption or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf	Non-bailable	Magistrate of the First Class

376C	Unlawful sexual contact with a young person	Imprisonment which may extend to ten years.	Cognizable if information relating to the commission of the offence is given to an officer incharge of a police station by the person aggrieved by the offence or by any person related to her or him by blood, or adoption, or if there is no such relative, by any public servant belonging to such class or category as may be notified by the State Government in this behalf.	Non-bailable	Court of Session
------	---	---	--	--------------	------------------

(iii) In the column 3 entry relating to section 509 for the words, “Simple imprisonment for one year, or fine, or both,” the words, “Simple imprisonment which may extend to 7 years and fine of not less than Rs.1000” shall be substituted.

CHAPTER IV

AMENDMENT OF THE INDIAN EVIDENCE ACT, 1872

Insertion of new section 53A 13. After section 53 of the Indian Evidence Act, 1872 (hereafter in this chapter referred to as the Evidence Act), the following section shall be inserted, namely:- 1 of 1872

Evidence of character or previous sexual experiences not relevant in certain cases. "53A. In a prosecution for an offence under section 376 or section 376A or section 376B or section 376C of the Indian Penal Code 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 previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent". 45 of 1860

Substitution of new section for section 114A. 14. For section 114A of the Evidence Act, the following shall be substituted, namely:-

Presumption as to the absence of consent in certain prosecution for sexual assault. '114A. In a prosecution for sexual assault under clause (a) or clause (b) or clause(c) or clause(d) or clause(e) or clause(g) of sub-section (2) of section 376 of the Indian Penal Code, 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 evidence before the court that he did not consent, the court shall presume that he did not consent. 45 of 1860

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

Amendment of section 146. 15. 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 or section 376A or section 376B or section 376C of the Indian Penal Code 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 general immoral character, or as to his previous sexual experience with any person for proving such consent or the quality of consent." 45 of 1860