

Bill No. 1 of 2019

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES
(AMENDMENT) BILL, 2019

A

BILL

further to amend the Protection of Children from Sexual Offences Act, 2012.

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

1. (1) This Act may be called the Protection of Children from Sexual Offences (Amendment) Act, 2019.

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

Short title
and
commencement.

Amendment
of section 4.

2. In the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the principal Act), section 4 shall be renumbered as section 4 (I) thereof and—

32 of 2012.

(a) in sub-section (I) as so renumbered, for the words "seven years", the words "ten years" shall be substituted;

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(b) after sub-section (I), the following sub-sections shall be inserted, namely:—

"(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

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(3) The fine imposed under sub-section (I) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

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Amendment
of section 5.

3. In section 5 of the principal Act,—

(I) in clause (j),—

(A) in sub-clause (i), the word "or" occurring at the end shall be omitted;

(B) in sub-clause (iii), the word "or" occurring at the end shall be omitted;

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(C) after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(iv) causes death of child; or";

(II) in clause (s), for the words "sectarian violence", the words "sectarian violence or during a situation of natural calamity" shall be substituted.

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Substitution
of new section
for section 6.

4. For section 6 of the principal Act, the following section shall be substituted, namely:—

Punishment
for aggravated
penetrative
sexual assault.

"6.(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

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(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

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Amendment
of section 9.

5. In section 9 of the principal Act,—

(i) in clause (d), for the words "such jail or remand home or protection home or observation home or other place of custody or care and protection", the words "such jail or remand home or protection home or observation home or other place of custody or care and protection or causes sexual assault, by giving any payment or benefits to the child or to any other person exercising control over the child, or by receiving any payment or benefits for the said purpose" shall be substituted;

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(ii) in clause (s), for the words "sectarian violence", the words "sectarian violence or during a situation of natural calamity" shall be substituted;

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(iii) after clause (u), the following clause shall be inserted, namely:—

5 "(v) whoever gives, or administers, or causes to be given, or administered, any hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity for the purpose of penetrating sexual assault,".

6. For section 14 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 14.

10 "14. (1) Whoever uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine.

Punishment for using child for pornographic purposes.

15 (2) Whoever using a child or children for pornographic purposes under sub-section (1), commits an offence referred to in section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, shall be punished for the said offences also under section 4, section 6, section 8 and section 10, respectively, in addition to the punishment provided in sub-section (1)."

7. For section 15 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 15.

20 "15. (1) Any person, who stores or possesses pornographic material in any form involving a child but fails to delete or destroy or report the same to the designated authority as may be prescribed, shall be liable to fine not less than one thousand rupees, and in the event of second or subsequent offence, with fine which shall not be less than five thousand rupees.

Punishment for storage of pornographic material involving child.

25 (2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

30 (3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine."

45 of 1860. 8. In section 42 of the principal Act, for the figures, letter and words "376E or section 509 of the Indian Penal Code", the figures, letters and words, "376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000" shall be substituted.

Amendment of section 42.

21 of 2000. 9. In section 45 of the principal Act, in sub-section (2), clause (a) shall be re-lettered as clause (ab) and before clause (ab) as so re-lettered, the following clauses shall be inserted, namely:—

Amendment of section 45.

45 “(a) the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of section 15;

(aa) the manner of reporting about pornographic material in any form involving a child under sub-section (2) of section 15;”.

STATEMENT OF OBJECTS AND REASONS

The Protection of Children from Sexual Offences Act, 2012 (the said Act) has been enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

2. The said Act is gender neutral and regards the best interests and welfare of the child as matter of paramount importance at every stage so as to ensure the healthy physical, emotional, intellectual and social development of the child.

3. However, in the recent past incidences of child sexual abuse cases demonstrating the inhumane mind-set of the abusers who have been barbaric in their approach towards young victims is rising in the country. Children are becoming easy prey because of their tender age, physical vulnerabilities and inexperience of life and society. The unequal balance of power leading to the gruesome act may also detriment the mind of the child to believe that might is right and reported studies establish that children who have been victims of sexual violence in their childhood become more abusive later in their life. The report of the National Crime Records Bureau for the year 2016 indicate increase in the number of cases registered under the said Act from 44.7 per cent. in 2013 over 2012 and 178.6 per cent. in 2014 over 2013 and no decline in the number of cases thereafter.

4. The Supreme Court, in the matter of *Machhi Singh vs. State of Punjab* [1983 (3) SCC 470], held that when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The same analogy has been reiterated by the Supreme Court in the matter of *Devender Pal Singh vs. State (NCT of Delhi)* [AIR 2002 SC 1661] wherein it was held that when the collective conscience of the community is so shocked, the court must award death sentence.

5. In the above backdrop, as there is a strong need to take stringent measures to deter the rising trend of child sex abuse in the country, the proposed amendments to the said Act make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child. It also empowers the Central Government to make rules for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 1st January, 2019.

VIRENDRA KUMAR

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill seeks to amend sub-section (2) of section 45 of the Protection of Children from Sexual Offences Act, 2012 so as to empower the Central Government to make rules to provide for the manner of deleting or destroying or reporting about pornographic material in any form involving a child to the designated authority under sub-section (1) of section 15 and the manner of reporting about pornographic material in any form involving a child under sub-section (2) of the said section.

2. The matters in respect of which rules may be made by the Central Government are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012

(32 OF 2012)

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Punishment for penetrative sexual assault. **4.** Whoever commits penetrative 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 imprisonment for life, and shall also be liable to fine.

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B.—AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Aggravated penetrative sexual assault. **5.** (a) Whoever, being a police officer, commits penetrative sexual assault on a child—

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(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

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14 of 1987.

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

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(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

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Punishment for aggravated penetrative sexual assault. **6.** Whoever, commits aggravated penetrative 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.

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D.—AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR

Aggravated sexual assault. **9.** (a) Whoever, being a police officer, commits sexual assault on a child—

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(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

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(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

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14. (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

Punishment for using child for pornographic purposes.

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description 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.

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

15. Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

Punishment for storage of pornographic material involving child.

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45 of 1860.

42. Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

Alternate punishment.

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45. (1)* * * * *

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

Power to make rules.

(a) the qualifications and experience of, and the fees payable to a translator or an interpreter, a special educator or any person familiar with the matter of communication of the child or an expert in that field, under sub-section (4) of section 19; sub-sections (2) and (3) of section 26 and section 38;

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LOK SABHA

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further to amend the Protection of Children from Sexual Offences Act, 2012.

*(Shri Virendra Kumar Minister of State, Women and Child Development and
Minority Affairs)*