

THE SEXUAL OFFENCES (SPECIAL COURTS) BILL, 2010

A

Bill

to provide for the speedy trial of sexual offences and for matters connected therewith. BE it enacted by Parliament in the Sixtieth year of the Republic of India as follows:

Short title, extent and commencement

1. (1) This Act may be called the Sexual Offences (Special Courts) Act, 2010.
- (2) It extends to the whole of India except the State of Jammu & Kashmir.
- (3) It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

Definitions

2. The Act, unless the context otherwise requires. –
 - (a) ‘Code’ means the Code of Criminal Procedure, 1973;
 - (b) ‘High Court’ in relation to a special court means the High Court within the territorial limits of whose jurisdiction such Special Court is proposed to be or is established;
 - (c) ‘notification’ means a notification published in the Official Gazette;
 - (d) ‘Public Prosecutor’ means a public prosecutor or an additional public prosecutor or a special public prosecutor appointed under section 9 and includes any person acting under the directions of the public prosecutor;
 - (e) ‘sexual offence’ means an offence specified in the Schedule;
 - (f) ‘Special Court’ means a special court or an additional special court established under sub-section (2) of section 3 or notified under subsection (3) of that section.

Establishment of Special Courts

3. (1) As soon as may be after the commencement of this Act the State Government shall for the purposes of establishment of Special Courts, after consultation with the High Court, constitute the areas comprised within the state into different judicial zones.
- (2) The State Government shall, as soon as may be, after the constitution of judicial zones under sub-section (1) and after consultation with the High Court, establish by notification one or more special courts in every judicial zone for the purpose of providing speedy trial of sexual offences:

Provided that where a Court of Session is notified under sub-section (3) for any judicial zone then such Court of Session shall be deemed to be a Special Court for that judicial zone and the provisions of this sub-section shall not apply to such judicial zone.

(3) Without prejudice to the provisions of sub-section (1) the State Government may notify any court of sessions as a Special Court for the purpose of this Act.

(4) Notwithstanding anything contained in the Code all sexual offences committed with n a judicial zone shall be tried by a special court for that judicial zone –

(a) established under sub-section (2); or

(b) notified under sub-section (3).

Composition and appointment of Judges of Special Courts

4. (1) A Special Court shall be presided by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.
- (2) The State Government may also appoint with the concurrence of the Chief Justice of the High Court additional judges to exercise jurisdiction in a Special Court.
- (3) A person shall not be qualified for appointment as a judge or an additional judge of a Special Court unless he is immediately before such appointment a Sessions Judge or an Additional Sessions Judge in any State.

Jurisdiction of Special Court

5. (1) Notwithstanding anything contained in the Code or in any other law, a sexual offence committed in a judicial zone shall be triable, only by the Special Court established or notified for such judicial zone in the State.
- (2) Nothing in the foregoing provision of this sub-section shall apply to a sexual offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and all other cases involving sexual offence committed in such judicial zone and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

Powers of Special Courts with respect to other offences

6. (1) When trying any sexual offence, a Special Court may also try any offence other than the sexual offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the sexual offence.
- (2) If in the course of any trial under this Act, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a sexual offence, convict such person of such offence and pass any sentence authorized by law for the punishment thereof.

Public Prosecutors

7. (1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

- (2) A. person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years.
- (3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and Powers of Special Courts

8. (1) A Special Court may take cognizance of any sexual offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.
- (2) When trying any offence, other than the sexual offence with which the accused may, be charged at the same trial under sub-section (1) of section 6 or under sub-section (2) of that section, which is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such

that it is not desirable to try it in a summary way, the Special court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding three years.

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

Trial by Special Court to be concluded with six months

9. The trial under this Act of any sexual offence shall be concluded as expeditiously possible and every endeavour shall be made to complete it within six months.

Modified application of certain provisions of the Code

10. (1) Notwithstanding anything contained in the Code or any other law, every sexual offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) The Code of Criminal Procedure 1973 shall apply in relation to an offence triable under this Act subject to the following modifications, namely:-

(i) in section 160, after subsection (2) the following subsections shall be inserted namely:

(3) Where under this Chapter, the statement of a female is to be recorded either as first information of an offence or in the course of an investigation into an offence and she is person against whom an offence under sections 354, 375, 376, 376A, 376B, 376C, 376D or 509 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded by a female police officer and in case a female police officer is not available, by a female government servant available in the vicinity and in case a female government servant is also not available, by a female authorized by an organization interested in the welfare of women or children.

(4) Where in any case the statement could not be recorded in accordance with the provisions of sub-section (3) for the reason that no female police officer or female government servant or a female authorized by an organization interested in the welfare of women and children is available, the officer in charge of the police station shall, after recording the reasons in writing, proceed with the recording of the statement of such female victim in the presence of a relative of the victim:

Provided that

- (a) no woman shall be required to attend at any place other than the place in which such male person or woman resides;
- (b) while recording the statement, a relative or a friend or a social worker of the choice of the person whose statement is being recorded shall be allowed to remain present;
- (c) the relative, friend or social worker so allowed to be present shall not interfere with the recording of statement in any manner whatsoever.”

(ii) in section 273 for the words “in the presence of the pleader.”, the following shall be substituted, namely:

“in the presence of the pleader:

“Provided that where the evidence of a person below sixteen years who is alleged to have been subjected to any 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.”

(iii) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving a sexual offence subject to the modifications that the references to “Court of Session” wherever occurring therein, shall be construed as references to “Special Court”.

(iv) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a sexual offence.

(v) Notwithstanding anything contained in the Code, no person accused of a sexual offence shall, if in custody, be released on bail or on his own bond unless —

- (a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(vi) The limitations on granting of bail specified in sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Amendment to the Indian Penal Code -

11. After section 376D of the Indian Penal Code the following section shall be inserted, namely:

Unlawful sexual contact.

376E. (1) Whoever, with sexual intent, touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person, not being the spouse of such person, without the consent of such other person, shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.

(2) Whoever, with sexual intent, invites, counsels or incites a young person 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 touches, with sexual intent, directly or indirectly, with a part of the body or with an object any part of the body of a young person, shall be punished with imprisonment of either description which may extend to three years and shall also be liable to fine.

(3) Whoever being in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency, touches, directly or indirectly, with sexual intent, with a part of the body or with an object, any part of the body of such young person, shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

Explanation: “Young person” in this sub-section and sub-section (2) means a person below the age of sixteen years.”

Amendments to the Indian Evidence Act 1872

12. The Indian Evidence Act 1872:-

a) after section 53 the following section shall be inserted

“53A. In a prosecution for an offence under section 376, 376A, 376B, 376C, 376D 376E 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 her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”

- (b) section 146 shall be renumbered as sub-section (1) and -
 - (a) in sub-section as so renumbered the proviso shall be omitted;
 - (b) after sub-section (1) as so renumbered the following sub-sect shall be inserted, namely:

“(2) In a prosecution for an offence under sections 354, 376, 376A, 376B, 376C, 376D, 376E or for attempt to commit any such offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to her general immoral character, or as to her previous sexual experience with any person for providing such consent or the quality of consent.”

THE SCHEDULE

Offences under the Indian Penal Code

- I. Section 354
2. Section 375
3. Section 376
4. Section 376A
5. Section 376B
6. Section 376C
7. Section 376D
8. Section 376E