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NOTIFICATION

No. LJA. 13/82/86, the 26th November, 1984. The following Act of Parliament which have received the assent of the President is hereby republished for general information.

K.N. Srivastava,
Deputy Secy. to the Govt. of Mizoram,
Law and Judicial Deptt.

THE CRIMINAL LAW (AMENDMENT) ACT, 1983 NO. 43 OF 1983

25th December, 1983.

An Act 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 Thirty-fourth Year of the Republic of India as follows.

- Short title. 1. This Act may be called the Criminal Law (Amendment) Act, 1983.
- Insertion of new section 2. In the Indian Penal Code (hereinafter referred to as the Penal Code) after section 228, the following section shall be inserted, namely—
- 228 A.

Disclosure of identity of the victim of certain offences etc. 228A (1) —whoever print or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B section 376C or section 376 D is alleged or found to have been committed thereinafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-

(a) by or under the order in writing of the Officer-in-charge of the police station or the police Officer making the investigation into such Offence acting in good faith for the purposes of such investigation: or

(b) by, or with the authorisation in writing of, the victim : or

(c) where the victim is dead or minor or of unsound mind, by or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called of any recognised welfare institution or organisation.

Explanation :—For the purposes of this sub-section “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation :— The printing or publication of the judgement of any High Court or the Supreme Court, does not amount to an offence within the meaning of this section.

Substitution

3. In the Penal Code, for the heading “Of rape ” occurring immediately before section 375 and for sections 375 and 376

of new Sections for sections 375 and 376.

the following heading and sections shall be substituted, namely :-

Sexual offences.

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a Woman under circumstances falling under any of the six following descriptions :-

First - Against her will.

Secondly - Without her consent.

Thirdly - With her consent, when her 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 herself 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 to which she gives consent.

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

Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Punishment for rape.

376 (1) Whoever, except in the cases provided for by subsection (2) commits rape 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 or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both :

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven year.

(2) Whoever :

(a) being a police officer commits rape-

(1) 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 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 rape on a woman 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 woman's or children's institution takes advantage of his official position and commits rape on any 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 rape on a woman in that hospital ; or
- (e) commits rape on a woman knowing her to be pregnant: or
- (f) commits rape on a woman when she is under twelve years of age : or
- (g) commits gang rape: shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose as sentence of imprisonment of either description for a term of less than ten years.

Explanation 1-Where a Woman is raped by one more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this subsection.

Explanation 2-"Woman'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 by any other name, which is established and maintained for the reception and care of woman 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.

Intercourse
by a man
with his wife
during se-
paration.

376A. Whoever has sexual intercourse with his own wife, who is living separately from him 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 may extend to two years and shall also be liable to fine.

Inter-
course
by pub-
lic
servant
with
women
in his
custody.

376B. Whoever, being a public servant, takes advantages of his official position and induces or seduces, any woman, who is in his custody as such public servant or in the custody of public servant subordinate to him, to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Inter-
course by
superin-
tendent
of jail
remand
home, etc.

376C. 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 woman's or children's institution takes advantage of his official position and induces or seduces any female inmate of such jail, remand home, place or institution to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

Explanation 1 - "Superintendent" in relation to a jail, remand home or other place of custody or a woman'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 2 - The expression "Woman's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

Inter-
course by
any mem-
ber of the
management
or staff
of a hos-
pital with
any woman
in that
hospital.
2 of 1974
Amendment
of sec-
tion 327.

376D. Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his position and has sexual intercourse with any woman in that hospital such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to five 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.

4. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the Criminal Procedure Code), section 327 shall be renumbered, as sub-section (1) of that section and after it, as so renumbered, the following sub-sections shall be inserted namely :-

"(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 370D of the Indian Penal Code shall be conducted in camera :

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain, in the room or building used by the court.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court."

Amendment
of the first
schedule.

5. In the First Schedule to the Criminal Procedure Code, under the heading "I-Offences under the Indian Penal Code" -

(a) after the entries relating to section 228, the following entries shall be inserted, namely :-

1	2	3	4	5	6
"228A	Disclosure of identity of the victim of certain offences etc. Printing or publication of a proceeding without prior permission of court.	Imprisonment for two years and fine. Ditto	Cognizable Ditto	Bailable Ditto	Any Magistrate Ditto

(b) for the entries relating to section 376, the following entries shall be substituted, namely :-

"376	Rape	Imprisonment for life or imprisonment for ten years and fine.	Cognizable	Non-bailable	Court of Session.
	Inter course by a man with his wife not being under twelve years of age.	Imprisonment for two yrs. of fine or both.	Non-cognizable	Bailable	Ditto
376 A.	Intercourse by a man with his wife during separation.	Imprisonment for two years and fine.	Ditto	Ditto	Ditto
376 B.	Intercourse by public servant with women in his custody.	Imprisonment for five years and fine.	Cognizable (but not arrest shall be made without a warrant or without an order of a Magistrate).	Ditto	Ditto

I	2	3	4	5	6
376 C.	Intercourse by superintendent of Jail, remand home, etc.	Ditto	Ditto	Ditto	Ditto
376. D.	Intercourse by manager, etc. of a hospital with any woman in that hospital.	Ditto	Ditto	Ditto	Ditto

Insertion of new section 114A. 6. After Section 114 of the Indian Evidence Act, 1872, the following section shall be inserted, namely :-

Presumption as to absence of consent in certain prosecutions for rape. "114A. In a prosecution for rape under clause (a) or clause (b) clause (c) or clause (d) or clause (e) 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 woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent,".

R. V. S. Peri Sastri,
Secretary to the Government of India.